PROTECT MUD BAY CLIFFS APPEAL OF THE WOODS AT VIEWCREST DECISION
SUB2022-0011, VAR2022-0002, CAP2022-0005

EXECUTIVE SUMMARY

A. First demonstrate compliance. Then grant vested development rights.

The Woods at Viewcrest is a proposed 38-lot hillside subdivision on steep coastal bluffs immediately above Mud Bay (North Chuckanut Bay). The Hearing Examiner approved the Woods at Viewcrest Preliminary Plat on June 5, 2026 before the administrative record demonstrated compliance with multiple applicable legal and technical requirements. The Hearing Examiner's Decision does not adequately address significant evidence regarding material deficiencies and inaccuracies involving core issues. These issues include the proposal's density, alterations of geologically hazardous areas and their buffers, stormwater impacts, public safety, and environmental compliance.

Although this appeal addresses several technical deficiencies, they all stem from a common error: essential aspects of the project were repeatedly approved before the administrative record demonstrated compliance with the applicable legal and technical standards.

Preliminary plat approval allows the developer to proceed with infrastructure improvements, excavations, construction and, more importantly, grants vested development rights. Once those rights vest, the City's ability to require substantial redesign or deny development becomes significantly more limited, potentially exposing the City to takings claims if approved lots are later determined to be undevelopable.

For that reason, the Municipal Code contemplates a straightforward sequence: **First demonstrate compliance. Then grant vested development rights.** The Hearing Examiner's approval effectively reverses that sequence by granting vested development rights while

repeatedly assuming post-approval analysis, future permitting, and future reports will establish the missing demonstration of compliance.

The Examiner's Decision repeatedly acknowledges that essential demonstrations required to establish compliance with applicable development standards were absent from the record, incomplete, or deferred to later engineering evaluation, reports, or approvals. The Examiner approved the Preliminary Plat, critical area and variance permits in spite of there being violations of applicable regulations. Approval came first, and compliance was deferred to later. EXHIBIT A summarizes these repeated deferrals.

The administrative record likewise contains numerous unresolved technical questions that remain unanswered. PMBC presented substantial evidence demonstrating that material issues remain unresolved concerning: hydrologic and hydraulic analysis; stormwater management and permanent drainage design; geotechnical conditions and long-term slope stability; Landslide Hazard Area buffer reductions; Department of Ecology's flow-control requirements; Mud Bay's receiving environment and shoreline ecological functions; future development intensity; and phased development. EXHIBIT B summarizes these unresolved issues, which remain noncompliant with municipal codes and Ecology requirements.

B. The Appeal is more a chronology than a list of errors.

Since the first Woods at Viewcrest neighborhood meeting five years ago in 2021, members of PMBC repeatedly identified specific deficiencies in the project record and explained to City staff why those deficiencies prevented the Applicant from demonstrating compliance with City code and Ecology requirements. The City was well aware of PMBC's concerns. The City and Hearing Examiner knew missing information was not provided before the permits were granted.

Ultimately, the Hearing Examiner approved the Preliminary Plat, but only by relying on future studies and future permitting rather than completed demonstrations of compliance.

Throughout these proceedings, PMBC presented substantial expert testimony identifying significant unresolved engineering, geologic, hydrologic, and environmental issues affecting the proposal. The Hearing Examiner instead gave substantial weight to feasibility-level, rough-concept stage, order-of-magnitude insights provided by the Applicant's consultants while repeatedly concluding that many critical demonstrations of compliance couldn't occur until later permitting.

For example, the Geotechnical Investigation for the project, Exhibit E, states, "Detailed lot-specific review and exploration for final design recommendations for structures is outside the scope of this study." (Exh C062, Bates C-01106) Therefore, lot-specific evaluations and analyses for feasibility and developability do not exist and are presumed to come later.

The proposed subdivision will be constructed upon property comprised of steep coastal bluffs containing large mapped landslide hazard areas, erosion hazard areas, shallow soils, historical landslide activity, and significant stormwater challenges. The site is immediately above —and has a direct hydrologic connection to— Mud Bay, a highly sensitive pocket estuary and Habitat Conservation Area containing environmentally sensitive mudflats, estuarine wetlands, salt marsh habitat, and other shoreline critical areas.

The City's obligation to protect public health, safety, welfare, and shoreline ecological functions is especially tested where intensive development is proposed on geologically hazardous coastal bluffs immediately above public trust waters of the U.S., publicly accessible shoreline areas and ecologically sensitive estuarine resources.

Even the Applicant's own geotechnical consultant acknowledged that its conclusions assumed "a typical level of risk is acceptable." (Exh C062, Bates C-01117) Given the circumstances of this proposal, "a typical level of risk" is not acceptable to the public and should not be acceptable to the City.

This appeal does not ask Council to decide specific disputed engineering questions. It asks Council to decide whether the City granted vested development rights where demonstrated compliance with key regulatory municipal codes and Ecology requirements is lacking.

Because the administrative record demonstrates that many of the development's most significant engineering and environmental components remain noncompliant, PMBC respectfully requests that Council reverse the Hearing Examiner's Decision.

I. ERROR NO. 1 — FAILURE TO COMPLY WITH DENSITY, LOT AVERAGING, AND PHASING REQUIREMENTS

A. Failure to Consider Current Legally Authorized Density

In December 2025, the City adopted Ordinance 2025-12-032, authorizing "four (4) units per lot, including accessory dwelling units" on single-family zoned lots. Consequently, the ordinance authorizes up to **152 dwelling units** within the proposed **38-lot** subdivision. The Hearing Examiner's Decision repeatedly evaluated the proposal as a **38-unit** subdivision and does not analyze the substantially greater development intensity now authorized under current City regulations. The Hearing Examiner's Decision therefore evaluated a materially different project than the one current City regulations authorize.

That omission is significant because development intensity directly affects virtually every engineering and environmental issue presented in this appeal, including: stormwater generation; traffic and roadway demand; occupancy; public safety exposure; slope loading; shoreline impacts; infrastructure demand; and cumulative environmental impacts.

Because the Hearing Examiner evaluated a materially different project than current City regulations authorize, the record does not demonstrate compliance before Preliminary Plat approval. Accordingly, the Hearing Examiner erred.

B. Failure to Comply with BMC 23.16.010.E (Phasing)

BMC 23.16.010.E provides: "Each phase shall consist of a contiguous group of lots that meets all pertinent development standards on its own and shall not rely on future phases for meeting any city codes."

The approved phasing plan does not comply with this requirement. Phase 1 is not contiguous, and both Phases 1 and 2 rely upon lot averaging involving lots located in other phases rather than independently satisfying the applicable development standards. Specifically:

- Phase 1 includes Lots 22, 37 and 38, which are not contiguous with other Phase 1 lots.
- The Phase 1 contiguous lots (lots 1 through 6) average only 19,824 square feet.
- The Phase 2 lots (lots 10 through 17) average only 11,605 square feet.

Neither phase independently satisfies the applicable 20,000-square-foot Area 7 standard. Minimum lot size and lot averaging are pertinent development standards. Because each phase must independently satisfy those standards and may not rely upon future phases to establish compliance, the approved phasing plan is not consistent with BMC 23.16.010.E.

Because the approved phases do not independently satisfy the City's development standards, the record does not demonstrate compliance before Preliminary Plat approval. Accordingly, the Hearing Examiner erred.

II. ERROR NO. 2 — FAILURE TO ADEQUATELY RESOLVE APPLICABILITY OF ECOLOGY FLOW-CONTROL REQUIREMENTS

The Hearing Examiner erred by accepting the Applicant's claimed exemption from Ecology's stormwater flow-control requirements without adequately resolving substantial legal, technical, and ecological questions regarding the applicability of that exemption.

The Applicant incorrectly claims exemption from Ecology's Minimum Requirement #7 (MR7 - Flow Control) under Appendix I-A of the Stormwater Management Manual for Western Washington (SWMMWW), which exempts from Ecology's flow control requirements direct discharges **at** (but not above) the applicable high-water mark into specified **salt** water receiving waters. However, the record contains substantial evidence raising legitimate questions regarding whether Mud Bay qualifies for that exemption. Among other things:

- Ecology's own *How to Meet Ecology's Construction Stormwater General Permit Requirements* provides specific guidance for stormwater management and distinguishes between "estuaries" and "salt water" within its definition of "surface waters of the state." Mud Bay is a tidal estuary and, when not devoid of water, contains **estuarine** water, not **salt** water.
- Appendix I-A separately identifies the Snohomish River Estuary as exempt. If the Snohomish River Estuary was automatically exempt, there would be no reason to be listed separately in Appendix I-A. In other words, the separate identification of the Snohomish River Estuary in Appendix I-A provides concrete evidence that estuaries, like Mud Bay, are not automatically exempt.
- Mud Bay is a vulnerable and constrained pocket estuary due to the railroad causeway prohibiting much of the bay's ability to naturally self-cleanse. The bay has fresh and salt water mixing and stormwater discharges directly affecting the bay's mudflats, estuarine wetlands, shoreline wetlands, salt marsh habitat, and other critical saltwater habitat functions. Mud Bay is often devoid of water at low tide, especially along the shoreline where the project's polluted stormwater will be discharged.
- Unlike the large marine receiving waters typically associated with dilution-based flow-control exemptions, Mud Bay experiences limited flushing and extensive tidal exposure. During

low tide, portions of the proposed discharge area consist primarily of exposed mudflats where stormwater pollutants accumulate rather than being immediately dispersed.

- The proposed stormwater discharge is **above** —not **at**— the applicable high-water mark and does not meet the requirement for flow control exemption.

These issues required careful resolution before preliminary plat approval because the applicability of the Minimum Requirement for flow control directly affects the design, performance, and regulatory requirements governing the project's permanent stormwater system.

The Hearing Examiner further erred by failing to adequately evaluate whether Mud Bay constitutes an "estuarine wetland" under Ecology's own stormwater definitions.

- The SWMMWW expressly defines "estuarine wetland" to include "rocky, sandflat, or **mudflat intertidal area** where fresh and salt water mix." Mud Bay is a mudflat intertidal area and meets the SWMMWW's estuarine wetland definition.

- The City and Applicant instead relied primarily upon old US Army Corps Clean Water Act wetland delineation concepts emphasizing vegetation while disregarding Ecology's directly applicable stormwater definitions for estuarine mudflats and intertidal systems.

- Ecology intentionally included mudflat intertidal systems within the SWMMWW definition even though mudflats are generally unvegetated under 40 CFR § 230.42. If vegetation were required for mudflats to qualify as estuarine wetlands under the SWMMWW, Ecology's explicit inclusion of "mudflat intertidal areas" would have little practical meaning.

- WAC 173-26-221 identifies critical saltwater habitats—including mudflats—as shoreline critical areas requiring heightened ecological protection and further provides that where multiple regulations apply, the regulations "most protective of ecological functions shall apply." The Hearing Examiner's Decision does not meaningfully address this provision.

PMBC does not ask Council to determine, as a matter of first impression, that the claimed exemption is unavailable. Rather, PMBC submits that the record demonstrates substantial unresolved legal, technical, and ecological questions concerning the applicability of the exemption. Those questions bear directly upon compliance with Ecology's stormwater requirements and should have been resolved before the City approved the Preliminary Plat and granted vested development rights.

Because the record did not demonstrate compliance before Preliminary Plat approval, the Hearing Examiner erred.

III. ERROR NO. 3 — FAILURE TO DEMONSTRATE COMPLIANCE WITH STORMWATER, SOILS, AND SLOPE STABILITY REQUIREMENTS BEFORE PRELIMINARY PLAT APPROVAL

The Hearing Examiner approved the Preliminary Plat before the administrative record demonstrated compliance with the City's stormwater regulations and Ecology stormwater management requirements for new developments. This error is reflected in four related deficiencies discussed below.

A. The City's SEPA Report Relied Upon Stormwater Modeling That Was Not Contained in the Preliminary Stormwater Management Report

Stormwater management is one of the central issues in this appeal because it directly affects runoff quantity, peak discharge rates, downstream flooding, groundwater recharge, slope stability, erosion potential, water quality, and the protection of Mud Bay's shoreline ecological functions. Demonstrating compliance with applicable City and State stormwater management standards requires completed hydrologic and hydraulic modeling and analyses that evaluate how stormwater will behave under existing and proposed site conditions.

The City's SEPA Report states that the Applicant's Preliminary Stormwater Management Report (PSWR) contained stormwater modeling demonstrating that the proposal satisfied these

requirements. Specifically, the SEPA Report states: "The Report modeled the stormwater flows to demonstrate that the Proposal will not increase post development runoff to adjacent properties and that hydrology to receiving water bodies will be maintained." (Exh C-005, Bates C-00025)

Later, the SEPA Report further states: "The PSWR modeling for sizing the proposed water quality treatment BMP included analysis of stormwater run-off from the individual lots." (Exh C-005, Bates C-00048)

Because the SEPA Report repeatedly represented that the PSWR contained such modeling, PMBC's stormwater expert, Richard Horner, carefully reviewed the PSWR to identify that modeling and evaluate its conclusions. Dr. Horner testified that he could not locate the formal hydrologic and hydraulic stormwater modeling described in the SEPA Report. This testimony was consistent with the Applicant's own stormwater engineer, who confirmed during the hearing that the PSWR does not contain formal hydrologic or hydraulic stormwater modeling.

Accordingly, the hearing record materially calls into question the SEPA Report's repeated conclusion that the PSWR contained formal hydrologic and hydraulic stormwater modeling demonstrating compliance with applicable stormwater requirements. If the PSWR did not contain the formal analyses repeatedly described in the SEPA Report, then a **principal factual predicate** supporting the MDNS and Preliminary Plat approval is called into question.

Various versions of the project's PSWR highlight the fact that stormwater modeling and calculations are missing from the final report. Section 6.6 (Requirement No. 6 – Runoff Treatment) of the December 4, 2023 PSWR states, "The site improvements will meet Enhanced Treatment for this project with the use of modular wetland devices. The treatment method and sizing calculations are detailed in Section 5.5." (Exh C-044, Bates C-00700) However, Section 5.5 is absent from the December 4, 2023 PSWR. No sizing calculations exist.

The final November 22, 2024 PSWR states, “The site improvements will meet Enhanced Treatment for this project with the use of modular wetland devices.” (Exh C-014, Bates C-00164) There is no mention of details for the treatment method and sizing calculations. The previous mention has been removed. No calculations are provided.

B. Stormwater, Soils, Groundwater, and Slope Stability Are Interdependent

The relationship between stormwater, soils, groundwater and slope stability is significant because these are not independent engineering disciplines.

Hydrology affects groundwater recharge. Groundwater influences slope stability. Soil characteristics influence infiltration and runoff. Stormwater design determines the quantity, concentration, and timing of runoff entering both the bluff and Mud Bay. Consequently, uncertainty in any one of these disciplines necessarily affects the reliability of the others.

Hydrologic and hydraulic modeling and analyses provide the technical foundation for evaluating runoff, groundwater response, conveyance capacity, and stormwater performance. Without those analyses, neither the Hearing Examiner nor Council can determine whether the proposed stormwater system satisfies applicable development standards.

C. The Hydrologic Soil Group Dispute Demonstrates Why Completed Analyses Were Necessary

PMBC presented substantial expert testimony from Richard Horner demonstrating that the Applicant incorrectly classified the predominant project soils as Everett-Urban loam having Hydrologic Soil Group B characteristics. PMBC's evidence demonstrated that the predominant soils more accurately reflect Hydrologic Soil Group C conditions, which have substantially lower infiltration capacity and correspondingly greater runoff potential.

That distinction is not merely academic. Hydrologic Soil Group classification directly affects runoff estimates, infiltration assumptions, stormwater facility sizing, peak discharge rates,

erosion potential, groundwater recharge, detention requirements, and downgradient impacts. By designing the project's stormwater system using Soil Group B assumptions despite evidence that the site is predominantly Soil Group C, the Applicant materially understated the site's runoff characteristics and associated impacts.

As a result, any stormwater analyses based on Soil Group B cannot provide a reliable basis for determining compliance with applicable City stormwater regulations, Ecology stormwater requirements, flow-control standards, or public-safety requirements.

The Hearing Examiner nevertheless approved the Preliminary Plat without resolving this fundamental disagreement regarding the site's hydrologic characteristics or its implications for compliance with applicable stormwater requirements.

D. Preliminary Plat Approval Requires Demonstrated Compliance Before Vested Development Rights Are Granted

The record likewise contains no completed demonstration that the proposed permanent stormwater system can safely collect, convey, discharge, and manage runoff from the fully developed subdivision without creating unacceptable risks to slope stability, adjacent properties, public safety, or Mud Bay's shoreline ecological functions. Instead, many of these demonstrations were deferred until later permitting and engineering review.

This appeal asks Council to decide whether vested development rights were granted before the administrative record demonstrated compliance with the applicable legal and technical standards. Its purpose is to determine whether the record already demonstrates compliance before vested development rights are granted.

A primary purpose of preliminary plat review is to determine whether the administrative record for the proposed subdivision complies with applicable legal requirements before vested

development rights are granted. For preliminary plat approval, required compliance findings cannot simply be deferred to later review stages.

Once approved, a preliminary plat authorizes the developer to move forward with substantial site-disturbing activity, including infrastructure improvements, excavation, grading, and construction-related work. Final plat approval confirms that the conditions imposed at preliminary plat approval have been satisfied and allows the developer to legally sell or transfer the lots.

Because the record does not demonstrate that the proposed development's interrelated hydrologic, geotechnical, and stormwater components complied with applicable regulations before Preliminary Plat approval, the Hearing Examiner erred in approving the Preliminary Plat.

IV. ERROR NO. 4 — FAILURE TO DEMONSTRATE THAT REDUCED LANDSLIDE HAZARD AREA BUFFERS PROVIDE EQUIVALENT PROTECTION BEFORE PRELIMINARY PLAT APPROVAL

The Hearing Examiner erred by approving substantial reductions to the City's standard Landslide Hazard Area (LHA) buffers without first requiring sufficient analysis to demonstrate that the reduced buffers would provide protection equivalent to that required by the Municipal Code. The approved subdivision reduces the City's standard 50-foot LHA buffers under BMC 16.55.460.A.1.a to as little as 10 feet on at least 33 of the proposed 38 lots — an 80 percent reduction affecting approximately ninety percent of the subdivision. (Exh PC-1.371, Bates C-04436) Because these reductions apply to the overwhelming majority of the proposed lots, they are not isolated exceptions. They represent a fundamental design feature of the subdivision that required demonstration of equivalent protection before Preliminary Plat approval.

A. Equivalent Protection Must Be Demonstrated Before Buffer Reductions Are Approved

The Municipal Code authorizes reductions to Landslide Hazard Area buffers only where equivalent protection can be demonstrated. That demonstration necessarily requires a reliable understanding of the geologic and hydrologic conditions that affect slope stability after development occurs — not simply under existing conditions.

As discussed in Error No. 3, many of the analyses necessary to evaluate post-development stormwater behavior, groundwater conditions, infiltration, runoff, and related geotechnical impacts had not yet been completed before Preliminary Plat approval.

B. The Applicant's Own Geologic Consultant Identified Multiple Development-Induced Changes That May Affect Slope Stability

The Applicant's own December 2009 Geologic Feasibility Investigation repeatedly warns that development itself will alter the conditions governing slope stability. (Exh PC-1.371, Bates C-04440) Among other things, the report explains that future development may:

- alter existing hydrologic conditions;
- change surface-water and groundwater flow;
- remove vegetation that presently limits erosion;
- increase erosion following disturbance of existing soils;
- affect slope stability through grading activities;
- increase loading from buildings, roads, fills, retaining walls, and other improvements;
- disturb fine-grained soils susceptible to erosion; and
- alter groundwater movement through soil compaction and changes in soil permeability.

The report further explains that changes in hydrology may alter the probability, frequency, and magnitude of landslide activity and that modifications to surface-water and groundwater flow may increase both the size and frequency of future landslide events.

These warnings come from the Applicant's own geologic consultant, who recognized that post-development slope conditions may differ materially from existing conditions because development itself changes the physical processes that control slope stability. Collectively, these warnings identify the very mechanisms by which development itself may increase landslide risk.

C. Equivalent Protection Could Not Be Demonstrated Without Evaluating Those Changes

The very factors identified by the Applicant's geologic consultant as controlling slope stability are the same factors that remained incompletely evaluated at the time Preliminary Plat approval was granted.

Among other things:

- formal hydrologic and hydraulic stormwater modeling analyses remained missing;
- groundwater response under post-development conditions had not been fully evaluated;
- lot-specific geotechnical investigations were deferred;
- site runoff volume, velocity, duration, infiltration, runoff concentration, groundwater movement, and long-term stormwater behavior remain unknown;
- historical landslide activity remained an important site characteristic;
- current City regulations authorized substantially greater future development intensity; and
- substantial portions of the engineering analysis were deferred until later permitting.

Without completed analyses addressing these interrelated conditions, neither the Hearing Examiner nor Council can determine whether reducing Landslide Hazard Area buffers from fifty feet to ten feet provides protection equivalent to the City's standard requirements.

This appeal does not contend that reduced buffers are never permissible. Rather, it asks whether equivalent protection had been demonstrated before the City reduced the buffers by eighty percent and granted vested development rights. The record demonstrates that it had not.

Future permitting may ultimately conclude that portions of the proposed subdivision can be safely developed with reduced buffers. But that possibility cannot substitute for the analyses that should have been completed before Preliminary Plat approval.

Because the administrative record does not demonstrate that the proposed blanket Landslide Hazard Area buffer reductions provide protection equivalent to the City's standard requirements, the Hearing Examiner erred in approving the Preliminary Plat.

V. ERROR NO. 5 — FAILURE TO ADEQUATELY PROTECT PUBLIC HEALTH, SAFETY, WELFARE, AND SHORELINE ECOLOGICAL FUNCTIONS

The Hearing Examiner erred by approving the Preliminary Plat despite the cumulative effect of multiple unresolved issues affecting public health, safety, welfare, and shoreline ecological functions.

Viewed collectively, all the preceding assignments of error demonstrate that the administrative record did not establish that the proposed subdivision could be safely and lawfully developed before the City granted vested development rights. The cumulative concerns include:

- the increase in potential development intensity from 38 units to as many as 152 units;
- unresolved questions concerning Ecology's flow-control requirements;
- missing required hydrologic and hydraulic modeling and analyses;
- unresolved uncertainty regarding long-term stormwater behavior;
- potential underestimation of runoff resulting from disputed Hydrologic Soil Group classifications;
- substantial reductions to Landslide Hazard Area buffers without completed demonstrations of equivalent protection;
- unresolved groundwater and slope-stability questions;
- direct stormwater discharge toward publicly accessible shoreline areas; and
- potential impacts to Mud Bay's estuarine wetlands, mudflats, salt marsh habitat, and other shoreline ecological functions.

As discussed in Error No. 3, these issues are technically interdependent and must therefore be evaluated collectively.

PMBC's stormwater expert Dr. Horner succinctly addresses the runoff problems ahead for this proposed development in his March 18, 2024 comment letter #1 and his November 5, 2025 comment letter #2.

> Concluding excerpt from Letter #1:
> "I was one of 14 signatories from the scientific community of a 2006 letter to the Puget Sound Partnership giving recommendations for improving water quality and aquatic and human ecosystems through better stormwater runoff management… The recommendations included means of preserving the least disturbed areas, arranging for no net loss of forest cover, and reducing runoff from impervious areas. **The proposed form of the Viewcrest development disregards all of these principles**." (Emphasis added)

> Concluding excerpt from Letter #2:

> "The updated Stormwater Report has not changed the opinions I expressed more fully in my March 18, 2024 letter. The construction-phase stormwater management plan, the basis for post-construction stormwater management, and the practices prescribed for the future finished development **remain highly inadequate**. As they stand, they will be **incapable of protecting** the integrity of the Category 1 estuarine wetland, Mud Bay, that will receive the Woods at Viewcrest's stormwater runoff. Increasing the density from the initial plan would compound the negative impacts." (Emphasis added)

The City has a heightened responsibility to protect public health, safety, welfare, and shoreline ecological functions where intensive development is proposed on steep coastal bluffs immediately above publicly accessible shoreline areas and environmentally sensitive estuarine resources. That responsibility is especially important where the record relies upon:

- feasibility-level studies;
- future engineering;
- deferred permitting;
- applicant-retained consultant assumptions; and
- future demonstrations of compliance.

Even the Applicant's own geotechnical consultant acknowledged that its conclusions assumed "a typical level of risk is acceptable." (Exh C062, Bates C-01117) Whether that level of risk is acceptable is ultimately a policy judgment entrusted to the City. That judgment should be made only after the administrative record demonstrates compliance with applicable development standards — not while substantial questions remain unresolved.

The issue before Council is not whether the project can ultimately be engineered to comply. The issue is whether the record demonstrated compliance when the City granted vested development rights.

Because these unresolved issues bear directly upon public safety, shoreline protection, and compliance with applicable City and state requirements, the Hearing Examiner's Decision should be reversed.

VI. RELIEF REQUESTED

For the foregoing reasons, Protect Mud Bay Cliffs respectfully requests that the Bellingham City Council reverse the Hearing Examiner's approvals of: SUB2022-0011, VAR2022-0002, and CAP2022-0005. Before preliminary plat approval is reconsidered, the Applicant must demonstrate compliance with applicable City and state requirements, including but not limited to:

- compliance with applicable density, lot averaging, and phasing requirements;
- completion of hydrologic and hydraulic modeling and analyses sufficient to evaluate the permanent stormwater system;
- resolution of the applicability of Ecology's Minimum Requirement #7 (Flow Control);
- proper evaluation of Mud Bay as the receiving environment, including its estuarine wetlands, mudflats, salt marsh habitat, and other shoreline ecological functions;
- accurate Hydrologic Soil Group classification and any resulting revisions to stormwater analyses;
- completion of lot-specific geotechnical investigations necessary to evaluate slope stability and development feasibility;
- demonstration that proposed Landslide Hazard Area buffer reductions provide protection equivalent to the City's standard requirements; and
- demonstration, based upon the completed administrative record, that the proposed subdivision can be safely and lawfully developed consistent with applicable City and state requirements and the City's obligation to protect public health, safety, welfare, and shoreline ecological functions before vested development rights are granted.

PMBC recognizes that reasonable professionals may disagree regarding individual engineering or environmental issues presented by this proposal. This appeal does not ask Council to resolve technical disagreements. Rather, PMBC respectfully submits that the administrative record demonstrates that numerous compliance determinations remained incomplete or missing when the Preliminary Plat was approved.

The project record must demonstrate compliance with applicable regulations and Ecology requirements **before** —not after— vested development rights are granted. Accordingly, PMBC respectfully requests that Council reverse the Hearing Examiner's Decision. Thank you for your careful consideration of this appeal.

EXHIBIT A: COMPLIANCE DETERMINATIONS DEFERRED UNTIL AFTER PRELIMINARY PLAT APPROVAL

Preliminary plat review must evaluate the subdivision as an integrated development proposal, including lot legality, density, stormwater management, hydrologic and hydraulic modeling, geotechnical stability, critical-area protections, access, utilities, grading, environmental impacts, and public-facility adequacy. These components must be sufficiently demonstrated in the record before preliminary approval because approval grants vested development rights and authorizes the developer to proceed toward substantial site-disturbing activity. Required findings cannot be replaced by assumptions that missing compliance evidence will be supplied during later engineering review, PFC agreements, or individual building permits.

1. Construction Management Plan
   Deferred until Public Facilities Construction (PFC) Agreement.
2. Bedrock Removal Plan
   Deferred until PFC Agreement.
3. Blasting analysis
   Deferred until future blasting/bedrock removal plan.
4. Detailed geotechnical investigations
   Deferred until PFC or Building Permit.
5. Demonstration of Landslide Hazard design standards
   Deferred until Building Permit.
6. Demonstration that reduced LHA buffers provide equivalent protection
   Deferred until Building Permit.
7. Demonstration of dynamic/static factors of safety
   Deferred until Building Permit.
8. Stormwater Pollution Prevention Plan (SWPPP)
   Deferred until permit review after preliminary plat approval.
9. Hydrologic and hydraulic calculations
   Deferred until permit review.
10. Detailed stormwater engineering
    Deferred until PFC Agreement.
11. Lot-specific infiltration feasibility analysis
    Deferred until each Building Permit.
12. Stormwater outfall velocity review
    Deferred until PFC Agreement.
13. Scour analysis
    Deferred until PFC Agreement if later deemed necessary.
14. Stormwater conveyance design review
    Deferred until PFC Agreement.
15. Geologic review of stormwater pipe and outfall
    Deferred until PFC Agreement.
16. Lot-specific structural recommendations
    Deferred until final design.
17. Site landscaping and infrastructure compliance
    Deferred until PFC Agreement.

18. Review of shoreline no-net-loss compliance
    Deferred until construction permitting.
19. Clearing and grading compliance
    Deferred until later permits.
20. Additional site exploration
    Deferred until after preliminary approval.
21. Demonstration of code compliance for altered GHAs
    Deferred until later permits.
22. Final engineering demonstrating overall compliance
    Deferred until after vested rights had already been granted.

EXHIBIT B: UNRESOLVED QUESTIONS REMAINING AT THE TIME OF PRELIMINARY PLAT APPROVAL

1. Hydrologic and hydraulic behavior of the completed subdivision.
2. Correct Hydrologic Soil Group (HSG B versus HSG C).
3. Permanent lot-level stormwater collection and conveyance design.
4. Stormwater runoff volumes, velocities, and concentration.
5. Groundwater movement beneath the site.
6. Long-term slope stability after grading and development.
7. Dynamic and static factors of safety for Landslide Hazard Areas.
8. Effects of shallow bedrock excavation.
9. Whether blasting or mechanical rock removal will be required.
10. Effects of bedrock removal on adjacent slopes.
11. Adequacy of reduced Landslide Hazard Area buffers.
12. Geotechnical conditions for each individual lot.
13. Stormwater outfall scour potential.
14. Whether Ecology's MR #7 Flow Control exemption actually applies.
15. Whether Mud Bay should be treated as an estuary rather than ordinary salt water.
16. Ecological impacts on mudflats, estuarine wetlands, salt marsh, and benthic habitat.
17. Compliance with Ecology Minimum Requirements 1, 2, 4, 5, 6, 7, and 9.
18. Long-term operation and maintenance of the stormwater system.
19. Actual future development intensity under Middle Housing (up to 152 units).
20. Whether each phase independently satisfies City code.
21. Whether lot averaging complies with City regulations.
22. Accuracy of the repeated claim that 80% of the site remains undisturbed.
23. Adequacy of the vegetation retention assumptions used throughout the Decision.
24. Public safety consequences of all of the above.