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Skagit County Auditor

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AFTER RECORDING RETURN TO:  
SKAGIT COUNTY HEARING EXAMINER  
1800 CONTINENTAL PLACE  
MOUNT VERNON, WA 98273

DOCUMENT TITLE: ORDER ON PRELIMINARY PLAT PL08-465

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: ALAN BUCHAN - BUCHAN BEACH LONG CaRD

ASSESSOR PARCEL NO: P114971, P114972, P114974, P114975, P114976

PROPERTY LOCATION: The project is located at 11330 Marine Drive; a portion of  
Section 34, Township 35 North, Range 1 East, W.M., Skagit  
County, Washington.

**BEFORE THE SKAGIT COUNTY HEARING EXAMINER**

**FINDINGS, CONCLUSIONS AND RECOMMENDATION**

**Applicant:** Alan G. Buchan  
2411 Skyline Way #208  
Anacortes, WA 98221

**Agent:** Schemmer Engineering  
c/o J.T. Schemmer  
317 Commercial Ave., Suite 101  
Anacortes, WA 98221

**File No:** PL08-0465

**Request:** Conservation and Reserve Development (CaRD) Land  
Division (Preliminary Plat).

**Related Approvals:** Zoning Variance PL06-1127 and Shoreline Variance  
PL06-1128, relating to density, side setbacks and  
site coverage.

**Location:** 11330 Marine Drive, within a portion Sec. 34, T35N, R1E.  
W.M. The property is adjacent to the shore of Burrows  
Bay.

**Parcel Nos:** P114971, P114972, P114974, P114975, P114976

**Land Use Designations:** (1) Zoning: Rural Intermediate  
(2) Shorelines: Rural Residential

**Summary of Proposal:** The creation of five single family residential lots and  
one open space lot, through the (CaRD) land division  
process. Five existing substandard lots are to be  
reconfigured into five smaller lots, with shared open  
space, on a total of 3.23 acres.

**Public Hearing:** A public hearing was requested by David Pearson. After  
reviewing the report of Planning and Development  
Services, the Hearing Examiner conducted a public hearing  
on August 12, 2009.

**Recommendation:** The preliminary plat should be approved, subject to  
conditions.



## FINDINGS OF FACT

1. Alan Buchan seeks approval of a preliminary plat to allow the reconfiguration of lots for an existing residential development.
2. The properties are identified as lots 48-52 of the Plat of Anaco Beach, located on the west side of Fidalgo Island along the shores of Burrows Bay, south of the city limits of Anacortes and west of Marine Drive. The total area is about 3.23 acres.
3. The address is 11330 Marine Drive, within a portion of Sec. 34, T35N, R1E., W.M. The current zoning designation is Rural Intermediate.
4. The subject property was platted long before the advent of zoning in Skagit County. All of the lots are presently substandard in size. The present lots numbers are P114971, P114972, P114974, P114975, and P117976.
5. The surrounding area is in rural and residential development. The area consists of smaller pre-existing parcels of similar size, developed along the shoreline of the bay prior to present zoning and shoreline regulations. The Anaco Beach development, like others in the neighborhood, has historically been used for residences and seasonal recreation.
6. The property was purchased by the Buchan family in 1931. Three houses were built shortly thereafter. Two additional homes were built in the 1950's and 60's. When the houses were built, not attention was paid to formal lot lines since the property was all in one ownership.
7. The five existing residential structures have utilities in place. All are served by a shared private asphalt driveway, off of Marine Drive. However, not all of the structures are on a separate legal lot.
8. The plan is to create a cluster of five new lots, each slightly larger than 5,000 square feet, each containing a separate beach cabin. The most shoreward of the existing cabins will be removed and replace further inland. The remainder of the property (approximately 2.65 acres) will be preserved as open space. The configuration will meet the minimum lot size requirement for CaRD developments.
9. The arrangement will also provide for a uniform shoreline setback of 66 feet from the Ordinary High Water Mark, more than meeting the applicable shore setback standard for the area. The development proposed – 406 feet of beachfront with five homes – will remain consistent with pattern of development established in the neighborhood.
10. The lots will continue to be served by the existing access, but the common



private drive will be improved to meet County standards. Maintenance shall be the responsibility of the homeowners.

11. A detailed drainage report has been submitted and reviewed by the Public Works staff. Storm water facilities, as well as storm drainage and access easements will be provided. A plan establishing a schedule of maintenance shall obligate all lots to participation.

12. Existing lots are supplied with potable water by the City of Anacortes system. This will continue to be the case after the proposed land division. All water, and other utility lines, shall be placed in utility easements prior to final plat approval. The property is located within the boundaries of a fire district.

13. The existing residences use an existing community septic system. The proposal is continue use of this system. Soil logs for a reserve drainfield shall be approved and the reserve area shall be shown on the face of the final plat

14. Critical area review was conducted and critical areas identified. The critical areas and buffers and the 66-foot shoreline buffer shall be set aside as Protected Critical Areas (PCAs). These include geo-hazard areas, pond areas and related buffers. The remainder of the open space shall be designated Open Space Preservation Area (OS-PA).

15. The applicant shall pay an impact fee of \$100 per lot prior to final plat approval, pursuant to a voluntary mitigation agreement with Skagit County Parks. This arrangement will be identified in the "plat notes" on the face of the final plat and addressed within the CC&R's or other rules governing the development.

16. The proposal is located within the Anacortes School District. The District at present does not have an impact fee policy and does not collect mitigation fees from developers. There are no schools within walking distance of this proposal.

17. In sum, the CaRD does not effect substantial change on the ground from the present condition. Its advantages are that, with the variances granted, it results in a development that is in conformance with the Code, and it formalizes the preservation of substantial protected open space.

18. Two persons wrote comment letters, all of which took issue with the density allowed. A public hearing was requested, and one of the commenters testified to the same effect at the hearing. This issue was previously resolved with the variance decision. The CaRD approval does not increase the existing development density. There will still be five houses on the property, though some relocating and upgrading will be permitted. This historic development is consistent with other pre-zoning development in the vicinity. Immediately to the south of this property is the large 1950's Del Mar Development which has smaller lots and denser occupancy. The subject land division, which preserves the



status quo, will not provide a precedent for the treatment of other property presenting different facts.

19. Moreover, based on topography, the low-lying area where the homes were originally built is the most logical place for homes to be. Existing forest shields the subject property from Marine Drive and the houses are obscured from neighboring homes on the north and east by hillsides and natural vegetation. Approval of the CaRD will merely validate the initial cluster development choice.

20. Proper notice for this project was given as required by law. Environmental review resulted in a Mitigated Determination of Non-Significance (MDNS), issued on September 18, 2008. The MDNS was not appealed. It contained the following conditions:

- a. Temporary erosion/sedimentation control measures, as approved by the Skagit County Department of Public Works, shall be in place prior to the placement of any fill material. The applicant shall maintain all temporary erosion/sedimentation control measures in accordance with the Skagit County Drainage Ordinance. Said measures shall remain in place until completion of the project.
- b. The applicant shall comply with Northwest Clean Air Agency requirements.
- c. The applicant shall comply with the provision of Chapter 14.32 of the Skagit County Code, the Skagit County Drainage Ordinance, as it relates to increased runoff resulting from additional impervious surfaces.
- d. An engineered soils compaction report shall be required for all structures placed on fill material.
- f. The applicant shall comply with all relevant provisions of 14.24 of the Skagit County Code (Skagit County Critical Areas Ordinance).

21. The proposal was reviewed by various County departments. Their comments are reflected in conditions of approval.

22. As conditioned, the subject proposal is not contrary to the public use or interest.

23. Any conclusion herein which may be deemed a finding is hereby adopted as such.



## CONCLUSIONS OF LAW

1. Under SCC 14.06.050(1)(A)(iv) a subdivision of fewer than nine lots is to be processed as a Level I administrative decision unless a public hearing is requested. If a public hearing is requested, the application is to be processed as a Level III Hearing Examiner Decision. SCC 14.06.110(15). The Level III process requires the Examiner, after a hearing, to make a recommendation to the Board of County Commissioners for its final decision. SCC 14.06.130(8).

2. The Hearing Examiner has jurisdiction over the subject matter and persons of this proceeding and is following the Level III process.

3. Although a portion of the subject property is within the shoreline jurisdiction, the previous variance decision resolved shorelines issues and no further shoreline permits are required. The proposed land division does not conflict with any Shoreline Management Act policies.

4. The requirements of SEPA have been met.

5. RCW 58.17.110(2)(a) requires that adequate provisions be made for various items of infrastructure and planning, including (a) public health, safety and general welfare, (b) open spaces, (c) drainage, (d) roads, (e) potable water supplies, (f) sanitary wastes, (g) parks and recreation, (h) schools, (i) public use and interest.

6. Under the facts, the proposed CaRD, as conditioned, will make adequate provisions for the factors listed in RCW 58.17.110(2)(a).

7. Under the facts, the proposed CaRD, as conditioned, will be consistent with SCC 14.18.000, 100 and 300. The CaRD requirements for open space, lot size, setback, avoidance of critical areas, clustering and screening are met. The land use variance resolves issues of density and lot coverage.

8. Any finding herein which may be deemed a conclusion is hereby adopted as such.

## CONDITIONS

1. The project shall be carried out as described in the application materials, except as the same may be modified by these conditions.

2. The final plat shall comply with the provisions of SCC 14.18.200 and Chapter 58.17 RCW. The applicant shall refer to the various provisions of SCC 14.18.200 in verifying that all items have been addressed for final approval.



3. The conditions of the MDNS (see Finding 20) shall be met prior to final plat approval.
4. The applicant shall submit a PCAE agreement for review and approval. The PCAE agreement shall reference both the OS-PA area (Tract C) and Tracts A, B, & D.
5. The plat map shall indicate the location of PCA signs. Typically signs should be located every 200 feet or line of sight, whichever is closer. The PCA signs shall be installed and inspected prior to final plat approval. PCA signs may be obtained from Planning and Development Services.
6. Road name signs must be installed on the private road in accordance with Skagit County Road Standards.
7. The lot corners must be set prior to final plat approval.
8. Once the address range is assigned, it shall be forwarded to Schemmer Engineering, Inc., and shall be shown on the face of the final plat.
9. All standard plat notes and appropriate departmental signoffs shall be required on the plat map.
10. Copies of any proposed covenants or association rules shall be provided for review. Any homeowners association agreements, drainage maintenance agreements or road maintenance agreements shall be submitted for review prior to final approval.
11. Final plat fees of \$200 per lot will be assessed and paid at the time of final plat approval.
12. The applicant shall review and address all conditions of the variance approval and certify that all conditions of approval are met, or explain how any unmet conditions will be met.
13. The applicant shall ensure that the final plat map on its face appropriately shows and labels all utility easements.
14. If any portion of the parent parcel is in an Open Space taxation program with the Skagit County Assessor's Office, that office should be contacted prior to proceeding with the land division.
15. A set of stamped envelopes addressed to all neighboring property owners and occupants within 300 feet of the subject property (with appropriate postage) shall be required for the final plat submittal. The applicant shall furnish a list of those individuals.



16. The applicant shall pay the Parks and Recreation fee (\$100 per residential lot) to Skagit County Parks and Recreation prior to final approval and shall provide proof of receipt. This impact fee shall be noted on the face of the final plat map and addressed in any CC&R's for the project.

17. The final landscape plan shall be approved prior to final plat approval. All required landscaping, if other than existing vegetation, shall be installed prior to final plat approval.

18. Compliance with any requirements of the Skagit County Fire Marshal shall be demonstrated prior to final plat approval.

19. The applicant shall show utility easements for water line(s) on the face of the final plat and shall show the approximate location of any existing side service water lines within the easements,

20. Soil evaluations shall be reviewed and approved for the reserve drainfield area prior to final plat approval. The reserve drainfield shall be shown on the final plat map.

21. A nonprofit maintenance corporation or homeowners association with the lot owners as members shall be established, unless the applicant determines that the condominium form of ownership should continue and secures County approval for its continuation. Any homeowners agreement shall be recorded and the auditors file number will be shown on the face of the plat.

22. Additional plat notes may be required prior to final plat approval.

23. All fees shall be paid prior to final plat approval.

24. The appropriate property taxes shall be paid prior to final plat approval

25. Additional conditions or requirements may be added for final plat approval as a result of final plat review once submitted.

26. Per Skagit County Code 14.18.100(6)(b), the preliminary plat shall be valid for a period of five years from the date of its approval.





## RECOMMENDATION

The Preliminary Plat of Buchan Beach (PL08-0465) should be approved, subject to the conditions set forth above.

DONE this 14<sup>th</sup> day of September, 2009

Wick Dufford  
Wick Dufford, Hearing Examiner