



COUNTY COMMISSIONERS

Cathy Wolfe  
District One

Sandra Romero  
District Two

Bud Blake  
District Three

**HEARING EXAMINER**

*Creating Solutions for Our Future*

**BEFORE THE THURSTON COUNTY  
HEARING EXAMINER**

|   |   |   |
|---|---|---|
| In the Matter of the Appeals of           | ) | SEPA Appeals 09-109566XA/                         |
|   | ) | 09-109558ZL                                       |
| <b>McAllister Park Homeowners Assoc.,</b> | ) |   |
| <b>Appellant</b>                          | ) |   |
| and                                       | ) | (Corrected for scrivener's errors on May 5, 2015) |
| <b>Oak Tree Preserve LLC, Applicant</b>   | ) |   |
|   | ) |   |
| of the December 2, 2014 MDNS              | ) |   |
| for SEPA 09-109566XA                      | ) |   |
|   | ) |   |
| and the Application of                    | ) | Project No. 09-103087                             |
|   | ) |   |
| <b>Oak Tree Preserve LLC, Applicant</b>   | ) |   |
|   | ) |   |
| <u>for Preliminary Plat</u>               | ) |   |

**SUMMARY OF DECISIONS<sup>1</sup>**

On the record, Appellants McAllister Park Homeowners Association and Oak Tree Preserve LLC each withdrew their appeals of the MDNS. Both appeals are dismissed.

The requested preliminary plat subdividing 258.5 acres into 1,037 single-family residential lots and multiple tracks for stormwater management, oak tree habitat preservation, parks, open space, alleys, and landscaping is **APPROVED** subject to conditions.

**SUMMARY OF RECORD**

**Request**

Oak Tree Preserve LLC (Applicant) requested approval of forestland conversion and preliminary plat applications to subdivide 258.5 acres into 1,037 single-family residential lots and multiple tracks for stormwater management, oak tree habitat preservation, parks, open space, alleys, and landscaping. The subject property is located in the Lacey urban growth area.

<sup>1</sup> The Decision was reissued May 5, 2015 with three scrivener error corrections. See Note on page 2.

McAllister Park Homeowners Association and Applicant Oak Tree Preserve LLC both timely appealed the March 5, 2015 MDNS issued by Thurston County Resource Stewardship Department in review of the proposal for compliance with the requirements of the State Environmental Policy Act.

The three items were consolidated for a single open-record hearing.

### **Hearing Date**

The Thurston County Hearing Examiner conducted an open record public hearing on the request on March 23 and 24, 2015. At the outset of the hearing, both Appellants withdrew their appeals. Only the plat application was considered at hearing. At the conclusion of proceedings, the record was held open for submission of post-hearing information consistent with the post-hearing order issued March 25, 2015 (Exhibit P11).

*Note:* After decision issuance on April 24, 2015, the Applicant requested correction of scrivener's errors on May 4, 2015. The requested corrections involved a single word or single number change to Findings 15, 21, and 41. The three requested changes were consistent with the record and were made on May 5, 2015 without amendment of reconsideration or appeal deadlines. The emailed request for corrections was made Exhibit O37.

### **Testimony**

At the open record public hearing, the following individuals presented testimony under oath:

#### *Thurston County:*

Robert Smith, Senior Planner, Thurston County Resource Stewardship  
Arthur Saint, PE, Civil Engineer, Thurston County Public Works  
Scott Davis, PE, Traffic Engineering and Operations Manager, Thurston Co. Public Works  
Brad Sangston, Environmental Health Specialist II, Thurston County Environmental Health

#### *Appellant:*

Mark Quinn, McAllister Park Homeowners Association

#### *Applicant:*

Kevin O'Brien, Applicant  
Jeff Pantier, Hatton Godat Pantier  
Steve Hatton, Hatton Godat Pantier  
Chris Wheller, Riley Group  
Curtis Wambach, Envirovector  
Sara Noland, ESA  
Jeff Schramm, TENW

#### *Public Comment:*

Theresa Nation, Department of Fish and Wildlife  
Alex Broman  
James W. Robertson

Michael Brummer  
Thomas Cofield  
Liz Lyman  
Ron Fuller  
Paula Strain  
Pamela Warner  
Doug Kurman  
Elizabeth Rodrick, Black Hills Audubon Society  
Arthur Scholes  
Liz Kohlenberg  
Duke Jackson Newton  
Gregory Hamblin  
Janine Unsoeld, SPEECH  
Jeff Heard  
Felicia Carroll  
William Koopman  
Rosaria Cofield  
Karl Tschimperle  
Lorna Stewart

**Attorney Representation**

- Appellant McAllister Park HOA was represented by J. Richard Aramburu.
- Applicant/Appellant Oak Tree Preserve LLC was represented by Patrick Mullaney.
- Thurston County was represented by Rick Peters, Deputy Prosecuting Attorney.

**Exhibits**

At the open record public hearing, the following exhibits were admitted into the record:

EXHIBIT C1 Resource Stewardship Staff Report, including the following attachments:

- Attachment a Notice of Public Hearing
- Attachment b Zoning/Site Map
- Attachment c Revised Master Application, received May 8, 2014
- Attachment d Revised Division of Land Application, received May 8, 2014
- Attachment e Revised Forest Land Conversion Application, received May 8, 2014
- Attachment f Narrative Summary, dated September 17, 2014
- Attachment g Preliminary Plat Map, Received September 19, 2014

- Attachment h Notice of Application, dated December 16, 2009
- Attachment i Mitigated Determination of Non-Significance, issued December 2, 2014
- Attachment j February 25, 2015 Comment Memorandum from Arthur Saint of the Public Works Department
- Attachment k August 25, 2014 Comment Letter from Brad Sangston of the Environmental Health Department
- Attachment l January 6, 2010 Comment Memorandum from Ryan Andrews with the City of Lacey
- Attachment m August 25, 2014 Letter from Tom Stiles with the City of Lacey
- Attachment n July 30, 2014 Letter from Mike Laverty of the North Thurston School District
- Attachment o June 20, 2014 Letter from the Washington State Department of Ecology
- Attachment p Thurston County Permitting System Policies & Procedures, policy ZONE.POL.801.05, UGA Residential Screening, dated August 30, 2005
- Attachment q Mazama Pocket Gopher Clearance Letter from the US Fish and Wildlife Service, dated August 29, 2014
- Attachment r Map Illustrating Safe Walking Route Improvement Location
- Attachment s March 3, 2015 Comment Memorandum from Arthur Saint of the Thurston County Public Works Department (regarding SEPA appeal issues)

- EXHIBIT C2 Traffic Impact Analysis, TENW, dated April 29, 2014
- EXHIBIT C3 Addendum to Traffic Impact Analysis, TENW, dated November 6, 2014
- EXHIBIT C4 Revised Environmental Checklist, received May 8, 2014
- EXHIBIT C5 Agreed Conditions Resolving McAllister Park Homeowner Associations SEPA Appeal, including graphic attachment (two pages)

- EXHIBIT C6 Oregon White Oak Habitat Management Plan, Environmental Science Associates (ESA), dated March 2014
- EXHIBIT C7 Public Comments (137 in total) received prior to hearing or by email prior to close of record (See Appendix A for complete list)
- EXHIBIT C8 Eight Color Photos of Public Hearing Notice Posting On Site
- EXHIBIT C9 Department of Fish and Wildlife SEPA Comment, December 16, 2014
- EXHIBIT C10 Recorded Voluntary Mitigation Agreement by and Between Oak Tree Preserve LLC and North Thurston Public Schools, recorded January 7, 2015
- EXHIBIT C11 Integrated Pest Management Plan, April 11, 2014
- EXHIBIT C12 Gopher Evaluation Summary Report, August 16, 2010
- EXHIBIT C13 Prairie Plant Evaluation, April 8, 2014
- EXHIBIT C14 Supplementary Drainage Information, Hatton Godat Pantier, January 20, 2015
- EXHIBIT C15 Preliminary Drainage and Erosion Control Report, April 12, 2014
- EXHIBIT C16 Resolution No. 14820, December 11, 2012
- EXHIBIT C17 Thurston County Code 17.15. Parts 200, 300, 400, 500 and 700 in effect in 2009, and Ordinance No. 14260, July 28, 2009
- EXHIBIT C18 GeoData Map Titled McAllister Geologically Sensitive Area
- EXHIBIT C19 Color Preliminary Plat of Oak Tree Preserve Site Plan, February 2014
- EXHIBIT C20 Oak Preserve Plat Summary, March 20, 2015
- EXHIBIT C21 Oak Tree Preserve Revised Department Recommended Conditions of Approval
- EXHIBIT C22 Groundwater Monitoring Summary, Riley Group, March 20, 2015
- EXHIBIT C23 Limited Shallow Soil Testing Investigation, August 21, 2014
- EXHIBIT C24 Full Size Preliminary Engineering Plan Set, April 2014
- EXHIBIT C25 Traffic Mitigation Projects required by the MDNS

- EXHIBIT C26 Comments from Theresa Nation, Department of Fish and Wildlife, March 23, 2015
- EXHIBIT C27 Email from Dave Hays, Department of Fish and Wildlife Comments on Environmental Assessment Process, March 14, 2012
- EXHIBIT C28 Written Comments received during public hearing, March 24, 2015 (See Appendix B)
- EXHIBIT C29 North Thurston Public Schools Map showing Nisqually Middle School and River Ridge High School Boundaries, October 31, 2008
- EXHIBIT C30 Preliminary Plat Map Oak Preserve Option “C”, November 2009
- EXHIBIT C31 Preliminary Plat Map Oak Preserve Option “C”, Meeting with DFW et al, May 2, 2013
- EXHIBIT C32 Oak Tree Preserve History of Oak Habitat Planning, Hatton Godat Pantier
- EXHIBIT C33 Department of Fish and Wildlife Publication titled “Management Recommendations for Washington’s Priority Habitats, Oregon White Oak Woodlands”, January 1998
- EXHIBIT C34 Email from J. Richard Aramburu regarding agreed conditions of approval resolving McAllister Park Homeowners’ Association SEPA Appeal, March 24, 2015
- EXHIBIT C35 Post-Hearing Public Comments (See Appendix C)
- EXHIBIT C36 Memorandum from Rick Peters, Deputy Prosecuting Attorney, re: Project 2009103087, Oak Preserve, Legal analysis of County’s obligations to preserve oak trees vs. obligations under RCW 82.02.020, April 8, 2015
- EXHIBIT C37 Memorandum from Arthur Saint, P.E., Public Works, re: Public hearing testimony and comments, April 9, 2015
- EXHIBIT C38 Memorandum from Robert Smith, Resource Stewardship, re: Project 2009103087, Oak Preserve, Chronology of review with WDFW, April 8, 2015
- EXHIBIT C39 Memorandum from Robert Smith Resource Stewardship, re: Project 2009103087, Oak Preserve, Intercity Transit comments, April 8, 2015
- EXHIBIT C40 Memorandum from Brad Sangston, Environmental Health, re: Project 2009103087, Oak Preserve Preliminary Plat Subdivision Application, April 8, 2015

- EXHIBIT C41 Memorandum from Arthur Saint, P.E., re: Revised Condition No. 1, April 15, 2015
- EXHIBIT O-01 City of Lacey 2030 Transportation Plan, December 2012
- EXHIBIT O-02 Thurston County Regional Planning Council (TRPC) 2025 Regional Transportation Plan, May 2004
- EXHIBIT O-03 Thurston County Road Standards, January 1999
- EXHIBIT O-04 Thurston County Capital Facilities Plan (TFP) 2014-2019
- EXHIBIT O-05 Thurston County Transportation Improvement Program (TIP) 2014-2019, November 15, 2013
- EXHIBIT O-06 Thurston County Transportation Impact Fee Program, April 2012
- EXHIBIT O-07 Thurston County Transportation Impact Analysis (TIA) Guidelines
- EXHIBIT O-08 Level 1 Traffic Scoping Letter, November 12, 2009
- EXHIBIT O-09 Thurston County Memo with Traffic Scope Comments, May 11, 2011
- EXHIBIT O-10 TENW Transportation Impact Analysis, April 29, 2014
- EXHIBIT O-11 City of Lacey TIA Review Comments Letter, October 13, 2014
- EXHIBIT O-12 TENW TIA Addendum, November 6, 2014
- EXHIBIT O-13 TENW Exhibit of Proposed Traffic Mitigations, May 22, 2014
- EXHIBIT O-14 Mullen Road Improvement Grant Approval, May 6, 2014
- EXHIBIT O-15 Oak Springs TIA (Heath), November 2013
- EXHIBIT O-16 Email from Scott Davis re: McAllister Traffic Calming, September 9, 2014
- EXHIBIT O-17 McAllister Park Traffic Calming Document from Thurston County, October 31, 2008
- EXHIBIT O-18 Commissioner Romero Breakfast Notice, October 13, 2014
- EXHIBIT O-19 Attachments – Maps with Letter dated September 18, 2014

- EXHIBIT O-20 Intercity Transit System Maps
- EXHIBIT O-21 Letter to Robert Smith re: Updated Wetland & Squirrel Reports, March 3, 2015
- EXHIBIT O-22 Letter to Robert Smith Requesting Extensions, March 6, 2015
- EXHIBIT O-23 NTPS Mitigation Agreement, December 31, 2014
- EXHIBIT O-24 Oak Preserve Squirrel Study Report, February 4, 2015
- EXHIBIT O-25 Oak Preserve Wetland Report (January 4, 2015) Revised March 2, 2015
- EXHIBIT O-26 Ordinance Ch. 17.10 Transportation Facilities Concurrency Management System
- EXHIBIT O-27 Ordinance Ch. 24.25 Fish & Wildlife Habitat
- EXHIBIT O-28 Response Letter to Robert Smith re: MDNS, December 9, 2014
- EXHIBIT O-29 Response Letter to Robert Smith, September 18, 2014
- EXHIBIT O-30 Response Letter to Robert Smith re: East Pond Design, January 20, 2015
- EXHIBIT O-31 Revised Narrative Summary, September 17, 2014
- EXHIBIT O-32 Project Description
- EXHIBIT O-33 TENW Exhibit of Proposed Traffic Mitigations (reduced file size)
- EXHIBIT O-34 Applicant Oak Tree Preserve LLC's Post-Hearing Memorandum, April 10, 2015
- EXHIBIT O-35 Applicant's Response to Post Hearing Comments, including the following:
- a. Response to Public Comments on Oregon White Oak Habitat Management Plan, Oak Tree Preserve Project, Thurston County Washington, Prepared by ESA, April 9, 2015;
  - b. Response to Hearing Comments, Curtis Wambach, M.S., Envirovector, April 8, 2015
  - c. Oak Preserve Plat Summary, Jeff Pantier, March 20, 2015
  - d. Response to Post-Hearing Comments re: Stormwater Management and Aquifer Protection, Steve Hatton, Hatton Godat Pantier, April 7, 2015
  - e. Response to Post-Hearing Comments, Kristina M. Weller, P.E., Riley Group;



f. Memorandum from Jeff Schramm, TENW, April 9, 2015

EXHIBIT O-36 Declaration of Kevin Taylor, April 10, 2015, including the following attachments:

- a. Project 2005102877 Cantergrove at Long Lake Thurston County Hearing Examiner Decision, March 27, 2007, and Project 2005102875 Townhouses at Long Lake Thurston County Hearing Examiner Decision, June 26, 2007
- b. Letter from Gloria Rogers, Department of Fish and Wildlife, regarding Freestone Ridge Oak Habitat Management Plan, April 22, 2013
- c. Email from Jeff Pantier to Mark Swartout, June 24, 2011

EXHIBIT O37 May 4, 2015 request for correction of scrivener's error submitted, by the Applicant

Also included in the record of this matter are the following pre-hearing motions, responses, and rulings related to the SEPA appeals prior to withdrawal and the March 25, 2015 post-hearing order, included as procedural exhibits because the information therein is relevant to the disposition of the plat application:

- P(procedural)1 Pre-Hearing Conference Order Setting Schedule, January 6, 2015
- P2 McAllister Park Homeowners Association Motion to Dismiss, January 16, 2015, with Erratum and five attached exhibits
- P3 Oak Tree Preserve LLC's Opposition to Motion to Dismiss, February 4, 2015, with attached declarations of Jeff Pantier and Kevin O'Brien
- P4 McAllister Park Homeowners Association Reply, February 9, 2015, with attached Sangston email and Quinn declaration
- P5 Order denying McAllister Park's motion to dismiss, February 12, 2015
- P6 Oak Tree Preserve LLC's Motion to Dismiss, February 17, 2015, with appendices A through D
- P7 McAllister Park Homeowners Association Response to motion to dismiss, February 23, 2015, with two attachments
- P8 Oak Tree Preserve LLC's reply, February 27, 2015
- P9 Order Granting Applicant's Motion to Dismiss, March 4, 2015
- P10 Order Amending Pre-Hearing Submission Schedule, February 18, 2015

Upon consideration of the testimony, exhibits, and argument admitted in the record, the Hearing Examiner enters the following findings and conclusions:

### FINDINGS

#### *SEPA Appeal Disposition*

1. Oak Tree Preserve LLC (Applicant) requested approval of preliminary plat and forestland conversation applications to allow subdivision of 258.5 acres into 1,037 single-family residential lots and multiple tracks for stormwater management, oak tree habitat preservation, parks, open space, alleys, and landscaping. McAllister Park Homeowners Association (Appellant) and the Applicant both timely appealed the March 5, 2015 MDNS issued by Thurston County Resource Stewardship Department in review of the proposal for compliance with the requirements of the State Environmental Policy Act (SEPA). The three items were consolidated for a single open-record hearing. *Exhibit C1, Attachments A, B, C, D, E, F, G, H, and I; Exhibit P1.*
2. Consistent with the pre-hearing order, Appellant McAllister Park HOA submitted a motion to dismiss the application and environmental review for lapse of the 2009 application and/or inadequacy of the notice of application issued by the County. This motion was denied. *Exhibits P1, P2, P3, P4, and P5.*
3. The Appellant's appeal asserted that impacts to area traffic, Oregon white oak habitat, and stormwater drainage had not been adequately addressed in the County's threshold determination. The HOA asserted that the subdivision would create significant adverse environmental impacts and requested that an Environmental Impact Statement (EIS) be required for the proposal. A pre-hearing motion by the Applicant to dismiss the oak habitat and stormwater issues for lack of standing was granted by the Hearing Examiner on March 4, 2015 because the Appellant's arguments failed to show the required injury in fact. *Exhibits P1, P6, P7, P8, and P9.*
4. The Applicant's appeal challenged MDNS conditions 2 and 3, which address testing and possible Applicant cleanup of soil contamination related to the former Asarco smelter in Tacoma. The appeal asserted that the two conditions are unlawful to the extent they impose requirements on the Applicant that exceed state law. *Exhibit C1.*
5. As of the commencement of the March 23rd hearing, after pre-hearing motions and rulings following the January 6, 2015 pre-hearing conference, SEPA appeal issues were limited to the following: for the Appellant, traffic impacts and for the Applicant, conditions related to clean up of possible soil contamination. *Exhibits P1, P2, P3, P4, P5, P6, P7, P8, P9, and P10.*
6. At the outset of the Appellant's SEPA appeal hearing, counsel for the Appellant McAllister Homeowners Association withdrew the appeal based on stipulated conditions agreed to between the Applicant and the Appellant addressing traffic calming measures, the nature and timing of specific traffic improvements to be constructed with the plat, and

increasing the screening buffer between the proposal and adjacent large lot single-family residential development from 20 to 25 feet in width. In exchange for adding these agreed conditions to the plat, if approved, and striking MDNS mitigation measure 13, the Appellant withdrew its appeal. Thurston County accepted the agreed conditions and agreed to strike MDNS condition 13. *Exhibits C5 and C34; Aramburu Comments; Peters Comments; Mullaney Comments.*

7. Subsequently, the Applicant also withdrew its appeal of MDNS conditions 2 and 3 at the outset of proceedings. *Mullaney Comments; O'Brien Testimony.*

#### *Application Background, Zoning, and Site Description*

8. The applications for the instant preliminary plat and conversion of 177.2 acres of forestland were submitted on November 13, 2009 by a previous property owner/Applicant. At the time the project was called Freestone Ridge, and it proposed to create 1,186 lots containing 938 detached units and 230 attached townhome units. The plat application was deemed complete for purposes of beginning project review on December 10, 2009. *TCC 18.10.030.C.3; Exhibit C1, Attachment H.*
9. On September 28, 2012, Oak Tree Preserve LLC (the Applicant) purchased the property and assumed ownership and control of the development application then under review; the project was renamed Oak Tree Preserve. In furthering the process of project review, the Applicant met with the County and Washington State Department of Wildlife staff several times over the course of the following year to discuss requirements relating to on-site oak woodlands. At the County's request, the Applicant submitted revised application forms for preliminary plat and forestland conversion on May 8, 2014 reflecting the new owner and revised project information that had developed over the course of project review since vesting as the Applicant responded to all County requests for information. The new information submitted included a revised plat map that incorporated County revision comments by setting aside more oak habitat than had initially been proposed, resulting in fewer proposed lots (1,037) and the present amended layout eliminating all attached residential units. The revised application is considered an updated application rather than a new application.<sup>2</sup> *Exhibit C1; Smith Testimony; Exhibit C1, Attachments C, D, E, F, and G; Exhibits C19 and C20.*
10. The property subject to the request for preliminary plat is located on the east side of Marvin Road SE generally at 3346 Marvin Road, bordered by the Burlington Northern Railroad on the south and the McAllister park subdivision on the north.<sup>3</sup>

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<sup>2</sup> In pre-hearing dispositive motions, Appellant McAllister Park HOA challenged the validity of the vesting of the revised application and the adequacy of original notice of application in the face of the revision. This challenge was denied in a pre-hearing ruling. The Examiner notes that Appellant's challenge to the application vesting/notice issue was dropped when Appellant's SEPA appeal was withdrawn. *Exhibits P2, P3, P4, and P5.*

<sup>3</sup> The legal description of the subject property is Tract B of Boundary Line Adjustment BLA-1443, the Northeast Quarter of Section 25, Township 18 North, Range 1 West, and a portion of the Southeast Quarter of Section 25, Township 18 North, Range 1 West, W.M.; known as Tax Parcel Numbers 11825410100, 11825310000,

Topographically, the northern part of the site includes an escarpment with steep slopes running diagonally southwest to northeast and also moderate to gentle southeasterly slopes. The northern portion of the property is forested with a mix of conifer species interspersed with deciduous species, primarily maple with areas of oak. The northern portion of the project site is undeveloped. The southern portion of the site gently slopes towards the south and contains oak woodlands and areas of pasture. The southern portion of the subject property is heavily grazed and developed with a single-family residence, accessory structures, a septic drainfield, and a water well, and it includes a power line easement running parallel to and set back from the southerly property line approximately 200 feet. All improvements related to the existing residence would be removed. The septic system would be abandoned and the well would be decommissioned consistent with State and County health standards. The power line easement would remain. *Exhibit C1; Exhibit C1, Attachments B, F, G, and K.*

11. Surrounding land uses consist of single-family residential subdivisions to the west and north; agricultural use (Thomsen farm) on residentially zoned property to the east; and the Burlington Northern Mainline railroad to the south. Further south of the railroad are additional single-family subdivisions. The adjacent subdivisions of Evergreen Estates to the west and McAllister Park to the north are comprised of lots approximately one-half acre in size. Lots in both subdivisions are served by on-site septic systems, which require more land area than lots served by municipal sewer. *Exhibit C1; Exhibit C19; Smith Testimony.*
12. The subject property is in the Lacey urban growth area (UGA). It has a Low Density Residential District Three to Six (LD 3-6) zoning classification and is designated Residential in the Thurston County Comprehensive Plan. The LD 3-6 zone allows single-family detached dwellings at densities between three and six units per acre. The proposed 1,037 lots on 258.5 acres would result in a density of 4.01 units per acre, consistent with the requirements of the zone. *Exhibit C1; Exhibit C1, Attachments B and E; Thurston County Code (TCC) 21.13.020.A.1.*
13. The LD 3-6 zone requires a minimum lot size of 4,500 square feet for detached single-family lots where access is from an alley and 5,000 square feet where access is from a street. *TCC 21.13.050.A.1.* The minimum required lot width for alley access is 40 feet and 50 feet with no alleys. *TCC 21.13.050.A.2.*
14. The property contains critical areas regulated by the Thurston County critical areas ordinance (CAO). These critical areas include oak habitat, potential habitat for native prairie species including the Mazama pocket gopher, and critical aquifer recharge areas including the McAllister geologically sensitive area. There is one wetland on-site that is too small to be regulated; it is therefore not a protected critical area. At the time the subject application vested in 2009, the CAO in effect was TCC Title 17.15, together with

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11825130100, 11825130200, 11825120100, 11825100000, 12825110100, 11825110000, 11825140200, and 11825140100. *Exhibit C1.*

interim ordinance No. 14260 (adopted on July 28, 2009) relating to native outwash prairies and Oregon white oak habitat. The drainage manual to which the application vested was the 1994 Thurston County Drainage Design and Erosion Control Manual (DDECM). *Exhibit C1; Exhibit C1, Attachments F and J; Exhibits C17 and C18.*

*Proposal*

15. The proposed subdivision would be built in ten phases (referred to as divisions on the plat map). All proposed lots would be developed with detached single-family residences. Some lots would be accessed from the street (front load lots) and some would take access from an alley on the rear line (rear load lots). The minimum proposed lot size is 4,500 square feet and 40 feet width for rear load lots and 5,000 square feet with 50 feet of front width for front load lots. The average proposed lot size is 5,447 square feet. The tallest proposed structure height would be 35 feet and not more than 60% of any residential lot would be covered with buildings. Full build out is anticipated to be completed by 2020. *Exhibit C1; Exhibit C1, Attachments D, F, and G; Exhibit C19.*
16. Access to all new lots would be provided by an internal public road network. The primary collector road to be constructed through the site would connect from Marvin Road along the southwest boundary of the subdivision to the existing stub of 19<sup>th</sup> Avenue SE in the McAllister Park subdivision at the north boundary. This primary connector through the site would be developed with sidewalks on both sides, turn lanes for some internal connections, on-street parking, and street lighting. This main through road would not provide direct access to any lots. A network of internal local roads and alleys would extend off of the main collector to provide access to each lot. Five short private roads are proposed to access 13 individual lots. Additional points of connection would be made at 27<sup>th</sup> Avenue SE and Priority Street SE on the project's west boundary. The internal roadway would include four stubs to off-site parcels anticipated to develop in the future, one on the west project boundary and three along the east boundary. *Exhibit C1; Exhibit C1, Attachments D, F, and G; Exhibits C2 and C19.*
17. The Applicant submitted a storm drainage plan designed to comply with the 1994 Thurston County Drainage Design and Erosion Control Manual (DDECM). Stormwater run-off from all new street improvements would be collected and directed to stormwater tracts. The collected runoff would be treated in wet ponds before being routed to detention ponds for infiltration. Roof runoff from structures on the individual lots would be directed to dry wells where soils are conducive to infiltration. Where soils would not allow infiltration, roof runoff would be conveyed to the central stormwater system. Two stormwater treatment and detention tracts are proposed: Tract 1-A in the southwest corner of the site and Tract 3-A along the east boundary in the northern portion of the site. Portions of these tracts would be available for use as play fields during times of the year when they are dry. Tract 1-A, the South Pond, is designed to infiltrate 100% of the runoff conveyed there consistent with the 1994 DDECM, and in fact, exceeds that minimum requirement by infiltrating 100% of the runoff predicted by the continuous simulation model required by the subsequent County stormdrainage manual. Discharge from this pond would only occur in the event of a storm exceeding the seven-day, 100-

year storm event, in which discharge would flow into an existing railroad drainage swale that is presumed to eventually discharge by infiltration to McAllister Creek. The East Pond in Tract 3-A satisfies the DDECM requirement to infiltrate 100% of runoff conveyed to it for the 100-year, 24-hour storm. In fact, because it was sized using the 2009 continuous simulation modeling standard, it is approximately 60% larger than required by the 1994 DDECM and would infiltrate all runoff from the seven-day, 100-year storm event. Overflow from a storm event exceeding this would discharge to an existing small kettle east of the pond and from there either by infiltration or via an existing swale that conveys into another kettle on the Thompsen property to the east (agricultural use) eventually into McAllister Creek. The stormwater modeling prepared for the project reviewed all storm data available over the previous 56 years and concluded that the proposed ponds would successfully infiltrate 99.95% of all stormwater runoff over that historical period. Because stormwater discharge flows from the site would mimic existing discharge, if not be reduced, the proposal is not anticipated to result in any off-site stormwater impacts. Groundwater studies performed by Applicant representatives showed that both ponds would have more than three feet separation from groundwater, satisfying applicable standards. *Exhibits C14 and C15; Hatton Testimony; Weller Testimony.*

18. In addition to stormwater detention tracts, the plat would create the following other tracts for non-residential uses. Four tracts for preservation of oak tree habitat would be retained in the southwestern portion of the site: 1-B, 1-C, 1-D, and 5-A. Tract 1-B would encompass a non-jurisdictional category III wetland and its buffer. Five tracts would be platted for park use: 1-E, 2-A, 3-B, 8-A, and 9-A. Pedestrian trails, interpretive signage, picnic areas, play structures, and a sport court are proposed to be placed in the park tracts. Sixteen general open space tracts are proposed (1-G, 1-H, 2-B, 2-C, 4-A, 5-B, 7-A, 7-B, 8-B, 8-C, 9-B, 9-C, 9-D, 9-E, 10-A, and 10-B). The general open space tracts would include 20- to 25-foot wide perimeter buffer tracts along the north and a portion of the west. Eighteen general landscaping tracts are proposed in the northern portion of the development: 3-C, 3-D, 3-E, 3-F, 3-G, 3-H, 3-I, 3-J, 6-A, 6-B, 7-C, 7-D, 7-E, 9-F, 10-c, 10-D, and 10-E. In addition, five tracts would contain private roadways accessing 13 lots and 14 tracts would be developed with alleys serving all rear-loading lots. *Exhibit C1; Exhibit C1, Attachment G; Exhibit C19.*
19. City of Lacey municipal water and sewer utilities would be extended into the subdivision to serve all lots. Lacey has provided comments stating that the utilities have capacity to serve the proposed lots and providing construction requirements. Extension and construction of those utilities would be required to conform to City of Lacey standards. All utilities would be required to be installed prior to final plat approval. Other utility companies that would serve the subdivision include Puget Sound Energy (electricity), LeMay for refuse, and Quest or Century Link for telephone. *Exhibit C1; Exhibit C1, Attachments L and M.*

20. At the time that the instant plat application vested, County Policy ZONE.POL.801.05 applied to proposed incompatible uses.<sup>4</sup> That policy required screening between newly created lots less than 50% of the size of adjacent existing residential lots, providing a choice of buffer methods including solid fencing, earth berms, vegetation, and 15-foot wide open space tracts with sight obscuring vegetation. A landscape plan was required. The lots proposed on the perimeter of the instant application would be 5,000 square feet in size. They would abut existing lots in the adjacent subdivisions of Evergreen Estates and McAllister Park that are approximately 22,000 square feet in size. The instant plat proposes a 20-foot wide open space tract along the north boundary and portions of the west boundary, which are the areas adjacent to Evergreen Estates and McAllister Park. The proposed buffer areas are currently forested. Whether the existing trees and shrubs, to be retained, are capable of providing the required sight obscuring vegetation would be assessed prior to final plat approval, once the proposed developed portion of the property has been cleared. The Applicant would be required to submit a landscape plan that includes buffering as required by Policy ZONE.POL.801.05. Any areas that need enhancement to satisfy the requirement for sight-obscuring vegetative buffer would be identified in that plan and the vegetation would be required to be planted prior to final plat approval. *Exhibit C1; Exhibit C1, Attachments G and P.*
21. Residential subdivisions of 10 or more lots in the Lacey UGA are required to dedicate 10% of the total site as usable open space. *TCC 18.47.020.C; TCC 18.47.040.B.* The open space calculation excludes required yards, setbacks, and other undeveloped portions of the site. Up to 50% of the open space requirement can be satisfied by preserved wetlands, wetland buffers, and other critical areas, and trees tracts retained in compliance with Forestland Conversion provisions in Title TCC 17.25. The open space area may also include stormwater facilities designed for active and or passive recreation opportunities in accordance with the applicable Drainage Design and Erosion Control Manual. Of the overall site, the Applicant is required to set aside 25.9 acres as dedicated as open space satisfying these requirements. The proposal would provide 76.45 acres of open space, which is 29.6% of the overall site area. Qualifying proposed open space tracts include: storm drainage/active recreation tracts 1-A and 3-A; oak preservation tracts 1-B, 1-C, 1-D, and 5-A; parks tracts 1-E, 2-A, 3-B, 8-A, and 9-A; open space tracts 1-G, 1-H, 2-B, 2-C, 4-A, 5-B, 7-A, 7-B, 8-B, 8-C, 9-B, 9-C, 9-D, 9-E, 10-A, and 10-B; and landscape tracts 3-C, 3-D, 3-E, 3-F, 3-G, 3-H, 3-I, 3-J, 6-A, 6-B, 7-C, 7-D, 7-E, 9-F, 10-C, 10-D, and 10-E. Active recreation components are provided in several tracts including: pedestrian trails with interpretive signage and picnic areas, play structures, multi-purpose sports court, and portions of the storm tracts that would be usable as sports fields during dry months. *Exhibit C1; Exhibit C1, Attachment G; Exhibit C19.*
22. The project is located within the North Thurston School District (District). In response to notice of application, the District provided comments regarding the impact to school

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<sup>4</sup> These requirements are in contrast to the inapplicable current Lacey Urban Growth Area Zoning Ordinance, adopted on November 11, 2010 nearly a year after the instant application vested, which formally codified provisions governing screening between incompatible uses. *TCC 21.80.055(3).*

facilities from the increased enrollment attributable to the fully built subdivision and identifying appropriate mitigation to address the impact and ensure that adequate facilities are provided. In order to address the plat's impacts, the Applicant has entered into a voluntary agreement with the District specifying a per-lot impact fee due at time of building permit issuance for each lot. The District's comments also noted the need for sidewalks to provide safe walking routes to school bus waiting areas and to nearby school sites. Applicable road standards require sidewalks and would provide safe walking conditions to bus waiting areas within the subdivision. The District and the Applicant would work together to identify the appropriate locations for bus waiting areas and any necessary improvements (pads, shelters, signs, pullouts, etc). School children from this development are expected to walk to the Evergreen Forest Elementary School located west of the plat at 3025 Marvin Road SE via the proposed connection of the internal road network to Priority Street SE and 27<sup>th</sup> Avenue SE. Safe walking conditions along much of this route have already been provided by the Evergreen Heights subdivision. The stretch of 27<sup>th</sup> Avenue from the intersection of Timber Drive SE to the west boundary of the instant plat still lacks safe walking conditions. The Applicant would be required to provide construct necessary improvements along the noted stretch of 27<sup>th</sup> Avenue SE. *Exhibit C1; Exhibit C1, Attachments N and R; Exhibit C10.*

#### *Traffic Impacts*

23. The Applicant commissioned a professionally prepared traffic impact analysis (TIA) to review the project's impacts on area transportation facilities. The TIA was prepared in April 2014 and is assumed the project would create 1,100 lots at full build out (which is 63 more lots than are proposed) to reach conservative results, which is assumed to occur in the year 2020. For review of incremental increases in traffic during construction, the TIA reviewed the project's impacts in four phases. Phase 1 would create 256 lots and would construct the primary connector road for the project, providing access for the earlier divisions by extending existing Lake Forest Road from Marvin Road SE. Phase 2 would create 241 lots and would extend the primary connector through the site and connect it to 19<sup>th</sup> Avenue SE. Phase 3 would create access for 273 additional units, with a new connection to Evergreen Heights Division 2. Phase IV would create access for the final 330 units assumed in the TIA, connecting the new internal connector to 27<sup>th</sup> Avenue SE in the existing plat of Evergreen Estates. At full build out (assuming 1,100 lots), the project would generate approximately 9,540 average new weekday trips, with 780 AM and 909 PM peak hour trips, based on trip calculation estimates in the Institute of Transportation Engineers (ITE) Trip Generation Manual (9<sup>th</sup> Edition). *Exhibit C2; Schramm Testimony.*
24. The TIA assessed project impacts to 35 area intersections by reviewing PM peak hour increases in delay, or level of service (LOS). The study area and the 35 specific intersections were selected based on scoping documents and Thurston County TIA guidelines to include those that would receive 25 or more PM peak hour trips. The complete list of study intersections is found in the record at Exhibit C2, pages 5-6. Several of the 35 intersections are projected to operate at LOS F (the worst level, not acceptable by County standards) even without the project by the year 2020. The failing



intersections within the City of Lacey jurisdictional boundaries are located along the City's established Strategy Corridors and are therefore exempt from the City's LOS standards. Mitigation for project impacts at County intersections anticipated to operate at LOS F was proposed in the TIA. *Exhibit C2, C3, and C25; Schramm Testimony.*

25. To mitigate impacts to Thurston County roads, a per-lot traffic impact fee of \$2,827 would be paid. The project would also be required to pay traffic mitigation fees to the City of Lacey, to be determined based on the number of PM peak hour trips affecting the current City TIP project list. Mitigation for Phase 1 traffic include: construction of a new east leg at the Marvin Road/Lake Forest site access intersection with stop control; financial contribution to the Carpenter/Mullen Road roundabout, scheduled to be built in a 2016 City of Lacey project; and contribution towards a County-planned improvement project at the Marvin/Mullen Roads intersection. Phase 2 mitigation includes: construction of a signal or roundabout at the Marvin Road/19<sup>th</sup> Avenue intersection; restriction of left turns from Union Mills onto northbound Marvin Road, with these trips redirected to southbound Marvin Road to u-turn at the signal/use the roundabout; creation of a two-way left turn lane to allow eastbound to northbound turn movement at Marvin Road/25<sup>th</sup> Avenue, creating a two-step merge maneuver. Phase 3 mitigation proposes to add a signal or roundabout at the Marvin Road/Lake Forest Drive site access point. *Exhibit C2, C3, and C25; Schramm Testimony.*
26. Upon review of the TIA, the County required specific mitigation through the environmental review process. These required mitigations include phased intersection improvements at Mullen and Marvin Roads (MDNS cond. 5), site access at Marvin Road (MDNS cond. 6), Union Mills/Marvin Roads (MDNS cond. 7), 19<sup>th</sup> Avenue/Marvin Road (MDNS cond. 8), 25<sup>th</sup> Avenue/Marvin Road (MDNS cond. 9), and additional improvements at Site access/Marvin Road (MDNS cond. 10). These conditions require improvements that, per County Engineer approval, would bring each intersection into compliance with the County's LOS standards, with the specific improvements to be designed and determined at specific points in construction phasing. Other traffic-related requirements imposed by the MDNS include restriction of construction traffic to site access by Marvin Road/Lake Forest Drive and extension of centerline markings and bike lanes on 19<sup>th</sup> Avenue from the site entrance to Marvin Road. *Exhibit C1, Attachment I.*
27. As part of the stipulated withdrawal of Appellant's SEPA appeal, MDNS condition 13 was stricken with the agreement of all parties and replaced with the following: traffic calming measures installed at seven locations on existing off-site 19<sup>th</sup> Avenue, to be selected in accordance with a menu of options proposed in Exhibit C5; conversion of a proposed T-intersection in Division 9 to a cul-de-sac with emergency vehicle access to 19<sup>th</sup> Avenue; and increased width of the required screening vegetative buffer between the proposed lots and the existing lots of Evergreen Estates McAllister Park from 20 to 25 feet in width. For the above selection of traffic calming measures, McAllister Park Homeowners Association is to have final design approval. *Exhibit C5; Aramburu Comments; Mullaney Comments; Peters Comments.* On the record, the County objected to the proposed option of all-way stops in place of traffic circles. Davis Testimony. This

revision to the stipulated agreement regarding traffic improvements that was the basis of the withdrawal of the appeal was agreed to by the Applicant and counsel for the Appellant prior to close of the record. *Exhibit C34; Mullaney Comments.*

*Critical Areas Including Oak Woodland Habitat*

28. The subject property contains one wetland, located adjacent to Marvin Road SE in the southwest portion of the site. The Applicant commissioned a professionally prepared wetland study, which determined it to be an isolated Category III wetland. Originally, the size of the wetland was stated as approximately 0.4 acres; however, based on a survey conducted by the Applicant's surveyor, the size of the wetland is 10,286 square feet or only 0.24 acres in size. Wetlands in the urban growth areas smaller than 11,000 square feet in size are not regulated by the applicable CAO. *TCC 17.15.200, definition of wetlands.* The wetland is located within oak preserve Tract 1-B and would not be impacted by the project. *Exhibit C1; Exhibit C19; Exhibit O25; Wambach Testimony.*
29. The subject property contains steep slopes, which are located in proposed Open Space Tract 7-A. Reviewing contour maps, the Applicant's surveyor estimates the maximum slope to be approximately 35%, which is consistent with the mapped soil type for the property (Alderwood gravelly sandy loam, 15 to 30% slopes, according to the Soil Conservation Service). More detailed site specific measurements will be made as part of construction plan preparations. According to the CAO, slopes of 50% or more, with vertical height greater than 15 feet, are defined as landslide hazard area. *TCC 17.15.200.* The required buffer from a landslide hazard area is 50 feet from the top and 25 feet from the toe. *TCC 17.15.620.* Clearing native vegetation and development on landslide hazard slopes and buffers is prohibited. *Exhibit C1; Exhibit C1, Attachment G.*
30. The subject property contains soils mapped as Spanaway gravelly loam, Spanaway gravelly sandy loam (0-3% slopes), and Everett very gravelly sandy loam (3-15% slopes). These soil types have been identified by the Washington State Department of Fish and Wildlife (WDFW) and the US Fish and Wildlife Service (USFW) as soils that could be habitat for certain prairie species including the Mazama pocket gopher (gopher). The gopher is a State priority species and is listed in the County critical areas ordinance as an important species. USFW recently listed the gopher as threatened under the Endangered Species Act (ESA). These soil types are also identified in the CAO and Ordinance No. 14260 (Interim regulation amending provisions in the CAO regarding native outwash prairies and oak habitat, adopted July 28, 2009) as soils that are potential native outwash prairies. *Exhibit C1.*
31. The Applicant submitted a professionally prepared gopher evaluation report. The gopher consultant performed a site survey implementing the gopher survey protocol established in the July 2009 WDFW Mazama pocket gopher management recommendations. The report found no gophers on the subject property but did find evidence of moles. The site property was reviewed by USFW, which agency also concluded that there are no gophers on-site. USFW submitted a letter indicating that the proposal is not expected to result in

a take of the listed species. *Exhibit C1, Attachment Q; Exhibit C12; Wambach Testimony.*

32. The Applicant submitted a professionally prepared prairie plant evaluation report, prepared after the consultant conducted a prairie plant survey. Although the site is not identified by the Department of Natural Resources as containing prairie habitat, the Natural Heritage Database identifies the white-top aster, a State sensitive species, on the southern portion of the site. The plant survey revealed that the southern portion of the site has been heavily impacted by grazing and found no listed native prairie plants on the subject property. The Applicant also provided a professionally prepared western gray squirrel survey that found no evidence of the native state Threatened species and state Priority species on-site. *Exhibits C13 and O24; Wambach Testimony.*
33. The subject property contains approximately 76.2 acres of oak woodlands that meet the applicable CAO definition of “important habitat”, the development of which is regulated by the CAO and Interim Ordinance 14260, in effect on the date of application. The CAO allows single-family residences within important habitats subject to standards. *TCC 17.15.720, Table 5; TCC 17.15.715.* According to the CAO, impacts to critical areas are best reduced through avoiding the activity altogether; thus avoidance is the primary means of achieving the requirements of the CAO. Unavoidable impacts often can and should be minimized through sensitive site design and deliberate actions during construction and implementation. *TCC 17.15.325.*
34. The Applicant submitted a professionally prepared Oregon White Oak Habitat Management Plan (HMP), dated March 2014. The HMP includes an analysis of the five existing oak habitat areas on the subject property. Consultants studied the five oak stands and assessed each for dominant plant species, wildlife species sign, invasive vegetation, percent cover of invasive and native species, assessment of human caused disturbance, and the number, size, and condition of oak trees. In performing this assessment, the consultants employed a modified version of the methods described in the Department of Natural Resources’ Ecological Integrity Assessment (EIA), which ranks ecological attributes of oak habitat including: edge effect, landscape structure, vegetation composition, natural disturbance regime, physiochemical conditions, and size of stand. Using these categories, each attribute in each stand was assessed and assigned a rank, A for best and D for worst, with points assigned per rank. The total number of resulting points was used to determine the existing condition of each stand and to target a no net loss in ecological function through mitigation provided to address impacts of the proposed development. Assessment findings are paraphrased as follows:

Area 1A      20.6 acres in area, 50% oak cover, even-aged Oregon white oak 8-14 inches dbh<sup>5</sup>, evidence of intensive grazing – Score C, 2.5 points

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<sup>5</sup> Diameter at breast height

|         |   |
|---------|---|
| Area 1B | 9.1 acres, even-aged Oregon white oak 8-14 inches dbh, moderate invasive species cover – Score D, 2.0                   |
| Area 2  | 23.5 acres, mixed conifer/oak woodland, 50% oak canopy, 10- 15 inch dbh, invasive species present – Score D, 2.4        |
| Area 3  | 20.5 acres missed conifer/oak woodland, 70% oak canopy, 15-20 inch dbh, invasive species present – Score D, 2.2         |
| Area 4  | 2.5 acres mixed woodland, mostly Oregon white oak, isolated from other four stands, oaks 8-12 inches dbh – Score D, 1.9 |

*Exhibit C6; Noland Testimony.*

35. According to the consultant’s application of the EIA ranking system, all five oak areas on-site are currently considered degraded. The relatively low rankings of the five stands indicate that they have been impacted by grazing, suppression of burning (which benefits oak stands by constraining conifer competition), encroachment of non-native species, and other disturbances. According to the consultants, rankings of C or below indicate that a stand is not considered acceptable for sustaining ecological integrity. However, all oak woodlands are valuable because of their rarity and even these degraded woodlands are capable of enhancement and restoration. *Exhibit C6; Noland Testimony.*
  
36. The HMP states that the proposal was designed to avoid impacts to approximately 55% of the on-site oak woodlands, which would be preserved in open space tracts. Approximately 38 acres of the 41.58 acres to be retained in oak woodlands are located in Areas 1A and 3 and would form a block of protected oak habitat in the southwest portion of the site. An additional two acres in Area 2. These three stands were the areas with the highest EIA rankings. The areas to be removed are Areas 1B and 4, which had the lowest EIA rankings. The oak woodland to be preserved represents land capable of being divided into an additional 162 lots. Some of the impacted oak areas are not able to be avoided because County road standards require access to be taken from the southwestern corner of the plat aligned with the existing Lake Forest Drive on the opposite side of Marvin Road. Marvin Road is a Strategic Corridor of Regional traffic value pursuant to the County Comprehensive Plan. It is not possible to relocate the road to avoid impacting oak Area 3. However, the on-site configuration of the road was modified to reduce impacts to oak Area 2 to the maximum extent feasible. Based on these factors, the oak woodlands consultant contended that avoidance was employed to the extent feasible in project design. *Exhibit C6; Noland Testimony.*
  
37. The goal identified for the HMP was to arrive at a condition of no net loss in ecological function of the retained oak stands. In the existing condition, the oak standards are not regenerating on their own. Douglas fir and invasive species are out competing them. For long term health and reproducibility, some intervention is required. In the opinion of the Applicant’s consultant, restoration and enhancement of retained portions of the stands

would be more beneficial than retaining 100% of the existing oak stands in their current condition. *Noland Testimony.*

38. To minimize impacts to the retained oak stands, the Applicant eliminated all small lot/townhouse development initially proposed and clustered the bulk of smaller lot density in the northern portion of the site, away from retained woodlands. Mitigation to be implemented to minimize and mitigate impacts to oak habitat includes the following:
- End livestock grazing
  - Control invasive species (Scot's broom, Himalayan blackberry, etc.)
  - Plant understory area with native shrubs and herbaceous plants
  - Thin conifer trees
  - Remove various debris (old cars, tires, trash)
  - Remove and revegetate existing trails and roads within preserve areas
  - Retain individual oak trees on lots and common areas, where feasible, to improve genetic diversity within the overall property
  - Salvage oak seedlings within development areas for use in other areas of the subdivision or for use by other groups for restoration
  - Provide access to small oak woodland areas in park settings, while fencing off and signing the larger preserve areas to minimize human intrusion
  - Retaining a qualified biologist to provide workshops and informational flyers for future residents regarding the value of oak woodland habitat
  - CC&Rs would require low-illumination and/or screened lighting to minimize glare into the woodlands
  - Maintenance of fencing, signage, and ongoing public education would be included in the responsibilities of the homeowners association
  - A detailed maintenance and monitoring plan for the oak set aside areas would be implemented for a period of five years to ensure survival of new plantings, to continue invasive species control, and to provide ongoing public education, among other things

According to the consultant's analysis, with implementation of the above mitigation measures, the retained oak stands would continue to have a C rating under the EIA methodology used for site assessment. *Exhibit C6; Noland Testimony.*

39. Resource Stewardship Staff submitted the position that the Applicant's HMP satisfied the study requirements of the CAO. Staff determined that the study's analysis and its proposed avoidance/minimization/mitigation scheme was consistent with the applicable provisions of TCC 17.15.700. *Exhibit C1; Smith Testimony.*
40. An early draft of the HMP was sent to the Washington State Department of Fish and Wildlife (WDFW) for review and comment. County Staff was in communication with WDFW regarding the HMP starting in 2009 and continuing in 2011 and 2013. Of note, WDFW staff assigned to review of the project changed repeatedly over the course of

County project review. The final draft of the HMP was sent to WDFW. After issuance of the MDNS, WDFW submitted a comment letter that was critical of the HMP dated December 16, 2014. This letter from newly assigned staff contained the first critical comments on the HMP from that state agency; it asserted that 100% of the on-site oak woodlands should be required to be retained. *Exhibit C9*. In the staff report and at hearing, Resource Stewardship Staff indicated that the applicable CAO provisions in Title 17.15 do not require retention of 100% of important habitats. Staff stated that the submitted HMP provides a plan that would ensure this habitat would be maintained and able to reproduce over the long term, thereby satisfying code requirements. *Exhibit C1; Smith Testimony; TCC 17.15.715*.

#### *Forestland Conversion*

41. If more than 5,000 square feet of treed area will be removed as part of a development, a Class IV Forest Land Conversion application is required. *TCC 17.25.400*. The Applicant has submitted a Forest Land Conversion application to harvest approximately 200,000 board feet of timber over approximately 177 acres of the site. The proposed timber harvest is located within the areas of the project to be developed into lots, roadways/alleys, and storm drainage facilities. A Class IV Forest Land Conversion is a permit with an administrative approval process that can follow the decision on the plat application. *Exhibit C1; Exhibit C1, Attachment E*.
42. The Thurston County Forest Lands Conversion Ordinance requires that all new subdivisions in the urban growth areas dedicate a minimum of 5% of the property as a tree tract and that each 4,000 square feet of lot area contain at least one tree. *TCC 17.25.400*. Five percent of the 258.5 acre site is 12.93 acres. The project would preserve Tracts 1-B, 1-C, 1-D, and 5-A totaling 41.66 acres, or 14.8% of the total site, for preservation of oak woodlands, which tracts would qualify as tree tracts under the forest land conversion ordinance. The total area of all proposed lots would be 5,648,539 square feet, or 129.67 acres, requiring a minimum of 1,412 trees to be planted on individual lots. *Exhibit C1; Exhibit C1, Attachments E, F, and G*.
43. Also required by the Thurston County Forest Practices Ordinance is a tree preservation and new tree planting plan. *TCC 17.25.600*. Prior to issuance of the Forest Land Conversion permit, the Applicant must submit the required tree preservation and new tree planting plan for the rest of the site. Street trees would also be provided along frontages consistent with Lacey UGA development standards. The tree plan must identify existing trees that can be retained in other open space tracts and include a proposal for street trees and planting trees on individual lots. *Exhibit C1*.

#### *Agency Review*

44. The Development Review Services section of the Public Works Department reviewed the proposal for compliance with traffic impact, access, and stormwater control requirements. Public Works Staff reviewed the TIA and the preliminary engineered drainage plan. Based on review of the TIA and consultation with the City of Lacey, mitigation measures were imposed during environmental review and further mitigation required in

recommended plat conditions of approval, intended to mitigate the project's impacts and ensure that the area roadways continued to operate at adopted levels of service. Public Works Staff determined that the submitted engineered drainage plan was consistent with the requirements of the 1994 Thurston County Drainage Design and Erosion Control Manual. Actual construction details to implement drainage and erosion control would be prepared for review and approval prior to construction of the various phases of the development, in the normal course of project development. Development Review Services recommended approval of the proposed subdivision subject to conditions. *Exhibit C1, Attachments I and J; Davis Testimony; Saint Testimony.*

45. The Environmental Health Division of the Public Health and Social Services Department (EHD) reviewed the project for compliance with health codes, including requirements for water supply, disposal of wastewater, and protection of ground and surface waters. EHD comments noted that the subject property is located within a Category I and II aquifer recharge area and portions of the property are within the McAllister geologically sensitive area, within an area of elevated nitrates, and within a Group A well head protection area. To address these issues, the Applicant submitted an integrated pest management plan (IPMP), would connect all lots to City of Lacey water and sewer, abandon all existing on-site septic, decommission on-site wells, and locate the stormwater facilities away from adjacent wells. The IPMP, a document containing best management practices for maintenance of landscaped areas, would be distributed to residents of the subdivision to provide with guidance regarding avoidance of excessive use of chemical fertilizers, herbicides, pesticides, and insecticides. Based upon review of the application materials, EHD Staff recommended approval subject to conditions. *Exhibit C1, Attachment K; Sangston Testimony.*
46. The Washington State Department of Ecology submitted comments concerning potential soil contamination on-site from the former Asarco smelter on Commencement Bay, in addition to other potential toxics cleanup, water quality, and water resources issues. The MDNS included conditions regarding the potential Asarco smelter contamination and toxics clean up. The Applicant's appeal of those two conditions was dropped at the outset of proceedings. *Exhibit C1, Attachments I and O.*

#### *Public Process*

47. On December 16, 2009, Thurston County mailed notice of application to the Applicant, neighboring property owners within 300 feet of the project boundaries, and other interested parties consistent with Thurston County Code requirements. *Exhibit C1, Attachment H.*
48. Pursuant to the State Environmental Policy Act (SEPA), Thurston County Resource Stewardship Department was designated lead agency for review of the proposal's impacts on the environment. The lead agency reviewed the application materials and additional information including but not limited to the following:

- Environmental checklist, received May 8, 2014
- Revised Division of Land application, received May 8, 2014
- Revised Forest Land Conversion, received May 8, 2014
- Narrative Summary, received May 8, 2014
- Preliminary plat map, Received September 19, 2014
- Preliminary Drainage and Erosion Control Report, Hatton Godat Pantier, dated April 12, 2014
- Traffic Impact Analysis, TENW, dated April 29, 2014
- Addendum to Traffic Impact Analysis, TENW, dated November 6, 2014
- Wetland Study Report, PE Consultants, Inc., dated November 11, 2009
- Integrated Pest Management Plan, Hatton Godat Pantier, dated April 11, 2014
- Prairie Plant Evaluation, EnviroVector, dated April 8, 2014
- Gopher Evaluation Summary Report, PE Consultants, Inc., dated August 16, 2010
- Oregon White Oak Habitat Management Plan, Environmental Science Associates (ESA), dated March 2014
- November 17, 2014 Thurston County Public Works Department Comment Memorandum from Arthur Saint
- August 25, 2014 Thurston County Public Health and Social Services Department Comment Memorandum from Brad Sangston
- June 20, 2014 Washington State Department of Ecology Letter
- July 30, 2014 North Thurston School District Letter
- August 29, 2014 US Fish and Wildlife Service Letter in regards to the Mazama Pocket Gopher
- Public comment letters

*Exhibit C1; Exhibit C1, Attachment I.*

49. Upon completion of review, the lead agency issued a mitigated determination of non-significance (MDNS) on December 2, 2014. Concluding that compliance with all applicable County regulations and the imposed mitigation measures would reduce the project's impacts to a point of non-significance, the MDNS required compliance with mitigation measures addressing school impacts, soil contamination, traffic impacts, and timber harvest. *Exhibit C1, Attachment I.*
50. On December 23, 2014, both the McAllister Park Neighborhood Association and the Applicant filed SEPA appeals. As noted in findings 1 through 7 above, each Appellant withdrew their appeal at the outset of the public hearing, rendering the MDNS final as of March 23, 2015.
51. Notice of public hearing was sent to all property owners within 300 feet of the site and to others who had requested notice on March 9, 2015. Notice of hearing was posted on-site on March 10, 2015 and published in The Olympian on March 13, 2015. *Exhibit C1; Exhibit C1, Attachment A.*



52. The WDFW submitted strongly worded concerns about the HMP for the first time in response to publication of the MDNS, urging retention of 100% of the on-site oak woodlands. *Exhibit C9*. Teresa Nation, WDFW Biologist and Environmental Planner and author of the WDFW SEPA letter, appeared to testify as a member of the public at hearing. She asserted three points:

Oak habitat is important. The Oregon white oak, Washington's only native oak species, is very slow growing. It doesn't produce acorns until it is 20 years old. Once oak habitat is gone, it is very hard to replace. Oak woodlands are used by more than 200 wildlife species for food, shelter, breeding, and rearing, including moths, butterflies, and wasps that only live in this habitat. The on-site oak woodlands contribute to wildlife diversity at a state level. Neotropical migrant birds as well as resident species prefer oak woodlands over coniferous forests. Today only a small fraction of the original extent of oak woodlands remains today, resulting primarily from development. Less than 1% of the remaining oak woodlands are protected by long term conservation. The roughly 76 acres of oak woodland on-site are the largest remaining stand in the County.

The existing oak woodlands on-site are required to be protected by 17.15.325. Avoidance is supposed to be the primary method of protection. Only unavoidable impacts should be minimized. The ultimate goal of the applicable CAO is that oak habitat maintain and reproduce over the long term, and the review authority may restrict activities within protected habitat. Ms. Nation asserted that the Applicant's HMP fails to satisfy the requirements of the CAO because it fails to avoid impacts. The number of lots could be reduced. She asserted that there are 184 acres outside of the protected habitat, and that approximately 70% of the site can be developed without removal of the oak stands.

Ms. Nation contends that the HMP is incomplete and inaccurate, asserting that it constitutes a misapplication of the EIA methodology. She stated that the EIA method cannot be used to evaluate the impact of the loss of 45% of the existing stand and that it therefore grossly underestimated quantity of mitigation required. She asserted that it is not possible to fully mitigate the impacts of the loss of mature oak woodlands, but that the HMP lacks a wildlife survey, that it only considered two of 200 species that use the habitat, and that it did not provide any analysis of the impacts to a functioning ecosystem of the removal of nearly half of its area.

*Nation Testimony; Exhibit C 26.*

53. The County received public written comments before, at, and after the public hearing. Verbal public comments were accepted into the record at an advertised public comment time of 1:00 pm on March 24, 2015. Concerns expressed in public comment fell into the following categories: traffic impacts, especially increases in existing congestion and increased cut through traffic; school impacts; loss of wildlife and oak habitat; disagreement with the proposed density; stormwater impacts; loss of wetlands; water

availability; steep slopes; impacts associated with clearing native vegetation and encroachment of invasive species; and impacts to parks. In more detail, the following paraphrases the primary concerns expressed:

**Traffic impacts:** Many people expressed frustration with existing traffic conditions, including Nisqually Cut Off Road, allegedly unsafe sight distance at existing left turns especially on 27th, the back up on Marvin Road at the elementary school during drop off and pick up, speeding especially on Marvin Road, conflicts with area wildlife (deer, etc.) on roads, and other existing conditions. Many expressed concern that the project's traffic cannot help but make these existing traffic conditions worse, including increased cut through traffic on local neighborhood streets (Meridian, Indian Summer, Walthew, and Mullen, especially), backups resulting from the rail line, increased risk to pedestrians who walk dogs in the area, and conflicts with pedestrian school children. Some contended that without a County project to upgrade Marvin Road, the project's traffic would overwhelm the local road network. Several people noted that weekend trip generation was not addressed and complained that it is worse than PM peak hour congestion in the existing condition. Some expressed distaste for roundabouts and noted that there are many older drivers in the area who do not function well in roundabouts.

**Impacts to existing subdivisions:** Some questioned whether the road improvements proposed/required for this project would dramatically degrade the ability of residents of surround plats to exit their subdivisions. At least one person questioned whether their property would be taken by eminent domain to provide required road widening (Lake Forest Drive).

**Environmental impacts:** Many who commented verbally and in writing seconded the statements made by Teresa Nation of WDFW regarding 100% retention of oak habitat. Some joined her, also, in disputing the use of the EIA method for rating the oak stands. One person challenged the HMP on the grounds that only three site visits were conducted. Several suggested that the project should be restricted to the minimum density allowed in the zone in favor of retaining more oak habitat. At least one person urged that the main project entrance off of Marvin Road should be relocated in favor of retaining the largest oak stand in an unfragmented condition. There were concerns expressed about impacts to groundwater quality generally and specifically from the stormwater ponds being used as sports fields when dry. Some registered concerns about water quality impacts to Long, Hicks, and Patterson Lakes, all of which are fed by ground water. Others were concerned about impacts to water quality in existing wells. At least one person questioned the impacts of all the timber removal and grading.

**Public Safety:** One person has been told by a trooper there is only one deputy sheriff from I5 to Yelm Highway; on one occasion they called the sheriff and were told they were sixth on the list of callers. Some commented on a general increase in crime in the area lately, including stolen mail, home invasions, and other property crimes. Some

expressed concern that the traffic increases would adversely impact emergency response times.

Process: Several comments were submitted about not having adequate time to review the voluminous materials in the record prior to hearing. Some challenged notice of application and/or hearing. Others remained unsatisfied that the environmental threshold determination adequately assessed all impacts and requested an EIS. Several comments disputed the appropriateness of applying superseded critical areas and stormwater regulations.

*Testimony of Alex Bromen, James W Robertson, Michael Brummer, Thomas Cofield, Liz Lyman, Ron Fuller, Paula Strain, Lori Schuster, Pamela Warner, Doug Karman, Elizabeth Roderick, Arthur Scholes, Liz Kohlenberg, Newton Jackson, Greg Hamblin, Janine Unsold, Jeff Heard, Felicia Carroll, William Coopmann, Rosaria Cofield, Karl Tschimperle, and Lorna Stewart; Exhibits C7, C28, and C35.*

54. In response to public comments, County representatives offered the following information: Marvin Road is included in the County's Capital Facilities Plan; it will be upgraded in the future. Timing and the details of the specific improvements are not yet known. The instant project's traffic impact fees would contribute to the Marvin Road project. The City of Lacey is working with WSDOT to address congestion at the I5 onramps that serve Marvin Road and the area. Regarding backups on Marvin Road at Evergreen Forest Elementary School, the school has initiated the permitting process on a site remodel that would provide a cross walk and relocate pick up and drop off farther inside the site, which is intended to relieve congestion on Marvin Road. The School District intends to do the related road improvements this summer. The MDNS contains a condition that prohibits logging, clearing and grading of the site until that particular phase of the development is ready for construction; this condition would limit the potential for invasive plant species to proliferate. Regarding parks and recreation impacts, the project would provide tot lot play equipment, a sports court, open play fields, and pedestrian trails in addition to payment of parks impact fees as required by County code. The fees collected in this way would be utilized to provide regional parks facilities, offsetting the project's impacts. *Testimony of Scott Davis and Robert Smith; Comments of Rick Peters; Exhibit C1; Exhibit C1, Attachment I.*
55. In response to selected specific traffic-related concerns, Public Works Staff reviewed the potential for cut through traffic on local access roads. In particular, Staff noted that Indian Summer is a local road south of the proposed project that provides a connection between Marvin and Meridian Roads. Staff noted that the cut through route via Indian Summer is about one mile long, and that the arterial route avoiding Indian Summer is about 1.5 miles long, but that the arterial route offers higher travel speeds and fewer potential conflicts, making it potentially faster. Public Works Staff did not recommend mitigation for the potential cut through traffic on Indian Summer. However, in reviewing the concerns about inadequate sight distance for existing intersections on 27<sup>th</sup> Avenue and increased impacts from the projects trip volumes, Public Works did recommend an additional condition. The recommended condition would require that prior to

construction of any phase that would connect the project to 27<sup>th</sup> Avenue, the Applicant must submit a Neighborhood Traffic Control Plan that would provide a traffic improvement (e.g., traffic circle) for any intersection on 27<sup>th</sup> Avenue determined not to meet sight distance standards by appropriate traffic engineering study. *Exhibits C37 and C41.*

56. Regarding the WDFW comments on the inadequacy of the HMP and the agency's position that 100% of the on-site oak woodlands need to be retained, County Staff uniformly related their shock at learning this is the WDFW position, especially so late in the process. There are no listed threatened or endangered wildlife species are known to inhabit the subject property. The property is located in Lacey UGA and zoned for a residential density to further the policies of the Comprehensive Plan. The proposed density is consistent with zoning and the Comprehensive Plan. The submitted HMP provides an analysis of the efforts to avoid and minimize the project's impacts to the oak habitat. Staff noted that under the original application only approximately 10% of the oak habitat would have been preserved. By increasing the oak habitat retention to 55%, together with the mitigation proposed in the HMP, County Staff submitted that the proposal satisfies the requirement of TCC 17.15.325 to avoid and to minimize impacts to the important habitat. *Smith Testimony; Exhibits C1, C38, and C36.*
57. Responding to public comments, Applicant representatives offered the following information.

The project would contribute somewhere in the neighborhood of \$23 million in fees to various County and City funds, including \$3.8 million to the School District, \$1,009 per lot in park impact fees, \$1,700 per lot in traffic impact fees to City of Lacey, \$3,039 per lot in County traffic impact fees, sewer connection fees of roughly \$5 million dollars, water connection fees of roughly \$6 million dollars, and other fees, including building permit fees. These fees go to directly offset the project's impacts to public services and infrastructure. The revisions to the original application added 22 acres of open space to the proposal and reduced the total lot count by 131 lots. *Pantier Testimony.*

Regarding the WDFW assertion that the EIA method was inappropriate for use in assessing the oak woodlands on-site, the Applicant's consultant noted that the DNR methodology was developed by working groups of scientists. It offered a standardized method that enabled the same study to be performed by others who could reach the same results. The EIA method has been meets best available science criteria. It was selected because the consultant was asked to apply scientific method to characterize existing habitat values, in order to preserve the highest value stands, and to maximize quality and ecological function of trees to be preserved. In applying the EIA method, the Applicant's consultant conducted three site visits, walking and driving the entire site and meeting with WDFW Staff on more than one occasion. At no time since the method was selected in 2011 and discussed with WDFW did the state agency request a different method be used until the December 2014 SEPA comment letter. *Noland Testimony; Exhibit O35.*

Regarding WDFW Staff's request to require 100% oak habitat preservation on-site, various Applicant representatives characterize this request as "unprecedented" and indicate that no other preliminary plat vested to the 2009 CAO was ever required to set aside 100% of oak habitat. They note that the applicable CAO does not establish a specific set aside but instead requires a case-specific habitat management report intended to establish oak tree buffers on a case-by case basis. At one point, WDFW Staff praised the use of the EIA method for site assessment. Applicant representatives assert that the 100% set aside is not supported by a site-specific scientific assessment prepared by WDFW or any other party, fails to consider the Applicant's vested property rights, and would reduce the lot count by to only 845 developable lots, rendering the project economically unfeasible. As stated in the Applicant's post-hearing submittal, governments cannot foist existing societal problems onto individual developers. "Just as a developer cannot be forced to remedy all deficiencies in a neighboring road network, OTP cannot be required to preserve all of the oaks on its property just because it is the largest remaining stand of such habitat in Thurston County."

*Exhibit O34, page 9; Exhibits C27, O34, O35, and O36.*

58. After review of all application materials, Resource Stewardship Staff submitted that the proposal is in compliance with all applicable codes, standards, and policies. This subdivision complies with goals and policies of the Comprehensive Plan regarding providing appropriate residential densities to discourage inappropriate conversion of undeveloped land to low density development, make efficient use of public utilities, and observe critical area regulations. The proposed subdivision complies with the Future Land Use map of the Comprehensive Plan. As proposed and conditioned, the subdivision is consistent with the Comprehensive Plan of the City of Lacey and Thurston County Land Use Plan for the Lacey Urban Growth Area. After consideration of all input from the Applicant, agencies, and members of the public, Resource Stewardship Staff recommended approval of the proposal. *Exhibit C1; Smith Testimony.*

## **CONCLUSIONS**

### **Jurisdiction**

The Hearing Examiner is granted jurisdiction to hear and decide applications for preliminary plats pursuant to RCW 36.70.970, TCC 2.06.010(A), and TCC 18.12.090.

### **Criteria for Review**

Consistent with Revised Code of Washington (RCW) 58.17.110, the preliminary plat shall be approved if the record demonstrates that the following criteria in Thurston County Code 18.12.090 are satisfied:

1. Appropriate provisions are made for the public health, safety, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds and all other relevant facts, including sidewalks and other planning

features that assure safe walking conditions for students who only walk to and from school; and

2. The public use and interest will be served by the platting of such subdivision and dedication.

### **Conclusions Based on Findings**

1. With conditions, appropriate provisions would be made for the public health, safety, public ways, potable water supplies, sanitary wastes, schools and school grounds and all other relevant facts. The record demonstrates that the proposed public and private roads, alleys, and frontage improvements would comport with applicable road standards and provide efficient access to all lots. Traffic impacts in both Thurston County and City of Lacey would be mitigated through the payment of fees. City of Lacey sewer and water have capacity to serve the project. Connection to these municipal utilities would include abandoning/decommissioning existing septic and water wells in conformance with State and County health standards. The record demonstrates that the proposed stormwater management system would adequately handle all runoff from new impervious surfaces, satisfying or exceeding the standards in the applicable 1994 DDECM. Open space totaling over 29% of the site is proposed to be dedicated as part of the subdivision. Open space amenities include pedestrian trails, a sport court, open fields available for recreation, and play equipment. Impact fees will provide for additional regional parks and recreation opportunities. School age children will be bussed to some North Thurston School District school sites while others may walk to a nearby elementary school. Conditions of plat approval would ensure that safe walking conditions are provided. A voluntary mitigation agreement between the School District and the Applicant would mitigate impacts to the North Thurston School District. Conditions of approval would ensure that perimeter buffering, tree preservation, and landscaping plan requirements are satisfied, if not exceeded. *Findings 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 41, 42, 43, 44, 45, 46, 54, 55, and 57.*
2. With conditions of approval, the public use and interest will be served by the platting of the subdivision. Regarding the adequacy of the oak woodland habitat management plan: the proposed plat vested to the critical areas provisions in effect in November 2009, before the County updated its CAO. The record demonstrates that project development amply considered important oak woodland habitat on-site, increasing the amount to be set aside from 10% to 35% to 55%. The avoidance, minimization, and mitigation proposed in the Applicant's HMP conforms to the requirements of the applicable CAO as it has historically been applied. The applicable CAO does not require the Applicant to set aside 100% of oak woodlands on-site. The proposed density of 4.1 units per acre is within the lower range of density allowed in the underlying zoning district, balancing critical areas protection and GMA goals of avoiding sprawl into rural areas. The proposed minimum lot dimensions comport with the requirements of the LD 3-6 zone. The record demonstrates that traffic impacts were extensively reviewed and, with conditions of approval, would be appropriately mitigated. After appropriate study, no evidence of the

Mazama pocket gopher, western gray squirrel, or white-topped aster was found on-site. The proposal was reviewed for compliance with SEPA requirements and an MDNS was issued. Both appeals of the MDNS were dropped at hearing, leaving the County's environmental threshold determination unchallenged. Compliance with MDNS mitigation measures would ensure site soils are studied for the presence of arsenic and lead, associated with the ASARCO smelter plume, and any contamination discovered would be handled in compliance with the requirements of the Model Toxics Control Act cleanup standards. The proposal complies with the Lacey-Thurston County Joint Comprehensive Plan. *Findings 1, 2, 3, 4, 5, 6, 7, 14, 15, 16, 17, 18, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 48, 49, 50, 52, 53, 54, 55, 56, 57, and 58.*

### DECISION

Because the Appellants withdrew their appeals of the MDNS, both SEPA appeals are dismissed and the MDNS is final.

Based on the preceding findings and conclusions, the application for preliminary plat subdividing 258.5 acres into 1,037 single-family residential lots and multiple tracks for stormwater management, oak tree habitat preservation, parks, open space, alleys, private roads, and landscaping is **APPROVED** subject to the following conditions:

- A. Prior to submitting a final plat application, all required on-site and off-site road, utility, and landscaping construction, identified in Paragraph B below, shall be satisfied for the applicable phase.
- B. Prior to final plat approval, the following Public Works Department related conditions shall be met:

#### ACCESS

- 1. Please note a construction permit shall be acquired from the Thurston County Public Works – Development Review Section prior to any construction. This shall be applied for, and paid for prior to the pre-construction conference.

#### TRAFFIC CONTROL DEVICES

- 2. All traffic control devices shall be designed, located, manufactured, and installed in accordance with the TCRS, Manual of Uniform Traffic Control Devices and applicable WSDOT Standards & Specifications. A sign and striping plan shall be incorporated into the construction drawings for the project. Please contact Thurston County Public Works – Development Review Section Staff to obtain the most current Thurston County guidelines.
- 3. County forces may remove any traffic control device constructed within the County right-of-way not approved by this division and any liability incurred by the County due to non-conformance by the applicant shall be transferred to the applicant.

## DRAINAGE

4. The stormwater management system shall conform to the 1994 Thurston County Drainage Design & Erosion Control Manual and Title 15.05 Thurston County Code.
  - a. For this project this also includes a two-year operation & maintenance agreement and financial security that shall be executed prior to final approval.
  - b. Prior to final approval a maintenance agreement found in Appendix K of the Drainage Design & Erosion Control Manual must be prepared for this project and recorded.
  - c. A property owners' association shall be formed. The document creating the Property Owners' Association shall at a minimum make provision for the following: (1) Members of the Property Owners' Association shall be responsible for maintenance of storm drainage facilities as described in Maintenance Plan (See Section 3.3), (2) Inclusion by reference of the maintenance manual prepared by the Project Engineer in accordance with Section 3.3 and (3) Power to assess fees to maintain storm drainage facilities and sanctions in the event that jurisdiction takes action to maintain facilities. Refer to Appendix E, Section E.2 of the Drainage Design & Erosion Control Manual for sample language.
5. All drainage facilities outside of the County right-of-way shall remain private and be maintained by the developer and/or the homeowner's association.
6. Storm water runoff shall be controlled through all phases of the project by facilities designed to control the quality and quantity of discharges and shall not alter nor impact any existing drainage or other properties.
7. All natural and man-made drainage paths contained in the proposed development require easements as set forth in **Section 2.14** of the DDECM.
8. Because proper landscaping is vital to the performance of the stormwater system, the Landscape Plan (if required) shall be signed/sealed by a WA licensed civil engineer (preferably the engineer who designed the stormwater system).
9. A Construction Stormwater Permit from the Washington State Department of Ecology may be required. Information about the permit and the application can be found at:  
<http://www.ecy.wa.gov/programs/wq/stormwater/construction/permit.html>. It is the applicant's responsibility to obtain this permit if required.



## UTILITIES

10. The proposed water and sewer system shall be designed in accordance with the standards and specification of the respective utility purveyor. All water and sewer plans are subject to review and acceptance by the respective utility purveyor.
11. Proposed utility work within the Thurston County Right of Way shall conform to the 1999 Thurston County Road Standards and Chapter 13.56 Thurston County Code. These standards do not address specific city design requirements but rather only items such as restoration of the County right of way and traffic control.
  - a. Placement of utilities within the County right of way will require a Franchise Agreement with Thurston County pursuant to Title 13.56 TCC. This agreement shall be executed with Thurston County prior to final approval.
  - b. Please note all utilities placed parallel to and within the pavement structure are required to rebuild a minimum of half the road, to include grinding and replacement of a minimum of 0.20' of asphalt concrete pavement.

## RIGHT-OF-WAY & SURVEY

12. In order to meet the requirements of the 1999 Thurston County Road Standards, additional right of way may be required. Please have your legal representative or surveyor prepare a Quit Claim Deed describing the necessary right-of-way, being a strip of land which when added to the existing right of way totals **49 feet** of right-of-way lying **East** of and abutting the existing centerline of **Marvin Road SE**. Upon your request, Thurston County's right-of-way representative will prepare the Quit Claim Deed describing the necessary right-of-way dedication. Please contact the Thurston County Right-of-Way section at 754-4998.
13. Pursuant to Title 18.24 Thurston County Code the Applicant shall execute an agreement and provide a financial security to assure successful operation of the required improvements prior to final approval. Improvements not covered by this agreement are water, sewer and stormwater facilities. These are addressed either by separate county ordinance or in the case of the water and sewer utilities by the utility purveyor.
14. Permanent survey control need to be placed to establish all public street centerlines, intersections, angle points, curves, subdivision boundaries and other points of control.
15. Permanent survey control monuments shall be installed in accordance with the standards provided by the Thurston County Public Works – Survey Division. The Survey Division can be reached at 754-4580.

## TRAFFIC

16. Payment of the off-site traffic mitigation required in the 12/2/14 Mitigated Determination of Non-significance is required prior to final approval in accordance with Section 2.13 of the Thurston County Road Standards. Timing of such payments to the other jurisdictions may be altered upon agreement with respective jurisdiction and Thurston County
17. Per Thurston County Resolution 14820, traffic impact fees shall be paid prior to issuing each building permit associated with this project.
18. The bike lane within the project boundaries for the collector road shall be 5' in width.
19. Prior to construction of any phase that would connect the project to 27<sup>th</sup> Avenue, the Applicant must submit a Neighborhood Traffic Control Plan that would provide a traffic improvement (e.g., traffic circle) for any intersection on 27<sup>th</sup> Avenue determined not to meet sight distance standards by appropriate traffic engineering study.

## GENERAL CONDITIONS

20. The proposed roadway in concept and design shall conform to the 1999 Thurston County Road Standards and the City of Lacey standards and development guidelines.
21. Development within the City of Lacey urban growth boundary, requiring review by both Thurston County and the corresponding city jurisdiction, shall be designed to the more stringent standards of the two jurisdictions.
22. Required plan submittal information is presented in **Chapter 3.00** of the TCRS.
23. The proposed grading or site work shall conform to Appendix J of the International Building Code, Title 14.37 of the Thurston County Code and 1994 Drainage Design & Erosion Control Manual.
24. When all construction/improvements have been completed, contact the Thurston County Public Works – Development Review Section at (360) 867-2051 for a final inspection.
25. This approval does not relieve the Applicant from compliance with all other local, state and/or federal approvals, permits, and/or laws necessary to conduct the development activity for which this permit is issued. One permit that may be required is a Construction Stormwater Permit from the Washington State Department of Ecology. Information on when a permit is required and the application can be found at:

<http://www.ecy.wa.gov/programs/wq/stormwater/construction/permit.html>. Any additional permits and/or approvals shall be the responsibility of the Applicant.

#### PROJECT SPECIFIC CONDITIONS

26. Once the planning department has issued the official preliminary approval, a construction permit application shall be submitted along with a complete set of construction drawings and the final drainage and erosion control report to Thurston County Public Works – Development Review Section for review and acceptance.
27. PRIOR to construction, the applicant shall:
  - a. Pay outstanding construction review and inspection fees\*
  - b. Receive a construction permit
  - c. Schedule a pre-construction conference with county staff.

\* The current fee schedule can be found online at <http://www.co.thurston.wa.us/permitting/fees/docs/public-works-development-review-fees.pdf> or contact Ruthie Padilla with the Thurston County Public Works – Development Review Section by phone at (360) 867-2046, or by e-mail at [padillr@co.thurston.wa.us](mailto:padillr@co.thurston.wa.us).

#### GENERAL INFORMATION

##### FINAL REVIEW

28. A duplicate original mylar drawing, certified by the design engineer as "record drawing" in accordance with the January 1, 1999 edition of TCRS, shall be provided prior to final approval. The final plat map and the survey traverse closure calculations shall be submitted to the Development Services Department prior to receiving final approval.
29. Prior to receiving final approval from this department, the following items shall be required:
  - a. Completion of all roads and drainage facilities
  - b. Final inspection and completion of all punch list items, if required after final inspection
  - c. Receive and accept **Appendix "F"** and **"K"** per the DDECM submitted and signed by the project engineer
  - d. Review and accept contractor's blueline record of changes. The changes shall be incorporated on to the original mylars, within "clouds". The record drawing mylars shall be received and accepted, then submit two sets of final record drawings for project file and bond file. The record drawings shall include street names and block numbers approved by Addressing Official.

- e. Financial security will be necessary for maintenance and operation of the drainage facilities
  - f. Financial security for the completion of all improvements required (i.e., sidewalks)
  - g. Required survey information on the final plat map
  - h. Homeowner's articles of incorporation or covenants
  - i. Completion of required frontage improvements
  - j. Completion of required signing and striping
  - k. Payment of any required utility fees
  - l. Payment of any required final fees
  - m. Complete the right-of-way dedication process
30. The final plat map shall note or delineate the following:
- a. "ATTENTION": Thurston County has no responsibility to build, improve, maintain or otherwise service the private road or driveway within or providing access to property described in this plat. The building, maintenance, repair, improvement, operation or servicing of the stormwater facilities outside the county rights of way are the responsibility of the property owner(s).
  - b. Increased storm water runoff from the road(s), building, driveway and parking areas shall be retained on site and shall not be directed to roadway ditches adjacent to Marvin Road SE.
  - c. If seasonal drainage crosses subject property, no filling or disruption of the natural flow shall be permitted.
  - d. Delineate the access restrictions by showing a "no access" strip, written and hatched, between the County approved access points along the frontage of Marvin Road SE on the final plat map.
  - e. Private roads are required to remain open at all times for emergency and public service vehicle use. Any future improvements (gates, fencing, etc.) that would not allow for "open" access will need to be approved by all applicable departments of Thurston County.
  - f. Storage requirements for runoff from buildings and parking surfaces shall be shown on individual building lots, including drywell sizing or storm drain connection points.
  - g. Maintenance of the required landscaping and vegetated drainage facilities within the public right of way is the sole responsibility of the (property owners) or (homeowners association) within this subdivision. Thurston County has no responsibility to maintain or service the said landscaping.

- h. The owner and/or Homeowners Association shall be responsible to operate and maintain the streetlights until such time the property is annexed to the city.
- i. Approval of this subdivision is conditioned upon payment of City of Lacey Traffic Mitigation Fees in the amount of \$1,128.68 per lot. This fee increases on July 1 of each year in accordance with the increase in the Engineering News Record Construction Cost Index and the amount is determined at the date of payment. Payment is required prior to the issuance of a water meter for those lots served by the Lacey Water Utility and prior to building permit issuance for those lots not served by such Utility.
- j. This plat is subject to stormwater maintenance agreement recorded under auditor's file no. \_\_\_\_\_.
- k. Easements are hereby granted for the installation, inspection, and maintenance of utilities and drainage facilities as delineated on the plat for subdivision \_\_\_\_\_ including unrestricted access for Thurston County staff to any and all stormwater system features for the purpose of routine inspections and/or performing maintenance, repair and/or retrofit as may become necessary. No encroachment will be placed within the easements shown on the plat which may damage or interfere with the installation, inspection, and maintenance of utilities. Maintenance and expense thereof of the utilities and drainage facilities shall be the responsibility of the Property Owners' Association as established by covenant recorded under Auditor's file number \_\_\_\_\_.
- l. The property described herein is required to accommodate stormwater runoff from frontage improvements to Marvin Road SE and all natural tributary areas abutting said property.
- m. Please clearly delineate and label all public and private roads.

C. Prior to final plat approval, the following Public Health and Social Services Department related conditions shall be met:

- 1. Prior to final approval for each phase of this subdivision water and sewer utilities must be extended to and through that phase of the plat. Written confirmation that the public sewer and water utilities have received final construction approval from the City of Lacey is required.
- 2. Prior to final approval for each phase of the subdivision all existing on site wells and monitoring wells must be decommissioned by a licensed well driller per Washington State Department of Ecology standards for that phase of the

plat. Copies of all well decommissioning reports (well logs) must be provided to this department.

3. Prior to final approval the subdivision all existing on-site sewage systems on the property must be abandoned per the requirements of Article IV of the Thurston County Sanitary Code. Abandonment permits are required for each abandoned system (abandonment permit fees will be waived as the review is part of the subdivision application). All documentation of abandonment must be provided.
4. An Integrated Pest Management Plan (IPMP) has been developed and approved for this project and must be incorporated into the Declaration of Covenant, Conditions and Restrictions.

#### GENERAL CONDITIONS

- D. Street addresses shall be shown on the final map.
- E. All conditions of the Mitigated Determination of Non-Significance shall be completed at the times specified, except that MDNS condition 13 is stricken and replaced by Condition R, below.
- F. To provide safe walking conditions for students who will walk to nearby North Thurston School District school sites a five-foot wide hard surfaced walking path, separated from driving lanes, shall be constructed along the stretch of 27<sup>th</sup> Avenue between the project boundary and the existing walking path at the intersection of 27<sup>th</sup> Avenue SE and Timber Drive SE. The path shall be constructed prior to final plat approval of that portion of the subdivision that will connect the internal subdivision road to 27<sup>th</sup> Avenue SE (currently listed as Division 10).
- G. The Applicant shall work with the North Thurston School District to identify appropriate locations for school bus waiting areas and if any improvements (pads, shelters, signs, pullouts, etc) are necessary. The bus stops shall be constructed prior to final plat approval of the applicable plat division, or at a later date if so agreed by the North Thurston School District.
- H. Prior to final plat submittal for each division of this subdivision that contains a perimeter 20-foot wide open space buffer, tract the Applicant shall submit a landscape plan designed by a landscape professional for review and approval; except that the buffer shall be increased to 25 feet in width at the locations specified in condition R below. The landscape plan shall propose improvements, including planting additional vegetation to provide the sight obscuring vegetative buffer, required by Policy ZONE.POL.801.05. All approved improvements shall be satisfied prior to final plat approval for the applicable plat division.

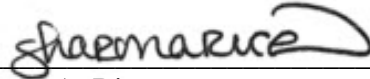
- I. Prior to final plat submittal for each division of this subdivision all proposed open space recreation amenities shall be installed.
- J. Prior to any vegetation removal, land clearing, grading, or any other construction activity for each division of the subdivision, the Applicant's surveyor shall accurately measure the slope angles on the property to determine if any slope meets the definition of landslide hazard area in the Critical Area Ordinance. If landslide hazard slopes are identified, no vegetation removal, land clearing, grading, or any other construction activity is allowed on the slope or within the 50-foot top of slope buffer and 25-foot toe of slope buffer. The landslide hazard areas and buffers shall be shown and labeled on the final plat map.
- K. Comply with recommended mitigation of the Oregon White Oak Habitat Management Plan (HMP), prepared by ESA (dated March 2014). A detailed monitoring, maintenance, and contingency plan shall be submitted for approval prior to any on-site development work, including cutting of any vegetation, land clearing, construction, etc. The monitoring, maintenance, and contingency plan shall run for five years past the date of final plat approval for the last phase containing oak mitigation.
- L. Once the Monitoring, Maintenance, and Contingency Plan is approved, the Applicant shall submit financial security in the amount of 125% of the cost for monitoring, maintenance, and contingency plans of the implementation of the Oak Habitat Management Plan. The term of the financial security shall run for five years past the date of final plat approval for the last phase containing oak mitigation.
- M. Construction fencing shall be installed adjacent to the oak habitat set aside areas prior to any clearing, grading or construction and shall be maintained throughout the entire construction process as to prevent disturbance of the critical area.
- N. Prior to issuance of the Forest Land Conversion permit, the Applicant must submit a tree preservation and new tree planting plan, as required by TCC 17.25. That plan must identify existing trees that can be retained in the open space tracts and include a proposal for street trees and for planting trees on the newly created lots.
- O. On April 8, 2014, the U.S. fish and Wildlife Service listed the Mazama Pocket Gopher under the Endangered Species Act. The subject parcel contains the soil type considered potential pocket gopher habitat. It is the responsibility of the landowner to comply with applicable federal regulations. Approval of this and other County permits may be superseded by federal law.
- P. The following notes shall be shown on the final plat map:
  - 1. This subdivision was reviewed and approved based on standards and allowances of the Low Density Residential District (LD 3-6) (TCC 21.13).

2. This subdivision was reviewed under project number 2009103087, folder 09 109558 ZJ.
  3. On April 8, 2014, the U.S. fish and Wildlife Service listed the Mazama Pocket Gopher under the Endangered Species Act. The subject property contains the soil type considered potential pocket gopher habitat. It is the responsibility of the landowner to comply with applicable federal regulations.
  4. The 20- or 25-foot wide landscape buffer, as appropriate, along rear lot lines of Lots \_ through \_ shall not be removed or disturbed.
  5. This property contains oak habitat which are designated as Critical Areas in Thurston County and are protected under the Thurston County Critical Areas Ordinance 17.15. All activities in and near the habitat areas shall comply with the Oregon White Oak Habitat Management Plan, prepared by ESA (dated March 2014).
  6. The lots of this subdivision are subject to a school mitigation agreement with the North Thurston School District, recorded under Thurston County Auditor's file number 4424198.
  7. Trees on individual residential lots shall be planted at a rate of one (1) tree for every four thousand (4,000) square feet of lot area at the time of building permit application.
- Q. All development on the site shall be in substantial compliance with the approved plat. Any alteration of this site plan will require approval of a new or amended plat. The Planning and Environmental Section will determine if any proposed amendment is substantial enough to require Hearing Examiner approval.
- R. As stipulated by all parties on the record, the following conditions shall replace MDNS condition 13:
1. Traffic calming features as described in Exhibit C5, Attachment A: Possible Traffic Calming Improvements will be constructed by the Applicant, except that the "choker" as shown at the boundary line between the OTP plat and McAllister Park at 19<sup>th</sup> Avenue will be replaced by a chicane. McAllister Park HOA shall have final design approval for all traffic calming improvements as shown in the McAllister Park subdivision. Construction of the traffic calming features in McAllister Park, as shown on Attachment A, shall be completed before the connection of new internal OTP roads to 19<sup>th</sup> Avenue SE.
  2. The Applicant will convert the T-intersection as shown on the project plans in the northern-most portion of Division 9A to a cul-de-sac with emergency vehicle access to 19<sup>th</sup> Avenue SE.



3. The Applicant will provide a vegetated screening buffer of not less than 25 feet in width along the north/south boundary between the proposed new lots and the McAllister Park property and along the east/west boundary between the proposed new OTP lots and the Evergreen Estates property.

Decided April 24, 2015.



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Sharon A. Rice  
Thurston County Hearing Examiner

Appendix A: Exhibit C7 - list of public comments received prior to hearing or via email prior to close of the record:

1. Victor Vogman & Lyudmila Kosinskaya, 12-27-09
2. James Bartley, Jr., including attachment, 12-28-09
3. Robert A. Harvie, including attachment, 12-29-09
4. Kathleen & Robert Bruner, 12-29-09
5. Karla Hubbell, Intercity Transit, 12-29-09
6. Mark Quinn, 12-30-09
7. Newton Jackson, 12-30-09
8. Dr. & Mrs. Charles Beleny, 12-30-09
9. Deborah Haskett, 12-30-09
10. Mary Louise Monaghan, received 12-31-09
11. Barbara Taylor, 12-31-09
12. Amanda Meyer, 1-3-10
13. Sean & Jennifer Lanksbury, 1-3-10
14. Andrea Kendall, 1-3-10
15. Victor J.A. LaBier, 1-4-10
16. Elizabeth Douglas, 1-4-10
17. Greg Hamblin, 1-4-10
18. David Hutchinson, 1-4-10
19. Bernie & Sandy Chaplin, 1-4-10
20. Pat & Ray Bouland, 1-4-10
21. Todd R. Rose, 1-4-10
22. Suneet S. Bath, DMD, 1-4-10
23. Jeffrey Greene, N. Thurston School District, to Jeff Pantier, 1-4-10
24. Jeffrey Greene, N. Thurston School District, to Gayle Zeller, 1-4-10
25. Joanne Rhyne, 1-5-10
26. Helen Gilchrist, 1-5-10
27. Jennie Adkins, 1-5-10
28. Travis Bell, 1-5-10
29. Arthur Van Veen, 1-5-10
30. Larry Hatch, 1-5-10
31. Ryan Andrews, Associate Planner, City of Lacey, 1-6-10
32. Victor J.A. LaBier, including attachment, 1-6-10
33. Jason Kunz, WDFW, 1-15-10
34. Deborah Katz, 1-19-10
35. James Connell, 10-11-10
36. Richard Puz, 9-24-14
37. Richard Puz, 10-24-14
38. Anthony Cook, 10-30-14
39. Board of Directors, McAllister Park Home Owners Association, 10-31-14
40. Deborah Haskett, 11-26-14
41. Pamela R. Warner, PhD, undated
42. Deborah Katz, 12-7-14
43. Robert & Charlotte McMullen, 12-8-14

44. H. Brian Rio & Kay Davies, 12-9-14
45. Jane & Jeffrey Bettinson, 12-9-14 MISSING PAGES 4
46. Marvin Roosendaal, 12-10-14
47. Mark Baus, 12-10-14
48. Jay Hildebrand, 12-11-14
49. Tim Woods, 12-11-14
50. Tom & Bonnie Anderson, 12-12-14
51. Lake Forest HOA, 12-12-14
52. Andrew & Rosemary Cavanaugh, 12-12-14
53. Suneet Bath, 12-14-14
54. Abhishek Basani, 12-14-14
55. Linda & Richard Puz, 12-14-14
56. Jason Strange, including attachment, 12-15-14
57. Mark & Susan Sundberg, 12-15-14
58. Robert & Melania Elias, including attachment, 12-15-14
59. Neal Ramer, 12-15-14
60. Sandy Ramer, 12-15-14
61. Monika Kido, 12-15-14
62. Mark & Susan Sundberg, 12-15-14
63. Mark & Paula Quinn, including attachment, 12-15-14
64. Seasons HOA, 12-15-14
65. N. Ramer, 12-15-14
66. Gregg & Joan Gunnarson, including attachment, 12-15-14
67. Michael & Kathy McSorley, 12-15-14
68. Ralph & Darlene Erickson, 12-16-14
69. Brian Rounds, 12-16-14
70. J. Richard Aramburu, 12-16-14
71. Deborah & Gary Adams, 12-16-14
72. Theresa Nation, DFW, including attachment, 12-16-14
73. Carol Cohoe, Aramburu @ Eustis, LLP, 12-16-14
74. Basani Abhishek, 12-16-14
75. Cherie Klapp, McAllister Park HOA, including attachment, 12-16-14
76. Elizabeth Bailey, including attachment, 12-16-14
77. David Morrison, 12-16-14
78. Al & Margie Eckroth, 12-16-14
79. Lynn & Mary Childers, 12-16-14
80. Dept. of Ecology, 12-16-14
81. John & Michelle Hooker, 12-16-14
82. Lyle & Diane Unwin, including attachment, 12-16-14
83. Todd Rose & Jessica Barrett, 12-16-14
84. George & Charlene Krasch, 12-16-14
85. Steve Puz, 12-16-14
86. Read Judah, 12-18-14
87. John Wsierski, 12-23-14
88. Arthur Scholes, 12-23-14

89. Huber Family, 12-30-14
90. George Ducatt, 12-13-14
91. George & Sandy Whitney, 12-14-14
92. Terri Herring, 2-16-14
93. Alan Booth, 12-15-14
94. Kathleen & Robert Burner, 12-15-14
95. Cindy & Tim Kuhl, 12-16-14
96. Jacquelyn Mills, 12-10-14
97. Sidna & Margaret Wimmer, 12-8-14
98. Bill & Maxine Williams, 12-16-14
99. Lynn & Mary Childers, 12-16-14
100. Paul & Kathy Perz, 12-16-14
101. Mary Mooers, 12-16-14
102. Andris & Inara Kleinbergs, 12-16-14
103. Betty Frazee, 12-12-14
104. Franklyn & Joyce Bishop, 12-13-14
105. Greg Hamblin, 12-12-14
106. Pamela Warner, 12-12-14
107. Brad Bitar, 12-12-14
108. Andrew & Rosemary Cavanaugh, 12-12-14
109. Gary Hubbard, 12-13-14
110. Thomas Weston, 12-13-14
111. Ken Anderson, 12-11-14
112. Robert Smith to Jeff Pantier, 12-11-14
113. Jay Hildebrand, 12-11-14
114. Mark Baus, 12-10-14
115. Surmukh Bath, 12-10-14
116. Patricia & Charles Bouland, 12-10-14
117. Wayne Gray, 12-9-14
118. Gerald McClain, 12-10-14
119. Marilyn Blessings, 12-8-14
120. Robert Smith to Marilyn Gray, 12-9-14
121. Tom Anderson, 12-6-14
122. Bob Mc Mullen, 12-8-14
123. Jacquelyn Mills, 12-7-14
124. Mark & Joanne Rhyne, 12-5-14
125. Dan Patterson, 12-5-14
126. Betty & Israel Mendoza, undated
127. Richard Puz, Laurel Oaks Park, 1-12-15
128. Rhonda House-Plank, 2-10-15
129. Beau Harer, 2-27-15
130. Kevin Greene, 3-23-15
131. Lee Rimner, 3-16-15
132. Michael & Patricia Novak, 3-15-15
133. L. Riemner, 3-17-15

134. William & Linda Rymer, 3-22-15
135. Krag Unsoeld, Hilde Flores, Janine Unsoeld, Ruth Shearer, Doug Canning, 3-23-15
136. Gail James, 3-23-15
137. John Grettenberger, 3-23-15

Appendix B, Exhibit C28, Written Comments received during public hearing, March 24, 2015:

1. Thomas Cofield, March 23, 2015
2. Liz Lyman, March 24, 2015
3. Ron Fuller, Seasons Homeowners Association, President, March 24, 2015
4. Elizabeth Roderick, Vice President, Black Hills Audubon Society Homeowners Association, March 20, 2015
5. Arthur Scholes, March 23, 2015
6. Liz Kohlenberg, PhD., March 23, 2015
7. Gregory Hamblin, undated
8. Krag Unsoeld, Hilde Flores, Janine Unsoeld, Ruth Shearer, Doug Canning, representing SPEECH, undated
9. Laurie Shuster, March 22, 2015
10. Karl Tschimperle, undated
11. Kailey Tschimperle, March 24, 2015
12. Ruth M. Smith, March 24, 2015
13. Petition to Thurston County Commissioners, signed by Michael F. Lang and Deborah M. Lang, signed March 4, 2015

Appendix C, Exhibit C35, Public comments submitted after close of the record per the post-hearing order<sup>6</sup>:

1. Jerry Lee Dierker, Jr., April 3, 2015
2. Robert, Ann & Lisa Bregent, April 2, 2015
3. Keith Underwood, April 2, 2015
4. Charles & Diane Rigby, April 2, 2015
5. Liz Lyman, April 3, 2015
6. Michael Sheahan, April 2, 2015
7. Liz Kohlenberg, April 3, 2015
8. Doug Karman, April 3, 2015
9. Lorna Stewart, April 3, 2015
10. Lake Forest Home Association Petition, received April 3, 2015
11. Donna Nickerson, April 3, 2015
12. Janine Unsoeld, April 3, 2015
13. Arthur Scholes, April 3, 2015

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<sup>6</sup> Note: Only the items allowed by the post-hearing order (written comments addressing exhibits not available for review prior to the hearing) are admitted; all articles or documents attached to such written comments are not admitted and not relied on.)

14. Elizabeth Rodrick, Vice President, Black Hills Audubon Society, April 2, 2015
15. Debra Jaqua, April 3, 2015
16. Felicia Carroll, April 3, 2015
17. Cheryl Huffman, April 3, 2015
18. Holly Harmon, April 3, 2015
19. Nowell Grothe, April 3, 2015
20. Brad Raines, April 4, 2015
21. Laurie Shuster & David Anderson, including Change.org petition, received April 3, 2015
22. Evergreen Estates Petition, received April 3, 2015
23. Joe Clark & Norma Larson, March 25, 2015
24. Julie Hensick, March 26, 2015
25. Neal Ramer, March 25, 2015
26. Harry Branch, March 25, 2015
27. Ron Fuller, March 29, 2015
28. William & Judith Hansen, March 29, 2015
29. Loyd & Carolyn Long, March 30, 2015
30. Mark Hohn, March 30, 2015
31. Michelle Rivera, March 30, 2015
32. Courtney Jarmon, March 31, 2015
33. Frank & Joyce Bishop, March 31, 2015
34. Newton & Helen Jackson, March 31, 2015
35. Cindy Sharpe, March 31, 2015
36. Interested Party ([spotty97@comcast.net](mailto:spotty97@comcast.net)), March 31, 2015
37. Lynn Villella & Joe Mailhot, April 1, 2015
38. Peggy Bruton, April 1, 2015
39. William Koopman, April 1, 2015
40. Andrea Sanchez, April 1, 2015
41. Beverly Jean Jenden, March 31, 2015
42. David Groves, April 1, 2015
43. Bill Moore, April 2, 2015

**THURSTON COUNTY**  
**PROCEDURE FOR RECONSIDERATION AND APPEAL**  
**OF HEARING EXAMINER DECISION TO THE BOARD**

**NOTE:** THERE MAY BE NO EX PARTE (ONE-SIDED) CONTACT OUTSIDE A PUBLIC HEARING WITH EITHER THE HEARING EXAMINER OR WITH THE BOARD OF THURSTON COUNTY COMMISSIONERS ON APPEALS (Thurston County Code, Section 2.06.030).

If you do not agree with the decision of the Hearing Examiner, there are two (2) ways to seek review of the decision. They are described in A and B below. Unless reconsidered or appealed, decisions of the Hearing Examiner become final on the 15th day after the date of the decision.\* The Hearing Examiner renders decisions within five (5) working days following a Request for Reconsideration unless a longer period is mutually agreed to by the Hearing Examiner, applicant, and requester.

The decision of the Hearing Examiner on an appeal of a SEPA threshold determination for a project action is final. The Hearing Examiner shall not entertain motions for reconsideration for such decisions. The decision of the Hearing Examiner regarding a SEPA threshold determination may only be appealed to Superior Court in conjunction with an appeal of the underlying action in accordance with RCW 43.21C.075 and TCC 17.09.160. TCC 17.09.160(K).

**A. RECONSIDERATION BY THE HEARING EXAMINER (Not permitted for a decision on a SEPA threshold determination)**

1. Any aggrieved person or agency that disagrees with the decision of the Examiner may request Reconsideration. All Reconsideration requests must include a legal citation and reason for the request. The Examiner shall have the discretion to either deny the motion without comment or to provide additional Findings and Conclusions based on the record.
2. Written Request for Reconsideration and the appropriate fee must be filed with the Resource Stewardship Department **within ten (10) days of the written decision**. The form is provided for this purpose on the opposite side of this notification.

**B. APPEAL TO THE BOARD OF THURSTON COUNTY COMMISSIONERS (Not permitted for a decision on a SEPA threshold determination for a project action)**

1. Appeals may be filed by any aggrieved person or agency directly affected by the Examiner's decision. The form is provided for this purpose on the opposite side of this notification.
2. Written notice of Appeal and the appropriate fee must be filed with the Resource Stewardship Department **within fourteen (14) days of the date of the Examiner's written decision**. The form is provided for this purpose on the opposite side of this notification.
3. An Appeal filed within the specified time period will stay the effective date of the Examiner's decision until it is adjudicated by the Board of Thurston County Commissioners or is withdrawn.
4. The notice of Appeal shall concisely specify the error or issue which the Board is asked to consider on Appeal, and shall cite by reference to section, paragraph and page, the provisions of law which are alleged to have been violated. The Board need not consider issues, which are not so identified. A written memorandum that the appellant may wish considered by the Board may accompany the notice. The memorandum shall not include the presentation of new evidence and shall be based only upon facts presented to the Examiner.
5. Notices of the Appeal hearing will be mailed to all parties of record who legibly provided a mailing address. This would include all persons who (a) gave oral or written comments to the Examiner or (b) listed their name as a person wishing to receive a copy of the decision on a sign-up sheet made available during the Examiner's hearing.
6. Unless all parties of record are given notice of a trip by the Board of Thurston County Commissioners to view the subject site, no one other than County staff may accompany the Board members during the site visit.

**C. STANDING** All Reconsideration and Appeal requests must clearly state why the appellant is an "aggrieved" party and demonstrate that standing in the Reconsideration or Appeal should be granted.

**D. FILING FEES AND DEADLINE** If you wish to file a Request for Reconsideration or Appeal of this determination, please do so in writing on the back of this form, accompanied by a nonrefundable fee of **\$638.00** for a Request for Reconsideration or **\$846.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Permit Assistance Center on the second floor of Building #1 in the Thurston County Courthouse complex no later than 4:00 p.m. per the requirements specified in A2 and B2 above. **Postmarks are not acceptable.** If your application fee and completed application form is not timely filed, you will be unable to request Reconsideration or Appeal this determination. The deadline will not be extended.

\* Shoreline Permit decisions are not final until a 21-day appeal period to the state has elapsed following the date the County decision becomes final.



|   |
|---|
| <b>Project No.</b> _____<br><b>Appeal Sequence No.:</b> _____ |
|---|

Check here for: RECONSIDERATION OF HEARING EXAMINER DECISION

THE APPELLANT, after review of the terms and conditions of the Hearing Examiner's decision hereby requests that the Hearing Examiner take the following information into consideration and further review under the provisions of Chapter 2.06.060 of the Thurston County Code:

(If more space is required, please attach additional sheet.)

Check here for: APPEAL OF HEARING EXAMINER DECISION

TO THE BOARD OF THURSTON COUNTY COMMISSIONERS COMES NOW \_\_\_\_\_  
 on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, as an APPELLANT in the matter of a Hearing Examiner's decision rendered on \_\_\_\_\_, 20\_\_\_, by \_\_\_\_\_ relating to \_\_\_\_\_

THE APPELLANT, after review and consideration of the reasons given by the Hearing Examiner for his decision, does now, under the provisions of Chapter 2.06.070 of the Thurston County Code, give written notice of APPEAL to the Board of Thurston County Commissioners of said decision and alleges the following errors in said Hearing Examiner decision:

Specific section, paragraph and page of regulation allegedly interpreted erroneously by Hearing Examiner:

1. Zoning Ordinance \_\_\_\_\_
2. Platting and Subdivision Ordinance \_\_\_\_\_
3. Comprehensive Plan \_\_\_\_\_
4. Critical Areas Ordinance \_\_\_\_\_
5. Shoreline Master Program \_\_\_\_\_
6. Other: \_\_\_\_\_

(If more space is required, please attach additional sheet.)

AND FURTHERMORE, requests that the Board of Thurston County Commissioners, having responsibility for final review of such decisions will upon review of the record of the matters and the allegations contained in this appeal, find in favor of the appellant and reverse the Hearing Examiner decision.

**STANDING**

On a separate sheet, explain why the appellant should be considered an aggrieved party and why standing should be granted to the appellant. This is required for both Reconsiderations and Appeals.

Signature required for both Reconsideration and Appeal Requests

\_\_\_\_\_  
 APPELLANT NAME PRINTED

\_\_\_\_\_  
 SIGNATURE OF APPELLANT

Address \_\_\_\_\_

\_\_\_\_\_  
 Phone \_\_\_\_\_

**Please do not write below - for Staff Use Only:**

Fee of  \$638.00 for Reconsideration or \$846.00 for Appeal. Received (check box): Initial \_\_\_\_\_ Receipt No. \_\_\_\_\_  
 Filed with the Resource Stewardship Department this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_.