



Community Development Department

P.O. Box 936, 2095 Main Street, Ferndale, WA 98248 - (360) 685-2368

MITIGATED DETERMINATION OF NON-SIGNIFICANCE

- Date of Issuance:** July 17, 2024
- Description of Proposal:** The proposal comprises 246 multifamily units in eight buildings, 50 townhouse units in 14 buildings, and 14 live/work units in four buildings. Additionally, there's a 4,200 square-foot commercial building, a large commercial pad, and a community building, totaling 28 buildings. It includes 515 parking stalls and improvements like stormwater management, utilities, roadways, landscaping, and open space. Onsite critical area impacts will be mitigated per Ferndale Municipal Code.
- The following reports have been prepared for this project:
 - Traffic Impact Analysis dated April 2024
 - WSDOT Response Memo dated July 2024
 - Whatcom County Response Memo dated July 2024
 - Critical Areas Assessment, revised December 2022
 - Mitigation Plan, dated January 2024
 - Cultural Resources Report dated, February 2023
- Applicant:** Silver Hawk Partners LLLP
303 Potter Street
Bellingham WA 98225
- Location of Proposal:** 0 Labounty Drive, Ferndale WA 98248
Parcel Number: 3902333443050000
Legal descriptions: DOWNIE'S ADD TO NORTH BELLINGHAM LOTS 11-14 LY SWLY OF HWY-EXC PTN TO HWY-TOG WI THAT PTN OF VAC FRANK ST
- 5094 Labounty Drive, Ferndale WA 98248
Parcel Number: 3902333372320000
Legal descriptions: N 1/2 NW SE-N 1 ROD SW NW SE-EXC PTN DAF-BEG AT INTERS OF E LI OF LABOUNTY RD-S LI OF N 1 ROD OF SW NW SE-TH ELY ALG S LI 264 FT-TH N PAR TO E RD LI 330 FT-TH W 264 FT-TH S ALG RD LI 330 FT-
- Application Number(s):** 24002-CUP, 24004-SE, 24001-SPR, and 24002-VAR
- Lead Agency:** City of Ferndale

The lead agency has determined that the proposed project does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). This decision was made after reviewing a complete environmental checklist and other information on file with the lead agency, as well as written comments received during the comment period. This information is available for review by the public upon request.

This MDNS is issued after using the Optional DNS process (WAC 197-11-355). There is no further comment period. A 14-day comment period was provided beginning on May 8, 2024, and ending on May 22, 2024. Notice of the intent to issue the MDNS was published, posted on the project site, and circulated to interested state and local agencies.

Five comments were received during the comment period –

1. The Lummi Nation has received notice of the proposed Silver Hawk Long Plat & PUD at 5094 Labounty Road in Ferndale, Washington and is responding as an affected tribe. The Lummi Nation Tribal Historic Preservation Office (LNTHPO) has facilitated a review of the project distribution including the following report by Garth Baldwin, Jeffrey Hillstrom and Stephen Austin:

"Cultural Resource Assessment for the Proposed Silverhawk Mixed-Use Development, 5094 Labounty Road (TPNs: 390233344305 & 390233337232), Ferndale, Whatcom County, Washington" dated February 24, 2023.

Based on information provided in the archaeological investigation report, it appears that this project will have a federal nexus (permit). If this is the case, the project will be subject to Section 106 of the National Historic Preservation Act (NHPA) and the LNTHPO would like to be consulted with by the Federal lead agency.

Applicant response: *This comment is noted. We are pursuing State and Federal permits for direct wetland impacts. The cultural resource assessment prepared for the project and referenced in the Lummi Nation comment has been included in our permit applications to the State and Feds. We assume that the Federal regulatory agency will engage with any appropriate parties as required by law during their review. No action is needed from the applicant to further address this comment.*

Staff response: *A condition has been added to this effect.*

2. Whatcom Transit Authority Recommended adding bus stop pad along Labounty to site plan and paratransit loading zones in front of each building.

Applicant's Response: *In response to this comment, we reached out to Hayden Richardson, the Transportation and Land Use Planner at WTA, and discussed their needs. After these conversations we revised the plans and added the bus stop pad per WTA guidance to the site plan drawings. See Sheet SP2. Through communication with Mr. Richardson regarding the paratransit stops, we learned that paratransit services can utilize the ADA aisles for ADA parking stalls for loading and unloading in lieu of a designated loading zone. We also explained that all lane widths, turning radii, and fire turnarounds across the site are adequate for SSC garbage truck access, meaning that WTA paratransit buses should also be able to access all buildings across the site. Mr. Richardson responded that he doesn't believe we need to update any information on our site plan at this time and that "it is great to hear that this development will be able to accommodate those services in the future." See the attached email from Hayden confirming this.*

Staff Response: *The applicant shall coordinate with WTA and propose*

reasonable accommodation for paratransit services prior to final site plan approval. A condition has been added to this effect.

3. Whatcom County Public Works requested revisions to the Traffic Impact Analysis and the analysis of three additional intersections for traffic impacts.

Applicant's Response: *The applicant has clarified this comment with the City of Ferndale and understands that we will need our traffic engineer to analyze the three intersections noted by the County in their comment. We have engaged with our traffic engineer regarding this analysis, and they have begun the process of analyzing these intersections, with the intent to provide a supplemental memorandum with their findings, prior to any project Hearing. If mitigation is required for these intersections, that can be conditioned at the time of Hearing.*

Staff Response: *The applicant has revised the Traffic Impact Analysis to address Whatcom County's comments and the updated report has been made part of the SEPA record.*

4. The Washington Department of Transportation had comments regarding the Traffic Impact Analysis and provided redline edits to the report.

Applicant's Response: *We have provided these comments to our traffic engineer, and as a part of their update they will address each of the comments made by DOT. This information will be provided to the City with the County requested intersection analysis.*

Staff Response: *The applicant has revised the Traffic Impact Analysis to address WSDOT's comments and the updated report has been made part of the SEPA record.*

5. A local neighborhood resident commented that bald eagles have been witnessed in trees located on the subject property.

Applicant's Response: *After receiving this comment, we consulted with 2 biologists regarding eagles. We also conducted a site visit to look for eagles or an eagle nest in any of the trees near the one identified in the photos provided with this comment. During our site visit we did not observe any eagles or a nest in any trees near the identified tree or near the developable portion of the property. Eagle nests are very large and easy to identify, and we are confident there are no nests in any trees in the developable portion of the property. It should be noted that the photographs provided with the public comment appear dated (no foliage on trees). Current site observations do not support the assertion in the comment that eagles are nesting in trees on-site. Should an eagle nest be identified in a tree proposed to be removed prior to start of construction, the developer will need to apply for a taking permit with the Department of Fish and Wildlife and remove the tree outside of nesting season for eagles.*

Staff Response: *The applicant shall coordinate with State and Federal agencies to secure any permits that may be applicable for the protection of bald eagles. The SEPA Checklist has been revised to indicate the presence of bald eagles on the property. Any required State and Federal approvals shall be provided prior to final site plan approval. A condition has been added to this effect.*

The lead agency for this proposal has determined that the project does not have a significant adverse impact on the environment, mitigation measures will be addressed through the City of Ferndale regulations and review process. In addition to compliance with current City regulations, the following mitigation measures were identified relative to the proposed project:

EARTH:

During construction, the contractor will implement City of Ferndale's erosion prevention measures, including silt fences, straw waddles, and adherence to the Stormwater Pollution Prevention Plan (SWPPP) for soil stabilization.

AIR:

During construction, erosion and sediment control measures will be implemented, including soil spraying to reduce dust, minimizing vehicle idling, covering dump trucks, and conducting regular vehicle inspections.

WATER:

The contractor will install Temporary Erosion and Sediment Controls (TESC) and Best Management Practices (BMP) and propose a stormwater management system meeting current Department of Ecology manual requirements. The project will comply with all City of Ferndale Critical Area requirements, as well as state and/or federal requirements.

ENVIRONMENTAL HEALTH:

Construction will adhere to the Ferndale Municipal Code's legal working hours, typically from 7am to 10pm. Spills during construction or daily use will be promptly managed following City of Ferndale and Washington State Department of Ecology standards. Hazardous materials on-site will be stored per state and local regulations. Equipment will be monitored closely for potential leaks.

PLANTS:

All site landscaping shall comply with City of Ferndale landscape standards. Landscape design will enhance native vegetation and supplement native soils with compost amendments.

ANIMALS:

The applicant shall coordinate with State and Federal agencies to secure any permits that may be applicable for the protection of bald eagles. Any required State and Federal approvals shall be provided prior to final site plan approval.

TRANSPORTATION:

Traffic impact fees are due upon building permit approval at the current TIF rate. Access roads shall meet City standards. Offsite improvements outlined in the April 2024 Traffic Impact Analysis are required mitigation measures.

PUBLIC SERVICES:

Water, sewer, and stormwater infrastructure will be constructed to City standards.

LIGHT AND GLARE:

Light from streetlamps will be directed towards the roadway to reduce spillage into surrounding properties.

PUBLIC SAFETY:

Fire protection infrastructure will meet Fire District Requirements. Construction traffic control will be coordinated among the applicant, Ferndale Public Works Department, and Ferndale Police Department.

RECREATION:

The project proposes constructing active and passive open space consistent with the Ferndale Municipal Code. Payment of park impact fees shall be paid pursuant to building permit approval

CULTURAL RESOURCES:

Inadvertent Discovery of Archaeological Resources:

Should archaeological resources (e.g., shell midden, animal remains, stone tools) be observed during project activities, all work in the immediate vicinity should stop, and the area should be secured. The Washington State Department of Archaeology and Historic Preservation (Stephanie Jolivette, Local Government Archaeologist 360-586-3088) and the Lummi Nation Tribal Historic Preservation Office (Lena Tso, THPO 360-312-2257; Tamela Smart, Deputy THPO 360-312-2253) should be contacted immediately in order to help assess the situation and to determine how to preserve the resource(s). Compliance with all applicable laws pertaining to archaeological resources is required.

Inadvertent Discovery of Human Skeletal Remains on Non-Federal and Non-Tribal Land in the State of Washington (RCWs 68.50.645, 27.44.055, and 68.60.055)

"If ground disturbing activities encounter human skeletal remains during the course of construction, then all activity will cease that may cause further disturbance to those remains. The area of the find will be secured and protected from further disturbance until the State provides notice to proceed. The finding of human skeletal remains will be reported to the county medical examiner/coroner and local law enforcement in the most expeditious manner possible. The remains will not be touched, moved, or further disturbed. The county medical examiner/coroner will assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the remains are non-forensic, then they will report that finding to the Department of Archaeology and Historic Preservation (DAHP) who will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all affected tribes of the find. The State Physical Anthropologist will make a determination of whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and the affected tribes. The DAHP will then handle all consultation with the affected parties as to the future preservation, excavation, and disposition of the remains" (DAHP).

Responsible Official: Michael Cerbone, Community Development Director
City of Ferndale P.O. Box 936, Ferndale, WA 98248
comment@cityofferndale.org or (360) 685-2367

Signature: _____

