

## BEFORE THE HEARING EXAMINER FOR SKAGIT COUNTY

- Applicant:** Apex Farms Apex Farms  
14112 Trites Road 4321 229<sup>th</sup> Pl SE  
Surrey, British Columbia Bothell, WA  
V3X 3EB, Canada 98021
- Agent/Engineer:** Rex Orkney Ravnik & Associates  
3600 Swan Road P. O. Box 361  
Mount Vernon, WA; 98273 Burlington, WA 98233
- Request:** Bayview Estates, Preliminary Plat, PL19-0113
- Location:** 13757 Josh Wilson Road, between Josh Wilson Road to the south and Rector Road to the north, within a portion Sec. 29, T35N, R3E, W.M.
- Land Use Designation:** Rural Reserve (RRv)
- Summary of Proposal:** Conservation and Reserve Development (CaRD) land division to create 33 single family residential lots on approximately 167 acres. 32 of the residential lots will be one acre in size, clustered in the northeastern portion of the site. Access will be from Rector Road on the north.
- Public Hearings:** Project public hearing, July 14, 2021  
SEPA appeal hearing, July 14 and July 21, 2021
- Appeal decision:** The DNS is affirmed. (See separate decision.)
- Permit decision/Date:** The preliminary plat is approved, subject to conditions. August 12, 2021.
- Reconsideration/Appeal:** Reconsideration may be requested by filing with PDS within 10 days of this decision. Appeal is to the Board of County Commissioners by filing with PDS within 14 days of this decision or decision on reconsideration, if applicable.
- Online Text:** The entire decision can be viewed at [www.skagitcounty.net/hearingexaminer](http://www.skagitcounty.net/hearingexaminer)

## **FINDINGS OF FACT**

1. Apex farms seeks preliminary plat approval for the proposed Bayview Estates Long CaRD.

2. The project site is west of Farm to Market Road, between Josh Wilson Road on the south and Rector Road on the north, located within a portion of Sec. 29, T35N, R3E, W.M.

3. The property is comprised of 167 acres on Bayview Ridge. Thirty-two (32) residential lots are proposed to be situated in cluster pods in the northeast corner of the property, southwest of the intersection of Rector Road and Farm to Market Road. These lots will be no larger than one acre in size. The existing residential site along Josh Wilson Road will become Lot 33. The remaining acreage will be identified as a separate lot or as open space associated with one of the proposed lots.

4. The proposal meets the applicable density requirements to for development as a CaRD land division.

5. The site now exists as four parcels and currently contains one existing residence within the southerly portion of the property. The westerly portion is covered by trees. The rest (the majority) of the property is in open pasture. The site contains several wetlands with various associated buffers.

6. Site topography slopes generally downhill from the north to south with slopes less than 5%. Surrounding uses are rural in nature with scattered and clustered residences on parcels of various sizes. The neighboring property to the north, east and south is primarily zoned Rural Reserve (10 acre minimum or 2/10 with CaRD divisions). To the west the zoning is Rural Intermediate (2.5 acre minimum lot size).

7. The application packet was received by the County on June 5, 2019 and determined complete on October 21, 2019,

8. A Notice of Development was posted on the property and mailed to all adjacent property owners within 300 feet. The Notice was published in a newspaper of general circulation on November 28, 2019. Twenty-one comment letters were submitted. The County requested additional information on

December, 19 2020, and asked for a response from the applicant to public comments received.

9. A public meeting was held on January 6, 2020, attended by around 50 persons. The principal concerns expressed related to: (a) septic systems, (b) traffic, (c) drainage, (d) schools, (e) and land use.

10. An environmental checklist prepared pursuant to the State Environmental Policy Act (SEPA) was received on April 28, 2020. A Mitigated Determination of Non-Significance (MDNS) was published on January 21, 2021. Eight letters were received during the SEPA comment period.

11. The MDNS contained the following conditions:

a. Temporary erosion/sedimentation control measures, as approved by the Skagit County Planning and Development Services, shall be in place prior to the placement of any fill material. The applicant shall maintain all temporary erosion/sedimentation control measure in accordance with the Skagit County Stormwater Management 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 provisions of Chapter 14.32 of the Skagit County Code, the Skagit County Stormwater Management Ordinance, as it relates to increased runoff resulting from additional impervious surfaces.

d. The applicant shall comply with Fire Code Standards.

e. 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).

g. Landscaping, per Skagit County Code 14.16.830 and SCC 14.18.330(3), shall be installed prior to Final Plat approval.

h. This project may be subject to one of Ecology's National Pollutant Discharge Elimination System (NPDES) permits. A Construction Stormwater General or Industrial Permit may be required by the Department of Ecology (WSDOE) for this project. Contact WSDOE Bellingham Field Office at (360) 715-5200.

i. Should any human remains, archaeological, historic or cultural materials be discovered during construction, work in the affected area shall cease immediately and the area shall be secured. Within 24 hours of the discovery, or as soon thereafter as possible, the developer shall notify the Skagit County Sheriff's office, Skagit County Planning and Development Services, the Washington State Department of Archeology and Historic Preservation and affected tribes. If following consultation with the above parties it is determined that an archaeological and cultural resource assessment is required, the project developer shall retain the services of a professional archaeologist to prepare such an assessment. Project works in the affected area shall only continue when in conformance with applicable state and federal laws.

j. The project shall be designed and constructed in accordance with the Skagit County Road Standards. The project shall require a commercial access permit and any public roadway improvements deemed necessary from Skagit County Public Works.

12. The applicant submitted professionally prepared reports, including: a geotest report, a critical areas assessment, an initial stormwater plan, a preliminary drainage report, a geotechnical report, and a traffic impact analysis.

13. The application was circulated to various county departments. Their comments are reflected in conditions of approval.

14. Critical Areas review was conducted and review staff identified a number of concerns, all of which have been addressed in conditions of approval.

15. Critical areas and associated buffers within the open space will be identified as Protected Critical Area Easements.

16. The plan for development calls for access to the new residential lots from Rector Road, at a point approximately 680 feet from Farm to Market Road. The lots will be reached by a new road built to County Road standards. The

development will contain approximately 3,520 linear feet of interior roadway. Construction of roadway and drainage facilities will require a grading permit.

17. The plan is for stormwater to be handled by infiltration on each lot. The applicant's expert convincingly testified that this can be done. The effect will be that the development will not add to off-site surface runoff.

18. The following note will be shown on the face of the plat:

“All runoff from impervious surfaces, roof drains and yard drains shall be directed so as not to adversely affect adjacent properties.”

19. Sewage disposal will be by individual septic systems for each lot. Twenty-nine (29) of the lots have approved site evaluations. All lots will need site evaluation approvals before final plat approval.

20. Potable water for properties on site will be provided by the Public Utility District. Fire hydrants will provide required fire flow.

21. The property is located within the Airport Environs for Skagit Regional Airport. While concern was expressed over safety and noise, the proposal is consistent with airport compatibility zones and meets applicable zoning.

22. The traffic impact study shows that the development is anticipated to generate 302 new average daily trips with 24 new AM peak-hour trips and 32 new PM peak-hour trips. Off-site intersections are expected to continue to operate at LOS B or better. Farm to Market Road is expected to remain below its hourly volume capacity after the development is complete.

23. No transit stops are located within the immediate vicinity of the proposed subdivision. The nearest line is Route 513 which runs from Burlington to the Port of Skagit.

24. The developer will provide proof of a voluntary mitigation agreement for payments to offset impacts on County parks and recreation facilities. If applicable at the time of development, mitigation of school impacts will be made by requiring lot owners to contribute fees in the amount included in the Burlington School District's Capital Facilities Plan at the time of issuance of building permits.

25. The subdivision as proposed makes adequate provisions for public health, safety and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds and all other relevant facts.

26. The public use and interest will be served by the plat.

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

### **CONCLUSIONS OF LAW**

1. The Hearing Examiner has jurisdiction over these proceedings. SCC 06.050(1)(b)(vi).

2. The requirements of the State Environmental Policy Act (SEPA) have been met. (See separate decision, denying appeal and affirming MDNS (PL21-0108).)

3. The application meets the preliminary plat requirements of SCC 14,18.100.

4. The proposed subdivision meets the statutory requirements of Chapter 58.17 RCW.

5. The approval herein, as conditioned, is consistent with CaRD requirements. SCC 14,18,310, 330.

6. 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 applicant shall obtain all other required permits and shall abide by the conditions of same.
3. Add the following plat notes:
  - All runoff from impervious surfaces and roof drains must be directed so as not to adversely affect adjacent properties.
  - Plat designed to Department of Ecology Stormwater Management Manual for Western Washington (2012 as amended 2014 Edition). See Preliminary Drainage Report, Ravnik & Associates, Inc, dated April 21, 2020, for additional information.
  - Each lot grants a right of access for future drainage inspections. Advanced notification will be provided to the land owner in advance of the inspection except in the event of a declared emergency.
4. Three road name options shall be submitted to Planning and Development Services (PDS) for review and approval for each of individually named road proposed within the development.
5. After road names are chosen and assigned, the address range request for each roadway will be forwarded to Skagit County GIS for review and assignment after preliminary approval has been granted. The address range(s) shall be shown on the face of the plat map before final approval.
6. The Land Division application number, #PL19-0113, shall be shown on each page of the map packet prior to final approval.
7. The final plat map shall be of a scale not less than 100' to the inch on 18" x 24" sheets, with a 2-inch border on the left edge, and a ½ inch border on all other sides.
8. In accordance with the SCC 14.18.200(4) all lot corners must be set prior to final plat approval.

9. The final plat shall include, at a minimum, the following:

- Name and address of the owners or record, developer, registered land surveyor/engineer.
- Legal description.
- Section subdivision showings the boundary of the plat in relation to the section.
- Vicinity sketch at a minimum scale of 2 inches = 1 mile, clearly identifying where the site is physically located within Skagit County in relation to surrounding towns, the port, and any other physical features (rivers, bays, etc.).

10. An updated title report will be required with the final plat submittal.

11. The applicant shall show compliance with SCC 14.18.200 (Final Subdivisions) prior to final approval.

12. If any portion of the parent parcel is in an Open Space taxation program with the Skagit County Assessor's Office, the applicant shall contact them at (360) 416-1780 prior to proceeding with the land division.

13. Per SCC 14.18.310(4), the open space shall be placed in one separate tract and the appropriate Open Space Designation(s) shall be assigned per SCC 14.18.310(5). The open space tract shall be given an identifying number or letter.

14. The acreages and square footages of each individual tract within the parent open space tract shall be shown on the face of the plat. The plat shall identify that each of the individual separate tracts are part of the overall open space parent parcel tract (SCC 14.18.310(4)(a)).

15. Per SCC 14,18.330(3) screening of cluster pods is required. Since the property for homes sites has been recently cleared, a Landscape Plan shall be provided pursuant to SCC 14.16.830 for review and approval. Landscaping shall be installed and completed prior to final plat approval.

16. The exact setbacks for each individual lot shall be determined and documented prior to final plat approval. A plat note, or table, referencing the setback for each lot shall be included on the final plat.



17. All standard plat notes and appropriate departmental signoffs are required. The applicant shall ensure that there are the appropriate number of acknowledgment blocks for all parties to the land division, and County staff, including the appropriate signature line for the Auditor's Office.

18. At a minimum, the following plat notes shall be shown on the face of the final plat map:

- Plat number and date of approval shall be included in all deeds and contracts.
- No building permit shall be issued for any residential or commercial structures which are not, at the time of application, determined to be within an officially designated boundary of a Skagit County Fire District.
- A Skagit County Address Range has been applied to the road system in this subdivision. At the time of application for building or access, Skagit County GIS will assign individual addresses in accordance with the provisions of Chapter 15.24 SCC. Change in location of access may necessitate a change in address. PDS should be contacted for specifics.
- A Lot of Record Certification has been issued for all lots included in this land division. By virtue of recording this land division and issuance of the Lot Certification, all lots therein shall be considered lots of record for conveyance and development purpose unless otherwise restricted.
- Zoning and Comprehensive Plan Designation: Rural Reserve (RRv).

19. The plat map shall show all existing and proposed easements/restrictions.

20. The applicant shall provide proof that a voluntary mitigation agreement for payments to offset impacts on County parks and recreation facilities has been entered into and shall also note such on the face of the plat. If necessary, the payments (\$100 per lot) shall be addressed in the CC&Rs. The payments shall be made prior to the issuance of individual building permits.

21. The project shall comply all conditions of the SEPA threshold determination (MDNS), issued on January 26, 2021 and published on January 28, 2021. (See Finding 11 above.)

22. The property is located within the Airport Environs for Skagit Regional Airport. Several different airport compatibility zones (ACZ's) overlay the property: 2, 3L, 4L and 6. A plat note shall reference the airport environs, prohibited uses and restrictions within the zones, and other compatibility requirements. (See SCC 14.16.210.)

23. The Airport Environs Overlay lines shall be identified on the face of the plat, showing the boundary between each of the ACZ's.

24. An Avigation Easement in favor of the Port of Skagit and a notice and acknowledgement of airport operations shall be included on the face of the plat or prepared as separate documents to be recorded with the land division and cross referenced on the face of the plat in the notes. (See SCC 14.16.210(5).)

25. Prior to final approval, the applicant shall provide copies for review of any proposed covenants and homeowners association agreements. Appropriate plat notes and auditor's file number cross references shall also be provided.

26. A list of neighboring property owners and occupants within 300 feet of the property shall be provided to PDS. A set of stamped envelopes (with postage) addressed to those owner and occupants shall be required for the final plat submittal.

27. All outstanding preliminary plat fees shall be paid within 30 days of this decision.

28. Final plat fees will be assessed at the time of final plat submittal. All outstanding final plat fees accrued through the final review shall be paid prior to final plat approval.

29. All utility easements shall be shown and labeled on the face of the plat map.

30. All required property taxes shall be paid prior to final plat approval.

31. Proposed Lot 33 is not included in the most recent wetland assessment. The assessment appears to require modification of the buffers for Wetlands C and K. Such modification should be addressed by Green Earth Operations and completed as an addendum to the assessment. The amended plat map must include Wetland K and its associated buffer.

32. The buffer averaging and mitigation proposed for the impact described are acceptable. Additional wetland investigation work is being completed for the project site that may require supplemental mitigation and additional project conditions based on the findings of that study.

33. Protective Critical Area Easements (PCAЕ's) shall be labelled as separate tracts or easements. The size of each PCAЕ shall be provided.

34. The plat map shall show the locations of the permanent buffer edge markers.

35. PCAЕ agreement(s) shall be submitted for review.

36. A plat note shall reference the PCAЕ agreement(s).

37. For final plat approval, site evaluations for septic systems shall be approved for all lots.

38. Include the following instream note in the plat notes for water service:

*“This development is in a watershed basin, as identified by the Washington State Department of Ecology, that has ground water withdrawal restrictions. Legal access to groundwater for future development is not guaranteed. Please contact Washington State Department of Ecology for more information.”*

39. Per SCC 14.24.330, a hydro-geo (HG) well review and a nitrate study shall be provided.

40. Approximate water line locations (---W---) shall be shown on the plat map. Proposed meter locations shall be indicated.

41. Water service lines shall be installed and then inspected, and approved by the PUD Board. Written confirmation of PUD water line acceptance shall be provided.

42. The applicant shall provide plat water supply notes per SCC 12.48.240(3).

43. The plat shall include a note that requires individual residential lot owners to identify an easement area at the time of building permit approval, for storm water dispersal on each residential lot consistent with the requirements of the drainage report completed by Ravnik & Associates, Inc. for this plat and the requirements of the Department of Ecology Stormwater Management Manual for Western Washington (2012 as amended 2014 edition).

44. Prior to commencing ground work, the applicant shall call 811.

45. Fire hydrants will be required for fire flow. The final land division shall comply with the Skagit County Coordinated Water System Plan for the required fire flow with hydrants and mains (Table 6-1).

46. Further fire code requirements may apply at time of building permit applications.

47. Long Plat roads become County Roads and shall be designed and constructed in accordance with Skagit County Road Standards. The main stem of roadway will need to be constructed as seen in drawing B-3 of the Road Standards Manual. All others shall be designed to the standard as seen in drawing B-2. A project engineer must be retained and inspections, construction staking, bonding and electronic record drawings are required.

48. All paved road monumentation shall use county-type monuments, available through private distributors or Skagit County Public Work at the applicant's expense.

49. A grading permit will be required for the construction of the roadway and drainage facilities. Construction plans shall be prepared by a civil engineer licensed by the State of Washington.

50. A utility permit is required for work performed within the County right-of-way when extending services to the plat.

51. Final submittal shall be a complete set of good quality reproducible Mylar (or equal) copies of the approved plans. Two complete sets of prints of the approved plans shall also be submitted.

52. The frontage plan and adjustments to Rector Road shall meet Skagit County Road Standards (Figure B-4).

53. Additional road right-of-way may be required to be dedicated to Skagit County as a condition of final approval.

54. In accordance with Section 12.09 of the Skagit County Road Standards, prior to starting road construction, the applicant shall post one or more signs showing the names and business names of both the applicant and the project engineer, as well as contact telephone numbers for each.

55. The construction of the roadway and any detention facilities for the subdivision will require certification by the project engineer that all items have been built in accordance with the approved construction plans. See Skagit County Road Standards, Sec. 12.

56. In accordance with SCC 14.18.200(2)(b)(ix), the following note must be shown on the face of the plat:

*“In no case shall the County accept a dedication or any obligation as to any road, street and/or alley until the same and all roads, streets and/or alleys connecting the same to the current County road system have been brought to full County Road Standards and a right-of-way deed has been transferred to and accepted by the County.”*

57. In accordance with SCC 14.18.200(4)(d), the lot corners must be set prior to final plat approval.

58. In accordance with SCC 14.18.100(7)(a)(ii), the Basis of Bearing shall be shown on the face of the plat.

59. This preliminary long subdivision approval shall be valid for five years from the date this decision become final. If any condition is not satisfied or the final subdivision is not recorded within the approval period, this preliminary approval shall be null and void.

**ORDER**

The proposed preliminary plat of Bayview Estates (PL19-0113) is approved, subject to the conditions set forth above.

**SO ORDERED**, this 12<sup>th</sup>, day of August, 2021.

  
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Wick Dufford, Hearing Examiner

Transmitted to Applicant, Staff and interested parties, August 12, 2021.