

**BEFORE THE HEARING EXAMINER
FOR THE TOWN OF COUPEVILLE**

In the Matter of the Application of)	No. PP-22-001
)	
Cecil Stuurmans, on behalf of)	Krueger Farm, Div. 4
Stuurmans Enterprises)	Preliminary Subdivision
)	
<u>For Approval of a Preliminary Subdivision</u>)	FINDINGS, CONCLUSIONS, AND DECISION

SUMMARY OF DECISION

The request for a preliminary subdivision of a 2.95-acre lot to create seven residential lots, with no new open space, and stormwater to be conveyed to an existing, off-site stormwater pond, is **APPROVED**. Conditions are necessary to mitigate specific impacts of the proposal.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held a hearing on the request on May 4, 2023.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

Donna Keeler, Planning Director
Joseph Grogan, Public Works Director
Cecil Stuurmans, Applicant Representative
Susan Sandberg
Roger Ellefson
Kellie Sites

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, undated
2. Application and Site Plan (Preliminary Plat Design), dated January 13, 2022
3. Memorandum of Agreement, dated January 13, 2004
4. Memorandum of Agreement Map (Draft Update), undated
5. Notice of Application, various dates
6. Notice of Public Hearing, various dates
7. SEPA Determination of Non-significance, issued April 15, 2023
8. Design Memorandum, prepared by Lervik Engineering, dated February 27, 2023
9. Certificate of Appropriateness, issued May 3, 2022
10. Public Works Memorandum and Revised Engineering Plans, dated April 12, 2023

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11. Krueger Farms Annexation PUD, dated February 19, 1997
12. Staff Powerpoint, presented May 4, 2023
13. Staff Report Revisions, dated May 4, 2023
14. Written Public Comment, dated April 29, 2023

The Hearing Examiner enters the following findings and conclusions based upon the admitted testimony and exhibits:

FINDINGS

Application and Notice

1. Cecil Stuurmans, on behalf of Stuurmans Enterprises, requests preliminary subdivision approval to divide an approximately 2.95-acre property into seven residential lots. The proposed subdivision, Krueger Farm, Div. 4, would be the latest phase in the larger Krueger Farm development project. The proposed subdivision would rely on off-site open space provided during an earlier phase of the larger project, and on an off-site stormwater pond provided during a different, earlier phase of the larger project. No new open space or stormwater facilities would be provided in the proposed subdivision, except a stormwater conveyance between the proposed subdivision and an existing, off-site stormwater pond. A road extension and pedestrian pathway are proposed. *Exhibit 1, Staff Report, pages 1, 3 and 4, 7; Exhibit 2; Exhibit 4.*
2. The Town of Coupeville (Town) determined that the application was complete on February 10, 2023. On February 16, 2023, the Town posted notice of the application and SEPA optional determination of nonsignificance at the property. Between February 11 and 17, 2023, notice was mailed to parties of record and property owners within 300 feet of the subject property. Notice was published in the *Whidbey News Times* newspaper on February 19, 2023. On April 17, 2023, the Town posted notice of the hearing and mailed notice of the hearing to property owners. On April 22, 2023, the Town published notice of the hearing in the *Whidbey News Times*. No agency comments were received. One public comment was received on April 29, raising concerns about traffic and asking for the proposed pedestrian path to be extended. *Exhibit 1, Staff Report, page 5; Exhibit 5; Exhibit 6; Exhibit 14.*

Environmental Review

3. The Town acted as lead agency and analyzed the environmental impacts of the proposal, as required by the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW). The Town used the optional process provided for by Washington Administrative Code (WAC) 197-11-355 and provided notice of the SEPA comment period with the notice of application. The Town's notice materials stated that the Town expected to issue a Determination of Nonsignificance (DNS) for the proposal and provided a SEPA comment deadline of March 8, 2022. The Town did not receive any comments in response to its notice materials, although, as noted, one public comment

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did come in after the comment deadline. The Town reviewed the Applicant's Environmental Checklist and other information on file and determined that the proposal would not have a probable significant adverse impact on the environment. Accordingly, the Town issued a Determination of Nonsignificance (DNS) on April 15, 2023. The DNS was not appealed. No critical areas are present. *Exhibit 1, Staff Report, pages 2, 5, and 6; Exhibit 5; Exhibit 7.*

Existing Site, Comprehensive Plan, and Zoning

4. The subject property consists of a single, 2.95-acre parcel, no. R13233-195-2000, located west of Northwest Third Street. It is an undeveloped, wooded parcel. Northwest Wilkes Street provides access to the property along its eastern property line. Northwest Krueger Street abuts the northern property line. The Applicant proposes a 50-foot-wide right-of-way running westward from Wilkes generally along the northern property line. The proposed extension off Wilkes would provide access to the seven proposed residential lots. Adjacent properties to the south, west, and north are residential properties zoned MOA/RM-9600. Also to the south are two open space tracts, owned by the Town, intended for stormwater conveyance. To the north is a mostly undeveloped 16-acre parcel, owned by the Town, with public access. *Exhibit 1, Staff Report, pages 1 through 3; Exhibit 2.*
5. The property is zoned "Memorandum of Agreement," or MOA. The MOA is a 2004 agreement between the Applicant and the Town to develop some 33.02 acres with residential uses. The MOA creates a "special planning area" covering the 33.02 acres, with nine distinct sub-areas within the special planning area. The sub-areas are designated Area A through Area I. Each of the nine sub-areas is subject to its own limits on the number and type of dwelling units that may be built therein. The subject property is in Area F, which has a total area of 5.03 acres. According to Section 1.3.5 of the MOA, Area F may be developed with up to 19 dwelling units, which must all be single-family units. Cottage or high-density single-family units may comprise up to half of the allowable total of units in Area F. *Exhibit 1, Staff Report, page 4; Exhibit 3.*
6. Two dwelling units within Area F have already been constructed under earlier land use approvals, leaving 17 units available in Area F. The Applicant's proposal would create seven more units, leaving 10 possible units available for future development in Area F if this subdivision is approved. The seven units proposed in this subdivision are not cottage or high-density units, and at any rate, fewer than half the units in Area F have already been built or will be built under this proposal, so there is no concern about violating the density limits imposed in Section 1.3.5. *Exhibit 1, Staff Report, page 4; Exhibit 3.*
7. According to Section 1.3.9.1 of the MOA, single-family residential density is "implemented" by the RM-9600 zoning district, meaning the RM-9600 lot dimensional standards apply to single-family developments in the special planning area. Under these

rules, the minimum lot size shall be 9,600 square feet. Minimum lot width shall be 75 feet. Maximum lot coverage shall be 35 percent. Street setbacks are 25 feet, rear setbacks are 20 feet, and side setbacks are six feet. *CTC 16.12.030; -.040*. Staff concluded that the proposed lots meet these requirements. *Exhibit 1, Staff Report, page 4; Exhibit 2; Exhibit 3*.

8. According to Section 1.5 of the MOA, Area H and Area I are dedicated to the Town as open space. In consideration of this dedication, all future subdivisions within the special planning area (which includes the Applicant's proposal) are not required to provide open space. *Exhibit 1, Staff Report, page 7; Exhibit 3*.
9. The 2012 Comprehensive Plan land use designation for the subject property is "Neighborhood Character District E-1, Krueger Farm," characterized as containing key elements associated with suburban-style development, including small lots, varied housing styles, street systems that are not integrated with the town streets, sidewalks, new landscaping, and "little apparent relationship to the town." Typical suburban development and open fields are the predominant land use proposed in this district. *2012 Comprehensive Plan, page 85; Exhibit 1, Staff Report, page 9*.
10. The Comprehensive Plan also specifically calls out and adopts the MOA and applies the MOA to the future land use map. As it pertains to MOA Area F, the Comprehensive Plan says, "This designation establishes a mix of residential densities, including single family, cottage and high density residential. Maximum tree retention (with accommodation for water views) and careful placement of structures and site improvements are hall." Staff concluded the proposal is consistent with the Comprehensive Plan. *2012 Comprehensive Plan, pages 19 and 23; Exhibit 1, Staff Report, page 9*.

Subdivision Requirements

11. Chapter 16.16 CTC provides specific requirements related to the subdivision of land, including requirements concerning improvements; minimum access and street standards; minimum water supply standards; minimum sewage disposal standards; standards related to drainage and utilities; lot configuration requirements; common facilities ownership and maintenance requirements; and installation, construction, and inspection requirements. County staff reviewed the proposal and determined:
 - Access will be provided via Northwest Wilkes Street and the proposed street extension across the northern portion of the proposed seven residential lots. The extension, known as the Northwest Third Street extension, will also result in a connection to Northwest Krueger Street in addition to Northwest Wilkes. The 50-foot-wide right-of-way for the Third Street extension will be dedicated to the Town. A pedestrian walkway will accompany the street extension along the south side of the extension. Public Works Director Joseph Grogan testified that the Town eventually hopes to connect the pedestrian walkway to the west, across an

unopened 40-foot right-of-way. However, that property is not owned by the Applicant, so the westward pedestrian connection cannot be made a condition of this subdivision approval. *Exhibit 1, Staff Report, pages 4, 8 through 10; Exhibit 2; Testimony of Joseph Grogan.*

- The subdivision is in the Town’s sewer and water service area and will be connected to the municipal water and sewer systems. Developers of the individual lots will be required to purchase water and sewer connections. *Exhibit 1, Staff Report, page 5.*
- Stormwater will be conveyed via a new conveyance to an existing swale in the vicinity of Northwest Sixth Street, and eventually to an existing stormwater pond that serves the overall Krueger Farm special development area. The section of swale between the subject property and Northwest Sixth Street will be improved. The applicant will re-design and improve the conveyance swale to meet Town Standard Detail “Grass Lined Drainage Swale,” as described in the design memorandum from the Applicant’s engineer, dated February 27, 2023. Lot owners in the proposed subdivision will automatically join the Peaceful Valley Community Association,¹ and that membership will run with the land. The Association was established in the course of an earlier, unsuccessful attempt to develop Krueger Farm via a planned unit development (PUD) in 1997. While only the first phase of the PUD was ever built, the Association established by the PUD remains a going concern, responsible for stormwater upkeep in the entire PUD area—which today includes the MOA area, because the 2004 MOA has taken the place of the unsuccessful 1997 PUD. The proposed seven lots in this subdivision will become members of the Peaceful Valley Community Association, because the subdivision’s stormwater will be conveyed to the existing stormwater swale and pond established for the MOA area. *Exhibit 1, Staff Report, page 4; Exhibit 2; Exhibit 8; Exhibit 10; Exhibit 11; Testimony of Joseph Grogan; Testimony of Cecil Stuurmans.*
- Drainage and erosion control improvements shall be installed by the Applicant prior to final plat approval. Surface water from the developed home sites will be infiltrated using standard residential systems and best management practices (BMP’s). The soil characteristics of the home sites must be verified as suitable for infiltration prior to obtaining a building permit. Standardized designs provided by the applicant’s engineer and use of the designs will be imposed as a condition of final plat approval and subsequent residential building permits. Surface water from impervious surfaces, such as the right of way, will be detained

¹ At various points in the record, the Association is referred to as the Peaceful Valley Community Association or the Peaceful Valley Homeowners Association. The Examiner concludes that the two terms are interchangeable. Either term refers to the Association established in the 1997 PUD, Exhibit 11.

and treated on site prior to discharge to the conveyance swale described above.
Exhibit 1, Staff Report, page 8; Exhibit 8; Exhibit 10.

Testimony

12. Donna Keeler, Planning Director, testified generally about the application and how the Town reviewed the application for consistency with the Town's Comprehensive Plan and zoning ordinances. She explained that the lots range in size from 10,000 to 16,000 square feet. She said the stormwater would be conveyed approximately 1,000 feet north. Ms. Keeler described the background to this application, which involves the 2004 memorandum of agreement (MOA), which could ultimately lead to as many as 108 dwelling units, with 12 acres of open space. The proposed subdivision is in MOA Area F.

Ms. Keeler noted an error in the staff report. In fact, there have been two units built in Area F, leaving 17 units remaining. There will be 10 units remaining after the approval of this proposal.

Ms. Keeler confirmed that no agencies had submitted comments on this proposal, and that the Town had submitted the proposal to other departments and agencies for their review.

In response to the one public comment received, Ms. Keeler said that traffic level of service would not be affected by the proposal. The local roads are at LOS A and the proposal would not lead to any degradation. Therefore, there was no basis to impose additional conditions related to traffic. There would be a pedestrian pathway installed along the proposed road extension. While it would be desirable for that pathway to continue farther west, the property to the west is not part of the subject property, so the walkway cannot be extended as part of this proposal.

Ms. Keeler testified that the proposal complies with the Comprehensive Plan, because the Plan specifically adopts the MOA, and this project is compliant with and partially implements the MOA.

Ms. Keeler explained that the Historic Preservation Commission had issues a Certificate of Appropriateness for the proposed subdivision as a whole. Individual buildings would still have to go through design review at the building permit phase, but there was no further design review for the Examiner to conduct at the platting phase.

She confirmed that no open space is required for the proposed subdivision because of the provisions of the MOA.

With regard to the PUD, Ms. Keeler testified that, although the plan had originally been

to use a PUD to develop Krueger Farm, the Town and the Applicant ultimately settled on the MOA concept instead. She said the PUD was basically “abandoned” in favor of the MOA.

In response to Applicant Representative Cecil Stuurman’s testimony (summarized below), Ms. Keeler testified that the Town did not intend to take over ownership of the off-site stormwater pond. She testified that the seven lots proposed here should join the Peaceful Valley Community Association and share responsibility for keeping up the stormwater pond. She acknowledged that some of the other Krueger Farm subdivisions had been approved without requiring owners to join the Association, but she said that was an error.

In response to a question from Roger Ellefson (summarized below), Ms. Keeler testified that there would be no landscaping between the proposed lots and the forested area adjacent. There would be some landscaping at the design review phase, as well as required compliance with the tree canopy ordinance. *Testimony of Donna Keeler.*

13. Public Works Director Joseph Grogan testified about the stormwater plan for the proposed subdivision. The stormwater will be conveyed to an off-site stormwater pond that is part of the original Krueger Farm property. All the stormwater from the MOA area is directed to this pond. Stormwater from the proposed subdivision would be conveyed across Town-owned open-space property, but the pond itself is not Town-owned. The Applicant would be required to install the conveyance according to Town standards. Once installed, the Town would take ownership of the conveyance across its land.

Mr. Grogan confirmed that connecting the pedestrian path to Broadway would have to be part of a second project, at public expense. He intended to submit that proposal to the Town Council after the Applicant’s portion of the pedestrian walkway is installed. *Testimony of Joseph Grogan.*

14. Applicant Representative and owner of the property Cecil Stuurmans described the history of the Krueger Farm project in more detail. Originally, he owned 61 acres of property in Coupeville, from Highway 20 almost to the coastline. In 1986, he testified, he and the other owners proposed a planned unit development for 217 units of housing and three acres of office space. He said the Town approved that PUD (although he could not remember what year), but then a mayor of Coupeville prevented the implementation of the PUD for political reasons. Only the first phase of the PUD was actually built. According to Mr. Stuurmans, the original plan was for the Town to take ownership of the entire stormwater system, including two stormwater ponds, one of which is the stormwater pond that is proposed for use by the current proposal. The reason for the Town’s supposed takeover of the stormwater infrastructure was that the stormwater

ponds would serve not only Mr. Stuurman's 61 acres but a total of 83 acres of land.

Following what he claimed was the mayor's obstruction of the PUD, Mr. Stuurmans said he had no choice but to revert to a series of traditional subdivisions: Krueger Farm Divisions 1, 2, and 3, which supersede the land divisions contemplated in the PUD. (The current proposal is Krueger Farm Division 4.) The first three divisions have been approved. Following the first three divisions, the Town took over the public roads but never took over the stormwater infrastructure. Mr. Stuurmans believed this was an error. He believed the original intent of the Town had always been to take over the stormwater infrastructure, and that this intent survived the transition from the PUD to the traditional subdivisions. He recognized the existence of an ongoing dispute between the Peaceful Valley Community Association and the Town regarding responsibility for the stormwater infrastructure.

In light of this history, Mr. Stuurmans objected to proposed condition 23, which would require the lot owners in the proposed subdivision to become members of the Peaceful Valley Community Association and share responsibility for the stormwater infrastructure. He said the other Krueger Farm subdivisions that were approved were not required to join the association, so this proposed subdivision should also not be required to join. Mr. Stuurmans thought it was normal and appropriate for a Town to take over responsibility for stormwater infrastructure. Mr. Stuurmans confirmed that the Peaceful Valley Community Association was still in existence. *Testimony of Cecil Stuurmans.*

15. Susan Sandberg testified that she fully supports the Applicant. *Testimony of Susan Sandberg.*
16. Roger Ellefson asked how long it would take for the project to be actually built, and he asked whether there would be a vegetation buffer between the proposed lots and the forested area adjacent. *Testimony of Roger Ellefson.*
17. Kellie Sites testified that she had moved to the neighborhood in 2020 and enjoyed living next to a large, empty lot full of trees. She wondered when the subdivision might be built. She said she enjoyed sitting on her deck, enjoying nature. She appreciated the Town and the Applicant "doing it right." *Testimony of Kellie Sites.*

Staff Recommendation

18. Ms. Keeler testified that the Town recommended approval with the conditions in the Staff Report, except she submitted revised language for proposed condition 23 regarding stormwater. Mr. Stuurmans testified that he had no objections to any condition other than proposed condition 23, to which he did object. Even at the close of the hearing, having heard the testimonies of Ms. Keeler and Mr. Grogan, Mr. Stuurmans still believed stormwater maintenance should be the responsibility of the Town. *Exhibit 1, Staff*

Report, pages 11 through 16; Exhibit 13; Testimony of Donna Keeler; Testimony of Cecil Stuurmans.

CONCLUSIONS

Jurisdiction

The Hearing Examiner has jurisdiction to hear and decide subdivision applications. *CTC 2.52.090.A.*

Criteria for Review

Under Chapter 16.16 CTC, preliminary approval for a land division requires consistency with the following:

1. The proposal is consistent with the subdivision design standards listed in Section 16.16.070 of this chapter [discussed below];
2. The public use and interest will be served by the subdivision;
3. Adequate potable water supplies and sewage collection and treatment facilities exist to serve the proposed subdivision;
4. The proposal is in conformity with any applicable federal, state and local laws, ordinances, and adopted plans;
5. Appropriate provisions are made for, but not limited to, the public health, safety and general welfare for 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, sidewalks and safe walking conditions for school children who walk to and from school.

CTC 16.16.060.A.

As noted above in CTC 16.16.060.A.1, there are specific design standards that all subdivision and short subdivision applications must meet:

- A. Town Plans and Development Regulations. Proposed subdivisions and short subdivisions shall be in accordance with the Coupeville development regulations and adopted plans of the Town, including but not limited to the comprehensive plan, shoreline master program, comprehensive plan of Ebey's Landing NHR, and the South Main Street study.
- B. Community Assets. The design of proposed subdivisions and short subdivisions shall incorporate, where possible, existing site features including, but not limited to, drainage ways, shorelines and vegetation, existing structures and historical sites and their surroundings, as defined in Section 16.12.080 of this title.
- C. Lot Shape, Size and Building Site.
 1. It is preferred that each lot of a proposed subdivision or short subdivision be generally rectangular in shape. Flag lots (lots connecting to the public right-of-way by means of an access easement or narrow strip of land) and other nonrectangular shaped lots are discouraged, but may be allowed when warranted

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- by unique site conditions. A private driveway or access easement shall not provide access to more than one flag lot.
2. Lot sizes shall not be less than the minimum size required in the zoning district unless dedicated or restricted by covenant or dedication for open space, park, recreational, utility or other public use.
 3. Each lot, unless dedicated or restricted by covenant or condition for open space, park, recreational, utility or other similar use, shall meet the minimum usable area requirements of the Coupeville development regulations and be served by utilities and vehicular access with a minimum reasonable amount of grading or site disturbance.
 4. Lot Size Averaging. An applicant for a subdivision or short subdivision may elect to use lot size averaging to reduce the square footage of individual lots in exchange for the dedication or set aside of open space within the plat. This option should be considered in cases where the clustering of individual lots will protect valuable open space or natural features. If this option is chosen, the following guidelines shall apply:
 - a. To calculate the number of lots possible on a given parcel or parcels of land, use the following formula: total square footage of useable area multiplied by 0.80 divided by minimum lot size in the applicable zoning district.
 - b. No single building lot shall be less than seven thousand two hundred (7,200) square feet in the RM-9600 zoning district, nor less than nine thousand six hundred (9,600) square feet in the LDR zoning district, nor less than fourteen thousand five hundred (14,500) square feet in the RR zoning district. Lot size averaging is not permitted in other zoning districts.
 - c. All lands set aside or dedicated as open space as part of lot size averaging shall be considered non-developable and shall be proportionately owned by the lot owners in the subdivision. Some passive use of these lands for recreational purposes may be permitted as part of preliminary plat approval.
- D. Hazard Areas. Where subdivision and subsequent development of land may pose a hazard to the subdivision or other property or nearby resources because of steep slopes, unstable soils or changes in quantity or quality of stormwater runoff, the applicant shall have the burden of presenting evidence satisfactory to the Town that such hazards will be mitigated. In the absence of such evidence, subdivision of such land shall be denied.
- E. Natural Vegetation, Vegetation and Features. Clearing of vegetation shall not commence without prior written approval of the Town and shall be limited to the minimum reasonably required to construct the infrastructure associated with the subdivision. Valuable natural and cultural landscape features such as trees, orchards, wetlands, hedgerows and wildlife habitat shall be preserved to the greatest extent feasible. These

- features shall be shown in preliminary clearing and grading plans at the time of application.
- F. Pedestrian Facilities. Pedestrian and bicycle access to schools, parks, shorelines, recreation areas, open space, public facilities and commercial areas shall be provided by walkway where street access is inadequate or where such a separate pedestrian facility would provide more efficient, direct or safe access or be in accordance with any current pedestrian trail plan.
 - G. Scenic Corridors, Historic Sites. Setbacks, density modifications, buffers, landscaping or other design features shall be used to maintain the rural, scenic quality of any designated corridors within the Town. Setbacks, density modifications, buffers, landscaping or other design features shall be used to protect the integrity of public views of historic structures and their surroundings.
 - H. Streams and Natural Drainage Ways. Natural drainage ways shall be kept open, unobstructed and shall not be relied upon for stormwater quality treatment.
 - I. Future Subdivision. Subdivisions and short subdivisions shall be designed to accommodate the future subdivision of adjoining lands by providing for future access and utility service where appropriate.
 - J. Street Names. Street names shall be designated by the Town at the time of preliminary subdivision or short subdivision approval.
 - K. Streets and Utilities.
 - 1. The width of constructed streets shall be kept to the minimum necessary to safely serve the subdivision and adjoining area, including anticipated increased traffic volume. Subdivisions and short subdivisions shall be designed to minimize the number of intersections and access points on arterial streets. Design and construction of streets and utilities shall be in accordance with the standards in [Chapter 16.24](#) of this title, in effect on the date of approval of the preliminary subdivision or short subdivision.
 - 2. Streets should be designed to conform with the topography of the site. Grading shall be minimized by the careful location of streets, utilities and building sites. Shared access driveways should be used where feasible.
 - 3. Adjacent lots that border the same street may share a common access from the public street, so long as a thirty (30) foot joint access easement is designated on the face of the plat.
 - L. Culs-de-sac.
 - 1. Generally, through streets, rather than cul-de-sacs, are encouraged. Temporary cul-de-sacs may be designated in a proposed subdivision when it is determined that a through street may be needed in the future.
 - 2. Temporary and permanent cul-de-sacs shall meet requirements for turnarounds and maximum length specified in Chapter 16.24 of this title.
 - M. Open Space Set Aside.
 - 1. To insure that new plats contribute to the historic rural character of Coupeville, every subdivision shall set aside a portion of the land within the subdivision

boundary as permanent open space. Desirable areas for set aside as open include woodlands, wetlands, drainage draws, remnant orchards, hedgerows or other features of the natural landscape. Areas not considered useable area cannot be counted as open space.

2. The amount of land set aside as permanent open space shall be no less than five percent of the total area being developed.
3. Land set aside as open space for compliance with this section shall generally be held in private ownership distributed in equal shares among the lot owners in the subdivision. With the agreement of the developer and the town council, the open space land may be dedicated to the Town and designated as public open space.
4. Subdivisions developed under Section 16.16.070(C)(4), Lot Size Averaging, are exempt from the open space set aside requirements of this section, so long as the open space reserved through lot averaging equals or exceeds the square footage that would be required through open space set aside.
5. Short subdivisions are exempt from this requirement

CTC 16.16.070.

The above-cited subdivision approval criteria are modified in the case of MOA lots, such as these. The most relevant of these modifications is the provision of the MOA that states that no further open space shall be required of subdivisions in the MOA zone. This creates an exception to the open space requirements set forth in CTC 16.16.070.M. *Exhibit 3.*

The state subdivision criteria, codified at Chapter 58.17 RCW, are as follows:

A proposed subdivision and dedication shall not be approved unless the city, town, or county legislature body makes written findings that: (a) appropriate provisions are made for the 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 schoolgrounds 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 (b) the public use and interest will be served by the platting of such subdivision and dedication.

RCW 58.17.110(2).

The criteria for review adopted by the Town of Coupeville are designed to implement the requirement of Chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with Town development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

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Conclusions Based on Findings

- 1. With conditions, the preliminary subdivision would be consistent with the criteria of approval established under CTC 16.16.060.A.** The property is consistent with the requirement of CTC 16.16.070, as amended by the MOA (discussed in the following conclusion). The public use and interest will be served by the subdivision, in that it will allow new residential development of a density and kind consistent with the Comprehensive Plan and with surrounding development. Adequate sewage collection and water supplies are available through the Town's existing systems. The proposal is in conformance with all applicable federal, state, and local laws. Adequate provision has been made for public health, safety, and welfare, in that adequate open space has been provided through the MOA. Adequate roads and walkways are proposed in the form of the Third Street extension and the pedestrian walkway, which will hopefully one day be connected all the way to the public streets to the west. The fire and school districts did not object to the proposal. There is no reason to believe traffic will be adversely affected.

The most unusual and controversial feature of the subdivision is its stormwater plan. The Examiner rejects the Applicant's argument that the Town is required to (or even should) take over management of the existing stormwater pond. It is the responsibility of the Applicant, not the Town, to make adequate provision for the protection of public welfare. *CTC 16.16.060.A.1.e.* Here, that means it is the Applicant, not the Town, who must maintain the stormwater pond. Town staff who testified at the hearing said the Town could take ownership of the stormwater conveyance to the pond, which crosses Town-owned property, but not the pond itself, which is on private property. The Examiner is sympathetic to the Applicant's surprise over having to maintain the stormwater pond, since earlier Krueger Farm Divisions 1 through 3 were, apparently, not required to participate in the maintenance of the pond. However, the Examiner accepts Ms. Keeler's explanation that it was an error not to have required the earlier subdivisions to participate. That error does not establish any kind of precedent that would allow the proposed subdivision to escape its responsibilities.

In addition, the Examiner notes that Section 1.3.7 of the MOA provides that "[t]he cost for all public improvements necessary to serve future development within the Special Planning Area, including, but not necessarily limited to ... stormwater facilities, shall be borne by the Owner." *Exhibit 3.* By its terms, Section 1.3.7 does not limit itself merely to construction of stormwater facilities; it could read to include maintenance of stormwater facilities, as well. Certainly, there is nothing in the MOA or the Town code that would require the Town to take ownership of, or otherwise be responsible for, the stormwater pond. The Examiner agrees with Town staff that the Applicant should share in the maintenance of the stormwater pond.

The Examiner concludes that, with conditions set forth below, the proposal complies with CTC 16.16.060.A. *Findings 1 through 18.*

2. **With conditions, the preliminary subdivision would be consistent with the criteria of approval established under CTC 16.16.070.** The proposal is consistent with all development regulations, and with the Comprehensive Plan. The regulations and the Plan were adopted specifically to implement the MOA, and this proposed subdivision is the next step in implementing the MOA, specifically a portion of Area F. The site design incorporates existing features, in that it relies on the open space provided in the MOA in Area H and Area I, and it makes use of the existing stormwater pond rather than create a new stormwater pond on-site. The lot sizes are all over 10,000 square feet, exceeding the minimum lot size set for the RM-9600 zoning district, the implementing district for single-family residential development under the MOA. Each lot will be served by utilities (establishing during the building permit phase) and will have access by way of the proposed Third Street extension. There are no hazard areas present. Vegetation will be preserved through landscaping requirements and tree canopy retention requirements that will be applied during the building permit phase. Adequate pedestrian facilities are proposed, in the form of the walkway along the south side of the Third Street extension, which has the potential to one day link up with public streets to the west. The subdivision is not part of any scenic corridor or historic site. No natural drainage ways will be obstructed, and no streams are present. The site is designed to accommodate future subdivisions, including those associated with the MOA. A street name for the Third Street extension has been proposed. Streets are appropriately sited and sized for the need, including the pedestrian walkway. The site does not use a cul-de-sac but rather connects to both Northwest Krueger and Northwest Wilkes Streets. To the extent that Lot 6 and Lot 7 might be called a cul-de-sac, the situation may only be temporary, in that the Third Street extension abuts an unopened, 40-foot right-of-way to the west, which, if opened, would make the Third Street extension a through-street.

No open space is proposed, but as Town staff explained, the open space requirement for lots in the MOA zone is superseded by the MOA. Section 1.5 of the MOA specifically states that “[b]ecause of this dedication of open space, future subdivision applications within any of the subareas shall be exempt from the open space requirement of CTC 16.16.070(M).” The 2004 MOA post-dates the latest amendment to CTC 16.16.070 (Ord. 614, adopted 2001), so the Examiner concludes that the MOA’s open space provisions prevail over those of CTC 16.16.070. In addition, the repeated references to the MOA in the Comprehensive Plan are further evidence that subdivisions in the MOA zone are explicitly meant to be treated differently from ordinary subdivisions.

The Examiner concludes that, with conditions, the requirements of CTC 16.16.070 are met. *Findings 1 through 18.*

3. **With conditions, the proposed subdivision would be consistent with development regulations, considering land use type, development level, infrastructure, and development characteristics, such as development standards, as required by Chapter 58.17 RCW.** The Town provided reasonable notice and opportunity to comment on the proposed preliminary plat. No public agencies commented on the proposal. Environmental impacts of the proposed plat were considered, as required by SEPA, and the Town issued a SEPA Determination of Nonsignificance that was not appealed. The preliminary plat would provide single-family residential development consistent with applicable development regulations and Comprehensive Plan and with the surrounding land uses. Town staff determined that, with conditions, the proposal would be consistent with all applicable County requirements, including the applicable Comprehensive Plan, town code, and development standards. The public interest would be served by the platting of the subdivision. As noted in Conclusions 1 and 2 and detailed below, conditions are necessary to ensure that the proposal meets all criteria required for preliminary plat approval as well as all other local, state, and federal requirements. *Findings 1 – 18.*

DECISION

Based on the preceding findings and conclusions, the request for a preliminary subdivision of a 2.95-acre lot to create seven residential lots, with no new open space, and stormwater to be conveyed to an existing, off-site stormwater pond, is **APPROVED**, with the following conditions:²

1. The final plat must be consistent with the requirements identified in CTC 16.16.100.
2. Development and use of the land shall be in accordance with the Town's plat requirements in Chapter 16.16 and with such other governmental permits, approvals, regulations, requirements, and restrictions that may have been imposed upon such land in association with the review and approval of the subject plat by the Town of Coupeville on file with the Town, include all infrastructure and site improvements. **This condition shall be noted on the face of the final plat.**
3. Compliance with the following conditions in the COA:
 - a. Utility lines shall be placed underground.
 - b. COA's are required for buildings.
 - Nonbinding: COA applications for single family homes should be reviewed in groups or all together.
 - Non-binding: Landscaping plan.

² Conditions include both legal requirements applicable to all developments and requirements to mitigate the specific impacts of this development.

4. Prior to clearing, grading, and other ground disturbance associated with the subdivision, construction plans, clearing, grading and final drainage plans, utility plans, erosion and sedimentation control plans and street plans shall receive the approval of the Town's Public Works Director.
5. Construction plans, clearing, grading and drainage plans, utility plans and street plans shall comply with Town standard construction specifications for water mains, sewers and storm drains and standards specified in Chapter 16.24, Development Regulations.
6. The Applicant shall comply with the conditions specified in the Memorandum from Joe Grogan, dated April 12, 2023, and the associated revised engineering plans (Exhibit 10 of this Decision).
7. The Applicant will re-design and improve the above referenced conveyance swale to meet Town Standard Detail SD-3 "Grass Lined Drainage Swale" as described in the Stormwater Conveyance Design Memorandum from the Applicant's Engineer dated February 27, 2023 (Exhibit 8 of this Decision).
8. Traffic Maintenance. If traffic is to be disrupted in any way, the Applicant's contractor may be required to submit a plan to the Town Public Works Director describing the proposed traffic management plan (signing, barricades, etc.). Approval of the plan shall be obtained before any work is started. Notification twenty-four (24) hours in advance of implementing the plan shall be attained before any work is started. Notification twenty-four (24) hours in advance of implementing the plan will be given to the Building Official. Saturday, Sunday, and holidays will not be considered in computing time for notification. The Town reserves the right to limit the amount of disruption. Where access to residences or businesses are affected, special considerations shall be given. The Town may require the contractor to provide advanced written notification to any properties where access is disrupted or denied for a period of more than two hours.
9. Air Pollution and Noise Control. The Applicant's contractor(s) shall take adequate measures to control dust. These control measures shall be exercised at all times, including weekends and holidays. A permit must be obtained from the Town for fire or smoke generating activity pursuant to the Uniform Fire Code and the NW Air Pollution Control Authority. Sounds which create a noise disturbance originating from temporary construction sites as a result of construction activity shall be prohibited between 7 P.M. and 7 A.M.
10. Maintenance Bond. The Applicant's contractor(s) shall guarantee that all work, materials or equipment furnished by him and deeded to the Town will fully meet requirements for quality of workmanship, materials, strength, and any and all other requirements whatsoever prescribed in the specifications. In case of failure of any part of the work,

materials or equipment under test or otherwise, the Applicant's contractor, without delay, shall make such changes, replacements and renewals as may be necessary to fully meet all the requirements and guarantees of the specifications. The Applicant's contractor shall furnish a surety bond to guarantee the work against faulty workmanship or materials for a period of one year following acceptance the Town of Coupeville. Applicant shall coordinate with the Public Works Director on specific project elements the maintenance bond shall be required for.

11. Insurance-Performance Bond-Proof of Registration. Prior to commencement of work the Applicant's contractor shall submit approved forms for compliance with state law regarding contractor registration. The Applicant's contractor shall provide proof of public liability and property damage insurance prior to commencement of work if any work is to be performed within public streets and rights-of-way if the work performed is done under contract to the Town. A performance bond will be required to insure the completion of certain improvements. If the contractor fails to avail themselves within ten (10) days after due notice by certified mail to make any necessary corrections, the Town shall have the right to replace the defective work or equipment by purchase from or contract with any other parties at the expense of the Applicant's contractor. Due notice shall mean written notification to the address provided by the contractor and written notice to the contractor's surety. The Town reserves the right to take limited corrective actions as may be necessary to protect public health, safety and welfare immediately without notice. Applicant shall coordinate with the Public Works Director on specific project elements the Insurance-Performance bond shall be required for.
12. As-Built Drawings. As-built drawings of all improvements deeded or conveyed to the Town shall be provided. As-built drawings shall show all approved modifications made during construction. It shall also show precisely the location of all buried utilities, including the measured distance to all sewer tees or wyes and distance from valves to fittings. The location of water and sewer shall be located by showing measured distances to monuments or other approved referenced.
13. Testing. Testing shall comply with that specified in the adopted specifications. If additional testing is ordered by the Town to determine if the work is in compliance with the specifications, that testing will be performed at the cost of the Town unless the original test fails. Additional tests shall be performed by the contractor at their expense after necessary corrective work has been performed. All costs of the original test shall be borne by the contractor.
14. Inspection. All work to be deeded to the Town shall be inspected by a qualified inspector and certificates of inspection provided by the Applicant's engineer to the Town. All costs of inspections shall be at the contractor's expense.

15. Surface water from impervious surfaces, such as the right of way, will be detained and treated on site prior to discharge to a conveyance swale located on Assessor's Parcel S7302-03-0000H-0 and S7708-00 dedicated to the Town as open space.
16. The Applicant shall submit an Erosion Control Plan in accordance with Section 13.20.080(C) of the Town Code. The intent of the Plan is to control erosion and sediment from runoff during construction and to permanently stabilize soils exposed during construction.
17. Applicant shall submit and obtain approval of a final permanent Stormwater Quality Control Plan and Stormwater Rate Control Plan, in accordance with Section 13.20.080 of the Town Code. The Preliminary Drainage Plan as amended herein shall form the basis for drainage improvements. Standardized single family household infiltration system design and locational parameters shall be developed and included in the final drainage report. The standard plans must be based upon verified soils conditions and percolations rates.
18. Unless otherwise modified by this section, the Applicant must submit detailed design plans and as-built plans for all public improvements consistent with the requirements of Chapter 16.24 and the standard construction specifications. All work must conform to these standards and performance maintenance guarantees will be required.
19. Improvements and the extension of NW Third Street shall be done in accordance with the adopted standards for local street access.
20. Future extension of NW Third Street to connect to NW Krueger is necessary. Before issuance of building permits for the occupation of land in any way, the street extension and path shall be completed and deeded to the Town. **The final plat will include a dedication to the Town of utility easement and right-of-way which includes the pedestrian path.**
21. The maximum allowable individual coverage is 35% of the useable area as defined in the Town code. **This restriction shall be noted on the face of the final plat.**
22. All future buildings will be subject to the approval of the Historic Preservation Commission. Certificates of Appropriateness (COA's) shall be required for each residential unit and accessory structures. **This requirement shall be noted on the face of the final plat.**
23. Each fee owner or contract purchaser of a dwelling unit in the Plat shall become a member of the Peaceful Valley Community Association, an unincorporated association established in the Krueger Farms Annexation Planned Unit Development, dated February

19, 1997 (Exhibit 11 of this Decision), and shall participate in the maintenance of the private stormwater pond in Peaceful Valley that will serve the proposed Krueger Farm Division 4 Plat. This obligation and membership shall run with the land. **This condition shall be noted on the face of the plat.**

24. The requirement to meet the Town's tree protection ordinance **shall be noted on the face of the final plat.**
25. Street name and traffic control signs shall be installed by the Applicant in accordance with Town standards.
26. Five hundred gallons per minute of fire flow is required for individual residences up to 2,400 square feet. Residences greater than 2,400 square feet (which includes garages) require 1,500 gallons per minute or be constructed with a residential sprinkler system. All homes over 5,000 square feet require sprinkler systems. **These fire flow requirements shall be noted on plat.**
27. Plat development shall be in compliance with the plans submitted by the Applicant and approved by the Hearing Examiner. Any proposed changes must be approved by the Town.
28. All construction debris shall be disposed of at a Town-approved site.
29. The Applicant and all contractors employed by the Applicant are required to comply with the Town's Inadvertent Discovery Protocols. The contractor shall stop work immediately and notify the Planning Director and the Washington Office of Archaeology and Historic Preservation if any historical or archaeological artifacts are uncovered during excavation or construction.
30. A public pedestrian path shall be constructed on the extended portion of Northwest Third Street at the Applicant's expense connecting Northwest Wilkes Street to Northwest Krueger Street.
31. Surface water from the developed home sites will be infiltrated using standard residential systems and best management practices (BMP's). The soil characteristics of the home sites must be verified as suitable for infiltration prior to obtaining a building permit. Standardized designs provided by the applicant's engineer and use of the designs will be imposed as a condition of final plat approval and subsequent residential building permits.

Decided this 18th day of May 2023.

A handwritten signature in black ink that reads "Alex Sidles". The signature is written in a cursive style with a long horizontal flourish at the end.

ALEX SIDLES
Hearing Examiner
Town of Coupeville