

**BEFORE the HEARING EXAMINER for the  
CITY of GOLD BAR**

**DECISION**

FILE NUMBER: LS-001-23

APPLICANT: Fall View, LLC  
10515 20<sup>th</sup> Street SE, #202  
Lake Stevens, WA 98258

TYPE OF CASE: Preliminary subdivision (*Fall View*)

STAFF RECOMMENDATION: Approve subject to conditions

EXAMINER DECISION: GRANT subject to conditions

DATE OF DECISION: June 6, 2023

**INTRODUCTION <sup>1</sup>**

Fall View, LLC (the “Applicant” <sup>2</sup>) seeks preliminary approval of *Fall View*, a 39-lot residential subdivision of a 38.8± acre site which is zoned R 12,500.

The Applicant filed a Land Use Application for subdivision approval on December 15, 2022. (Exhibits 1; 4; 7 <sup>3</sup>) The Gold Bar Public Works Director (“Director”) deemed the application to be complete on January 5, 2023. <sup>4</sup> (Exhibit 5) The City issued a Notice of Application on January 9, 2023. (Exhibit 6) No written comments were received in response to the Notice of Application. (Testimony)

The subject property is located at XXXXX Ley Road, immediately northwest of the May Creek Road/Ley Road intersection. The subject property is composed of three separate tax parcels whose Assessor’s Parcel Numbers are 27090500200300, 27090500200400, and 27090500201100 (collectively referred to as “Parcel 003”). (Exhibits 1; 16)

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<sup>1</sup> Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

<sup>2</sup> The Examiner routinely uses an acronym or shortened version of the Applicant’s name to personalize name references throughout the Decision. Where, as here, the Applicant’s name and the project name are the same, that practice could lead to confusion. Therefore, the impersonal “Applicant” will be used. No disrespect is intended.

<sup>3</sup> Exhibit citations are provided for the reader’s benefit and indicate: 1) The source of a quote or specific fact; and/or 2) The major document(s) upon which a stated fact is based. While the Examiner considers all relevant documents in the record, typically only major documents are cited. The Examiner’s Decision is based upon all documents in the record.

<sup>4</sup> The Director has the lead City staff responsibility for processing land use applications. [Gold Bar Municipal Code (GBMC) 19.05.020]

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The Gold Bar Hearing Examiner (“Examiner”) viewed the subject property via Google Earth imagery: Overhead imagery dated July 23, 2018; Street View imagery dated November, 2021.

The Examiner held a hybrid open record hearing on May 31, 2023: In-person participation was available at the City Hall; remote participation was available through the “Zoom” platform. The City gave notice of the hearing as required by the Gold Bar Municipal Code (“GBMC”). (Exhibits 10 - 12) While some members of the public attended the hearing at City Hall, none actively participated in the hearing.

Pre-filed Exhibits 1 – 8 and 10 - 17, as enumerated on an Exhibit List prepared by the City, were entered into the hearing record at the outset of the hearing. Anticipated Exhibit 9 was a placeholder for written public comments. As there were no written public comments, that exhibit number was not entered. Exhibit 15 consists of six separate documents. To make citations simpler, the Examiner divided Exhibit 15 into the following sub-parts:

Exhibit 15A: Letter, LDC to City, April 17, 2023

Exhibit 15B: Letter Report of Geotechnical Investigation, Cobalt Geosciences, LLC to the Applicant, April 18, 2023

Exhibit 15C: Construction Drainage Report by LDC, March 2023

Exhibit 15D: Critical Areas Study by ACRE Environmental Consulting, LLC, April 20, 2023

Exhibit 15E: Traffic Impact Analysis by Kimley-Horn and Associates, Inc., April, 2023

Exhibit 15F: *Fall View* Construction Plans, 23 sheets, May 12, 2023

The following additional exhibits were entered into the record during the hearing:

Exhibit 18: *Fall View*, proposed Preliminary Plat, April 4, 2023

Exhibit 19: Water availability letters, January 5, 2023

Subsection 16.10.020(G) GBMC requires that preliminary subdivisions “shall be approved, disapproved or returned to the applicant for modification or correction within ninety (90) days from the date of filing thereof unless the applicant consents to an extension of such time period”. Time spent preparing an environmental impact statement, if required, is not counted.

The action taken herein and the requirements, limitations and/or conditions imposed by this decision are, to the best of the Examiner’s knowledge or belief, only such as are lawful and within the authority of the Examiner to take pursuant to applicable law and policy.

## FINDINGS OF FACT

1. Parcel 003 is a 38.8± acre, irregularly shaped parcel having approximately 2,012 feet of frontage on the west side of Ley Road, immediately northwest of the May Creek Road/Ley Road intersection. Most of Parcel 003’s north boundary follows the south (left) bank of the Wallace River. Approximately 382 feet of the north boundary near the northwest corner of the property is bordered

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on the north by Assessor's parcel 32280900202400 (the "Ells/Pueher Property").<sup>5</sup> The proposed plat (Exhibit 18) and the construction plans (Exhibit 15F) depict an irregular area following an existing fence line south of the Ells/Pueher Property as excluded from the proposed plat. In fact, that area is still part of Parcel 003. The Applicant and Ells/Pueher intend to transfer that area from Parcel 003 to the Ells/Pueher Property by Boundary Line Adjustment ("BLA") before recording the *Fall View* plat. (Testimony)

2. The Gold Bar City Limits essentially follow the south bank of the Wallace River and Ley Road in this area. (Exhibit 4, pp. 2; 4) Parcel 003 is zoned R 12,500. (Exhibit 4, p. 4)
3. The majority of Parcel 003 is relatively flat. Bluffs located about 200 feet south of the Wallace River and about 160 – 320 feet east of the west property line descend steeply some 20 – 35 feet to lower, flat areas. Parcel 003 is covered with a variety of coniferous and deciduous overstory vegetation accompanied by regionally typical understory vegetation. A gravel driveway cuts diagonally through Parcel 003 from Ley Road to the Ells/Pueher Property.<sup>6</sup>
4. Three wetlands are located wholly or partly on Parcel 003. Wetland A, the largest, occupies the low area west of the western bluff and straddles the west property line. Wetlands B and C are located at the base of the bluff near the northeast corner of Parcel 003. All three wetlands are Category III features (Exhibit 15D, pp. 5 & 6)
5. The Wallace River is a Type 1 stream. (Exhibit 15D, p. 7) The Wallace River is subject to Shoreline Management Act ("SMA") regulations. The jurisdictional area of the SMA is essentially the water body plus shorelands extending 200 feet from the water body. The City's policy is that if part of a parcel lies within the SMA jurisdictional area but no development will be undertaken within required buffer areas, no permits will be required under the SMA. (Testimony) The proposed plat does not depict any development activity within 200 feet of the south bank of the Wallace River. (Exhibit 18)
6. Gold Bar's Critical Areas Regulations are contained in Chapter 18.08 GBMC. The standard buffer requirement for Category III wetlands is 75 feet. [GBMC 18.08.050(2)(D)] Wetland buffer widths may be averaged under certain specified conditions. [GBMC 18.08.050(2)(D)(4)] The outer perimeter of wetland buffers must be marked in the field and confirmed by the Director prior to any site development activity. [GBMC 18.08.050(2)(E)(1)] The City may condition a development

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<sup>5</sup> The Assessor's parcel number format used herein is that found on the Assessor's official web site. Some record documents use a slightly different format.

Exhibit 18 shows Fonda Ells as the owner of the Ells/Pueher Property. Testimony at hearing stated that the parcel was owned by James Pueher (as spelled by the witness). The Snohomish County Assessor's record show ownership of that parcel in the names of Fonda Ells and James Pueher. [Official Notice: <https://scopi.snoco.org/Html5Viewer/Index.html?configBase=https://scopi.snoco.org/Geocortex/Essentials/REST/sites/SCOPI/viewers/SCOPI/virtualdirectory/Resources/Config/Default>, last visited June 1, 2023] The Examiner will use the Assessor's ownership data. (It actually matters not to this Decision who owns that property.)

<sup>6</sup> The gravel driveway is not located within an established easement. A driveway easement from Ley Road to the Ells/Pueher property lies to the north of the actual driveway. That easement will be vacated and replaced with public road and easement access to the Ells/Pueher Property with recordation of the *Fall View* plat. (Exhibit 18)

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permit to require placement of permanent signs and/or fencing along the outer buffer perimeter to “prevent future impacts to the wetland.” [GBMC 18.08.050(2)(E)(2) and (2)(E)(3), quote from GBMC 18.08.050(2)(E)(3)(a)]

The standard buffer for a Type 1 stream is 150 feet. [GBMC 18.08.080(4)(C)] Marking requirements for stream buffers are similar to those for wetlands. [GBMC 18.08.080(3)(E)]

7. The minimum lot area in the R 12,500 zone is 12,500 square feet (“SF”). However, lots that will be served by on-site sewage disposal must meet Snohomish County Health Department (“SCHD”) <sup>7</sup> area regulations. Single-family dwellings are the fundamental permitted use in the R 12,500 zone. [GBMC 17.24.020 cross-referenced back to GBMC 17.16.020(A)] Duplexes are also allowed as a permitted use under the following conditions: No two duplexes may be physically less than 250 feet apart; a site plan is required; and duplex design must be “compatible with surrounding homes.” [GBMC 17.24.020 cross-referenced back to GBMC 17.16.020(R), quote from subsection (R)(3)]
8. The Applicant proposes to subdivide the flat, upper portion of Parcel 003 into 39 lots, each of which will contain at least 18,000 SF to meet SCHD requirements for on-site sewage disposal. The lots will be served by two public street cul-de-sacs. The longer cul-de-sac will intersect Ley Road at the May Creek Road/Ley Road intersection and will have a short easement from the cul-de-sac bulb to provide access to the Ells/Pueher Property. (Exhibits 15F; 18)

All lots will be served by on-site sewage disposal systems. (Exhibit 15F)

No development below the bluffs nor within 150 feet of the Wallace River is proposed. Lots 10 – 19 extend to the base of the western bluff; the required Wetland A buffer encumbers the western 75 feet of those lots. Lots 30 – 33 extend north of the base of the northerly bluff; Wetlands B and C and their buffers are located within those lots. Buffer averaging, as allowed by City code, is proposed for Wetlands B and C. (Exhibits 15C; 15F; 18)

A total of approximately 10.75 acres of Parcel 003 (about 28% of the entire site) will be preserved from development in one form or another: Tract 996 along the west edge of the plat will be a 7.0 acre Native Growth Protection Area protecting Wetland A; Tract 997 along the south shore of the Wallace River will preserve 3.6 acres in that area as “Park” (open space); and Tract 999 will preserve an 0.1 acre strip at the south end of the site as open space. In addition, easements encumbering portions of proposed Lots 10 – 19 (Wetland A buffer) and proposed Lots 30 – 33 (Wetlands B and C and their buffers) will also be preserved. (Exhibits 15F; 18)

9. The Applicant proposes to avail itself of the duplex provisions in GBMC 17.16.020(R). City staff has preliminarily determined that code provisions will allow between seven and nine duplexes to be constructed in the plat, the number depending on which lots are chosen for duplexes. (Testimony)

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<sup>7</sup> Successor to the former Snohomish Health District. [Official notice]

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10. The Applicant submitted the required application (Exhibit 1), a project narrative (Exhibit 2), survey, proposed plat, and preliminary supporting plans (Exhibits 15F; 18), and technical studies (Exhibits 15B; 15C; 15D; 15E).
11. The record contains evidence that appropriate provisions have been made for:
  - A. Open space. Approximately 10+ acres of the site will be retained as open space. (Exhibit 18)
  - B. Drainage ways. The site's soils are conducive to infiltration of stormwater runoff. Therefore, all storm water from impervious surfaces will be infiltrated into the on-site soils; no point discharges are proposed. (Exhibits 15B; 15C; 15F)
  - C. Streets and roads. The two proposed interior streets have been designed to meet City standards. Frontage improvements (curb, gutter, planter strip, and sidewalk) will be provided along Parcel 003's Lay Road frontage. (Exhibit 15F)
  - D. Alleys. The design does not require Alleys. (Exhibit 18)
  - E. Other public ways. No need for other public ways within the subdivision exists. A private easement to provide access to the Ells/Pueher Property will be provided from the end of the southern cul-de-sac. (Exhibit 18) Transportation impact fees are required by code. (Exhibit 16, p. 7)
  - F. Transit stops. The record contains no request for transit stops.
  - G. Potable water supply. The City has certified that it has sufficient capacity in its water system to service the new development. (Exhibit 19; and testimony)
  - H. Sanitary wastes. Preliminary delineation of a sewage system drainfield area for each proposed lot has occurred. The Applicant's septic system designer has been working with the SCHD to assure that each lot will be able to meet SCHD requirements for an on-site sewage disposal system. (Exhibit 15F; and testimony)
  - I. Parks and recreation. No active recreation park or area is required by code. Tract 997 will provide undeveloped, passive park area along the Wallace River. (Exhibit 18) Park impact fees are required by code. (Exhibit 16, p. 7)
  - J. Playgrounds. Playgrounds are not required by code.
  - K. Schools and schoolgrounds. No request for school grounds has been made. School impact fees are required by code. (Exhibit 16, p. 7)

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L. Safe walking conditions for students who only walk to and from school. Public school students will be bussed to their schools; pick-up location(s) will be along the improved Lay Road frontage. (Testimony)

12. A typical single-family residence is responsible for approximately 10 vehicle trips on an average week day (“ADT”), of which approximately 1 trip occurs during the peak, evening traffic hour. The Applicant’s traffic consultant predicts that 39 single-family residences will result in 368 new ADT and 37 new trips during the peak PM traffic hour. (Exhibit 15E, p. 2; and testimony) The City’s Level of Service (“LOS”) standard is LOS C. (Exhibit 15E, pp. 8 & 9)

The traffic impact analysis focused on three local intersections: 1<sup>st</sup> Street/Lewis Avenue; 1<sup>st</sup> Street/May Creek Road; and May Creek Road/Ley Road/site access road. (The calculations assume all project traffic uses the south access road for a worst-case intersection scenario.) All three intersections currently operate at LOS A and would continue to do so with the additional projected subdivision traffic. (Exhibit 15E, p. 13)

A typical duplex residence is responsible for approximately 7 ADT, of which approximately 0.7 trips occur during the peak, evening traffic hour. (Testimony) If the Applicant were to replace 9 single-family residences with 18 duplex residences (the reported maximum allowed duplexes), trip generation would increase to 426 ADT, of which 43 would occur in the PM peak hour.<sup>8</sup> That trip increase would not change the LOS of any of the three studied intersections. (Testimony)

13. Gold Bar’s State Environmental Policy Act (“SEPA”) Responsible Official issued a threshold Determination of Nonsignificance (“DNS”) for *Fall View* on January 11, 2023. (Exhibits 7 & 8) The DNS was not appealed. (Testimony)

14. The Director recommends approval of *Fall View* subject to 23 conditions. (Exhibit 16, pp. 6 - 8) The Applicant has no objection to any of the recommended conditions. (Testimony)

15. Testimony was presented by five area residents. A resident across the Wallace River from the Ells/Prueher Property wondered whether that property was to be further developed. The Examiner advised that since the Ells/Prueher Property is not part of the *Fall View* subdivision, nothing in this Decision would directly affect, restrict, or benefit that property. The Examiner would note that since the easement that will serve the Ells/Prueher Property will be only 20 feet wide, further development of that parcel would be problematic.<sup>9</sup>

One resident questioned the impact on traffic volumes of developing some lots as duplexes. That question led to the traffic consultant’s discussion of duplex trip generation, summarized above.

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<sup>8</sup> (39-9) x 10 = 300 ADT; (9 x 2) x 7 = 126; 300 + 126 = 426. 10% of 426 ≈ 43.

<sup>9</sup> The minimum right-of-way width for more than one lot is 40 feet. [Gold Bar Design and Construction Standards, Standard Plan 300]

The same resident expressed concern about the loss of wildlife habitat from development of Parcel 003. That concern will be addressed in the Conclusions of Law, below.

Two residents, who live downstream along the Wallace River, questioned what impact the development would have on the Wallace River itself. The Applicant's consultant explained that since all storm water runoff will be infiltrated into the on-site soils, there will be no point discharges to the Wallace River. It should also be noted that no development will occur within 200 feet of the Wallace River. One witness's testimony also expressed concern about river flooding from snow melt in the Spring. The proposed subdivision will not contribute appreciably, if at all, to snowmelt; to the extent that it did contribute to snow melt, the subdivision will not increase the amount of snow melt into the Wallace River.

Finally, one resident expressed concern about traffic congestion from nearby Wallace Falls State Park. While the proposed subdivision will not contribute to state park traffic, the Applicant did note that the required frontage improvements on Ley Road will provide space for some on-street parking.

16. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

## LEGAL FRAMEWORK <sup>10</sup>

The Examiner is legally required to decide this case within the framework created by the following principles:

### Authority

A preliminary subdivision is a Type III application which is subject to an open record hearing before the Examiner. The Examiner makes a final decision on the application which is subject to the right of reconsideration and appeal to Superior Court. [GBMC 2.26.120, .125, and .140; GBMC 19.01.030; GBMC 19.05.080; and GBMC 19.06.060]

The examiner's decision may

grant, deny, or grant with such conditions, modifications, and restrictions as the examiner finds reasonable to make the application or appeal compatible with its environment, the Gold Bar Municipal Code, the Gold Bar Comprehensive Plan, other official policies and objectives, and land use regulatory enactments. Examples of the kinds of conditions, modifications, and restrictions that may be imposed include, but are not limited to, additional setbacks, screenings in the form of fencing or landscaping, easements, dedications, or additional right-of-way and performance bonds[.]

[GBMC 2.26.120(B)]

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<sup>10</sup> Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

### Review Criteria

The review criteria for preliminary subdivisions are set forth at GBMC 16.12.040:

- A. **Public Use and Interest.** The decision maker shall inquire into the public use and interest proposed to be served by the establishment of the subdivision or short subdivision. The decision maker shall make written findings that appropriate provisions are made in the subdivision or short subdivision for, but not limited to, public health, safety and general welfare and for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary waste, parks and recreation, playgrounds, schools and school grounds, and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school, and shall consider all relevant facts to determine whether the public use and interest will be served by the subdivision or short subdivision and any dedication. Dedication of land to any public agency shall be clearly shown on the final plat or final short plat.
- B. **Consistency with Comprehensive Plan and Planning Standards and Specifications.** All preliminary plats and short plats shall comply with the general purposes of the Gold Bar comprehensive plan and to all adopted planning standards and specifications, including the Gold Bar zoning code.

A “consistency determination” is also required for every project permit application.

During project permit application review, [Gold Bar] shall determine whether the items listed in this subsection are defined in the development regulations applicable to the proposed project. In the absence of applicable development regulations, [Gold Bar] shall determine whether the items listed in this subsection are defined in [Gold Bar’s] adopted comprehensive plan. This determination of consistency shall include the following:

1. The type of land use permitted at the site, including uses that may be allowed under certain circumstances, if the criteria for their approval have been satisfied;
2. The level of development, such as units per acre, density of residential development in urban growth areas, or other measures of density; and
3. Availability and adequacy of infrastructure and public facilities identified in the comprehensive plan, if the plan or development regulations provide for funding of these facilities as required by RCW Chapter 36.70A; and
4. Character of the development, such as development standards.

[GBMC 19.04.010(B)]

### Vested Rights

Subdivision and short subdivision applications are governed by a statutory vesting rule: such applications “shall be considered under the subdivision or short subdivision ordinance, and zoning or other land use control ordinances, in effect on the land at the time a fully completed application ... has been submitted ...” [RCW 58.17.033] The proposed preliminary subdivision is thus vested to regulations as they existed on January 5, 2023.



### Standard of Review

The standard of review is preponderance of the evidence. The applicant has the burden of proof. [GBMC 19.05.060; City of Gold Bar Hearing Examiner Rule of Procedure 316(a)]

### Scope of Consideration

The Examiner has considered: all of the evidence and testimony; applicable adopted laws, ordinances, plans, and policies; and the pleadings, positions, and arguments of the parties of record.

## CONCLUSIONS OF LAW

1. Extensive, detailed conclusions regarding conformance with the criteria for approval are unnecessary since *Fall View* is essentially an uncontested case. The Director has concluded that the preliminary subdivision meets all applicable criteria for approval set forth in Title 16 GBMC. (Exhibit 16) The Examiner concurs. There is no need to belabor the point.
2. Section 16.12.040(B) GBMC requires the Examiner to consider “the general purposes of the Gold Bar comprehensive plan”. The Examiner’s ability to use the comprehensive plan in project review is constrained by state law which states that the comprehensive plan is applicable only where specific development regulations have not been adopted: “The review of a proposed project’s consistency with applicable development regulations or, in the absence of applicable regulations the adopted comprehensive plan ....” [RCW 36.70B.030(1)]

The state Supreme Court addressed that provision in *Citizens v. Mount Vernon* [133 Wn.2d 861, 947 P.2d 1208 (1997), *reconsideration denied*] in which it ruled that “[RCW 36.70B.030(1)] suggests ... a comprehensive plan can be used to make a specific land use decision. Our cases hold otherwise.” [at 873]

Since a comprehensive plan is a guide and not a document designed for making specific land use decisions, conflicts surrounding the appropriate use are resolved in favor of the more specific regulations, usually zoning regulations. A specific zoning ordinance will prevail over an inconsistent comprehensive plan. If a comprehensive plan prohibits a particular use but the zoning code permits it, the use would be permitted. These rules require that conflicts between a general comprehensive plan and a specific zoning code be resolved in the zoning code’s favor.

[*Mount Vernon* at 873-74, citations omitted] Consideration of “general purposes” is permissible so long as it does not devolve into an item-by-item evaluation.

3. The Staff Report quotes Comprehensive Plan Policy LU-P10: “All new plats in Gold Bar and its urban growth area shall be designed to support future connection to a sanitary system, including placement of side sewer and sewer mains within the development.” *Fall View’s* plans do not contemplate installation of “dry sewers.” Director’s Recommended Condition 14 would require

recording of a notice against the title of each new lot requiring connection to city sewer within 12 months of availability. (Exhibit 16, p. 7) The Director testified that Policy LU-P10 has not been incorporated into the GBMC. The Examiner therefore concludes that a requirement for installation of dry sewers would not be legally defensible. The Director's recommended condition, to which the Applicant agreed, is the most that can be required.

4. Parcel 003 is located within an incorporated city. Urban densities are to be expected in a city. The current zoning of this area (R 12,500, approximately 3 dwelling units per net acre) is an urban density zoning category (albeit, on the low end of the urban spectrum). Although not expressly detailed in the hearing record, it is commonly understood that urban density development destroys the natural habitat for many wildlife species. The loss of wildlife habitat is a known result of urbanization – large wildlife species and humans do not coexist in close quarters well. When the City's legislative body, the City Council, applied the R 12,500 zone to this area, it made a conscious trade-off: Human habitat over wildlife habitat. Except as required to comply with with adopted Critical Areas regulations, loss of wildlife habitat is to be expected as the City develops.

In this case, a large band of land along the Wallace River will remain undeveloped as well as the extensive Wetland A area along the west edge of the subdivision. Thus, about 30% of the site's natural habitat will be preserved.

5. Based upon all the evidence in the record, the Examiner concludes that *Fall View* makes appropriate provisions for the items listed in GBMC 16.12.040(A).
6. Based upon all the evidence in the record, the Examiner concludes that *Fall View* meets the considerations within GBMC 16.12.040(B). All evidence demonstrates compliance with the general purposes of the Comprehensive Plan, to the extent they can be considered, and zoning code, subdivision code, and Critical Areas regulations.
7. Given all the evidence in the record, the Examiner concludes that *Fall View* will serve the public use and interest and will thus comply with GBMC 16.12.040(A).
8. *Fall View* passes the consistency test: Single-family and duplex residential are permitted land uses in the R 12,500 zone; the proposed density is within the range contemplated by the Comprehensive Plan and allowed by the R 12,500 zone; adequate public utilities are available to serve the proposed lots; and the development's character is consistent with the surrounding land uses.
9. The recommended conditions of approval as set forth in Exhibit 16 are reasonable, supported by the evidence, and capable of accomplishment with the following changes:
  - A. A preliminary subdivision embodies the concept of approval of a specific development proposal: the preliminary plat. Preliminary subdivision evaluation is based upon the specific preliminary plat submitted by the applicant. It is appropriate, therefore, that the conditions of approval clearly identify the plat which is being approved. The recommended conditions in Exhibit 16 do not do so. Both the Applicant and the Director agree that Exhibit 18 constitutes

the plat which should be approved. Reference to that exhibit will be provided in a new condition.

- B. The property to be subdivided as depicted on Exhibits 15F and 18 does not currently legally exist: The configuration of the northwest corner depends upon approval of a BLA between the Applicant's property and the Ells/Pueher Property. That BLA needs to be approved and consummated before *Fall View* can be granted final approval and recorded. A condition to that effect will be added.
- C. The GBMC makes placement of permanent signage and fencing along the outer perimeter of wetland and stream buffers a discretionary action on each permit.

Because the entirety of Wetland A's buffer will exist solely as an easement across the rear of proposed Lots 10 – 19 and the entirety of Wetlands B and C and their buffers will exist solely as an easement across the rear of proposed Lots 30 – 33, signage and fencing need to be required. The average lot owner would have no idea where the edge of the buffer were if it were not demarcated on each lot. And, the likelihood that a lot owner would violate the buffer (accidentally, out of ignorance, or on purpose) would go up exponentially were the edge of the buffer not permanently demarcated on each affected lot. The existence of the buffer easements must also be clearly shown on the final plat. Therefore, the Examiner will impose appropriate conditions requiring depiction of the buffer easements and placement of signage and fencing consistent with GBMC standards along the outer buffer edges across proposed Lots 10 – 19 and 30 – 33.

The Wallace River buffer is an entirely different matter. The outer edge of that buffer is about 50 feet north of the southern edge of "Park" (open space) Tract 997. It does not need to be fenced as the lot owners abutting Tract 997 would have no individual right to do anything beyond their property lines in any event. Since the edge of the buffer will be located within Tract 997, signage is not required.

A condition will also be added to make clear that neither clearing nor grading is to occur within Tracts 996, 997, and 999 or within the wetland buffer portions of proposed Lots 10 – 19 and 30 – 33.

- D. A few minor, non-substantive structure, grammar, and/or punctuation revisions to Recommended Condition 23 will improve parallel construction, clarity, and flow within the conditions. Such changes will be made.

10. Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

## DECISION

Based upon the preceding Findings of Fact and Conclusions of Law, and the testimony and evidence submitted at the open record hearing, the Examiner **GRANTS** preliminary subdivision approval for *Fall View* **SUBJECT TO THE ATTACHED CONDITIONS**.

Decision issued June 6, 2023.

\s\ John E. Galt (Signed original in official file)

John E. Galt  
Hearing Examiner

## HEARING PARTICIPANTS <sup>11</sup>

Rich Norris  
Mark Villwock  
Emily Ellson  
Ross Healy  
Lee Russell

Ryan C. Larsen  
Mike Houser  
Brad Lincoln  
Kara Bensley

## NOTICE of RIGHT of RECONSIDERATION

This Decision is final subject to the right of any party of record to file a written request for reconsideration within seven (7) calendar days of the date this Decision was mailed to the parties. See GBMC 2.26.125 for additional information and requirements regarding reconsideration.

## NOTICE of RIGHT of APPEAL

This Decision is final subject to the right of a party of record with standing, as provided in RCW 36.70C.060, to file a land use petition in Superior Court in accordance with the procedures of GBMC 2.26.140 and 19.06.060. Any appeal must be filed within 21 days following the issuance of this Decision unless reconsideration has been requested. See GBMC 2.26.140 and 19.06.060 for additional information and requirements regarding judicial appeals.

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<sup>11</sup> The official Parties of Record register is maintained by the City's Hearing Clerk.

The following statement is provided pursuant to RCW 36.70B.130: “Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.”

**CONDITIONS OF APPROVAL**  
***FALL VIEW***  
**LS-001-23**

This Preliminary Subdivision is subject to compliance with all applicable provisions, requirements, and standards of the Gold Bar Municipal Code, standards adopted pursuant thereto, and the following special conditions:

**Preliminary Plat and General Subdivision Design –**

1. Exhibit 18 is the approved preliminary plat; Exhibit 15F is the approved preliminary supporting plans.
2. The applicant/developer shall adhere to all applicable codes, standards and regulations in effect at the time of development, including, but not limited to, the Gold Bar Municipal Code, the Stormwater Management Manual, the Building Code, and Uniform Fire Code, as adopted by the City.
3. In accordance with GBMC, the City Council may require the subdivider to enter into a developer/subdivision agreement to memorialize the preliminary plat conditions of approval, requirements for the construction of all infrastructure improvements including plan submittals, inspections, bonding, including private improvements and facilities associated with the subdivision.
4. No logging, clearing, or grading is permitted within any designated open space, “Park,” critical area, or critical area buffer.
5. The outer perimeter of the wetland buffers within the subject property shall be staked prior to initiation of construction activity as required by GBMC 18.08.050(2)(E)(1).
6. Prior to final plat approval and recordation, a Boundary Line Adjustment between the Applicant’s property and the Ells/Pueher Property, creating the common boundary configuration depicted on Exhibits 15F and 18, shall have been approved and consummated.
7. Prior to final plat approval and recordation, critical area buffer perimeter fencing and signage pursuant to GBMC 18.08.050(2)(E)(2) and (2)(E)(3) shall have been installed on proposed Lots 10 – 19 and 30 – 33.
8. All required critical area buffer easements shall be recorded/established prior to or concurrent with final plat recordation. All such easements shall be clearly shown on the face of the final plat.

### **Septic Systems-**

9. The applicant/developer shall design the plat and septic systems to be consistent with adopted Snohomish County Department of Health standards and regulations for on-site sanitary septic systems.

### **Transportation –**

10. The developer shall construct street improvements throughout the development including curb, gutter, sidewalks, landscaping strip, street lighting, and street markings in accordance with GBMC street standards. The sidewalks may be separated from the street with a minimum three (3) foot landscaping strip along arterials. Rolled curbs are allowed with approval of Public Works Director. The applicant shall submit a final street design per City standards.
11. Ley Road shall be widened to match city design standards, and including sidewalks, curb, gutters, and asphalt paving.

### **Surface Water/Stormwater –**

12. During grading and construction activities, the developer shall retain and manage on-site surface and stormwater within the site in accordance with an approved temporary erosion control plan.
13. The temporary stormwater management facilities shall be constructed before any significant amount of site grading commences.
14. During construction, the developer shall inspect weekly, maintain and repair all temporary and permanent erosion and sediment control BMPs to assure continued performance. During the wet weather construction period, the access road and on-site utilities shall be phased to minimize open soil exposure.
15. During construction, the developer shall ensure that trucks are cleaned before leaving the site. The applicant shall provide street cleaning of Ley Road/May Creek Road during site clearing, grading, and filling and shall promptly clean-up any dirt, mud, or other material deposited on public streets and shall be responsible for cleaning storm drains in public streets that are impacted by construction.
16. Prior to issuance of any construction or clearing and grading permit, the applicant shall secure a right-of-way permit from the City Public Works Department which may include:
  - Designated truck-haul routes
  - Truck loading/unloading activities
  - Location of construction and hauling
  - Hours of construction and hauling
  - Provisions for street sweeping, excavation and construction

17. All proposed water and sewer lines and facilities which are not located within the public right-of-way shall be located in appropriate easements. Easements shall be recorded at final plat recording.

**Utilities –**

18. All utilities, pipelines and cables are to be placed underground.

**Water –**

19. To ensure that new lots are not created if they cannot be served with water, state law (RCW 58.17.110) requires the City to determine if appropriate provisions are made for water supplies before approving a new subdivision. The City of Gold Bar shall issue a letter certifying water availability for the proposed plat. Connection to the City's water system must be completed within 24 months of the date of the letter, or a new availability notification letter must be obtained.

**Sewer –**

20. A requirement to connect to the future City sewer system within twelve (12) months of availability shall be recorded on the title of all lots and the developer shall notify future home purchasers of this requirement.

**Fire –**

21. The developer shall provide adequate fire protection through the placement of fire hydrants and through proof of required fire flow as prescribed by the Snohomish County Fire District #26, and the Unified Building Code, as adopted by the City.

**Other -**

22. The applicant/developer shall be required to pay school impact fees, transportation impact fees, administrative impact fees, and park impact fees consistent with GBMC. The amount of the mitigation impact fees will be determined and paid to the designated Sultan School District Representative and City of Gold Bar official at the time of issuance of the building permit for the each individual lot.
23. The applicant/developer shall be required to pay any transportation impact/mitigation fees consistent with the reciprocal agreement between the City of Gold Bar and Snohomish County.
24. The developer shall maintain landscaping within the right-of-way for a two-year period following installation. Such maintenance shall be secured with a performance bond filed with the City. Subsequent to the two-year period, maintenance responsibility shall be passed to the City of Gold Bar Stormwater Utility. Prior to transfer, the city will verify the required maintenance has been completed.
25. All import fill material shall be clean and free of environmental hazards and contaminants. Proof of clean import soils may be required by the City Public Works Department.

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26. The applicant/developer shall submit an up-to-date title report prior to recording of final plat that demonstrates that all taxes, penalties, and interest have been paid.
27. All site improvements, including streets, sidewalks, signage, bicycle lanes, frontage improvements, drainage improvements, and landscaping shall be completed prior to Final Plat, with the exception of the final paving of streets and street markings. Alternatively, the City may approve a financial bond or assurance for items not completed prior to Final Plat. All site improvements, not including individual homes, must be installed prior to final inspection of the first home.
28. In keeping with city road designations, Road A will be named Birch Court.
29. The applicant/developer shall adhere to the recommendations as outlined in Exhibit 14, items 1 to 14 (the City memorandum dated May 18, 2023).