APPLICATION: The applicant is requesting Preliminary Approval for a 5 lot Planned Residential Development (PRD) on approximately 24 acres of land zoned Rural Forest. The lots will range in size from 0.66 acre to 0.86 acre. The proposal would include approximately 20.4 acres of Open Space (85% of the site) with 3.1 acres of the Open Space (15% of Open Space) designated as Community Area. The proposed source of water is the Freeland Water District. The proposed method of sewage disposal is individual septic systems.

DECISION: Approved subject to conditions.

FINDINGS OF FACT

INTRODUCTION

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted herein and evidence presented at the public hearing on September 18, 2008.

I.

PRELIMINARY INFORMATION

Applicant: Dogwood Whidbey Development, LLC

Property Location: The proposed development is located west of S.R. 525 approximately one mile north of the intersection of Mutiny Bay Rd. and S.R. 525. It is located within the NE quarter of section 32 and the NW quarter of section 33, township 30 North, Range 2 East, Willamette Meridian.

Applicable Ordinances, Statutes and Regulations: Island County Comprehensive Plan, Section IV, Goals and Policies, Chapter 17.03 ICC, Chapter 16.17 ICC, Chapter 11.05 ICC, Chapter 16.25 ICC
SEPA: A Determination of Non-Significance was issued by Island County on July 8, 2008.

      South Whidbey Record – September 3, 2008

Mailing of Notice to Applicant: August 25, 2008

Sign Posted: August 21, 2007

Mailing of Staff Report: August 29, 2008

Date of Application: August 29, 2008

Hearing Date: September 18, 2008

Exhibit Log:
1. Master Plan Map
2. **PRD 274/07** Staff Report
3. John Bertrand, Public Works comments, dated 5/19/08
4. Aneta Hufauer, Public Health comments, dated 6/5/08
5. Justin Craven, Critical Area Planner comments, dated 7/2/08
6. PRD 274/07 General PRD Map with area calculations, dated June 2007, received 4/29/08
7. PRD 274/07 Detailed PRD Map with top-lines, dated June 2007, received 4/29/08
8. **PRD 275/07** Staff Report
9. John Bertrand, Public Works comments, dated 5/19/08
10. Aneta Hufauer, Public Health comments, dated 6/5/08
11. Justin Craven, Critical Area Planner comments, dated 7/2/08
12. PRD 275/07 General PRD Map with area calculations, dated June 2007, received 4/29/08
13. PRD 275/07 Detailed PRD Map with top-lines, dated June 2007, received 4/29/08
14. **PRD 276/07** Staff Report
15. John Bertrand, Public Works comments, dated 5/19/08
16. Aneta Hufauer, Public Health comments, dated 6/5/08
17. Justin Craven, Critical Area Planner comments, dated 7/2/08
18. PRD 276/07 General PRD Map with area calculations, dated June 2007, received 4/29/08
19. PRD 276/07 Detailed PRD Map with top-lines, dated June 2007, received 4/29/08
20. **PRD 277/07** Staff Report
21. John Bertrand, Public Works comments, dated 5/22/08
22. Aneta Hufauer, Public Health comments, dated 6/5/08
23. Justin Craven, Critical Area Planner comments, dated 7/2/08
24. PRD 277/07 General PRD Map with area calculations, dated June 2007, received 4/29/08
25. PRD 277/07 Detailed PRD Map with top-lines, dated June 2007, received 4/29/08
26. **PRD 345/07** Staff Report
27. Central Whidbey Island Historical Preservation District Review Committee review sheet, dated 3/4/08
28. John Bertrand, Public Works comments, dated 5/22/08
29. Aneta Hufauer, Public Health comments, dated 6/5/08
30. Justin Craven, Critical Area Planner comments, dated 7/2/08
31. PRD 345/07 General PRD Map with area calculations, dated June 2007, received 4/29/08
32. PRD 345/07 Detailed PRD Map with top-lines, dated June 2007, received 4/29/08
33. Draft Covenants for Open Space for all PRD’s, received 12/28/07
34. Public comment from Pam & Tim Thomson, received 8/27/07

Island County Hearing Examiner
PRD 345/07
Page 2 of 25
35. Public comment from Jerry Lloyd, received 8/27/07
36. Public comment from Margie Kuehn, received 9/1/07
37. Public comment from Debra Raden, received 9/1/07
38. Public comment from Amy Frantz, received 9/2/07
39. Public comment from Pam Thompson, received 9/4/07
40. Public comment from Kim Olmstead, received 9/4/07
41. Public comment from Barbara Moran, received 9/5/07
42. Public comment from Anne Winter, received 9/5/07
43. Public comment from Tina Jarvis, received 9/5/07
44. Public comment from Beverly Rose, received 9/6/07
45. Public comment from Marianne Edain, received 9/10/07
46. Public comment from Mary R Tallman, received 9/17/07
47. Public comment from Diana L. Putney, received 9/17/07
48. Public comment from Marianne Edain, received 9/19/07
49. Public comment from Tanya Goetz, received 9/20/07
50. Email from Kyla Waters, Island County Planning to parties of record with only email addresses asking for mailing address if they want to receive staff report, dated 7/23/08
51. PRD 274/07 Notice of complete application from Monica Felici to Web Engineering Inc., dated 8/10/07
52. Affidavit of mailing, dated 8/17/07 to Web Engineering Inc.
53. Affidavit of mailing, dated 8/17/07 to property owners within 300 feet.
54. Notice of Application with SEPA, dated 8/15/07
55. Affidavit of Posting Public Notice Sign, dated 8/21/07
56. Notice of Application with SEPA, dated 8/22/07
57. Affidavit of Publication, dated 8/28/07
58. PRD 275/07 Notice of complete application from Monica Felici to Web Engineering Inc., dated 8/10/07
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79. Affidavit of Posting Public Notice Sign, dated 8/21/07
80. Notice of Application with SEPA, dated 8/22/07
81. Affidavit of Publication, dated 8/22/07
82. Letter from Paula Bradshaw, Office of the Island County Hearing Examiner to Neil Latta, dated 8/25/08
83. Affidavit of mailing, dated 8/25/08
84. Email to POR with only email addresses, dated 8/28/08
85. **PRD 274/07 Binder # 2**
   a. Part 1 - Application, sections 1-10 with table of contents
   b. Part 2 – Formal correspondence throughout review process
86. **PRD 275/07 Binder # 3**
   a. Part 1 - Application, sections 1-10 with table of contents
   b. Part 2 – Formal correspondence throughout review process
87. **PRD 276/07 Binder # 4**
   a. Part 1 - Application, sections 1-10 with table of contents
   b. Part 2 – Formal correspondence throughout review process
88. **PRD 277/07 Binder # 5**
   a. Part 1 - Application, sections 1-10 with table of contents
   b. Part 2 – Formal correspondence throughout review process
89. **PRD 345/07 Binder # 6**
   a. Part 1 - Application, sections 1-10 with table of contents
   b. Part 2 – Formal correspondence throughout review process
90. Letter from Paula Bradshaw to Neil Latta, with attached staff reports, dated 8/29/08
91. Affidavit of mailing, dated 9/2/08
92. Mitigation & Restoration Plan Addendum for: The Estates at Whidbey, dated 5/9/08
93. Affidavit of Publication, dated 9/8/08
94. Ltr dated 9/18/08 from Jerry Lloyd to Michael Bobbink, Hearing Examiner

**HEARING TESTIMONY**

Bill Poss  
Island County Public Works  
PO Box 5000  
Coupeville WA 98239

Neil Latta  
Web Engineering, LTD  
149 W Kellogg Rd.  
Bellingham, WA 98226

Jesse Molnick  
Dogwood Whidbey Development, LLC  
333 156 St. NE  
Arlington WA 98223

Andrew Hicks  
Island County Planning & Community Development  
PO Box 5000  
Coupeville WA 98239

Jerry Lloyd  
756 Plantation Dr.  
Greenbank WA 98253
II.

Island County Planning and Community Development has recommended approval of this application subject to conditions. The Findings of Fact entered by Island County in the staff report are supported by the record as a whole. The Hearing Examiner hereby adopts the Findings of Fact set forth in the staff report, Exhibit #26 in the Hearing Examiner’s file, a copy of which is attached hereto and incorporated herein by this reference.

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following:

CONCLUSIONS OF LAW

I.

The Island County Planning Department has entered Conclusions of Law in the staff report, a copy of which is attached hereto. The Conclusions of Law entered by the Planning Department in the staff report are supported by the record as a whole and are hereby adopted by the Hearing Examiner as Conclusions of Law herein.

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following:

DECISION

The Island County Hearing Examiner hereby grants preliminary approval for a 5 lot planned residential development located on approximately 24 acres of land zoned Rural
Forest located on the west side of SR 525 approximately one mile north of the intersection of Mutiny Bay Road and SR 525, subject to the following conditions:

1. Compliance with Island County Public Works requirements as specified in the attached comments and conditions dated May 22, 2008.

2. Compliance with Island County Health Department requirements as specified in the attached comments and conditions dated June 5, 2008.

3. Prior to final PRD approval, the covenants establishing a homeowners’ association shall be recorded with the Island County Auditor’s Office. The covenants must outline how the common Open Space areas are to be maintained by the homeowners’ association. Membership in the association and dues or other assessment for maintenance purposes shall be mandatory.

4. There is a Rural Forest zoned parcel located within 500 feet of the subject parcel; therefore, compliance with the provisions of ICC 16.25.040 is required. The following declaration must appear on the face of the final short plat.

   “Applicant and Applicant’s heirs, legal representatives, assigns, and lessees, hereby acknowledge and agree to accept by the placement of this notice, and the acceptance and recording of this instrument, that 1) The property herein described is situated within five hundred (500) feet of agricultural, forest land, or a surface mining operation, or lands designated mineral lands of long term commercial significance; 2) A variety of commercial activities may occur on these lands that are not compatible with residential development for certain periods of limited duration, and therefore the property may be subject to noise, dust, smoke and odors resulting from harvest, planting, fertilization, waste disposal and pest control associated with permitted agricultural, surface mining or forest practices; 3) For mineral lands these activities may include mining, extraction, screening, washing, crushing, stockpiling, blasting, transporting and recycling of minerals; and 4) These practices, when performed in accordance with County, State and Federal law, shall not be subject to legal action as a public nuisance unless the activity has a substantial adverse effect on the public health and safety. By the recording of this notice, the County does not intend to affect or impair any right to sue for damages under new RCW 7.48.305.

5. The project shall be constructed with a 24-inch deep infiltration trench along internal roads, as proposed.

6. All buffers and wetlands shall be clearly flagged where any work will occur within 50 feet of a buffer or any wetland to prevent accidental intrusion during site work.

7. A silt fence shall be installed along all clearing limits within 25 feet of any critical area buffer.
8. BMP’s shall be installed and maintained to prevent the transport of sediment from the work area into any wetland, stream, or associated buffer.

9. Vehicular barriers shall be installed in existing roads crossing critical areas or the associated buffers that are not to be used for vehicular traffic.

10. Project construction shall maintain strict conformity to the approved plans, unless modified by this Department.

11. All plant species in rain gardens shall be native and approved by this department prior to installation.

12. If rain gardens and bioswales are not maintained, a redesign may be required.

13. Rain gardens shall not disturb or result in channelization of a buffer.

14. All rain gardens shall be located outside of any critical area buffer.

15. All restoration areas and mitigation that involves planting require a monitoring report to be submitted to this Department yearly; additional monitoring and planting will be required if the success standards are not met.

16. Prior to final PRD approval, all site and off-site improvements required as a condition of preliminary approval shall be complete, OR, at the discretion of the Board of Island County Commissioners by recommendation of the Planning Director and County Engineer shall be bonded for.

17. All utilities installed on-site shall be underground.

18. All proposed development shall comply with the state noise ordinance, air pollution control regulations, water quality standards, and all other pertinent codes and ordinances.

19. Prior to submittal of the Final PRD application, obtain approval of (1) a Private Road Name Petition (attached) and (2) individual addresses for the proposed lots. Pursuant to ICC 14.04, RCW 58.17.280, Ordinance #C-32-96, the addresses must appear on the final PRD map and the following standards for posting the address must be followed:

The property owner shall post the address in a manner that it can be read from the public or private road accessing the addressed property and provide adequate identification of the addressed property in accordance with the following. Addresses shall be posted on the addressed building, with one-half inch (1/2") channel numerals at least five inches (5") in height, in colors contrasting with the background in such manner and location as to be clearly visible from the road. In instances where the main building's posted address is not clearly visible from the road, house numbers shall be visibly posted at one location at a height between four feet (4’) and eight feet (8’) from road level and anywhere
within an arc of 30 feet from the point of intersection of the driveway with the access road, with numerals at least three inches (3”) high on a contrasting background and visible when traveling in either direction.

20. On the face of the final map, please clearly define the areas dedicated to open space.

21. In addition to the standard final map requirements, the following shall also appear on the face of the final plat:

   A. The complete plat number and existing parcel number must appear at the top right corner of each sheet of the final plat as follows: **PLANNED RESIDENTIAL DEVELOPMENT NO. PRD 345/07.R23032-167-2360, R23032-100-2350, R23032-033-2340, R23032-168-3030, R23032-100-3010, R23032-033-2990.**

   B. The name of the Planned Residential Development: **The Estates at Whidbey V.**

22. The following shall appear under **Restrictions** on the final PRD:

   “This PRD herein shown shall be limited to the number of lots proposed; no further subdivision within the PRD shall be allowed.”

23. The following shall appear under **Restrictions** on the final PRD:

   “The Open Space is to be left in its undisturbed natural state, except for those portions designated Community Area and the removal of dead or dying trees that are an immediate threat to fall on power lines, a building or other improvement. The only clearing onsite shall consist of the clearing of the interior lots, lots 1-5, and the area designated as Community Area.”

24. The following shall appear under **Restrictions** on the final PRD:

   “Any future trails constructed within the designated Open Space areas are restricted to pedestrian/equestrian use only; no motorized vehicles allowed, except for maintenance purposes only. Maximum width of trails shall be 5 feet and they shall be pervious.”

25. The following shall appear under **Restrictions** on the final PRD:

   “During all installation, maintenance, or repair of drain fields and/or well sites in the Open Space, the only clearing, cutting, or removal of vegetation shall be within an area which is the minimum needed to meet Island County Health Department requirements. All other vegetation must remain and meet the Open
Space restrictions as noted herein. No clearing, cutting, or removal of vegetation outside the drain field area shall be allowed.”

26. The following shall appear under **Restrictions** on the final PRD:

“Minimum building setbacks shall be as follows: The interior lots 1 through 12 shall have a minimum building setback of twenty (20) feet from the local access road that serves these lots and a minimum building setback of five (5) feet from each lot boundary. No variances shall be granted to place structures within these setbacks.”

27. Lighting fixtures shall be shielded, hooded and oriented towards the ground so that direct rays of light from the lighting sources are not visible past the property boundaries.

28. All requirements shall be completed and the Final PRD Mylar must be recorded within five (5) years from the date of this approval.

29. All requirements for Final PRD approval required in ICC 16.06.120 & 130 shall be met. The final PRD shall be consistent with the approved preliminary PRD as modified by conditions of preliminary approval listed in this section.

30. The above requirements are subject to change if proposed lot sizes, the parcel size or any other information provided by the applicant or their authorized representatives proves inaccurate.

31. The total of all property taxes for the year in which the PRD is to receive final approval and any delinquent assessments for which the property may be liable shall be paid in full to the Island County Treasurer prior to the recording of the final PRD.

32. Upon completion of the above requirements, the applicant shall submit:

   i. The original Final PRD application and all required materials, along with three copies.
   ii. An original, complete Certificate of Title formatted to meet the Washington State Recording requirements dated no earlier than 30 days prior to submittal.
   iii. Four paper copies of the proposed final PRD.
   iv. A signed and notarized statement by the owner that all conditions of preliminary approval have been met.
   v. Established application fees for a Final PRD application.

   *Note: The information shall be collated into four, separate, identical packages each to include the above listed items.*
33. On the final mylar, ALL certification stamps and signatures must be in permanent black ink.

34. The Island County Auditor will only accept the following for recording:

   Sheet size must be 24 x 18 inches. Borders must be 2 inches on the left edge and ½ inch on the top, bottom, and right edges. If any part of a signature, seal, drawing, or any other mark is located in the required borders, the Auditor’s Office will not accept the plat for recording.

Entered this 29th day of September, 2008, pursuant to authority granted under the laws of the State of Washington and Island County.

________________________________
MICHAEL BOBBINK
Island County Hearing Examiner

APPEAL PROCESS:

PRD

This decision of the Hearing Examiner shall be a final and conclusive decision unless within fourteen (14) days following the mailing of such decision a written statement of appeal is filed with the Island County Board of Commissioners by the applicant, a Department of the County, or Party of Record, who is also an Aggrieved Person. Said statement shall set forth any alleged errors and/or the basis for appeal and shall be accompanied by a fee pursuant to the fee schedule adopted by the Board; provided that such appeal fee shall not be charged to a department of the County or to other than the first appellant ICC 16.13.100.b; ICC 16.19.190.
Preliminary Planned Residential Development (PRD)
Staff Report and Recommendation

THE ESTATES AT WHIDBEY V

FILE NUMBER: PRD 345/07

APPLICANT: Dogwood Whidbey Development, LLC.
ASSESSOR’S PARCEL NUMBER: R23032-167-2360, R23032-100-2350, R23032-033-2340, R23032-168-3030, R23032-100-3010, R23032-033-2990

PROPOSAL

The applicant is requesting Preliminary Approval for a 5 lot Planned Residential Development (PRD) on approximately 24 acres of land zoned Rural Forest. The lots will range in size from 0.66 acre to 0.86 acre. The proposal would include approximately 20.4 acres of Open Space (85% of the site) with 3.1 acres of the Open Space (15% of Open Space) designated as Community Area. The proposed source of water is the Freeland Water District. The proposed method of sewage disposal is individual septic systems.

STAFF FINDINGS

1. Project History and Review Process

This preliminary application for a Planned Residential Development with SEPA was submitted on August 1, 2007. Planning and Community Development determined that the application was complete on August 10, 2007. Public notice for the development was published in the South Whidbey Record on August 22, 2007 which established the beginning of a 14 day public comment period ending on September 5, 2007.

On October 1, 2007, Island County Planning and Community Development (ICPCD) sent a review letter to the applicants informing them that additional information was needed in order to reach a decision. This letter included comments and requirements from the Health Department, dated August 21, 2007.
The letter also included comments from the Engineering Department, dated September 18, 2007.

On December 28, 2007 the applicants submitted a packet of additional information.

On February 19, 2008, ICPCD sent a review letter to the applicants informing them that additional information was still needed in order to reach a decision. This letter included comments and requirements from the Health Department, dated February 7, 2008. The letter also included comments from the Engineering Department dated January 16, 2008.


a. **Location:** The proposed development is located west of S.R. 525 approximately one mile north of the intersection of Mutiny Bay Rd. and S.R. 525. It is located within the NE quarter of section 32 and the NW quarter of section 33, township 30 North, Range 2 East, Willamette Meridian.

b. **Site Condition and Size:** The site consists of six (6) parcels and is approximately 24 acres in size. The parcels slope generally from east to west and contain wetland areas along the southern portion of the proposed PRD boundary. The parcels are mostly forested with a mixture of evergreens and alders. The understory is made up primarily of ferns and salal.

c. **Zoning/Type of Land Use Permitted:** The subject parcels are zoned Rural Forest (RF). Permitted uses in the RF zone include single-family residences, accessory uses, guest cottages, etc. Chapter 17.03.110 ICC sets forth a minimum lot size requirement of 10 acres, with a base density of 1 dwelling unit per 10 acres. Planned Residential Developments (PRD) are allowed in this zone for parcels larger than 20 acres in size. PRD’s allow for the increase of the allowed base density provided that a certain percentage of the area is designated as Open Space.

The PRD application followed the Type III in accordance with Chapter 16.19 ICC. Type III applications follow a 90-day review time period, and are decided upon by the Hearing Examiner after an open record pre-decision hearing takes place.

d. **Access:** The site is currently served access by a 20 to 22-foot/two-lane wide, private access road that is and will continue to be the only access road for ingress/egress to this proposed development’s entrance. That road is also contained within a 60-foot wide access and utility easement which has a single common approach access point location onto State Route (SR) 525 to the east, the nearest adjoining public road. Additionally, an Access Connection Permit was previously issued for it by WSDOT for single family residential use. While it will continue to serve as the main (and only) access road for ingress/egress to this
proposed development, it will soon have a revised new common approach access point location onto SR 525. Furthermore, it will also be providing access onto that state highway from at least 20 other recently created lots, eight proposed new lots and four other proposed PRDs that would also contain a total of 37 new lots.

e. Surrounding Zoning and Development: The subject parcels are bordered on all sides by Rural Forest zoned parcels except to the southeast where the parcels are bordered by a parcel zoned Rural. The subject parcel is located within 500 feet of Commercial Agriculture/Rural Agricultural/Rural Forest zoned property, therefore ICC 16.25.040 does apply to this proposal which requires that a statement be recorded onto the face of the final plat.

f. Density of Development: As listed in ICC 17.03.110, the established base density for the Rural Forest zone is 1 dwelling unit per 10 acres. According to Chapter 17.03.180.E ICC, the base density can be increased by 100% for parcels between 20 and 80 acres in size in the Rural Forest zone, provided that 85% of the property is dedicated to Open Space. The applicants are proposing the PRD on six (6) parcels with an area of 24 acres, and dedicating 85% of the parcel as Open Space. For property of this size, the applicants have the opportunity to create up to 5 residential lots. Each lot is proposed to be between 0.66 acre and 0.86 acre in size.

g. Natural Features and Critical Areas: According to Island County Critical Areas Maps and subsequent field investigation, the site contains regulated streams and wetland features. According to the Soil Conservation Service Soil Survey for Island County, the predominant soil types found on the site are Hoypus gravelly loamy sand with 5-15% slopes, and Whidbey gravelly sandy loam with 5-15% slopes. The FEMA flood zone designation for the site is X.

h. Shoreline: The project is not within Shoreline Jurisdiction.

i. Archaeological Sites: According to the maps provided by the State Office of Archaeology and Historic Preservation, the project is not located within a known cultural resource area.

j. Historic Districts: The site is not within Ebey’s National Historic District.

k. Accident Potential and/or Noise Zone: The site is located not located within an AICUZ Noise Zone Level.

3. Definitions:

**Open Space (ICC 17.03.040):** Areas of a site designated and permanently committed by Conservation Easement as undisturbed areas or Community Area; committed to community Use or committed to Farm or Forest Use. Examples of Open Space include undisturbed natural areas such as slopes and wetlands, buffer areas whether landscaped or in native vegetation, and pastures or gardens. Open Space may also be used for passive activities such as trails. Well sites and septic drainfields located in
designated Open Space areas will be considered Community Area and are allowed in Open Space, subject to certain limitations imposed by Chapter 16.17 ICC.

4. Land Use Controls

A. Island County Comprehensive Plan, Section IV, Goals and Policies:

1. Rural Forest Lands. In the Island County Comprehensive Plan, the subject site was located within the Rural Forest Land Use Designation. The established goal of Rural Forest lands is to “Create an area where rural forestry activities are encouraged to occur with residential uses while preserving rural character and maintaining open space as the dominant characteristic.”

Consistency of the proposal with policy statements for the Rural Forest Lands is achieved as follows:

i. Minimum parcel size is 10 acres. The base density is one dwelling unit per 10 acres. The subject parcels meet the minimum lot size. As for the new lots being created through this proposal, they will be smaller than 10 acres. The next point below will describe how this is possible. The proposal will also result in the adjustment of several boundary lines of existing parcels. However, the adjustments will not result in the creation of a parcel that is less than 10 acres outside of a PRD.

ii. Preference shall be given to PRD cluster development consisting of either attached or detached housing on parcels at least 20 acres in size in the event subdivision of land occurs. A density bonus should be granted proportional to the size of the PRD and the Open Space Ratio and there are no adverse impacts to critical areas or natural resource conservation areas. PRD’s located outside the unincorporated portion of a municipal Urban Growth Area shall not be approved unless it can be determined affirmatively that the need for future urban services is precluded and that the PRD will provide a better opportunity to protect rural character than a traditional subdivision or short subdivision. The applicants are proposing a 5 lot PRD. The lots total 3.6 acres, while the Open Space totals 20.4 acres, or 85% of the total parcel.

iii. The proposed land use for the 5 lots through the PRD process for single family homes and 85% Open Space is consistent with the Permitted Uses of Rural Forest lands.

iv. The development is not near designated Commercial Agriculture lands, so there should be no potential for conflict with and/or conversion of farm land.
2. **Residential Development.** The established goal of residential development is to “encourage clustered residential development where appropriate. All residential development should preserve the community feel of an area and further the protection of rural character in Island County.”

Consistency of the proposal with policy statements for Residential Development is achieved as follows:

i. This proposal reduces the inappropriate conversion of undeveloped land into sprawling, low-density development. Because this PRD is required to have so much open space and is clustered, the development is not sprawling.

ii. Standards for subdivisions and planned residential developments shall encourage clustering and avoid or minimize the adverse impacts to the visual or physical environment while still fostering rural lifestyles and rural character. This proposal is following a “cluster-type” development plan, and the residences and more than 85% of the parcels dedicated to open space will maintain rural lifestyles and character.

iii. Each lot will utilize individual septic systems and drainfields that will be located within each lot’s boundaries. Water will be provided to each lot by the Freeland Water District.

B. **Chapter 17.03 Island County Code.** The density and lot sizes are within the standards for lots created through the Planned Residential Development in the Rural Forest zone.

1. As listed in ICC 17.03.110, the established base density for the Rural Forest zone is one dwelling unit per 10 acres, with a minimum lot size of 10 acres. For lots, tracts or parcels 20 acres or larger in size the base density may be increased as specified in ICC 17.03.180.E through the approval of a PRD pursuant to Chapter 16.17 ICC.

2. According to Chapter 17.03.180.E ICC, the Density Bonus System is designed to provide incentives for cluster development in order to reserve opportunities for future urban development, provide permanent preservation of open space, critical areas, wildlife habitat and natural lands, and protect agricultural and forest resource lands. For parcels between 20 and 80 acres in size, a 100% density bonus can be obtained when at least 85% of the land is dedicated as open space.
C. Chapter 16.17 Island County Code.

1. The proposed PRD will not result in a significant adverse environmental impact that cannot be mitigated by reasonable mitigation measures. A SEPA Threshold Determination of Non-Significance was issued for this proposal and it was determined that the PRD will not result in a significant adverse environmental impact.

2. The subject site is physically suitable for the type, density and intensity of the use being proposed. All departments/agencies have no objection to the proposal, therefore, it has been found that the site is physically suitable for the proposal.

3. The proposal places the 12 lots into 2 separate clusters. Clusters are required to be separated from each other by at least 200 feet of Open Space, and no more than 6 dwelling units can be in a single cluster.

4. Approximately 15% of the Open Space will be designated as Community Area. For this proposal, the applicant has placed community roads into the Community Area. However, a 1.2 acre tract will be used for a common lawn area. The lawn area is proposed to provide a variety of amenities including picnic shelter, fire pits, BBQ areas, an event lawn, children’s play area, parking, and related amenities.

D. Chapter 11.05 Island County Code. The check for Adequacy as described in ICC 11.05.030 is performed to ensure the public facilities necessary to support development activities are available and adequate to serve the proposed development. This check is done to ensure appropriate provisions have been made prior to preliminary approval. The check for adequacy was performed on the public facilities listed in Section 11.05.030.A ICC as follows:

1. Requirements of Chapter 11.03 ICC, the Storm Water and Surface Water Ordinance are addressed in the Island County Engineering Division’s comments dated May 19, 2008.

2. According to a memorandum from Larry Kwarsick dated March 1, 1999, community parks owned and operated by the County are expected to operate within the adopted level of service standards through the year 2020. Therefore, the community parks are assumed to be adequate to serve the proposed development.

3. Requirements of Titles 8, Health, Welfare and Sanitation, concerning potable water supplies and sanitary wastes are addressed in the Island County Health Department’s comments dated June 5, 2008.
4. The subject site is located within the boundaries of the Coupeville School District, which has yet to adopt a comprehensive plan which fulfills the requirements of Section 11.05.040.3.C ICC. Therefore, school and school ground facilities are presumed to be adequate to serve the proposal subject to the provisions contained in Section 11.05.040.D.2 ICC.

5. Pursuant to Chapter 11.04 ICC, a Certificate of Transportation Concurrency has been issued for the proposal, confirming that the level of service standards used in the Transportation Concurrency Management Program has been satisfied and that sufficient road capacity exists for the proposal.

6. Island Transit has yet to adopt a comprehensive plan which fulfills the requirements of Section 11.05.040.03.C ICC. Therefore, transit stops are presumed to be adequate to serve the subject proposal to the provisions contained in Section 11.05.040.D.2 ICC.

E. **Agriculture and Forestry Protection, ICC 16.25.** The subject site is situated within 500 feet of property that is zoned Rural Forest, Rural Agriculture or Commercial Agriculture or lands designated as mineral resource lands. The requirements of Chapter 16.25.040 ICC, therefore, apply to the proposal.

F. **SEPA Review.** A Notice that a SEPA Threshold Determination of Non-Significance would likely be issued on the proposal was issued on August 22, 2007. Island County issued a Determination of Non-Significance on July 8, 2008 under WAC 197-11-340. No appeals were filed with this office.

4. **Agency Comments**

   a. The Island County Public Works Department has no objection to the preliminary approval of this PRD. Comments and conditions for approval are provided in the attached memorandum from John Bertrand dated May 22, 2008.

   b. Island County Health Department has no objection to the preliminary approval of this PRD. Comments and Conditions of approval are provided in the attached memorandum from Aneta Hupfauer dated June 5, 2008.

   c. The Planning and Community Development Department’s critical areas planner has no objection to preliminary approval of this PRD. Comments and Conditions of approval are provided in the attached memorandum from Justin Craven dated July 2, 2008.
5. Public Comments

This office received 9 public comments regarding the Planned Residential Developments being proposed. The majority of these comments stressed concern over the preservation of trails throughout the properties. Other concerns presented regarded 1) moratoriums on some of the parcels, 2) the source of water (the Freeland Water District) expansion, 3) the estimated impervious surface area listed in the Drainage Narrative for each lot, 4) the impacts a road crossing through a wetland buffer will have, 5) the impact this development will have on local roads (namely S.R. 525), 6) the potential for undersizing stormwater management facilities, 7) cumulative impacts of all proposals taken together, as well as future proposals already in early planning.

ANALYSIS

1. Roads in Open Space:

Review of this PRD 345/07 occurred in conjunction with four (4) other PRD applications (274/07, 275/07, 276/07, and 277/07). All five (5) PRDs are contiguous to each other. As far as staff could find, these five (5) PRDs are the first PRD applications for parcels zoned Rural Forest since the adoption of the Island County Code in 1998.

A dilemma that presented itself early on in the review process of these PRDs was the issue of having roads within the designated Open Space. Initially, staff referred to historical PRD applications to find an answer as to whether or not roads have ever been allowed in Open Space. Staff could not find an example of a PRD where a road was in an area that was designated as Open Space.

Based on the definition of Open Space per ICC 17.03.040 staff originally determined that roads could not be within areas designated as Open Space. Though the definition does not explicitly exclude roads, the description of what is allowed in Open Space does not appear to include roads. Under this determination roads would be required to be counted toward the Lot Area. In response to this determination, the applicants pointed out that if the road area were required to be subtracted from the available lot area they would not be left with viable lot sizes.

Staff then considered that for PRD 274/07 the applicants have 7.5 acres to work with (15% of the 50 acre parcel) and approximately 6.35 acres of that area was proposed to be road area. This left only 1.15 acres to be divided among 10 separate lots. It was also considered that the length of the roads was necessary to develop as far away from the wetlands as possible. The applicants and staff then explored various ideas that might provide some relief to the 85% Open Space requirement but not take away from the fundamental concept of Open Space. Staff agreed with the applicants that in order to ensure that PRDs in the Rural Forest zone remain feasible, some relief was necessary.
Section 16.17.110 of ICC provides the ability to designate up to 15% of Open Space for Community Area within a PRD. Community Area allows specified portions of Open Space to be put to Uses that are otherwise not allowed within the general Open Space areas. Examples of such Uses allowed in Community Area are well sites, drain fields and recreational uses. In the same way that wells and drain fields are infrastructure that is necessary for residential development, staff finds that roads also constitute a form of infrastructure that is necessary and shared by the entire community.

Staff has hereby determined that for PRDs within the Rural Forest zone, private roads may be contained within the designated Community Area. This determination is based on the finding that the Comprehensive Plan establishes a preference for cluster development over traditional subdivisions. Additionally, the minimum Open Space requirement for PRDs within the Rural Forest zone, coupled with the requirement of using Lot Area for roads, would likely deter landowners from developing Rural Forest land into cluster developments.

For PRD 345/07 a large part of the Community Area is devoted to a 1.2 acre Community Area tract located to the east of the lots. No specific development improvements are proposed within this tract, however, the future intended use is anticipated to generally be an open lawn area with picnic tables, fire pits/BBQ areas, and children’s play area. This type of community recreation is consistent with section 16.17.110 ICC.

2. Public Comments:

The primary concern that seemed to be mentioned in the comments that were received regarded the preservation of public horse trails within the Open Space of the proposed PRDs. Since the property involved in PRDs 274/08, 275/08, 276/08, 277/08, and 345/08 is all privately owned, it is the landowner’s decision how the Open Space is to be utilized, as long as the Uses are permissible by Island County Code. That being said, the applicants have indicated that the trails will likely remain for equestrian uses.

Another concern that was mentioned in the public comments was that the expansion of the Freeland Water District boundaries has not been finalized. For preliminary approval of a PRD it is only necessary to provide evidence that there is an available source of water. The Freeland Water District has provided a letter of commitment for 12 connections to the proposal. The PRD will not receive final approval until the Freeland Water District expands to include the PRD area or until an alternative source of water is approved. It is important to point out that there are other alternative water sources for this PRD. For instance, the applicant could propose individual or group wells or establish an entirely new water system. It is staff’s opinion that the proposed source of water would have the least amount of impact on the environment.
3. **Lot Line Adjustments:**

Instead of the traditional PRD applications that involve the division of a single parcel, this PRD involves the division of several, 10 acre pieces, into small clustered lots. Additionally, the PRD boundary does not follow along existing boundary lines. This could potentially result in the creation of remainder parcels that are less than 10 acres.

Since Boundary Line Adjustments and Lot Combinations are Type I Decisions and this PRD application follows the Type III Decision process, staff determined that it was not necessary to require the applicant to first combine the lots and then go through the Boundary Line Adjustment application process. Instead the Preliminary Planned Residential Development process can effectively combine the lots and adjust the boundary lines of the PRDs so that the requirements set forth in ICC 16.17 and 17.03 may be met.

The applicants have provided a Master Plan map that shows the current parcel configuration as well as the PRD configuration that will result from approval of this PRD application. Five remainder parcels will be created from the adjustment of lot lines for each of the five PRDs (274/07, 275/07, 276/07, 277/07, and 345/07) and each of the remainder parcels will be larger than 10 acres, as required by ICC 17.03.110.

4. **Density Bonus:**

This particular PRD is unusual because the Bonus Density (3 dwelling units) is greater than the Base Density itself (2 dwelling units). At first staff struggled with this concept because ICC 17.03.180.E indicates that for PRDs in the Rural Forest zone there shall be a maximum Bonus Density of 100%. However, upon further consideration staff determined that the 100% figure was intended as a variable to be plugged into the equation provided in subsection 17.03.180.E.6 of ICC. Additionally, subsection 17.03.180.E.5 of ICC explains that the PRD Bonus Density shall be calculated based on the amount of Open Space with fractional units rounded upward. Since the equation takes into consideration the Maximum Permitted Bonus in percent, and the Code stipulates that fractional units shall be round up, it is reasonable to assume that in some cases, the Bonus Density will be slightly larger than the Base Density.

**CONCLUSIONS**

1. The staff of Island County Health, Engineering, and Planning and Community Development evaluated the proposed project for compliance with Titles 11, 8, 13, and 17 and with Chapters 16.06, 16.14C, 16.17 and 16.19 of the Island County Code. Other county and/or state agencies were consulted as appropriate. Health Department comments and requirements are described in the memorandum from Aneta Hupfauer, dated June 5, 2008. Public Works comments and requirements are described in the memorandum from John Bertrand, dated May 22, 2008. Comments and requirements regarding Critical Areas are described in the attached memorandum from Justin
Craven dated July 2, 2008. Other Planning and Community Development comments and requirements are described in this Staff Report.

i. A Determination of Consistency was performed according to ICC 16.19.100. Upon conformance with the conditions of approval, the proposed PRD will be consistent with the adopted Island County standards for lot size, density, land use, roads, drainage facilities, proposed method of waste disposal and system of water supply as required.

ii. A check for Adequacy was performed according to ICC 11.05. Appropriate provisions have been made for specified public facilities and the proposal complies with the adopted level of service standards for drainage ways, community parks, potable water supplies, sanitary waste disposal, schools, streets and transit stops.

iii. Upon conformance with the conditions of approval, the proposed PRD will conform to the requirements of Chapters 16.06, 16.04, and 16.17 ICC and Chapter 58.17 RCW.

**RECOMMENDATION**

Based on the foregoing Findings, Analysis and Conclusions, the Planning and Community Development recommends approval of the Preliminary Planned Residential Development, PRD 345/07, submitted on behalf of Dogwood Whidbey Development, LLC., proposing to develop eleven parcels (R23032-167-2360, R23032-100-2350, R23032-033-2340, R23032-168-3030, R23032-100-3010, R23032-033-2990) totaling 24 acres into 5 residential lots, and 85% of the parcel into Open Space, subject to the following conditions:

35. Compliance with Island County Public Works requirements as specified in the attached comments and conditions dated May 22, 2008.

36. Compliance with Island County Health Department requirements as specified in the attached comments and conditions dated June 5, 2008.

37. Prior to final PRD approval, the covenants establishing a homeowners’ association shall be recorded with the Island County Auditor’s Office. The covenants must outline how the common Open Space areas are to be maintained by the homeowners’ association. Membership in the association and dues or other assessment for maintenance purposes shall be mandatory.

38. There is a Rural Forest zoned parcel located within 500 feet of the subject parcel; therefore, compliance with the provisions of ICC 16.25.040 is required. The following declaration must appear on the face of the final short plat.
“Applicant and Applicant’s heirs, legal representatives, assigns, and lessees, hereby acknowledge and agree to accept by the placement of this notice, and the acceptance and recording of this instrument, that 1) The property herein described is situated within five hundred (500) feet of agricultural, forest land, or a surface mining operation, or lands designated mineral lands of long term commercial significance; 2) A variety of commercial activities may occur on these lands that are not compatible with residential development for certain periods of limited duration, and therefore the property may be subject to noise, dust, smoke and odors resulting from harvest, planting, fertilization, waste disposal and pest control associated with permitted agricultural, surface mining or forest practices; 3) For mineral lands these activities may include mining, extraction, screening, washing, crushing, stockpiling, blasting, transporting and recycling of minerals; and 4) These practices, when performed in accordance with County, State and Federal law, shall not be subject to legal action as a public nuisance unless the activity has a substantial adverse effect on the public health and safety. By the recording of this notice, the County does not intend to affect or impair any right to sue for damages under new RCW 7.48.305.

39. The project shall be constructed with a 24-inch deep infiltration trench along internal roads, as proposed.

40. All buffers and wetlands shall be clearly flagged where any work will occur within 50 feet of a buffer or any wetland to prevent accidental intrusion during site work.

41. A silt fence shall be installed along all clearing limits within 25 feet of any critical area buffer.

42. BMP’s shall be installed and maintained to prevent the transport of sediment from the work area into any wetland, stream, or associated buffer.

43. Vehicular barriers shall be installed in existing roads crossing critical areas or the associated buffers that are not to be used for vehicular traffic.

44. Project construction shall maintain strict conformity to the approved plans, unless modified by this Department.

45. All plant species in rain gardens shall be native and approved by this department prior to installation.

46. If rain gardens and bioswales are not maintained, a redesign may be required.

47. Rain gardens shall not disturb or result in channelization of a buffer.

48. All rain gardens shall be located outside of any critical area buffer.
49. All restoration areas and mitigation that involves planting require a monitoring report to be submitted to this Department yearly; additional monitoring and planting will be required if the success standards are not met.

50. Prior to final PRD approval, all site and off-site improvements required as a condition of preliminary approval shall be complete, OR, at the discretion of the Board of Island County Commissioners by recommendation of the Planning Director and County Engineer shall be bonded for.

51. All utilities installed on-site shall be underground.

52. All proposed development shall comply with the state noise ordinance, air pollution control regulations, water quality standards, and all other pertinent codes and ordinances.

53. Prior to submittal of the Final PRD application, obtain approval of (1) a Private Road Name Petition (attached) and (2) individual addresses for the proposed lots. Pursuant to ICC 14.04, RCW 58.17.280, Ordinance #C-32-96, the addresses must appear on the final PRD map and the following standards for posting the address must be followed:

The property owner shall post the address in a manner that it can be read from the public or private road accessing the addressed property and provide adequate identification of the addressed property in accordance with the following. Addresses shall be posted on the addressed building, with one-half inch (1/2") channel numerals at least five inches (5") in height, in colors contrasting with the background in such manner and location as to be clearly visible from the road. In instances where the main building’s posted address is not clearly visible from the road, house numbers shall be visibly posted at one location at a height between four feet (4’) and eight feet (8’) from road level and anywhere within an arc of 30 feet from the point of intersection of the driveway with the access road, with numerals at least three inches (3") high on a contrasting background and visible when traveling in either direction.

54. On the face of the final map, please clearly define the areas dedicated to open space.

55. In addition to the standard final map requirements, the following shall also appear on the face of the final plat:

   C. The complete plat number and existing parcel number must appear at the top right corner of each sheet of the final plat as follows: PLANNED RESIDENTIAL DEVELOPMENT NO. PRD 345/07.R23032-167-2360, R23032-100-2350, R23032-033-2340, R23032-168-3030, R23032-100-3010, R23032-033-2990.
   
   D. The name of the Planned Residential Development: The Estates at Whidbey V.

56. The following shall appear under Restrictions on the final PRD:
“This PRD herein shown shall be limited to the number of lots proposed; no further subdivision within the PRD shall be allowed.”

57. The following shall appear under **Restrictions** on the final PRD:

“The Open Space is to be left in its undisturbed natural state, except for those portions designated Community Area and the removal of dead or dying trees that are an immediate threat to fall on power lines, a building or other improvement. The only clearing onsite shall consist of the clearing of the interior lots, lots 1-5, and the area designated as Community Area.”

58. The following shall appear under **Restrictions** on the final PRD:

“All future trails constructed within the designated Open Space areas are restricted to pedestrian/equestrian use only; no motorized vehicles allowed, except for maintenance purposes only. Maximum width of trails shall be 5 feet and they shall be pervious.”

59. The following shall appear under **Restrictions** on the final PRD:

“During all installation, maintenance, or repair of drain fields and/or well sites in the Open Space, the only clearing, cutting, or removal of vegetation shall be within an area which is the minimum needed to meet Island County Health Department requirements. All other vegetation must remain and meet the Open Space restrictions as noted herein. No clearing, cutting, or removal of vegetation outside the drain field area shall be allowed.”

60. The following shall appear under **Restrictions** on the final PRD:

“Minimum building setbacks shall be as follows: The interior lots 1 through 12 shall have a minimum building setback of twenty (20) feet from the local access road that serves these lots and a minimum building setback of five (5) feet from each lot boundary. No variances shall be granted to place structures within these setbacks.”

61. Lighting fixtures shall be shielded, hooded and oriented towards the ground so that direct rays of light from the lighting sources are not visible past the property boundaries.

62. All requirements shall be completed and the Final PRD Mylar must be recorded within five (5) years from the date of this approval.

63. All requirements for Final PRD approval required in ICC 16.06.120 & 130 shall be met. The final PRD shall be consistent with the approved preliminary PRD as modified by conditions of preliminary approval listed in this section.
64. The above requirements are subject to change if proposed lot sizes, the parcel size or any other information provided by the applicant or their authorized representatives proves inaccurate.

65. The total of all property taxes for the year in which the PRD is to receive final approval and any delinquent assessments for which the property may be liable shall be paid in full to the Island County Treasurer prior to the recording of the final PRD.

66. Upon completion of the above requirements, the applicant shall submit:

   i. The original Final PRD application and all required materials, along with three copies.
   ii. An original, complete Certificate of Title formatted to meet the Washington State Recording requirements dated no earlier than 30 days prior to submittal.
   iii. Four paper copies of the proposed final PRD.
   iv. A signed and notarized statement by the owner that all conditions of preliminary approval have been met.
   v. Established application fees for a Final PRD application.

   Note: The information shall be collated into four, separate, identical packages each to include the above listed items.

67. On the final mylar, ALL certification stamps and signatures must be in permanent black ink.

68. The Island County Auditor will only accept the following for recording:

   Sheet size must be 24 x 18 inches. Borders must be 2 inches on the left edge and ½ inch on the top, bottom, and right edges. If any part of a signature, seal, drawing, or any other mark is located in the required borders, the Auditor’s Office will not accept the plat for recording.

This Staff Report and Recommendation was prepared by:

Andrew Hicks, Associate Planner August 25, 2008

Enclosure:
Memorandum from Island County Public Works Department, dated June 5, 2008
Memorandum from Island County Health Department, dated May 22, 2008
Comments from Critical Areas Planner, Justin Craven, dated 2, 2008
PRD Maps, Master Plan

cc: Applicant
Aneta Hupfauer, Island County Health Department
John Bertrand, Island County Public Works Department
Michael Bobbink, Hearing Examiner
Parties-of-Record
File PRD 345/07