

July 8, 2013

**CITY OF BAINBRIDGE ISLAND, WASHINGTON
HEARING EXAMINER**

REPORT AND DECISION

Project: Nishi Garden Preliminary Subdivision

File number: SUB14797

Applicant: Kay Nishi
10336 NE Knight Rd.
Bainbridge Island, WA. 98110

Request: The applicant requests approval to subdivide a 6.60 acre parcel into six lots.

Location: The subject property is located at 10336 NE Knight Road, northwest of the intersection of Sunrise Drive and Knight Road.

**Environmental
Review:**

The project is subject to State Environmental Policy Act (SEPA) review as provided in Washington Administrative Code (WAC 197-11-800). Utilizing the optional DNS process contained in WAC 197-11-355, the City issued a combined Notice of Application/SEPA comment period on January 1, 2010. The 14-day comment period ended on January 15, 2010. The City, acting as lead agency, issued a Mitigated Determination of Non-significance (MDNS) for this proposal on April 22, 2011; the appeal period for this threshold determination expired May 6, 2011 (Attachment G).

The SEPA determination was appealed by the applicant Kay Nishi (Attachment H). Pursuant to mediation the City and the applicant (the appellant) agreed to dismiss the appeal pursuant to a signed Stipulation and Order of Dismissal with Prejudice (Attachment I).

FINDINGS OF FACT

A. Site Characteristics

- I. Tax Assessor Information:
 - a. Tax Lot Number: 022502-3-047-2002
 - b. Owner of record: Kay Nishi

- c. Lot size: 6.6 acres
 - d. Land use: Residential
2. Terrain / Soils: The subject property slopes ten percent, 95 feet over a course of 920 feet, from south to north down to a wetland that occupies the northern third of the property. A roadside ditch (referred to as a “watercourse” hereafter) lies between the property’s eastern boundary and the edge of the paved driving surface of Sunrise Drive over the length of the property.
4. Site Development: The subject property contains a residence, garage, and studio building, along with customary single-family residential site improvements. Existing residential development will be retained.
5. Access: The existing residential development contains two accesses, one from Knight Road, a Residential – Suburban road, and one from Sunrise Drive, classified as a Collector. Driveway access to Lot 1 will continue to be provided from Knight Road. A new access road from Sunrise Drive is proposed for Lots 2 through 6 in the location of the existing driveway.
6. Public Services and Utilities:
- a. Police: Bainbridge Island Police Department
 - b. Fire: Bainbridge Island Fire District
 - c. Schools: Bainbridge Island School District
 - d. Water: Kitsap County P.U.D. No. 1
 - e. Sewer: On-site septic systems are proposed for individual residences.
 - f. Storm drainage: According to the drainage plan prepared by Browne Engineering (April 29, 2013), the runoff from the existing development is collected and routed to a roadside swale; the proposal involves no change to existing drainage facilities. A combination of dispersion trenches and on-site infiltration, including several rain gardens, is proposed for new development.
7. Zoning / Comprehensive Plan Designation: The subject property is zoned R-1, 40,000 square feet per unit; the Comprehensive Plan designation is Open Space Residential (OSR-1).
8. Surrounding Zoning / Comprehensive Plan Designation: The properties to the east, across Sunrise Drive, are zoned R-2; the remaining surrounding properties are zoned R-1. The Comprehensive Plan designation for the surrounding properties is Open Space Residential (OSR-2 and OSR-1), respectively.
9. Surrounding Uses: Knight Road borders the south property line and Sunrise Drive borders the east property line. The lots to the south across Knight Road and to the north are undeveloped. The lots to the east across Sunrise Drive contain residential development. One lot to the west is residentially developed. An open space / conservation easement for Sunrise Meadows PUD lies adjacent to the northern half of the subject property along the west property line (Kitsap County A.F.N. 3057641).

B. Procedural History

10. A pre-application conference was held July 10, 2007. The preliminary subdivision application was received December 18, 2009, deemed complete December 18, 2009 and a Notice of Application was published January 1, 2010. The SEPA threshold determination was issued April 22, 2011, with the applicant submitting an appeal of the SEPA determination on April 28, 2011. A prehearing conference

was held by the Hearing Examiner on January 31, 2013; a prehearing order issued February 4, 2013, clarified and framed the appeal issues. Pursuant to mediated settlement agreement, the applicant agreed to dismiss the SEPA appeal. The public hearing on the plat application was held on June 28, 2013.

11. Five public comments were received regarding the proposed development. Commenters expressed concern about potential impacts to existing trees on the property, stormwater management and plat density. One individual commented on the wetland analysis submitted with this application, questioning the habitat rating and resultant buffer requirement (Attachment P).

12. Regarding agency review, the Kitsap County Health District has given preliminary approval for septic system installation to serve the lots of the Nishi Garden plat. Final Health District approval will be required prior to completion of the final plat. The Bainbridge Island Fire District indicated that a hydrant would be required at the intersection of Sunrise Drive and the proposed Nishi Circle access road, as well as at the intersection of Sunrise Drive and Knight Road.

C. Regulatory Compliance

Comprehensive Plan Goals and Policies

Land Use Element

13. *Residential Open Space Goal 1. Preserve open space area through a development pattern which will enhance the character of the area and the valuable functions the open space area serves on the Island (i.e. aquifer recharge, fish and wildlife habitat, recreation).*

BIMC 17.12.030. requires all critical areas and their related buffers be designated open space areas; the proposed plat designates the wetland and buffer as open space areas and meets this goal.

14. *Historic Preservation Goal 3. Archaeological resources found on Bainbridge Island should be identified, preserved, and / or left undisturbed.*

The project is conditioned to protect archaeological resources (Condition #8).

Environmental Element

15. *Environment Goal 1. Preserve and enhance Bainbridge Island's natural systems, natural beauty, and environmental quality.*

- i. Environment Policy EN 1.1. Land use decisions shall be made seriously considering the overall goal of the Comprehensive Plan in protecting the Island's natural environment.*
- ii. Environment Policy EN 1.4. Encourage community land use plans and development patterns that maintain, enhance, or restore natural systems, and protect wildlife, fish resources and open spaces.*

Environment Goal 3. Whenever there is a subdivision of land, the City shall consider the impact on critical areas.

- i. Environment Policy EN 3.1. The number and design of lots shall be based on avoiding or minimizing the impact to critical areas and protecting natural systems. Development*

shall be consistent with the objectives of the Critical Areas policies rather than maximizing the number of lots. In order to protect critical areas, the full density permitted under the zoning ordinance might not be achieved.

- ii. Environment Policy EN 3.3. Any lot created by subdivision of land shall include sufficient area to accommodate a building site not in a critical area.*

The project is conditioned to enhance and restore the wetland buffer. In addition, the wetland and its buffer are contained within the protected open space area. The application demonstrates that the number and design of lots will avoid or minimize impacts to critical areas. The project parcel has sufficient area to accommodate building sites outside of critical areas.

16. *Fish and Wildlife Goal 1. Protect and enhance wildlife, fish resources and natural ecosystems on Bainbridge Island*

- i. Fish and Wildlife Policy FW 1.1. The protection and enhancement of wildlife habitat shall be an integral component of the land use planning process. Land uses and developments shall minimize the impacts to priority habitat and priority species as defined by the Washington Department of Fish and Wildlife, and to species or habitat determined to be locally significant.*
- ii. Fish and Wildlife Policy FW 1.3. The protection and enhancement of priority habitat shall be one of the criteria used when evaluating the preservation of open space as part of development techniques, such as flexible lot design subdivisions.*
- iii. Fish and Wildlife Policy FW 1.4. The City shall protect priority habitat and limit fragmentation of habitat that isolates wildlife populations (physically and genetically) by identifying an interconnected system of corridors which will provide continuous links east to west and north to south, connecting larger tracts identified as priority habitat.*
- iv. Fish and Wildlife Policy FW 1.5. Wetlands and riparian areas shall be protected.*
- v. Fish and Wildlife Policy FW 1.6. The City shall undertake appropriate, adequate, and timely actions to protect and recover state priority species, species listed under the federal Endangered Species Act, local species of concern, and their habitats located within the City to 1) avoid local extirpation of such species from the lands or fresh waters or nearshore of the City and 2) contribute to the protection and recovery of such species throughout the greater region in cooperation with federal, state, and other local agencies. Local extirpation means the elimination of self-sustaining residential populations from the entire Island and its waters, or adequate habitat to sustain use of the Island's lands and waters by transitory or migratory populations.*
- vi. Fish and Wildlife Policy FW 1.7. The City shall work closely with the Department of Fish and Wildlife (the agency with expertise to "preserve, protect, and perpetuate" wildlife resources of the state) in matters involving wildlife.*

The Sunrise Drive drainage watercourse flows north through the wetland along the eastern edge of the Nishi property until it intersects Dripping Water Creek on the adjacent property about 500 feet north of the northern Nishi boundary. The creek is then culverted east under Sunrise Drive. Coho salmon and cutthroat trout are documented within Dripping Water Creek on the east side of Sunrise Drive; cutthroat are also documented in the creek west of Sunrise Drive. The Washington State Department of Fish and Wildlife (WDFW) classifies both Coho and cutthroat as priority species and the riparian area as priority habitat.

The application proposes protection and enhancement of the wetland and wetland buffer in addition to providing a 25-foot wide full landscape screen along Sunrise Drive. These plat enhancements will provide new additional protection to the wetland and habitat associated with Dripping Water Creek.

17. *Aquatic Resources Goal 1. Preserve and protect the Island's remaining aquatic resources' functions and values. Aquatic resources include marine nearshore, wetlands, streams, creeks, and associated vegetated areas.*

- 1) *Aquatic Resources Policy AQ 1.2. Development shall not be approved in regulated wetlands, streams, or buffer areas, unless a property owner would be denied all reasonable use of property.*
- 2) *Aquatic Resources Policy AQ 1.3. Require that vegetated buffers be maintained between proposed development and the aquatic resource in order to protect the functions and values of such systems. Degraded buffers should be restored to enhance their function. Reductions in vegetated buffers shall only be allowed in areas where such reductions, if consistently applied, would not result in significant cumulative impacts to aquatic resources and fish and wildlife habitat.*
- 3) *Aquatic Resources Policy AQ 1.7. New development using flexible lot design should include any wetlands, streams, or required buffers in separate tracts or easements to remain in common ownership.*

Building areas, utilities, septic systems and stormwater facilities are proposed to be located outside required wetland buffer areas. As conditioned, the degraded wetland buffer will be enhanced by removing invasive vegetation and planting native species.

Land Use Code Requirements

Critical Areas

18. *Stream Definition. BIMC 16.20.030(A)(46). Streams are defined as those areas where the surface water flows are sufficient to produce a defined channel or bed. A defined channel or bed is an area which demonstrates clear evidence of the passage of water and includes but is not limited to bedrock channels, gravel beds, sand and silt beds, and defined-channel swales. The channel or bed need not contain water year-round. This definition is not meant to include irrigation ditches, canals, storm or surface water runoff devices, or other artificial watercourses unless they are used by fish or used to convey streams naturally occurring prior to construction.*

The watercourse that runs along the entire length of the property's Sunrise Drive frontage does not meet the City's definition of a stream provided in BIMC 16.20.030.A.46. While the watercourse currently contains a defined channel that demonstrates clear evidence of passage of water, it does not convey a naturally occurring stream. Upon investigation the City found no defined channel or flow even during the wet season. From all indications the ditch appears to be an artificial watercourse created at the time Sunset Drive was constructed. The road was built on an elevated prism through the eastern end of a large wetland, so an element of natural hydrology was likely present. But there is no topographical evidence of a pre-existing channel. Because the City has adopted its own definition of a stream for critical areas purposes, questions about how the watercourse might be classified under the State's water typing system have no regulatory consequences for this proceeding.

19. *Class II Fish and Wildlife Conservation Areas. BIMC 16.20.130(B)(c)(ii). Habitats for state-listed candidate, monitor, or priority species documented in maps or databases available to the City*

and its citizens, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term.

Coho salmon and cutthroat trout are documented in Dripping Water Creek on the east side of Sunrise Drive; cutthroat are also documented in the creek west of Sunrise Drive. The Washington State Department of Fish and Wildlife (WDFW) classifies both Coho and cutthroat as priority species and the riparian area as priority habitat. While the City does not define the watercourse as a stream, it together with the wetland are classified a Fish and Wildlife Conservation Area. The wetland buffer provides sufficient protection to this area adequate to preserve the existing habitat, with the buffer to be enhanced by planting of native vegetation and the removal of invasive species.

20. *Land Divisions and Land Use Permits BIMC 16.20.130(C)(8). All land divisions and land uses proposed on a site that includes fish and wildlife habitat conservation areas shall comply with the procedures and development standards in this section, including the following:*

- i. In order to avoid the creation of nonconforming lots, each new lot shall contain at least one building site that meets the requirements of this chapter, including buffer requirements for habitat conservation areas. Each lot must also have access and a sewage disposal system location that are suitable for development which do not adversely impact the fish and wildlife conservation area.*

The proposed development will provide the buffers required for the wetland/wildlife conservation area. No homesites, septic systems or stormwater drainage facilities are proposed within the wetland or buffer.

21. *Regulated Wetlands BIMC 16.20.160(C)*

The Wetland Analysis Report prepared by Wiltermood Associates, Inc., dated December 12, 2006, classifies the wetland on the subject property as Category III based on a habitat score less than 20. This outcome was verified by Wiltermood within a June 27, 2013, update. According to BIMC 16.20.160(D) Table 3, a Category III wetland requires an 80 foot water quality buffer and a 15 foot building setback. The proposed homesites adjacent to the wetland on lots 4 and 6 are set back 100 feet or more, meeting these requirements.

22. *Regulated Uses and Activities BIMC 16.20.160(E)*

In accordance with BIMC 16.20.160(E) Table 8, land division is a permitted activity within parcels having wetlands and wetland buffers if homesites on new lots are located outside the regulated wetland features. If the property can be divided such that all setbacks, buffers and other zoning requirements can be met without variances, the wetland areas can be included in the plat density calculation. The proposed subdivision provides protection to the wetland and wetland buffer by designating them as dedicated open space. All homesites and improvements will be located outside the wetland and its buffer.

Subdivision Design Standards

23. *Flexible lot design requirements for single-family subdivisions. BIMC 17.12.020.* All subdivisions within the City are required to be designed in accordance with the flexible lot design requirements. The Nishi Garden subdivision meets the flexible lot design standards. Each home site and all infrastructure will be located outside of critical areas, their buffers and required setbacks.

24. *Open space/cluster standards for homesite locations for single-family residential subdivisions. BIMC 17.12.030*. All subdivisions must either provide open space or cluster the homesites. The Nishi Garden subdivision has chosen the open space option. The open space within the subdivision will encompass all critical areas and their buffers plus significant trees, which constitute the highest valued features. The open space will occupy 46-percent of the total lot area, far exceeding the minimum 25-percent open space requirement, and will be privately held by the owners of Lot 6. The open space will be protected via an open space management plan to be recorded with the final plat documents (Condition #17). A portion of the wetland buffer is currently occupied by a landscaped yard; the applicant will remove invasive plants and enhance this area. To prevent encroachment into the protected area, the open space critical area will be protected both by a low-impact fence in accordance BIMC 17.28.020.30 and with signage (Condition #16).

25. *General residential subdivision standards (BIMC 17.12.040). All residential short, long, and large lot subdivisions shall comply with the following standards:*

Compliance with BIMC Titles 16 and 18 and RCW Title 58. Lot areas, dimensions, and other characteristics shall comply with the requirements of BIMC Title 18 applicable to the zone district where the land is located, including landscaping and/or vegetated buffers. In addition, each subdivision plat shall comply with all applicable provisions of RCW Title 58 (Boundaries and Plats) or its successors. Subdivisions including sensitive areas or their required buffers shall also comply with the provisions of BIMC 17.12.060.

The Nishi Garden preliminary plat drawings were prepared by a Washington State Licensed Land Surveyor in compliance with RCW Chapter 58.17 and BIMC Titles 16 and 18. The subdivision will provide required vegetative buffers, critical areas protection, open space, and compliant lot areas and dimensions.

26. *Water Supply Systems*. Locations of individual or community water supply systems and associated wellhead protection areas shall comply with all applicable Health District standards. Consistent with the District's preliminary approval, the subdivision will be served by a public water system. An existing well will be decommissioned prior to final plat approval (Condition #18).

27. *Septic Systems*. The Kitsap Health District reviewed drainfield designs for the proposed lots and has conferred preliminary approval (Attachment K).

28. *Roads and Pedestrian Access*. Roads and access will need to comply with the "City of Bainbridge Island Design and Construction Standards and Specifications" and all applicable requirements of the BIMC. The City's Development Engineer has reviewed and approved the proposed new road and cul-de-sac designs. The new plat access road will use an existing driveway curb cut onto Sunrise Drive. The new road design will minimize impervious surfaces by means of a cul-de-sac serving five of the six lots. Kitsap Transit has not recommended a transit stop.

Neighborhood residents Mark Kruse and Glen Scott testified as to the dangers that pedestrians encounter on Sunrise Drive due to high traffic speeds and the absence of either sidewalks or bicycle lanes. The City's non-motorized transportation plan indicates that there should be bicycle lanes along both sides of Sunrise Drive, but due to its small size and impact this development will not be required to provide these amenities. This systemic infrastructure deficiency will need to be addressed through

publicly funded improvements. Some hedge removal may be required to meet entering sight distance requirements at the new access road's intersection with Sunrise Drive.

Other Zoning Requirements

29. *Minimum Lot Size*

Minimum lot size is 12,500 square feet if the septic drainfield is located within the lot and the Kitsap Public Health District has not required a larger lot size. For Nishi Garden each lot will be in excess of 12,500 square feet, with lots ranging in size from 18,000 to 153,000 square feet. The Health District has conferred preliminary design approval.

30. *Density*

The maximum number of lots permitted is calculated by dividing the total lot area of the property (without deducting areas to be dedicated as public rights-of-way or encumbered by private road easements) by the minimum lot area specified for standard lots in the zone district. The subject property contains approximately 6.60 acres (287,462 square feet) and is zoned R-1. Utilizing a base zoning density requirement of 40,000 square feet per lot, a maximum of seven lots is permitted. The proposed subdivision creates six lots and meets the density requirement.

31. *Minimum Lot Dimensions*

Minimum lot width is 50 feet. Insofar as practical, side lot lines should be at right angles to street lines. The size, shape and orientation of lots need are deemed appropriate for the type of development and use contemplated. Each of the proposed lots is over 50 feet in width at the minimum lot width measurement line.

32. *Maximum Lot Coverage.*

Maximum lot coverage, the portion of the lot area that may be occupied by buildings pursuant to BIMC 18.12.050.K, is set at 15 percent in the R-1 zone. An average lot coverage of approximately 7000 square feet per lot represents the maximum allowable lot coverage for this plat. The project is conditioned to specify on the face of the final plat (Condition #24) the maximum coverage for each lot.

33. *Minimum Setbacks.*

The following setbacks apply to this plat:

Building to building (on-site):	10 feet
Building to exterior plat boundary line:	15 feet
Building to Nishi Circle right-of-way	15 feet
Building to Sunrise Drive right-of-way	50 feet
Building to Knight Road	15 feet
Building to open space	10 feet

The project is conditioned to meet required setbacks. (Condition #24).

34. *Tree Retention, Protection and Replacement*

Significant trees within the open space area are valued open space features and must be retained (BIMC 18.15.010). The proposed plat will retain significant trees within the designated open space area consistent with the standards of this section. An open space management plan has been submitted and will be recorded with the final plat to ensure the protection and replacement of significant trees (Condition #17).

35. *Park Buffers and Buffers for Dedicated Conservation Lands.*

A subdivision adjacent to a park or dedicated conservation lands must provide a 25 foot filtered

landscaping screen if the existing vegetation does not provide such screening (BIMC 18.15.010 D.6). A portion of proposed Lot 4 lies adjacent to conservation land and is subject to the 25 foot landscaping screen requirement. A planting plan shall be submitted and approved by the City prior to final plat approval (Conditions #11 and 13).

36. *Roadside Buffers*

Either a 50-foot buffer of existing mature trees and shrubs or a 25-foot full screen landscape buffer is to be maintained or planted along any subdivision boundary that fronts on an arterial or collector road (BIMC 18.15.010 E.2). The proposed subdivision has frontage along Sunrise Drive, a collector road. Excluding the northern section of subdivision frontage adjacent to the wetland and its buffer, the remaining portion currently features a landscaping hedge and grass. Absent mature trees comprising a 50-foot buffer, a 25-foot landscaping screen is required to be planted or bonded prior to final plat approval (Conditions #12 and 13).

CONCLUSIONS

1. The Hearing Examiner has jurisdiction over this proceeding and is authorized under City ordinances to make a final decision on the Nishi Garden preliminary subdivision application. Public hearing notice requirements have been met.
2. As documented with the findings stated above, the plat application for Nishi Garden meets the decisional criteria stated at BIMC 2.16.125.H for preliminary approval of a long subdivision. It complies with the applicable land use and subdivision development standards of BIMC Titles 17 and 18 and makes appropriate provisions for the public health, safety and general welfare, and for the public use and interest, including all items listed in RCW 58.17.110. The proposed development will be consistent with the City's comprehensive plan.
3. The preliminary long subdivision was prepared in conformity with the requirements of the flexible lot design process. Almost half of the original parcel remains in protected open space, ensuring the long term protection of the wetland and buffer critical areas while providing adequate space for residential development at the density allowed by the zoning.
4. The city engineer's recommendation for preliminary approval contains determinations that the City's decisional criteria for drainage, streets and pedestrian ways, road standards and utilities can be met, and such determinations are supported by substantial evidence within the record.

DECISION

The preliminary subdivision application for Nishi Garden (file no. SUB14797) is APPROVED, subject to the following conditions of final plat approval:

SEPA Conditions (revised and edited per the stipulated order of dismissal):

1. Prior to any construction activities, appropriate permits, including but not limited to right-of-way permits and license agreements, road approach permits, clearing, grading, and building permits, shall be obtained by the applicant from the City.
2. To the extent permits are required from other public agencies in order to construct the subdivision improvements, the applicant shall obtain any such required permits prior to

~~construction. To avoid or mitigate environmental impacts, Washington State Department of Fish & Wildlife Hydraulic Project Approval is required prior to construction of the internal public road improvements and facilities on this project. Where the proposed internal public road crosses the roadside drainage channel/stream along the property's Sunrise Drive frontage, a bridge or bottomless culvert shall be required, unless an alternative is approved through the Hydraulic Project Approval process (BIMC 16.20.130.C). The applicant shall submit copies of any required Hydraulic Project Approvals to the City prior to construction.~~

- ~~3. To mitigate transportation impacts, the applicant shall install a multi-use non-motorized shoulder improvement for the length of the property's Sunrise Drive frontage. The improvement shall consist of a five foot width paved shoulder immediately adjacent to the fog line and a one foot width gravel shoulder immediately adjacent to the pavement.~~
- ~~4. To avoid or mitigate environmental impacts, Washington State Department of Fish & Wildlife Hydraulic Project Approval may be required prior to construction of the shoulder improvements / facilities along the property's Sunrise Drive frontage. The applicant shall submit copies of any required Hydraulic Project Approvals to the City prior to construction.~~
5. To avoid or mitigate environmental impacts, the applicant shall provide copies of all public agency approvals and approved drawings to all contractors performing work at the site prior to beginning any construction work.
- ~~6. To mitigate environmental impacts, the applicant shall obtain a Special Use Review permit and approval in accordance with BIMC 16.20.160 for road facilities, including internal roadway and the non-motorized shoulder improvements along Sunrise Drive, along with stormwater facilities proposed within a regulated stream or wetland buffer. Application for special use shall include an on-site mitigation plan consistent with BIMC 16.20.160. The applicant shall plant/replant the roadside drainage channel/stream bank and buffer, along with the wetland buffer area, with native or equivalent vegetation that replicates a natural, undisturbed riparian condition.~~
7. To mitigate environmental impacts, the applicant shall submit complete civil plans and drainage report for the proposed development to the City Engineer and the Department of Planning and Community Development for review and approval. The design shall be prepared by a Professional Engineer licensed in the State of Washington, and shall be in accordance with BIMC 15.20.
 - i. The plans shall depict all required improvements, and shall include roadway details and profiles, shoulder facilities, water, utility and storm drainage facilities, including easement location and dimensions.
 - ii. The plans shall address grading, erosion and sedimentation control and include a Stormwater Pollution Prevention Plan (SWPPP).
 - iii. The City finds that the proposed activity is likely to cause measurable degradation of surface water quality without a proper temporary erosion and sedimentation control plan (TESCP). Therefore, prior to any construction within this plat a TESCP shall be submitted and approved by the City. Prior to any construction occurring between October 1 and April 30, a TESCP specifically addressing wet weather conditions shall be reviewed and approved by the City Engineer.
8. To avoid impacts to archaeological resources, 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.

9. Prior to the submission of the final plat application, the applicant shall submit an enhancement planting plan for the wetland buffer outside of the tree canopy for the City's review and approval. The plan shall also include the removal of invasive species from the wetland buffer, including within the existing tree canopy.
10. The wetland buffer enhancements shall be completed prior to the submission of the final plat application, or an appropriate assurance device shall be submitted and accepted by the City for the enhancement activities.

Project Conditions:

11. A 25-foot filtered screen perimeter landscape buffer shall be maintained along the portion of the western subdivision boundary that is adjacent to the Sunrise Meadows Deeded Conservation Easement. If the existing vegetation is not sufficient to meet the filtered screen landscaping requirements pursuant to BIMC 18.15.010 D.4., then the 25-foot buffer shall be planted with native vegetation to meet the requirement.
12. A 25-foot full screen perimeter landscape buffer shall be maintained along the portion of the eastern subdivision boundary that is adjacent to the Sunrise Drive and outside of the existing tree-line. The existing vegetation is not sufficient to meet the full screen landscaping requirements pursuant to BIMC 18.15.010 D.4, and the 25-foot buffer shall be augmented with native trees and plants to meet the requirement.
13. A landscape planting plan for all required landscaping in accordance with BIMC 18.15.010 shall be submitted and approved by the City prior to final plat submittal. All planting shall be installed prior to final plat approval or an assurance device shall be provided to guarantee the installation.
14. Once the required landscape planting has occurred, a landscaping maintenance assurance shall be provided and held by the City for three years to insure the health of vegetation.
15. The edge of the open space/critical area shall be fenced within proposed Lot 6 with a low-impact fence in accordance with the definition contained in BIMC 17.28.020(30). The fencing may have openings no greater than 5 feet wide to allow access to the open space for passive use or trails. The fencing shall be installed or assured prior to final plat and shall be maintained in perpetuity.
16. Signs shall be erected in accordance with BIMC 17.28.020.37 and shall be spaced at no more than 50 foot intervals along the open space fence. The signs shall be installed or assured prior to final plat approval and shall be maintained in perpetuity.
17. A final open space management plan must be submitted with the final plat application and approved by the City, then filed with the Kitsap County Auditor as part of the final plat.
18. In accordance with the Kitsap Health District's preliminary plat approval, the existing well on the site is required to be decommissioned. Final Health District approval shall be obtained prior to final plat submittal.
19. The Project shall comply with the following conditions of the City's Development Engineer:
 - A. The roadway and drainage facility for the subdivision shall follow the proposed plan

shown on the Preliminary Subdivision Submittal completed by Browne Engineering, Inc. dated April 29, 2013 and in the Preliminary Plat of Nishi Garden by Adam and Goldsworthy, Inc. dated June 12, 2013.

B. The subdivision shall conform to the City of Bainbridge Island Design and Construction Standards, Surface and Stormwater Management regulations and the Stormwater Facilities Maintenance Program in accordance with the provisions of BIMC 2.16. Public and private improvements, facilities and infrastructure, both on and off the site, required for the subdivision shall be completed and have final inspection and approval prior to final plat approval unless the City Engineer accepts an assurance device in lieu of completion. The applicant shall comply with the following conditions to the satisfaction of the City Engineer:

- i. Roadway and drainage facilities for the road, including profiles, will be designed and constructed.
- ii. The water service plan shall be reviewed and approved by the City. Water service will be provided to each lot.
- iii. A surface and stormwater pollution prevention plan will be provided and executed for construction activities.
- iv. The applicant's engineer shall develop full engineering drawings for the construction of the roadway. Surface stormwater collection, conveyance and treatment shall be designed by a civil engineer that is registered in the State of Washington. Stormwater civil plans shall be designed in accordance with the City of Bainbridge Island Municipal Code (BIMC 15.20 and BIMC 15.21).
- v. In accordance with the provisions of BIMC 2.16.070.N, in lieu of completion of improvements with conditions of a preliminary short plat approval, the City Engineer may accept an assurance device in an amount and in a form determined by the City Council, but not to exceed 125 percent of the established costs of completing the infrastructure, that secures and provides for the actual construction and installation of improvements or the performance of the conditions within one year, or such additional time as the City Engineer determines is appropriate after final plat approval. The City Engineer shall require an assurance device securing the successful performance of improvements for two years after the City's acceptance of the improvements.
 - a) In the event an assurance device in lieu of completion of improvements is sought by the applicant, the applicant shall provide an itemized engineering estimate approved by the City Engineer with final plat application.
 - b) In the event an assurance device in accordance with the provisions of BIMC 2.16.160.K. is approved, any such assurance device shall be in place prior to final plat approval. A prominent note on the face of the final plat shall state: "The lots created by this plat are subject to conditions of an assurance device held by the City for the completion of certain necessary facilities. All purchasers shall satisfy themselves as to the status of completion of the necessary facilities."
 - c) As-built civil construction plans will be provided by the applicant prior to final approval of civil construction.

- C. Soil and/or infiltration testing is required prior to final design of the proposed raingardens. Sizing and location of the raingardens must be in accordance with the measured infiltration capacity of the soil.
- D. Stormwater Pollution Prevention and Temporary Erosion and Sediment Control Plans shall include off-street accommodation for construction vehicle parking.
- E. The construction of the stormwater drainage system must be evaluated and approved by the engineer of record prior to final approval of civil construction.
- F. The owner shall be responsible for maintenance of the storm drainage facilities for this development following construction in accordance with BIMC 15.21. A Declaration of Covenant that guarantees to the City that the system will be properly maintained will be required prior to final approval of civil construction.
- G. A maintenance plan shall be developed for the on-going maintenance of the storm drainage system upon completion of construction. The applicant will provide the City with a copy of the plan for review and approval prior to final approval of civil construction.
- H. The developer's engineer shall certify that there is adequate entering sight distance at the site entrances and exits, including sight clearance as required by BIMC 18.12.040.B. Such certification shall note the minimum required sight distance, the actual sight distance provided, and a sight distance diagram showing the intersection geometry drawn to scale, topographic and landscaping features, and the sight triangle. The sight distance shall meet the requirements of the COBI Design and Construction Standards.
- I. Transportation facilities shall be reviewed and approved by fire officials during the civil construction design.
- J. It shall be the responsibility of the applicant to verify the adequacy of the proposed water main to meet fire flow requirements pursuant to the City of Bainbridge Island Municipal Code 13.10.065. Fire flow requirements to neighboring property must be maintained. Plans and calculations showing how this level of pressure will be maintained will be provided to the city.
- K. The following items shall be incorporated into the civil construction plan submittal for this project:
- i. Show all easements and status.
 - ii. Label contour elevations.
 - iii. Show and dimension the right-of-way.
 - iv. Show location of bench mark to be used for construction with datum and ties to local monuments.
- L. A right-of-way (ROW) construction permit will be required prior to any construction activities within the right-of-way. The ROW permit will be subject to separate conditions and bonding requirements.

20. A fire hydrant is required at the entrance to the proposed subdivision on Sunrise Drive in addition to the hydrant proposed at the corner of Knight Road and Sunrise Drive, unless the Fire Marshall determines that fire flow is sufficient to serve the proposed lots. The fire hydrants shall be installed or assured prior to submittal of final plat.
21. The location of regulatory street signs and mailbox locations shall be shown on the plat utility plans required to be submitted prior to final plat approval.
22. All lot corners shall be staked with three-quarter inch galvanized iron pipe and locator stakes along with all other applicable survey provisions of Table 3-3.(City of Bainbridge Island Administrative Manual)
23. A plat certificate shall be provided with the final plat application.
24. Building setback and lot coverage requirements must be shown on the final plat,specifically:
 - Building to Building - Minimum 10 feet separation.
 - Building to Subdivision Boundary - 15 feet.
 - Building to Knight Road or Nishi Circle - Minimum 15 feet setback.
 - Building to Sunrise Drive – Minimum 50 feet setback
 - Building to Open Space – Minimum 10 feet setback
 - Maximum Lot Coverage per lot – 6,955 square feet.
25. The final plat shall be submitted in substantial compliance with preliminary plat drawings date stamped received June 12, 2013. Conditions 1, 5, 8, 11, 12, 15, 16, 19 v.b., 20 and 24 shall be listed on the final plat mylar.

ORDERED July 8, 2013.



Stafford L. Smith, Hearing Examiner
City of Bainbridge Island

The Hearing Examiner is authorized to make the City of Bainbridge Island's final decision on a preliminary subdivision application. A party with standing may seek judicial review of this decision by filing a timely suit in Kitsap County Superior Court under the Land Use Petition Act.

The exhibit list prepared by the Clerk of the Hearing Examiner's Office is attached.

EXHIBIT LIST

Plat of Nishi Garden SUB14797

Applicant: Kay Nishi

Staff Contact:
Joshua Machen, AICP
Current Planning Manager

Public Hearing: 06/28/2013 at 9:00 am

Location: City of Bainbridge Island
City Hall Council Chamber

Hearing Examiner: Stafford Smith

EXHIBIT NO.	<u>Plat of Nishi Garden SUB14797</u>	DATE	NO. OF PAGES
	DOCUMENT DESCRIPTION		
1	Notice of Public Hearing and Certificate of Distribution and Posting	06/07/2013 (published)	7
2	Director's Recommendation (with Attachments A – P)	06/19/2013	21
	A. Preliminary Subdivision Application	05/17/2013 (revised)	9
	B. Notice of Application	01/01/2010 (published)	1
	C. Preliminary Subdivision Drawings	06/12/2013 (revised)	5
	D. Civil Plan	05/17/2013 (revised)	2
	E. Wetland Analysis Report – Wiltermood Associates	12/12/2006	58
	F. SEPA Checklist (with staff response)	12/18/2009	13
	G. SEPA Threshold Determination	04/22/2011	4
	H. Appeal of SEPA Determination	04/28/2011 (appeal filed) 03/11/2013 (Hearing Brief filed)	34
	I. Stipulation and Order of Dismissal with Prejudice	04/2013 (submitted)	5
	J. Kitsap County Health District Notifications of Pending Building Site Application Approval	06/28/2011 (received)	7
	K. Kitsap County Health District Preliminary Subdivision Approval	05/28/2013	1
	L. Bainbridge Island Fire District Comments and Conditions	05/23/2013	2
	M. City of Bainbridge Island City Engineer/Development Engineer Comments	06/06/2013	3
	N. Non-binding Water Capacity Commitment	12/18/2009 (received)	1
	O. Plat of Nishi Garden Open Space Management Plan	06/12/2013 (received)	4
	P. Public Comment	03 to 04/2010	12
3	SEPA Appeal – Stipulation and Order of Dismissal With Prejudice	06/28/2013	5
4	Compromise and Settlement Agreement and Release of Claim	06/24/2013	6
5	Applicant's Hearing Brief	06/27/2013	12
6	Wiltermood Associates - Letter Response to Neighbor Comments	06/27/2013	22