

**CITY OF BLAINE**  
**REQUEST FOR COUNCIL ACTION**  
**MEETING DATE:** January 23, 2006

**SUBJECT:** The applicant is seeking approval for a proposed Major Development Review (Permit # MDR-3-05). The approvals are requested for three multi story structures comprised of 54 condominium units. The subject property is approximately 3.69 acres in size. Inclusive in the Major Development review is a Shorelines Substantial Development Permit, Binding Site Plan, and Planned Unit Development amendment

**PROPONENT:** Shaw Holdings, LLC

**PREPARED BY:** Department of Community Development

**AGENDA LOCATION:** Comments/Communications ☐ Consent ☒ Committee Reports ☒  
Unfinished Business ☐ Council Action Items ☐ Public Hearing ☒ Standing Committees ☒

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**ATTACHMENTS:**

Planning Commission Recommendation to City Council - Meritage Condominiums

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**REQUEST:**

The applicant is requesting approvals for a shorelines substantial development permit, a binding site plan and a planned unit development amendment for the construction of a 54-unit condominium proposal.

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**ISSUES/ANALYSIS:**

Staff has worked with the applicant to make a number of site changes to bring the development project into compliance with the Semiahmoo Master Plan, and City regulations. The project as amended is compliant with City policy and regulations. See staff report to Planning Commission for additional detail.

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**FINDINGS**

The Planning Commission agreed with staff's recommendation to approve the request with conditions.

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**RECOMMENDATION:**

The Planning Commission and staff recommend approval of the request with attached conditions.

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**FISCAL ANALYSIS:** None.

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**REVIEWED BY:** City Manager  Finance Dir.  City Clerk 

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**COUNCIL ACTION:**

☐ Approved ☒ Denied ☒ Tabled/Deferred ☐ Assigned to: \_\_\_\_\_

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**COUNCIL ACTION:** \_\_\_\_\_





# CITY OF BLAINE

## DEPARTMENT OF COMMUNITY & ECONOMIC DEVELOPMENT

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# Planning Commission Recommendation To City Council Meritage Condominiums

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## I. INTRODUCTION

### A. SUMMARY OF PROJECT PROPOSAL

On June 20, 2005 the Department of Community Development at the City of Blaine received an application from Shaw Holdings, LLC for approval of a Major Development Review (Permit # MDR-3-05). The application was determined to be complete on July 29, 2005. The approvals are requested for three multi story structures comprised of 54 condominium units. The subject property is approximately 3.69 acres in size.

### B. SUMMARY OF RECOMMENDATION TO CITY COUNCIL

Pursuant to Chapter 17.38, and 17.60, Blaine Municipal Code, the Shorelines Management Program and the Resort Semiahmoo Master Development Plan, approval with conditions, is hereby recommended by the Planning Commission for the following:

- Shorelines Substantial Development Permit
- Binding Site Plan, Meritage Condominiums
- Planned Unit Development amendment

To undertake the following:

Development of 54 condominium units.

Upon the following property/location:

Lot 3, Semiahmoo Spit (west of the Resort at Semiahmoo).

### **C. PROCEDURAL INFORMATION**

The Applicant is seeking City approval of the proposed Binding Site Plan, a planned unit development amendment and the proposed Shorelines Substantial Development Permit. In order to achieve project approval, the proposal must demonstrate compliance and consistency with the requirements of the Comprehensive Plan, Resort Semiahmoo Master Development Plan, the Blaine Municipal Code, Blaine Shorelines Management Program and other state regulations.

In its compliance and consistency review and deliberation, the Planning Commission held a public hearing on October 13, 2005 @ 7:00 p.m, a land use committee and shorelines committee meeting on October 19, 2005 at 5:30 and a public meeting to approve the recommended findings of fact and conditions on October 27, 2005. The hearing was reopened on December 22, 2005 due to a procedural error in regards to the original MDNS. At the December 22, 2005 hearing, Planning Commission recommended approval of the attached findings of fact and conditions.

The Planning Commission evaluated the following Exhibits as presented by City of Blaine Staff:

- A. Master Land Use Application Form
- B. Shorelines Substantial Development application form
- C. SEPA Environmental Checklist
- D. Habitat and Bird Survey and Impact Assessment for Meritage
- E. Cultural Resource Assessment
- F. Preliminary Storm water Design Report
- G. Traffic Impact Analysis
- H. Geotechnical Report
- I. Preliminary binding site plan maps
- J. Provisions for the Maintenance of Common Areas
- K. Proposed Plant lists
- L. Letter of Conditional Wastewater Service Availability
- M. Letter of Conditional Water Service Availability
- N. Public correspondence
- O. Planned Unit Development Number One schematic
- P. Applicant's response to PUD amendment
- Q. Proposed Landscape Plan

### **II. FINDING OF FACT**

The Planning Commission recommendation is based upon the following Findings of Facts:

1. The subject property is approximately 3.69 acres in size.
2. The physical location of the proposed development is Lot 3, Semiahmoo Spit (west of the Resort at Semiahmoo).
3. The subject site is zoned Marine Planned Recreation (MPR).
4. The subject site is included in the Spit Planned Unit Development Number One. The original PUD plans for condominium development on the subject site.
5. The subject site is included in the Resort Semiahmoo Master Development Plan.

6. Pursuant to Section 17.06.070, BMC, the Department of Community Development, City of Blaine, issued a Determination of Complete Application on July 29, 2005. Pursuant to Section 17.06.100, BMC, a Notice of Application (NOA) requesting comments from any person on the proposed development was posted as required at both the site and at City Hall. The same notification was published in a Council designated newspaper on August 24, 2005. A neighborhood meeting was held by the applicant (with staff present) at the site on August 10, 2005. A notice of the public hearing was published in the Bellingham Herald newspaper on September 30, 2005 and in the Northern Light newspaper on October 6, 2005. The hearing was re-notified in the Bellingham Herald newspaper on November 23, 2005 and in the Northern Light newspaper on December 8, 15 and 21, 2005.
7. A completed SEPA Environmental Checklist was signed on June 8, 2005. The City of Blaine issued a Mitigated Determination of Nonsignificance (MDNS) on October 3, 2005. The City reissued a MDNS on November 10, 2005 which included the change to condition #17 attached below.
8. The proposed Major Development Permit proposal was reviewed for consistency with the City of Blaine Comprehensive Plan and was found that with appropriate conditioning relevant Goals and Policies could be adequately met.
9. The subject property is located within 200 feet of the ordinary high watermark of Semiahmoo Bay and is therefore subject to the City of Blaine's Shorelines Management Program.

### III. RECOMMENDATION

The Planning Commission hereby recommends:

Through a Public Hearing process, the members of the Planning Commission considered and deliberated over all relevant information, studies, public and agency comments, and a staff report that was provided to them. At the conclusion of the Public Hearing the Planning Commission recommended approval of the Findings and Conclusions identified in the City's Staff Report and recommended approval of the Substantial Shorelines Development Permit, the Binding Site Plan and Planned Unit Development Amendment with conditions and forwarded the conditions listed in the MDNS.

The proposal is recommended for approval with the following Conditions:

#### A. General

1. The subject proposal shall comply with all applicable local, state, and federal laws and regulations in effect at the time of subdivision application or the date of development approval which may be legally deemed to apply to the proposal.
2. The subject proposal shall provide CC&R's for the proposed project.

#### B. Site Design and Development

1. All uses and development within Meritage shall conform to all relevant requirements and standards of:
  - a. The Blaine Comprehensive Plan;
  - b. The Blaine Municipal Code;
  - c. The State Building Code as adopted by the City;
  - d. The Development Guidelines and Public Works Standards Manual;

- e. All other applicable state and local regulations.
- 2. All easements for trails, utilities, roadways etc. shall be shown on the final plat.
- 3. Increase the proposed 30 foot public access easement on the shoreline to 40 feet wide to allow for the development of a public use trail above the bluff.
- 4. Fully improve park and access trails prior to occupancy.
- 5. Work with the Resort at Semiahmoo to establish a 20 foot public access easement and pedestrian trail to allow public access to the shoreline area. Connect trail to existing shoreline trail.

#### C. Public Services

- 1. Prior to final approval, the Applicant shall provide a letter from the School District indicating their ability to provide service. The letter shall further address any capacity issues relevant to the proposed development.

#### D. Water, Sanitary Sewer and Electrical

- 1. The final sewer, water electrical system plans for utility service to the project shall be designed and stamped by a civil engineer licensed in the State of Washington in the case of sewer and water service and by an electrical engineer licensed in the State of Washington in the case of electrical service.
- 2. The utility service shall be designed to the City of Blaine Development Guidelines and Public Works Standards.
- 3. All utilities shall be underground.
- 4. Connect to 8 inch ductile iron water main on western edge of Semiahmoo Parkway in parking lot entrance.
- 5. Incorporate double check valve assemblies into domestic, fire sprinkler and irrigation system design.
- 6. Assess Sewage Pump Station No 4 (SPS4) capacity, and if said assessment results indicate that SPS4 capacity is inadequate to accommodate full build out/occupancy of Meritage as proposed, include SPS4 retrofit(s)/upgrade(s) in subject proposed project design scope.
- 7. Submit an engineered electrical plan.
- 8. Utility access easements shall be identified on the face of the final plat to allow access to utility system facilities including but not limited to flow meters, water shutoffs, fire hydrants and electrical vaults and junction boxes. Access shall be allowed on a 24 hour, 365 day a year basis.
- 9. Final utility engineering plans shall be submitted to the City Public Works Department for review and approval. No construction work shall begin on utilities until construction work is authorized by the City.
- 10. The applicant shall complete a Public Facilities Construction Agreement if any utilities are intended to be conveyed to the City. Said agreement shall be signed prior to construction.

#### E. Stormwater

- 1. See MDNS Condition # 1,3,4,5,6,7 & 8.
- 2. Include in the Storm water Quality Monitoring Plan a section that addresses monitoring methodology and frequency to monitor ground water and surface water quality degradation that results from fecal coliform contaminated storm water. As recommended by the State of Washington Department of Ecology, the applicant shall place a series of permanent 4 inch diameter monitoring wells along the waterward perimeter of the development. The Applicant shall establish baseline / background fecal

coliform concentrations prior to any land disturbance. Once land disturbing activities begin, the Applicant shall arrange to sample for, and measure, fecal coliform concentrations during severe storm events for one year after the Applicant completes construction of all condominium units.

3. If project will entail installation of new, or relocation of existing, stormwater catch basins, then catch basin grates shall be "bolt-down" type.
4. Maintenance responsibilities for the stormwater system shall be noted on the final plat and described in the CC&Rs.

**F. Parks, Recreation and Trails**

1. Construct proposed park amenities per approved site plan prior to occupancy of any structure.
2. Construct public access trail on southwest property boundary to primary path standard (8 to 10 feet wide surfaced with gravel / crushed rock).
3. Construct public shoreline trail to match existing trail along the shoreline in front of the Resort at Semiahmoo.
4. Add a public access route between Buildings 2 and 3
5. Do not add a public access route between Buildings 1 and 2
6. Signage on all public access trails to be located at each end of the trail and interspersed in the middle of the trail.

**G. Landscaping and Buffering**

1. The area contained in the 40 foot public access easement along the shoreline waterward of the public trail, shall be left in natural vegetation with the exception of potential enhancement projects specifically approved by the Community Development Department.
2. Provide enhanced landscaping along northern property line adjacent to existing public access trail.

**Adopts the MDNS Conditions**

1. Water and Sewer Service Availability Letters. As a prerequisite to the City's approval of the General Binding Site Plan (GBSP), the Applicant must acknowledge receipt of separate water and sewer service availability letters for the proposed 54 condominium units from the Public Works Department.
2. Archaeological Monitoring of Land Disturbing Activities. The Applicant shall ensure that a professional archaeologist is present at all times during land disturbing activities (e.g., clearing, filling, grading, excavating, trenching) to monitor those activities. If the archaeologist observes any pre-contact, historic period archaeological deposits and/or human remains in any part of the project area, the Applicant shall immediately halt ground disturbing activities in an area large enough to maintain integrity of the deposits and/or remains, and shall immediately notify the Lummi Nation and other tribal interests, OAHF, and the City of Blaine to consult on the proper means to proceed. The archaeologist shall prepare and submit to the same parties an Archaeological Monitoring Report following City approval of the GBSP. This Report shall include prescribed measures to ensure the integrity of the deposits and/or remains.
3. Updated Preliminary Storm water Design Report. The Applicant shall submit an Updated Preliminary Storm water Design Report (UPSDR) to the Public Works Department for review and subsequent revisions/comments or approval. The Public Works Department must approve the UPSDR before the Applicant may perform land disturbance activity on the project site. The UPSDR shall demonstrate how storm water

will be managed on the site after the completion of construction. The UPSDR shall address all changes in the proposed GBSP design. In addition, the UPSDR shall provide a conceptual outline of the Construction Storm water Pollution Prevention Plan (CSWPPP), together with a description of the types of construction storm water pollution prevention measures that the Applicant proposes for the CSWPPP (see MDNS Condition #4).

The UPSDR shall also include a description of the dust suppression measures that would be employed if the City eventually determines that the Applicant must provide dust control measures during construction. The Applicant shall submit a final Dust Suppression Plan as required by MDNS Condition #5.

A civil engineer licensed to practice in the State of Washington shall prepare the UPSDR under the requirements of the latest edition of the Washington State Department of Ecology Storm water Management Manual for Western Washington, particularly Chapter 3, and shall respond to any relevant conditions of GBSP approval. As a minimum, the UPSDR shall include a Permanent Storm water Control Plan, the Construction Storm water Pollution Prevention Plan (see MDNS Condition #4), an Operation, Maintenance, and Repair Manual, a detailed Storm water Quality Monitoring Plan (see MDNS Condition #6), and a Dust Suppression Plan (see MDNS Condition #5). If a conflict exists between a standard in the latest edition of the Storm water Management Manual for Western Washington and a City storm water regulation, the higher/more stringent standard, as determined by the Public Works Department Director, shall prevail.

The UPSDR shall also address storm water source control and storm water treatment if the Washington State Department of Ecology Storm water Management Manual for Western Washington threshold evaluation process dictates these actions. If qualifying as noted, the Applicant shall:

- Clearly identify the storm water source control methodologies and storm water treatment best management practices (BMPs) that the Applicant will use on this development, and
  - Select BMPs to assure that storm water runoff generated from roads, driveways and parking areas receives effective treatment prior to introduction to groundwater, and
  - Given the proposed project's proximity to Drayton Harbor and to Semiahmoo Bay, make provisions to remove fecal contamination to a level that does not degrade water quality or contribute to current fecal coliform loading levels. The UPSDR shall include the opinions of experts consulted, including the State's Puget Sound Action Team, in the selection of these particular methods and BMPs. Detailed treatment specifications shall be submitted as part of the Final Storm water Design Report (see MDNS condition #7).
4. Construction Storm water Pollution Prevention Plan. The Applicant shall submit a draft Construction Storm water Pollution Prevention Plan (CSWPPP) to the Public Works Department for review and subsequent revisions/comments or approval. The Public Works Department must approve the CSWPPP before the Applicant may perform land disturbance activity on the project site. The CSWPPP shall generally describe how the Applicant will manage storm water on the site during the time periods that land disturbing activity is taking place, including: measures to protect disturbed areas, control and direct storm water runoff through construction areas, and provide water quality treatment for runoff from the site. Measures may include, but are not limited to: filter fencing, straw bale barriers, brush barriers, gravel filter berms, sediment traps, stabilized construction



entrances, rock check dams, interceptor ditches, and mulching and matting of exposed soil. Best Management Practices (BMPs) associated with the CSWPPP shall comply with the latest edition of the Washington State Department of Ecology Storm water Management Manual for Western Washington.

5. Dust Suppression Plan. The Applicant shall submit a draft Dust Suppression Plan (DSP) to the Public Works Department for review and subsequent revisions/comments or approval. The Public Works Department must approve the DSP before the Applicant may perform land disturbance activity on the project site. The DSP shall address methods to control dust generated on and off the site during construction.
6. Storm water Quality Monitoring Plan. The Applicant shall submit a draft a Storm water Quality Monitoring Plan (SWQMP), together with the UPSDR (see MDNS Condition #3), to the Public Works Department for review and subsequent revisions/comments or approval. The Public Works Department must approve the SWQMP before the Applicant may perform land disturbance activity on the project site. The SWQMP shall address monitoring methodology and frequency to monitor ground water and surface water quality degradation that results from fecal coliform contaminated storm water. As recommended by the State of Washington Department of Ecology, the Applicant shall place a series of permanent 4" diameter monitoring wells along the waterward perimeter of the development. The Applicant shall establish baseline/background fecal coliform concentrations prior to any land disturbance. Once land disturbing activities begin, the Applicant shall arrange to sample for, and measure, fecal coliform concentrations during severe storm events for 1 year after the Applicant completes construction of all condominium units.
7. Final Storm water Design Report. After the Applicant completes the construction/installation of all permanent storm water facilities, the Applicant shall submit a draft Final Storm water Design Report (FSDR) to the Public Works Department for review and subsequent revisions/comments or approval. The Public Works Department must approve the FSDR before the City will approve the GBSP.
8. The Draft and Final EIS for the Resort Semiahmoo Master Development Plan recommends that earthwork activities be conducted only during dry (summer) weather periods. Further analysis supports this precaution. Consequently, as water quality mitigation, the Applicant shall not clear, grade, or excavate between October 30<sup>th</sup> and March 1<sup>st</sup>, unless persistent dry weather conditions exist as approved by the City Public Works Department Director (note: see condition #17 for development constraints relating to migratory bird disturbance). These earthwork activities must also cease during extreme wet weather conditions (i.e., ¼ inch or more per hour rainfall) to reduce erosion potential. The Applicant shall establish a manual rain gauge station on the subject property in advance of land disturbance activities, which shall remain in place until plat construction activities are complete.
9. The Homeowners Association shall own, operate, maintain, and repair the permanent storm water system at its cost. The CC&Rs shall authorize:
  - Anytime access by City staff to inspect and assess storm water system condition and performance, and
  - City staff to enforce storm water system operation, maintenance, and repair requirements as outlined in the City approved Storm water System Operation, Maintenance, and Repair Manual, and
  - The City to assume storm water system operation, maintenance, and repair duties if the City determines, in its exclusive discretion, that the Homeowners Association is not satisfactorily operating, maintaining, or repairing the storm water system,

10. A traffic study addressing transportation impacts for Meritage was submitted. The Transpo Group created the report on April 29 addressing trip generation, trip distribution, right turn guidelines, levels of service and queuing for the Drayton Harbor Road/Blaine Road intersection. The Study found that a right turn lane "is currently warranted and would continue to be in the future with the proposed project. The study concludes that "no mitigation is required by the project since its impacts are anticipated to be minor." While traffic generated from the Meritage condominiums contributes only a small part of the increased traffic volume to this intersection, the cumulative impact of additional residential development will require a turn lane in the near future. The report does not address other road or transportation improvements (e.g. internal transit shuttle & ferry service) identified in The Resort Semiahmoo Master Development Plan and Environmental Impact Statement including improvements to the intersections of Bell Road and Peace Portal Way, Bell Road and Drayton Harbor Road, the intersections of Drayton Harbor Road and Harbor View Road, and Harbor View Road and Lincoln Road.

Transportation impact fees paid to the City will provide funding for off-site improvements to roads within the City limits. However, many of these improvements are on roads located in the County. In addition to the payment of traffic impact fees, the developer shall demonstrate, prior to binding site plan approval, how this project will contribute its pro rata share of funds for road and other transportation improvements initially required for the Semiahmoo Development when it was approved in 1986.

11. The General Binding Site Plan identifies building setback lines from the ordinary high water mark (OHWM) for the three condominium structures. The Ordinary High Water Mark is currently being designated by the Department of Ecology. All structures will be setback a minimum of 90 feet from the established Ordinary High Water Mark. In order to preserve and enhance open space along the shoreline and to help protect the marine environment the area between the OHWM and the building setback line shall be identified on the final plat as a conservation easement area, running in perpetuity with the land. Pursuant to the City's Shoreline Management Program and the Resort Semiahmoo Master Development Plan, the conservation easement shall be divided into three zones: Public Access zone (minimum 30 feet landward from the OHWM, provided that this may be expanded landward as necessary, encroaching into the Private Open Space zone, if the available uplands do not allow sufficient construction space for the trail); Private Patio zone (maximum 25 feet waterward from the building setback line); Private Open Space zone (minimum 35 feet, area between landward edge of the Public Access zone and waterward edge of the Private Patio zone). The applicant shall adhere to the specific use and development guidelines within each of these zones, which are defined by the City's Shoreline Management Program and the Semiahmoo Master Plan, and with the following inclusion: (a) in the Private Patio zone, the impervious surface shall not exceed 25 percent of the area of the zone on a particular lot and provided further that the amount of impervious surface (as defined in Chapter 17.142 of the Blaine Land Use and Development Code) allowed on the entire lot is not exceeded. (b) in the Private Patio zone, native vegetation shall be used and lawns shall be prohibited.
12. Required public access sites and related accessory uses shall be fully developed and available for public use at the time of final plat approval or as required through permit approval with adequate surety to assure timely construction in a form approved by the City.

13. The Semiahmoo Spit is a unique geological formation. It is composed of sand gravel and underlying layers of clay and is subject to active shoreline processes. The Draft Environmental Impact Statement for Marina Facility on Semiahmoo Spit (Marina DEIS) states on page 56 that there have been "...no noticeable physical changes to the shoreline...". "The weakest part of the spit is the narrow causeway where it joins Birch Point. High storm waves frequently overtop this area, and a seawall, as well as riprap, have been placed there to protect the access road to the cannery. Other than at this point, the beaches of the spit are well-established and quite stable (Bauer, 1974b; and Terich, unpublished)." Prior to binding site plan approval the Applicant shall submit a shoreline report that re-analyses the relative stability of the beach and upland area and potential erosion and hazards resulting from both active storm events and annual shoreline processes in this area. The report shall include analysis and conclusions with respect to shoreline, movement, stability and offer mitigating recommendations. The report shall be considered prior to determining the final location of trails structures and related facilities or utilities.
14. The applicant provided a Geotechnical Engineering Report, prepared by GeoEngineers on June 9, 2005. In addition to compliance with the IBC and other relevant building regulations, construction shall comply with the recommendations contained in this report. The CC&R's shall also contain language that informs the property owner of the potential tsunami hazard and to be aware of tsunami evacuation plans for the Spit.
15. A landscape plan was submitted with the proposal. In addition to the landscape plan, a maintenance plan must be created, that shall be an obligation of the homeowner's association and enforceable by the City through the development's Covenants, Conditions, and Restrictions (CC&Rs). The applicant shall include a section in the CC&R's of the Meritage condominiums that specifically addresses the maintenance requirements of this Landscape Plan. The CC&R's shall be reviewed and approved by the Department of Community Development prior to binding site plan approval.
16. Implementation of this plan shall preclude the use of fertilizers, herbicides and pesticides. If corrections or amendments are identified during binding site plan review, a final submission of both plans shall be required prior to commencing land disturbing activities.
17. The parcel proposed to be developed is on Semiahmoo Bay between two large existing structures; the Resort at Semiahmoo to the northeast, and the Beachwalker Condominiums located immediately to the southwest. The three buildings proposed for the project are located on 530 feet of shoreline frontage. Building 1 and 2 are located 90 feet from the shoreline (OHWM). Building 3 is located 195 feet from the shoreline. A parking lot and Semiahmoo Parkway are located immediately behind the lot to the southeast. Drayton Harbor shoreline is approximately 600 feet to the southeast of the property. The project can almost be characterized as infill given that the site is located in the middle of a developed commercial recreation island at the end of the spit. There are currently ongoing urban levels of activity in this area along the shoreline and in the upland area. Additionally, commercial and recreational boat traffic routinely travel back and forth immediately off the point of the Spit.

In light of these factors, it is reasonable to assume that birds feeding, or resting in this urban area do so despite the human activity that exists on a daily basis. This condition is quite apparent on the mudflats to the north of Marine drive and the marine commercial

district where thousands of migratory birds rest and feed during the fall, winter and spring of each year. Several comments on the record can lead to a reasonable conclusion that migratory and especially over-wintering birds adapt to higher levels of activity or noise. When they occur in relatively predictable and modulated frequency, urban, commercial or industrial noise and activities do not appear to have significant impacts on these birds. However, dramatic changes in noise and activity levels disturb feeding and resting patterns.

Several reports and expert testimony were consulted in an attempt to verify these observations. There appears to be general consensus that the intertidal area along the spit provides adequate feeding conditions for the significant numbers of migratory and over-wintering birds that inhabit this area between October and May; that the greatest concentrations of birds are generally found during November, December, January, February, March and April, and; because the birds are moving north in the spring, they are particularly sensitive to disturbance in March and April. For example, brant use the area in their migration north in late March and April of each year. However, collectively the reports appear to be deficient in site-specific data, inconclusive in their analysis, and contain conflicting direction. After reviewing all available expertise, it remains difficult to precisely determine what type of birds inhabit the waters adjacent to the site, when they are there, and what the impact is from humane activity on this site.

There is, however, a consensus (among professionals) that there are significant numbers and species of migratory birds that feed and rest on the water adjacent to this site (Loons, sea ducts, bay ducts, brant). It is also generally accepted that these birds are most vulnerable to disturbance during periods of migration. Consequently, it appears reasonable and prudent that human restraint should be exercised to ensure that cumulatively, human disturbance in the uplands do not result in dwindling numbers beyond sustainable populations.

This information and some basic logic leads to the conclusion that that heavy equipment operation and exterior construction (e.g. grading, framing, and external finishing work) will have the greatest potential to impact migratory bird populations during construction. We also know that, cumulatively, increased urban density can impact these birds in a number of ways. With this in mind, the proponent will be required to utilize the following on-site mitigating measures:

Mitigation prior to construction:

1. Vegetate the first 40 feet of waterfront in native vegetation.
2. Install a sound and site buffer consisting of a noise-dampening wall measuring 8 feet in height, the width of the building footprint and a minimum of 40 feet from the OHWM. The wall can be earth bermed, constructed of straw bales, wood with insulating panels or an alternative design that effectively reduces visual exposure and noise levels. Storage containers or similar aesthetically displeasing objects are not allowed.
3. Establish a no entry zone with appropriate side yard fencing within the 40 feet.

General restrictions during construction:

1. Stationary noise producing equipment (compressors, generators, etc) must be located on the southeast side of the buildings or inside the buildings when the first floor walls are in place.
2. Nonessential noise producing equipment is prohibited from October 15 to May 15.

3. All vehicle parking shall be restricted to the southeast side of the property,  
Periods of no construction activity:

1. No earthwork or exterior construction will be allowed during the periods of the year with the greatest sustained concentrations of migrating birds (December, January, February or March).
2. Deviation: Because building 3 is further isolated from the shoreline, only heavy equipment operation shall be restricted during the above referenced months.

Periods of conditional construction activity:

3. Earthwork and exterior construction may be allowed during the months November and/or April, with the approval of the City, provided:
  - a. A qualified bird biologist monitors the site for a 5-day period immediately before construction and determines that the adjacent intertidal area is not populated with bird species whose migratory journey will be compromised because of the construction activity.
  - b. All pre-construction mitigation is completed.

Unrestricted interior work during construction:

1. Interior work shall be allowed all twelve months.

Mitigating measures during occupancy:

1. Locate the public access trail as far east as can be reasonably accommodated and vegetate the area between the beach and trail with native vegetation.
2. Limit outdoor lighting during the night to negligible levels over the shoreline and intertidal areas.
3. Prior to occupancy, establish residential best management practices (BMPs) that help minimize migratory bird disturbance. These shall include generally accepted BMPs sanctioned by qualified ecologist with expertise in the field and incorporated into the CC&Rs.
4. Establish leash and animal management restriction in the CC&Rs
5. Educational information and materials shall be provided to residents and shoreline users addressing the potential for migratory bird disturbance. The applicant shall garner approval of these educational information and materials from the City's Blaine / Birch Bay Birding Committee prior to final plat approval.

18. Educational information and materials shall be provided to spit residents and users about the potential for disruption to shore birds caused by activities in the intertidal areas especially during the fall, winter and spring seasons, including a reference to pets off leash and the City's leash law. The applicant shall garner approval of these educational information and materials from the City's Blaine / Birch Bay Birding Committee prior to final plat approval.

19. Prior to binding site plan approval, the developer shall provide interpretive and informational signage along the spit public trail system (see MDNS condition #18) to advise trail users and residents of the need to minimize activities in the shoreline that disrupt wildlife and provide educational information about the many wildlife inhabitants and their environments. The homeowners association shall be required to maintain said signage, within the boundaries of the Meritage condominium development, as part of its' CC&Rs with a provision therein approved by the City providing for the City enforcement of such provision.

20. A qualified "special inspector" approved by the City shall be assigned the responsibility of overseeing compliance with the conditions of this MDNS and other relevant local, state and federal requirements during plat construction. Visit frequency and responsibilities shall be determined through the binding site plan review and approval process. The inspector shall report to the Director of Community Development.
21. The City of Blaine Comprehensive Plan, the Resort Semiahmoo Master Development Plan, the City's Urban Waterfront Development Plan and the City of Blaine – Birch Bay Transportation Plan, to name a few, reference to ferry service between Semiahmoo Spit and downtown Blaine. Specifically, the Resort Semiahmoo Master Development Plan, Page 7.14, identifies the provision of ferry service both as a measure to mitigate traffic impacts to the Spit and also to provide an amenity to the Semiahmoo Spit area. Prior to binding site plan approval the applicant shall identify in the Shoreline Public Access Plan for Semiahmoo Spit connections with a Spit-side terminus of a pedestrian ferry service and locations for directional signage to the pedestrian ferry service.

**PLANNING COMMISSION ACTION:**

- ☐ Approved ☐ Denied ☐ Tabled/Deferred  
☐ Assigned ☒ Other:

**Signed**

  
Brad O'Neill, Chair