



COUNTY COMMISSIONERS

Carolina Mejia-Barahona  
District One

Gary Edwards  
District Two

Tye Menser  
District Three

**HEARING EXAMINER**

*Creating Solutions for Our Future*

**BEFORE THE HEARING EXAMINER  
FOR THURSTON COUNTY**

In the Matter of the Applications of	)	NO. 2020102143 Manor House
	)	
<b>MK58, LLC</b>	)	FINDINGS, CONCLUSIONS,
	)	AND DECISION
For a Preliminary Plat,	)	
Planned Residential Development, and	)	
Forest Land Conversion	)	

**SUMMARY OF DECISION**

Based on the record submitted, the applications for forest land conversion, planned residential development, and preliminary plat to subdivide 81.36 acres into 505 single-family and townhome residential lots cannot be approved. The extent of conflicting and missing information is so great that it is not possible to remand to allow clarification. Therefore, the applications must be **DENIED**.

**SUMMARY OF RECORD**

**Request:**

MK58 LLC (Applicant) requested a preliminary plat to subdivide 81.36 acres into 505 single-family and townhome residential lots using the planned residential development (PRD) design standards and a forest land conversion to harvest 53 acres of timber. The planned residential development and plat would create 505 residential lots on 81.36 acres to be developed with a combination of single-family and multifamily units, multiple open space tracts, a new internal public road system, and public sewer and water facilities. The subject property is comprised of nine tax parcels in the Lacey Urban Growth Area south of Mullen Road SE in unincorporated Thurston County.

**Hearing Date:**

The Thurston County Hearing Examiner conducted a virtual open record public hearing on the request on November 29, 2021. No in-person site visit was conducted, but the Examiner viewed the site and surroundings on Google Maps. The record was held open through December 1, 2021 to allow any members of the public having difficulty joining the virtual hearing to submit written comments, with time scheduled for responses from the parties. Two post-hearing public

comments were submitted, and the record closed on December 3, 2021. Due to the size of the record, the Applicant agreed at hearing to extend the decision issuance period by 10 business days.

These proceedings originally also included a consolidated appeal of the County's environmental threshold determination issued pursuant to the State Environmental Policy Act (SEPA No. 20-105973, issued September 24, 2021). Following a prehearing conference convened on October 19, 2021, a scheduling order was issued that established pre-hearing document exchange deadlines, including a motions schedule. The Applicant filed a motion to dismiss the SEPA appeal. Having considered the Appellant's clarification of errors alleged on appeal, Applicant's revised proposal withdrawing the variance request, Appellant's response to the motion, and Applicant's reply to the response, the motion to dismiss was granted by order issued November 15, 2021. The documents relating to the dismissed appeal are identified in Appendix A.

**Testimony:**

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

Brett Bures, Building and Planning Manager, Thurston County  
Arthur Saint, Civil Engineer, County Public Works  
Dawn Peebles, Senior Environmental Health Specialist, PHSS  
Matt Unzelman, PE, County Traffic Engineering and Operations Manager  
Mark Steepy, P.E., KPFF, Applicant representative  
Jeff Schramm, Traffic Engineer With TENW, Applicant representative  
Steve Chamberlin, Applicant  
Aaron Laing, Applicant's Legal Representative (argument and testimony)  
Alex Sidles, Legal Representative for Theresa Janzen (argument and testimony)  
Mary Ellen Russell, Registered Landscape Architect for Theresa Janzen  
Madeline Bishop  
Gail Grubb  
Mark Hunter  
Maddi Bongiorno  
Christina Peterson  
William Stewart  
Debra Bond-Yancey  
Linda Friedman  
Alice Huston  
Kelly Spacek  
James Robertson

**Exhibits:**

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

Exhibit 1 Community Planning and Economic Development Staff Report, with the following attachments:

A. Master Application, submitted May 21, 2021

- B. Division of Land Application, submitted May 21, 2021
- C. Project Narrative, submitted May 21, 2021
- D. Planned Residential Development Plan Set, submitted August 25, 2021
- E. Landscape Plans Sheet L-1, submitted May 21, 2021
- F. Cut & Fill Grading Plan, submitted May 21, 2021
- G. Density Calculation Map, submitted May 21, 2021
- H. Geotechnical Report by Terra Associates, Inc., dated, December 9, 2019
- I. Geotechnical Report by Terra Associated, Inc., dated, April 7, 2020
- J. Storm drainage Basin Map, submitted May 21, 2021
- K. Drainage Report Preliminary with Appendix A-K, submitted May 21, 2021
- L. Water Availability Letter from Pattison Water Supply, dated January 9, 2020
- M. Sewer Availability Letter from the City of Lacey, dated March 31, 2020
- N. Integrated Pest Management Plan (IPMP), submitted May 21, 2021
- O. Groundwater Investigation Report from Insite Geologic Inc., dated March 16, 2020
- P. Development Rights Certificates, submitted May 21, 2021
- Q. Open Space Letter, High/Low Analysis, dated March 20, 2021
- R. Hydrogeologic Assessment by Insight Geologic Inc., dated July 15, 2021
- S. Public Hearing Notice & SEPA MDNS Determination w/SEPA Checklist, dated September 24, 2021
- T. Traffic Impact Analysis, dated April 28, 2021
- U. City of Lacey Manor House Traffic Impact Analysis Approval, dated August 6, 2021, with attached
  - 1. City of Lacey comments on the TIA with Applicant responses, dated July 7, 2021
- V. Cultural Resource Report, dated April 19, 2021
- W. Habitat Management Plan, Mazama Pocket Gopher and Prairie Plants, dated October 31, 2019
- X. Department of Health Comments (email), dated June 24, 2021
- Y. WSDOT Comments (email), dated July 22, 2020
- Z. Forest Land Conversion Application, submitted May 21, 2021
- AA. Logging Site Plan/Drainage Plan, submitted May 21, 2021
- BB. [stricken - repeat document]
- CC. Nisqually Tribe Comment Letter, dated September 30, 2021

- DD. Department of Ecology Comment Letter, dated July 9, 2020
- EE. Department of Ecology Comment Letter, dated June 10, 2021
- FF. North Thurston Public Schools Comment Letter, dated June 24, 2020
- GG. North Thurston Public Schools Comment Letter, dated May 24, 2021
- HH. North Thurston Public Schools Comment Letter, dated June 10, 2021
- II. Department of Archaeology & Historic Preservation Letter of No Effect, dated May 25, 2021
- JJ. Mazama Pocket Gopher Screening and Prairie Plant Survey with Habitat Management Plan, submitted July 25, 2020
- KK. Intercity Transit Revised Comment, submitted June 8, 2021
- LL. Applicant's Response to RB Engineering letter to Steve Chamberlain re: water system plan, dated July 1, 2021 with attached State of Washington Department of Health (DOH) letter, dated May 20, 2021
- MM. Olympic Region Clean Air Agency (ORCAA) Comment, dated August 4, 2021
- NN. Spurgeon Creek/Yelm Highway Temporary Signal Concept, submitted August 25, 2021
- OO. Spurgeon Creek/Yelm Highway Temporary Signal Concept EOPC, submitted July 6, 2021
- PP. Public Comment – See Appendix A
- QQ. Mazama Pocket Gopher Screening and Prairie Plant Survey, dated October 16, 2019
- RR. Memo – Review of Reports Prepared for SCA Consulting Group, dated July 20, 2020
- SS. Updated Overall Preliminary Plat Map Sheet C2.0, received November 11, 2021
- TT. [none offered]
- UU. [none offered]
- VV. Ruling on Motion to Dismiss and Revised Scheduling Order dated, November 15, 2021
- WW. Public Hearing Notice, issued November 15, 2021
- XX. Squaxin Island Tribe Comment Letter, dated June 22, 2020
- YY. Notice of Application, issued June 19, 2020
- ZZ. David A. Bricklin, Bricklin & Newman, LLP Letter, dated October 7, 2021
- AAA. Graphic depicting location of Applicant's proposed off-site in-lieu open space donation

- BBB. Critical Areas Report, dated May 11, 2020
- CCC. Thurston PUD letter of intention to provide water service, dated November 24, 2021
- DDD. City of Lacey Development Review Public Works recommended plat conditions, dated July 31, 2020
- Exhibit 2 Public Comments Received After Publication of Staff Report
- A. Alexandra Kasuske email, received November 23, 2021
  - B. Memorandum by Alex Sidles of Bricklin & Newman LLP on behalf of Theresa Janzen, received November 28, 2021
  - C. Christina Peterson email, received November 28, 2021
  - D. Mary Ellen Russell of Russell & Lambert Landscape Architecture report prepared for Attorney Alex Sidles on behalf of Theresa Janzen, received November 29, 2021, with attached curriculum vitae of Mary Ellen Russell
- Exhibit 3 Final site plan and elevation of options for perimeter setback, submitted at hearing
- Exhibit 4 Washington Water Service letter, dated November 24, 2021, submitted by Applicant
- Exhibit 5 Applicant's requested revised conditions 6, 52, 52, and 54, submitted at hearing
- Exhibit 6 Revised Phasing Plan, submitted at hearing
- Exhibit 7 Timely post-hearing public comments:
- A. Richard Tuttle email, received November 29, 2021
  - B. Daniel Slocum email, received November 29, 2021
- Exhibit 8 Revised recommended conditions from CPED and Environmental Health Division, timely submitted November 30, 2021<sup>1</sup>
- Exhibit 9 Applicant's response to proposed condition revisions, timely submitted November 30, 2021
- Exhibit 10 Planning Staff Response to Applicant's Proposed Condition Revisions
- A. Public Works Response, dated December 2, 2021
  - B. Planning Staff Response to Applicant's proposed condition revisions
  - C. Applicant final response to County comments
- Exhibit 11 Photograph of posted hearing notice, submitted by the Applicant<sup>2</sup>

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<sup>1</sup> See Appendix C for a discussion on the admission of Exhibits 8, 9, and 10.

<sup>2</sup> The photograph of the posted hearing notice was verbally referenced by Applicant representatives at hearing, acknowledged by the undersigned, and was provided by Mark Steepy in his email providing the other documents requested in the post-hearing scheduling email. It is admitted.

Based on the record developed through the open record hearing process, the Hearing Examiner enters the following findings and conclusions.

## FINDINGS

### *Site Context and Procedural Background*

1. MK58 LLC (Applicant) requested a preliminary plat to subdivide 81.36 acres into 505 single-family and townhome residential lots using the planned residential development (PRD) provisions. The submitted applications include one for forest land conversion related to the proposal to harvest 53 acres of timber. The planned residential development and plat would create 505 residential lots on 81.36 acres to be developed in phases with a combination of single-family and multifamily units, 27 open space tracts, a new internal public road system, and public sewer and water facilities. The subject property is comprised of nine contiguous tax parcels (referred to herein as “the subject property”) in the Lacey Urban Growth Area south of Mullen Road SE in unincorporated Thurston County.<sup>3</sup> *Exhibits 1, 1.A, 1.B, 1.C, 1.D, 1.SS, 3, and 6.*
2. The subject property is zoned McAllister Geologically Sensitive Area (MGSA). *Exhibit 1.* The intent of the MGSA zone is to: a) protect the McAllister Springs geologically sensitive area by provision of sewer and application of strong water quality standards for residential uses; b) provide density opportunities that will make provision of sewer economically attractive and accelerate installation of sewer to this area; and c) enhance residential quality of the Lacey UGA by providing a high standard of development for single-family residential development at urban densities. *Thurston County Code (TCC) 20.10.010.* Land uses permitted outright in the MGSA zone include single-family residential development, planned residential developments, townhouse developments, condominiums, and a maximum of up to 5% of two- and three-family units. *TCC 20.10.020.* The permitted residential density is a minimum of three and a maximum of six residential units per acre when sewer is provided. *TCC 21.10.035.* The Lacey-Thurston County Joint Comprehensive Plan designates the area for residential use. *Exhibit 1.*
3. The purpose of the planned residential development provisions within the Lacey UGA are established in County Code as follows: a) to encourage imaginative design and the creation of permanent open space by permitting greater flexibility in zoning requirements than is generally permitted by other chapters of this title; b) to preserve or create environmental amenities superior to those generally found in conventional developments; c) to create or preserve usable open space for the enjoyment of the occupants; d) to preserve to the greatest possible extent the natural characteristics of the land, including topography, natural vegetation, waterways, views, etc.; e) to encourage development of a variety of housing types; f) to provide for maximum efficiency in the layout of streets, utility networks, and other public improvements; and g) to provide a guide for developers

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<sup>3</sup> The legal description of the subject property is a portion of Section 35 and 36, Township 18 North, Range 1 West, W.M.; also known as Tax Parcel Numbers 09710001000 (19.6 acres), 09710005004 (5.0 acres), 09710005001 (1.0 acre), 09710005003 (4.7 acres), 11836330000 (40.8 acres), 11836330700 (4.7 acres), 11836330500 (4.34 acres), 11836330200 (0.03 acres), and 11836330100 (1.1 acres). *Exhibit 1.D.*

and county officials in meeting the purpose and provisions of this chapter. *TCC 21.60.010*. Parcels developed pursuant to the PRD provisions are subject to the lot size, setback and yard standards, design standards, and environmental/ recreational amenities provisions of the PRD chapter (*TCC Chapter 21.60*). Development within PRDs remains subject to the requirements of the underlying zone and of the subdivision ordinance except to the extent that those requirements are superseded by the PRD provisions; the setback, lot size, height limits, and other dimensional requirements of the underlying zone are expressly waived. *TCC 21.60.050.A and .B*.

4. The irregularly shaped consolidated subject property is located south of Mullen Road SE, west of Meridian Road SE, north of 58th Avenue SE, and east of Kagy Street SE. The northeast-most portion of the property abuts Mullen Road. Southern portions abut 58th Avenue SE, and western portions abut Kagy Street SE. The site is generally flat with no major topographic features; existing slopes overall are less than 3% with one small area along 58th Avenue approaching 5% slopes. Past and current uses of the subject property include approximately six single-family residences on large lots with appurtenances including barns, a riding arena, accessory structures related to agricultural uses, cattle/horse grazing pasture, and a former 53-acre Christmas tree farm. The property contains several large stands of Douglas fir and an approximately one-acre grove of Oregon White Oaks in addition to other oaks. Planning Staff indicates that approximately 21 acres of the subject property are previously unplatted. The nearest bodies of surface water are Pattison Lake (approximately 0.5 miles to the southwest), Long Lake (approximately 0.6 miles to the northwest), and Lake St. Clair (approximately 0.8 miles to the east). *Exhibits 1, 1.C, 1.K (page 6), 1.R, and 3; Google Maps site view.*
5. Surrounding development, rural in nature, includes residential uses, small agricultural uses, and scattered commercial or home occupation uses. There are several subdivisions to the west of Kagy Street, including Madrona Estates and Courtney View Estates. The Winwood Subdivision is southwest across 58th Avenue. Across Mullen Road to the north are the Archerwood Village and Seasons subdivisions. Other properties to the south and east are generally large lot single-family residences, some with personal agricultural accessory uses. North Thurston Public Schools owns property adjacent to the northeast portion of the subject property just south of Mullen Road SE. Woodland Elementary School is located slightly less than two miles to the northwest. *Exhibits 1.K (page 8), 1.R, 1.PP, and 3; Google Maps site view.*
6. The project as initially proposed in May 2020 sought permission to create 620 dwelling units, including an apartment complex, and included an application for variance seeking to reduce the minimum 30-foot perimeter screening buffer between the proposed smaller lots and the surrounding larger parcels required by *TCC 21.80.055* to a 20-foot perimeter buffer. Following initial public meetings and consultation with Thurston County and City of Lacey, the proposal was revised to 505 lots with no apartments. Later, following an appeal of the County's environmental threshold determination, the Applicant withdrew the variance application and revised the perimeter of the project to provide a 30-foot buffer, described in more detail below. *Exhibits 1, 1.C, and 1.K (page 2); Appendix B.*

7. The Mazama pocket gopher is a species listed as endangered pursuant to the federal Endangered Species Act. The subject property is entirely underlain by two soil types known to provide habitat for this species: Nisqually loamy fine sand, a “More Preferred” gopher soil, and Spana gravelly loam, a “Less Preferred” gopher soil. *Exhibit 1.QQ, Appendix B.* The Applicant commissioned a professionally prepared critical areas study of the overall site, which found no wetlands or streams on or within three hundred feet of the subject property. According to a report by geotechnical consultants, no geologically hazardous areas were found on-site, and the site’s soils could be subject to erosion following ground disturbing work, but with proper implementation of standard best management practices, erosion hazards are anticipated to be adequately mitigated. Areas of important oak habitat were found on site, as were areas of individual oak trees. The subject property is located in an area known to contain Mazama Pocket Gopher habitat, with observed mounds both onsite and on nearby properties. The site is outside of any regulated floodplain and contains no regulated shorelands. *Exhibits 1.H, 1.K (page 8), and Exhibit 1.QQ.*
  
8. The project is located in the Woodland Creek Basin within the Henderson Inlet Watershed Basin, in Water Resources Inventory Area 13 - Deschutes, and is within the McAllister Geologically Sensitive zone. The subject property is underlain by regulated critical aquifer recharge area (CARA) and wellhead protection areas for three nearby community water supply systems. The Group A Thurston PUD (formerly Pattison Water Company) primary well (Source #1, Well #1 Christmas Tree) is located on site and its wellhead protection area is entirely within the project boundaries. Also, Group A Holiday Ranchettes water system well (Source #9, Well #5 AGN707) is located southwest of the subject property and its wellhead protection radius extends into the site.<sup>4</sup> There is an extensive glacial till deposit (“hard pan”) under the site between the surface and aquifers serving as residential water supplies in the area. The Thurston PUD and Holiday Ranchettes supply wells are further protected by another clay layer known as the Olympia Beds. The third system is the Group B, Lacey Fire District 3 – Mullen (Source #1, Well #1 AHF089) public water system, the wellhead protection area of which overlays a small portion of the northeast corner of the subject property. *Exhibits 1, 1.N, 1.O, 1.R, 1.W, 1.X, and 1.QQ.*

## *Proposal*

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<sup>4</sup> The project narrative states that an additional tax parcel (1186330401, 0.99 acres) is included within the overall site area and that it houses a Thurston PUD production well. The application materials assert this separate tax parcel is under the same ownership as the encompassing parcel and was presumably created for tax purposes only. *Exhibits 1.C.* The subdivision application states that the water supply is located off-site on Parcel 11836330300. *Exhibit 1.B.* The existing conditions plan show that Parcel 11836330300 is off-site to the west of the subject property and is 0.84 acres in area. Parcel 11836330401 is not found on the site plans. *Exhibit 1.D.* The undersigned notes that the accurate identity of these two wells is not made clear in the record; it is assumed in this finding that the off-site well along Kagy Street on Parcel 11836330300 is the Holiday Ranchettes well and that the well south of the barn on Parcel 11836330000 is the Thurston PUD well, based on information pieced together from many documents and testimony.



9. The project under consideration in these proceedings seeks to subdivide 81.36 acres into 505 total lots, an internal public road network, and 27 open space tracts totaling 20.26 acres. Two existing residences would be retained (and count toward the 505 lot total), one in the extreme northwest corner of the property fronting Kagy Street SE, and the other in the southwest corner of the property fronting 58th Avenue SE. All other residences and structures would be removed. The project is proposed to be constructed in four phases, each phase containing a mix of detached single-family and attached townhome units.<sup>5</sup> Phase 1 of the project is expected to commence immediately upon obtaining final preliminary plat/ PRD approval and approval of construction documents. Future phases would be completed over the following years depending upon market conditions, to be completed not later than the five-year expiration of the approved Preliminary Plat/ PRD. Home sizes are anticipated to range between 1,200 to 4,000 square feet on varying lot widths. Designed to provide an affordable product, the housing is intended to be attractive to military families and retirees. *Exhibits 1.C, 1.D (Sheet C1.0), 1.K (page 4), 1.SS, 3, and 6.*
10. Two existing residences would be retained on two of the proposed lots, which would be a 0.5-acre lot fronting on Kagy Street and a 0.9-acre fronting 58th Avenue. Both would continue to use their existing driveways. The new detached single-family lots are proposed at a mix of widths including 34, 40, and 50 feet. These lots would have front yard setbacks of 10 feet for the residence and 20 feet for garages; rear yards would be a minimum of 15 feet; and side setbacks would vary between three and five feet, depending on lot width, with a minimum of five feet on street side setbacks and a minimum of 10 feet between structures. Typically 26 feet wide by 90 feet deep, the 104 proposed townhouse lots would have zero setback on the interior lot lines (attached units) with a minimum of 10 feet between structures, and would provide minimum front setbacks of 20 feet from right-of-way and minimum rear setbacks of 15 feet. Minimum proposed lot area would be 2,340 square feet, and maximum structure height would be 35 feet. *Exhibits 1.C, 1.D (Sheet C1.0), 1.K (page 2), 3, and 6.*<sup>6</sup>
11. That application materials state that maximum density is calculated by adding all site acreage not encumbered by wetland critical areas (81.36 acres, no wetlands, or critical areas) and half of the right-of-way frontage, or in this case 2.45 acres, and multiplying by

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<sup>5</sup> The exact number of units in each phase is not stated in writing in the record, and figuring this out is complicated by the following. When individual lots are counted on the final phasing map offered at hearing as Exhibit 6, they appear to total 506 lots. Counting the lots on Exhibit 1.D, Sheet C1.0 results in 505 lots, but the counts per phase do not match the totals stated in the Phases Lot Count table, and when the numbers in that table are added, the total is 506. Further complicating count is the fact that the final phasing plan (Exhibit 3) reversed the order of phases stated in the plan set (Exhibit 1.D). It is not clear what the total proposed unit count per phase is. *Exhibits 1, 1.C, 1.D, 3, and 6.* The undersigned takes notice that the exact number of units per phase is a matter that could be decided following preliminary plat approval, during civil engineering, based on more detailed site specific investigation, so long as any imposed mitigation measures based on reaching specific thresholds are satisfied and so long as the total count - including the two retained existing residences - does not exceed 505.

<sup>6</sup> Details on numbers of townhouse lots are inconsistent in the materials, ranging from 104 (Exhibit 3) to 147 (Exhibit 1.C) townhomes. Minimum lot widths for detached single-family lots appear to be inconsistent in the materials, ranging from 26 feet (Exhibit 1.D, Sheet C1.0) to 34 feet (Exhibit 3).

six, resulting in 503 allowed units.<sup>7</sup> *Exhibits 1.C and 1.D.* At 503 units (including two existing residences to be retained), the project would be developed at a density of six units per acre, consistent with the maximum allowed in the MGSA zone. *Exhibits 1, 1.C, and 1.D; TCC 21.10.035.* Two of the proposed 505 lots require approval of transfer of development rights (TDR) owned by the Applicant. The plan set and final phasing plan each indicate two contingent lots, which in the final phasing plan would be one each in Phases 3 and 4. Currently, the TDRs owned by the Applicant do not allow the “receiving” area to be applied in the location of the subject property. According to the Applicant, the County was considering revising the TDR program, which could result in there being additional areas where TDRs can be used. At hearing the Applicant indicated that, if approved, they are likely to be the last two lots developed. Planning Staff recommended a condition of approval that would allow the two additional lots if, in the future, allowed receiving areas are expanded to include the subject property. *Exhibits 1, 1.D, 1.P. and 6.* The Applicant is not proposing to utilize density bonus credits.<sup>8</sup> *Exhibit 1; Testimony of Mark Steepy and Steve Chamberlain.*

12. Townhouse developments are permitted in the MSGA zone. *TCC 21.10.020.A(3).* Townhouses are built in groups such that individual units have side walls on lot lines. The townhouse provisions require a minimum lot width of 20 feet and minimum lot area of 1,600 square feet, a minimum setback of 25 feet from a public right-of-way, and a minimum rear setback of 15 feet. A minimum of 10 feet between structures is required. Maximum height is that of the underlying zone. Each unit is required to be provided a minimum of 300 square feet of private open space. Townhouse developments are subject to design review in TCC Chapter 21.70. *TCC 21.61.040.* Proposed townhome lots would be a minimum width of 26 feet. Although the townhouse regulations allow for density increases based on provision of specified amenities, the Applicant has not proposed a density increase. *TCC 21.61.040.B(3); Exhibit 1.C; Mark Steepy Testimony.* As of the hearing, the Applicant had not submitted a design review application with the proposed plat. Planning Staff submitted that a design review application for the townhouse portion of the development would need to be administratively approved prior to building permit issuance. *Exhibit 1, page 12.*
13. The PRD provisions require a minimum of 30% of the overall site to be set aside as common open space, held in a single, common ownership “where such ownership assumes full responsibility for maintenance and operation,” which must be available to all lots in the development. *TCC 21.60.140.A(1).* Common open space must be usable and accessible physically and visually from an adjacent street or internal pedestrian route and must have convenient access for residents of the development. *TCC 21.60.140.A(4).* Up to 50% of the common open space requirement can be met through cash or like value

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<sup>7</sup> There’s no citation in the record to authority supporting the inclusion of half of the right-of-way frontage in density calculations, and the undersigned was unable to find it in TCC 21.60.140.B or elsewhere. The staff report does not analyze density.

<sup>8</sup> The project narrative at Exhibit 1.C makes reference to 12 density bonus credits, which would result in a total of 515 lots; however, it was clarified at hearing that the total proposed is 503 lots plus two TDR lots, for a total of 505 lots, if the Applicant’s TDR application is approved. *Mark Steepy Testimony.*

of land area donated to the county for open space purposes within that specific parks planning area, at the discretion of the County. *TCC 21.60.140.A(5)*. At 81.36 acres, the PRD requires 24.41 acres of common open space. The Applicant proposes 27 open space tracts ranging from 0.13 to 3.79 acres interspersed throughout the plat, totaling 20.26 acres. Seven of the tracts are greater than an acre in area. Fifteen of the open space tracts contain stormwater ponds or other drainage features. A 1.23-acre open space tract (Tract A) would retain the Oregon White Oak grove in the northwest corner of the property. Proposed 3.79-acre tract K, in the interior of the site, would retain an existing Group A well, and proposed 0.62-acre Tract M would retain the open area around an existing barn. The remaining tracts would contain landscaping and trails. Several of the tracts either include or are comprised of a minimum 20-foot depth landscaped area around the project perimeter. *Exhibit 1.D*. The Applicant proposes to complete the required open space dedication (4.15 acres remaining) through public dedication of approximately 20 acres it owns adjacent to the Mullen Road Habitat Preserve located roughly two miles northwest of the site. The Public Works Parks Department does not have a mechanism to collect funds and the County does not have a specific Parks planning area that includes the subject property. Planning Staff testified at hearing, however, that the City of Lacey is amenable to this concept and is willing to accept the donated property that is adjacent to an existing City park, and the County is pleased to accept the dedication of parkland to Lacey in place of the County. *Brett Bures Testimony; Exhibits 1, 1.D, 1.E, 1.Q, and 1.AAA; Google Maps site view*.

14. In addition to common open space, a minimum of 300 square feet of private, usable open space with a minimum of 15 feet in depth and width shall be provided for each ground level dwelling unit PRD, visible and accessible from the dwelling unit. *TCC 21.60.140.A(6)*. This private open space is not called out in the materials. Planning Staff submitted that the project can be conditioned to comply with this requirement. *Exhibit 1, page 12*.
15. Pursuant to *TCC 21.80.055(1)(b)*, a subdivision proposing residential lots smaller than 50% of the size of the contiguous residential development creates lots that are defined as an incompatible use. Incompatibility is required to be screened by a 30-foot wide vegetated buffer planted with predominantly native and drought tolerant species that provides a very dense sight barrier and physical buffer to significantly separate conflicting uses. A combination of trees, shrubs, berms, fences, and related design features may be selected, provided that the result is sight-obscuring from adjoining properties. Retaining mature vegetation is preferred. *TCC 21.80.055(3)*. Of note, individual single-family residences, existing, legal non-conforming uses, and properties separated by a public road are exempt from the perimeter screening buffer requirement. *TCC 21.80.055(2)(b)*. The project initially included a request for variance pursuant to *TCC 21.80.055(2)(c)*, which requested to reduce the width of the screening buffer to 20 feet; however, prior to hearing, that variance request was withdrawn. At hearing, the Applicant proposed two options for treatment within the screening buffer: 1) within the outer 20 feet, an eight-foot wide path and additional landscaping to supplement existing site vegetation, with a six-foot tall cedar fence, or 2) no path, no cedar fence, existing chain link fence to remain, and additional landscaping as necessary to supplement

existing vegetation sufficient to create a sight-obscuring barrier. Under either option, the Applicant proposed to provide the inner 10 feet of screening buffer width either within a landscaping easement across the rear yards of abutting proposed lots or as the outer 10-feet of abutting open space tracts. As proposed, either option would extend east from Kagy Street along the north boundary of the site, turning north along the site boundary to Mullen Road; south from Mullen Road along the east site boundary of Phase 2, jogging with the property line and stopping at 58th Avenue at the south property boundary; and around the property in separate ownership in the southwest quadrant of the subject property. Of note, in currently proposed Phase 4, the 30-foot screening buffer would require 10-feet of width in the proposed right-of-way at the east edge of the cul-de-sac identified as Road J. Also in Phase 4, the 30-foot screening buffer would be required along the entire east boundary of the lot identified as Lot 71 at Exhibit 1.D, Sheet C2.2. No perimeter buffer is proposed along the Mullen Road, Kagy Street, or 58th Avenue frontages, and none is proposed at the locations of the five road stubs; however, street trees and rear yard landscaping including trees are proposed along the site's 58th Avenue frontage.<sup>9</sup> Additionally, a 20-foot deep landscape Tract F is proposed along 58th Avenue in Phase 3, and open space Tract E fronts 58th Avenue in Phase 4. *Exhibits 1.E and 3.*

16. The project would take primary access from one site entrance on Mullen Road SE and from another site entrance on Kagy Street SE, with all lots connected by an internal road network to these two entrances. The Applicant would be required to install a total of approximately 3,000 lineal feet of half-street frontage improvements along the exterior of the site. On Mullen Road, improvements would be built to City of Lacey Major Collector, Type 2 standards, which (according to the plan set) include a 10-foot median, two 12-foot travel lanes, a five-foot bike lane on both sides, seven-foot planter strips, six-foot sidewalks, and 10-foot utility easements on both sides. The site's Kagy Street and 58th Avenue frontages would be improved to Minor Collector, Type 2 standards, requiring (per the plans) an 11-foot vehicle lane, a five-foot bike lane, seven-foot planter strip, and six-foot sidewalk along the site's frontage. A total of approximately 15,000 lineal feet of new internal roads would be constructed to City of Lacey standards. The roads approaching both site entrances would be constructed to the Major Collector, Type 2 standards previously noted. The internal roads would be built to varying standards based on how many lots are served. The majority of the network would be built to the Major Local Residential standard, requiring two 10-foot travel lanes and a six-foot bulb out parking lane, six-foot planter strip, five-foot sidewalk, and 10-foot utility easements on both sides. The proposed road stub segments (intended to make future connectivity possible in the event of future adjacent development), which are short and serve relatively few lots, would be built to the Minor Local Residential standard, requiring two nine-foot travel lanes, a five-foot bike lane, six-foot planter strip, five-foot sidewalk, and 10-foot utility easements on both sides. Roads in Phase 1 would stub to the east and west, Phase 2 roads would stub at two locations to the east, and Phase 4 roads would stub at one location to the north in order to connect to potential future development on adjacent

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<sup>9</sup> Although the internal roads are not anticipated to be continued off site in the foreseeable future, there was no discussion on the record of why no screening buffer was proposed in the locations of the road stubs, or whether the road stub itself is not incompatible for the purposes of TCC 21.80.055.

parcels. As conditioned, street lighting consistent with City of Lacey standards would be required to be installed and maintained by the HOA until the subject property is annexed into City of Lacey. *Exhibits 1.C, 1.D (Sheets C2.1 - C2.9), 1.K (page 2), 1.DDD, and 6; Arthur Saint Testimony.* No private roads are proposed within the project. *Mark Steepy Testimony.*

17. Currently, off-site Marvin Road dead ends north of the site at Mullen Road. Extension of Marvin Road to connect to Yelm Highway south of the site is project 19 on the City of Lacey 2030 Transportation Plan, published December 2012.<sup>10</sup> A route between the dead end of Marvin at Mullen Road to Yelm Highway necessarily goes through the subject property. Although it is not listed on the current 2021-2026 Transportation Improvement Program, at some point, this project will be completed.<sup>11</sup> Because this connection is included in the Lacey Comprehensive Plan, the Applicant is required to provide for the extension of Marvin Road through the site. Although the entire Major Collector right-of-way width is required to be dedicated, the project only proposes to use the southern portion of the extension for project traffic. The Applicant has requested to be required to improve only the southern portion needed by the project and to defer construction of the northern portion until the connection down from Mullen Road is finalized. *Exhibits 1 and 1.D; Testimony Mark Steepy and Jeff Schramm.*
18. Pursuant to TCC 21.60.120, each detached single-family unit must provide a minimum of two off-street vehicle parking stalls, and each townhome unit must provide 1.5 off-street vehicle parking stalls per unit in addition to one bicycle parking space per 10 vehicle stalls, or a minimum of two bicycle spaces per building. *TCC Title 21, Table 21T-13.* On-street parking would be available inside the project on all Major Local Residential streets, which are all internal plat roads except for the future roads stub segments, which would be Minor Local Residential streets. Parking is prohibited on roads identified as either Major Collectors or Minor Collectors by the City of Lacey. *Exhibits 1.D (Sheets C2.1 - C2.9) and 1.DDD.* Proposed parking provisions within the project were not detailed in the plans or the project narrative. The Applicant testified that each single-family residence would have a two-car garage with a driveway the same width and 20 feet deep. Townhome units would be provided with either single car or two car garages. *Steve Chamberlain Testimony.*

#### *Review of Supporting Documentation*

19. The Applicant commissioned a professionally prepared traffic impact assessment (TIA), dated April 28, 2021, which considered a total of 503 new lots and assumed credit for four existing residences. Based on these numbers, the planned residential development is anticipated to generate 4,710 net new average daily trips, including 369 AM peak hour and 494 PM peak hour trips. Based on scoping comments provided by City of Lacey,

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<sup>10</sup> The Examiner takes official notice of the following document:

[https://www.ci.lacey.wa.us/Portals/0/docs/Public\\_Works/Final%202030%20Lacey%20Transportation\\_web.pdf](https://www.ci.lacey.wa.us/Portals/0/docs/Public_Works/Final%202030%20Lacey%20Transportation_web.pdf)

<sup>11</sup> The Examiner takes official notice of the following document:

[http://www.ci.lacey.wa.us/Portals/0/docs/city\\_council/resolutions/2020/Resolution%201095%20-%206-Year%20Transportation%20Improvement%20Program%20\(TIP\)%2007.09.2020.pdf](http://www.ci.lacey.wa.us/Portals/0/docs/city_council/resolutions/2020/Resolution%201095%20-%206-Year%20Transportation%20Improvement%20Program%20(TIP)%2007.09.2020.pdf)

Washington State Department of Transportation, and Thurston County, the TIA studied 22 surrounding intersections and included known pipeline projects (approved and not yet built), a background growth rate of 4% per year applied to traffic counts conducted prior to 2021, and a horizon year of 2026. The TIA projected future intersection operations based on full build out. Of the 22 study intersections, 13 are forecasted to operate at acceptable levels of service (LOS) during the weekday PM peak hour. Of those not forecasted to operate at acceptable LOS, six intersections are located on City of Lacey or Thurston County Strategy Corridors that are exempt from LOS standards, including: College Street/ Yelm Highway, Ruddell Road / Yelm Highway, Marvin Road / Steilacoom Road, Pacific Avenue / Old Pacific Highway, Old Pacific Highway / Kuhlman Road, and Old Pacific Highway / 7th Avenue E. The project is not required to mitigate for increased delays at these intersections due to strategy corridor designation. Five affected intersections have planned improvements to be constructed by others, which when completed, would result in acceptable LOS with the project trips added. These are: Yelm Highway / Spurgeon Creek Road, Marvin Road / Union Mills Road, Marvin Road / 19th Avenue, Marvin Road / Mullen Road, and Meridian Road / Yelm Highway. Two intersections not included in the previous two categories would experience LOS deficiencies as a result of project trips, and the Applicant is therefore required to mitigate the project impacts at the following: Kagy Street / Mullen Road, and Meridian Road/ Mullen Road. Both site entrances are forecasted to operate at acceptable LOS with minimal queuing in the PM peak hour. *Exhibit I.T.*

20. The TIA included the following relevant information about the planned improvements at study intersections, which was obtained from the City of Lacey Six-Year 2019-2024 Transportation Improvement Program (TIP), Thurston County 2021-2026 TIP, TRPC Annual Listing of Obligated MPO Projects (CY 2019), and the City of Lacey 2030 Transportation Plan.

- Rainier Road Improvements: This project is expected to begin construction in 2024 and will include improvements to tapers and storage lanes at intersections including the study intersection of Yelm Highway SE/College Street SE/Rainier Road SE.
- Yelm Highway Improvements: This project is expected to widen the eastern side of Yelm Highway to accommodate an additional northbound lane, a bike lane, sidewalk, and other urban amenities. Project design is scheduled to begin in 2024.
- Mullen Road Reconstruction: This project is expected to widen Mullen Road to accommodate bicycle lanes, sidewalks, improved channelization, landscaping, illumination, and drainage improvements. A roundabout will be installed at the intersection of Carpenter Road and Mullen Road. This project is anticipated to be completed by 2022.
- Marvin Road Extension: This project is a feasibility study for extending Marvin Road south to Yelm Highway, including identification of appropriate configuration and alignment. The City will support Thurston County for their project. The layout of the proposed Manor House Residential project will accommodate this extension, which will extend Marvin Road south from Mullen Road through the site to 58<sup>th</sup> Avenue SE.
- Marvin Road Corridor Improvements (Thurston County): This project proposes improvements to several intersections and segments of Marvin Road between Pacific

Avenue SE and Mullen Road SE. A new roundabout at the intersection of Marvin Road SE and 19<sup>th</sup> Avenue SE is fully funded through construction; however, a target completion date has not been identified. A future roundabout at the intersection of Marvin Road SE/Mullen Road SE is also planned, but a project timeline is not currently available.

- Meridian Road SE/Yelm Highway SE Intersection Improvements (Thurston County): This project consists of corridor or improvements and a new roundabout at the intersection of Meridian Road SE/Yelm Highway SE. The project is currently in the design phase and does not currently have a target completion date for construction.

*Exhibit 1.T, page 13.*

21. The TIA recommended the following mitigation for the project's trips. To mitigate impacts to roads within the City of Lacey, the Applicant should be required to pay traffic impact fees based on the number of PM peak hour trips affecting roads within City of Lacey Transportation Improvement Project (TIP) list. To mitigate the project's impact to road within Thurston County, the Applicant should be required to pay traffic impact fees of \$3,791 per single-family unit. In order to specifically mitigate impacts on the two intersections drive to unacceptable LOS by project trips, the TIA recommended: 1) construction of a refuge lane for northbound left turning vehicles at the Kagy Street/Mullen Road intersection, anticipated to be required by the time the project reaches 50% build out<sup>12</sup>; and 2) signalization or a roundabout at the intersection of Meridian Road/Mullen Road by the time the project reaches 50% build out.<sup>13</sup> *Exhibit 1.T; Testimony of Arthur Saint and Jeff Schramm.*
22. Prior to July 6, 2021, City of Lacey Staff reviewed the Applicant's TIA and submitted two concerns, which the Applicant addressed prior to hearing. One concern was that the TIA had indicated the Ruddell Road/ Mullen Road intersection is shown as having less delay with the project than without it, despite the addition of project trips. An Applicant transportation consultant responded that the trip distribution from the project would send most trips to turning movements at the intersection that have lower delays than the overall intersection level of delay, such that the addition of project trips slightly decreases overall intersection delay. Another concern from Lacey was that the TIA failed to address the practical impacts of project trips on strategy corridor intersections. To this, Applicant consultants responded as follows:

The following measures have been identified consistent with the City's requirements for impacts to intersections on strategy corridors:

1. Develop roads with pedestrian facilities. The Manor House project will include sidewalks along the Mullen Road, Kagy Street, and 58th Ave SE frontages and internal roadways.

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<sup>12</sup> The TIA stated that the project's share of trips at this intersection at full build out would be 22%. *Exhibit 1.T, page 2.*

<sup>13</sup> The TIA stated that the project's share of trips at this intersection at full build out would be 16%. *Exhibit 1.T, page 2.*

2. Dedicate ROW on the Manor House property for the City's future Marvin Road extension south of Mullen Road. The future Marvin Road corridor will provide a future 'connected street' corridor that will add transportation capacity to the subarea and alternative access to existing roads such as Mullen, Meridian, Yelm Highway, and others.
3. Develop a road grid system that is consistent with City Access Management requirements.

*Exhibit 1.U.1.*

23. On August 6, 2021, Lacey Transportation Engineering Staff recommended approval of the PRD and plat conditioned on payment of City of Lacey transportation impact fees and the following conditions:
  - 1) Strategy Corridor Mitigation: The TIA indicates that three signalized intersections in the City of Lacey that are impacted by the project will be at level of service F in the project's horizon year. These intersections are all located in strategy corridors, which are areas that are exempt from level of service standards because they are in areas where road widening is not the preferred option to address congestion. Instead, alternative strategies need to be identified to address congestion. The extension of Marvin Road from Mullen Road to 58th Avenue is an acceptable strategy to mitigate the impacts of the development. Please continue to work with Thurston County on a plan to construct this extension.
  - 2) Multi-Modal Mitigation: According to the Thurston Regional Planning Council's 1999 Household Travel Survey, 5.6% of all trips are made by bicycling or walking. This project is expected to generate a similar number of pedestrians and cyclists. The Transportation Comprehensive Plan identifies the need for sidewalk, bike lanes and other facilities to accommodate multi-modal transportation. The multi-modal impacts from this project shall be mitigated by constructing frontage improvements according to Lacey's standards.

*Exhibit 1.U.*

24. The Applicant would be required to extend nearly 7,000 linear feet of City of Lacey sewer main from the intersection of Carpenter/Mullen Roads to the intersection of Kagy Street/Mullen Road and from there to the intersection of Kagy Street/58th Avenue. The main would then be extended to and through the internal road network in order to provide STEP system service to each lot; all existing/retained and proposed residential units would be connected to sanitary sewer. All sewer utility improvements would be required to be designed and constructed to meet the applicable standards of the City of Lacey Comprehensive Sanitary Sewer Plan, Thurston County Health Department, Washington State Department of Health (DOH), the LOTT Clean Water Alliance and Department of Ecology, as well as the specific conditions stated in Exhibit 1.DDD. The City of Lacey provided a letter of sewer availability and verbally confirmed continued availability with Thurston County Environmental Health Division Staff shortly before the hearing. Seven existing on-site septic systems would be decommissioned. *Exhibits 1.C, 1.M, 1.R, and 1.DDD; Dawn Peebles Testimony.*



25. The Applicant intends to connect the 505 proposed lots, including the two retained residences, to public water provided by Thurston PUD, formerly Pattison Water Company. In September 2019, Pattison Water Company agreed to provide domestic and fire flow water for up to 460 connections. The PUD purchased the Pattison Water Company and its infrastructure in either March or July 2021. The PUD's primary source well and main distribution lines are located on a separate tax parcel, number 11836330401, within the boundaries of the subject property; this well is referenced as both the Christmas Tree Well and the Pattison-500 well in the record. *Exhibits I.X and I.CCC*. The original well and storage components are well beyond their useful life expectancy and are planned to be upgraded and replaced as a part of the PUD's Water System Plan Improvements, with work scheduled to begin in early 2022. The Applicant has agreed to pay for drilling a well able to produce at least 600 gallons per minute at the existing (Christmas Tree Well) site, replacement of the Tri-Lakes Booster station with adequate pumping capacity, and construction of a reservoir adjacent to the Christmas Tree Well to provide 200,000 gallons of storage capacity.<sup>14</sup> Before these capital improvements are completed, the PUD has indicated it would look into interim measures to ensure adequate water service is available to its customer base, including the instant proposal; identified interim measures including reevaluating current capacity, and if necessary, establishing an intertie with adjacent public water purveyors. *Exhibits I.C, I.L, I.X, and I.CCC*. Another water purveyor, Washington Water Service, offered to provide 50 connections from the Holiday Ranchettes water system on interim basis for the instant project. *Exhibit 4*.
26. Environmental Health Division Staff testified the capital improvements planned by PUD and involving Applicant contribution would address public comments expressing concern about impacts to water pressure and availability. Staff noted that the Thurston PUD water system, including the proposed capital improvements, is under the authority of Washington State Department of Health and that the system would be approved to provide service to this project if it is found to be in compliance with state laws. Given that the number of connections currently available is fewer than the number of proposed lots and that the water system is under state jurisdiction, Environmental Health Division (EHD) Staff recommended conditions of approval that would ensure only the number of lots that can be served by state authorized public water would be developed. *Dawn Peebles Testimony*.
27. In July 2021, an Applicant consultant submitted an analysis of the Thurston PUD (formerly Pattison) water system's limiting factors, which indicated that the total number of connections currently available is 104. This number of connections is supported by a May 20, 2021 Waster System Plan approval issued by the attached Washington State Department of Health Office of Drinking water, which acknowledges 104 available future connections assuming all serve single-family residences. The Applicant's consultant calculated that once the planned infrastructure is in place, including the new well and reservoir, the system would have capacity for 623 future connections. *Exhibit*

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<sup>14</sup> In the various exhibits, the capacity of this future reservoir is stated as either 200,000 or 260,000 gallons. *Exhibits I.LL and I.CCC*.

*1.LL.* Subsequent information submitted by the Office of Drinking Water reached a smaller number of available connections, stating the system is approved for 1,697 connections and currently serves 1,665 connections. This would leave only 32 connections available. *Exhibit 1.X.* An Applicant representative testified that the PUD could provide between 80 and 100 connections, which was asserted to be enough connections to begin first phase construction. *Mark Steepy Testimony.* It is not clear from the record how many connections are currently available.

28. In the existing condition, the subject property contains approximately two acres of impervious surfaces including existing buildings, driveways, roadways and out - buildings. As noted above, two existing residences (with garages) and the barn would be retained, and all other existing buildings and structures would be removed. The proposal includes approximately 12.4 acres (539,000 square feet) of new on-site roadways, which are considered pollution generating impervious surfaces (PGIS), 4.33 acres (188,510 square feet) of new on-site curb and sidewalk (non-PGIS), 4.52 acres (197,000 square feet) of driveways (PGIS), and approximately 16 acres (718,000 square feet) of roof area (non-PGIS), for a proposed impervious surface total on-site of approximately 42.55 acres. Setting aside designated open space tracts, the remainder of the subject property - approximately 29 acres - would be converted to or left in pervious surfaces. Off-site frontage improvements would add an additional approximately half-acre of new impervious surface area. *Exhibit 1.K.*
29. In order to determine appropriate stormwater management methods, a geotechnical report and a groundwater/soils investigation were prepared for the project by qualified consultants. The investigation included excavation of 18 test pits throughout the site to depths of seven to 11 feet below grade. Based on the results of these studies, a low impact development stormwater management approach was selected using infiltration and bioretention facilities dispersed throughout the site. Roadside bioretention facilities would collect and treat runoff from all new frontage improvements. Yard runoff from individual lots would be infiltrated on-site, which was found to be feasible due to the highly porous soils (12.9 inch/hour design infiltration rate) located within a few feet of the surface. Runoff from townhouse lots would be directed to bioretention ponds, while runoff from other non-townhouse lots and tracts would be managed using downspout infiltration and/or bioretention facilities. All driveway runoff, and the majority of sidewalk runoff, would be directed to the adjacent roadway and managed in the road bioretention ponds. A proposed perimeter trail winding around much of the site would have a pervious surface. All bioretention facilities would be landscaped in accordance with the requirements of the Thurston County Drainage Design and Erosion Control Manual. Bioretention facilities located in open space tracts have been designed with curving and/or unique shapes, and with the proposed landscaping, the facilities are intended to be aesthetically pleasing features in the landscape. Bioretention cells are proposed to be placed within medians and landscape strips to serve frontage improvements. The technical details of on-lot stormwater management would be developed during civil engineering review and would include an engineered drainage plan submittal. Proposed best management practices include post-construction soils

restoration to all non-impervious areas of the site that are disturbed. *Exhibits 1.D (Sheet C3.0), 1.K, 1.O, and 1.R.*

30. Aside from individual lot downspout infiltration and driveway/landscape infiltration features, all stormwater facilities would be located either within the public right-of-way or placed within utility easements to allow access for inspection, maintenance, and repair. Operation and maintenance of stormwater facilities would be the responsibility of the Applicant until a homeowners association (HOA) is established, at which time responsibility would be transferred to the HOA. Stormwater facilities for frontage improvements located within right-of-way would be maintained by the County after construction final inspection approval. The Applicant proposes to execute an “Agreement to Maintain” with the County that would include the approved operations and maintenance plan, a site plan identifying all facilities, and a pollution source control plan; this agreement would be recorded against the PRD/plat. Each individual lot served by an on-site infiltration, dispersion, or other stormwater management feature would be subject to an individual agreement with the County to maintain stormwater facilities and implement the pollution source control plan. The individual agreements would also be recorded with the County. *Exhibits 1.D (sheet C3.0), 1.K, 1.O., and 1.R.*
31. Thurston County Public Works Staff reviewed the preliminary stormwater management plan and the supporting geotechnical investigations and the found proposed 15 storm ponds using LID practices including bioretention and disposing of stormwater via infiltration complies with all preliminary review requirements of the County’s Drainage Design and Erosion Control Manual. Staff noted specifically that the site soils are very well drained, that the proposed bioretention within the right-of-way is approved, and that the proposal would maintain natural infiltration locations. Staff also called out that soils impacted by construction would be amended to prevent future drainage issues. *Arthur Saint Testimony.*
32. Addressing cultural resources protection requirements, the Applicant commissioned a cultural resources assessment for the project, which resulted in a written report dated April 19, 2021. The consultants determined that there are no archeological sites, historic properties, or cemeteries within a mile radius of the subject property. In addition to background review, the assessment was based on field investigation that included a site survey with backhoe excavation at depths of four to seven feet. Aside from encountering a buried pipe that may or may not have been associated with the historic Kagy Homestead, which was previously located within the project vicinity, no cultural resources were identified in the survey. The consultant recommended that the Applicant adopt an inadvertent discovery plan but that the project could otherwise proceed, because no significant cultural resource concerns were identified. *Exhibit 1.V.* In May 2021, the Washington State Department of Archeology and Historic Preservation issued a letter concurring with the cultural resources assessment’s finding of “No Effect to Historic Properties.” *Exhibit 1.II.*

### *Critical Areas*

33. The subject property is underlain by a Category I, extreme aquifer sensitivity area critical aquifer recharge area (CARA) as defined in TCC 24.10.010.A. Groundwater beneath the site is vulnerable to contamination from land use activities. These aquifers are the primary drinking water source for Thurston County residents. Residential subdivisions are allowed in Category I CARAs subject to critical area permit review and the applicable requirements of TCC Title 24. *TCC 24.10.020, Table 24.10-1*. In support of the project, the Applicant commissioned professionally prepared hydrogeologic assessment of the site. As proposed, project stormwater would be managed in accordance with local and state laws, and an integrated pest management plan (IPMP) would be implemented within the plat. Having reviewed well logs, Soil Conservation Service soils information, Department of Ecology information, conducted a site visit, and tested site soil borings, in addition to other sources of information about underlying geologic conditions, the consultants concluded that the project as proposed would not present a threat to regional groundwater quality nor nearby supply wells from stormwater infiltration. The proposal to serve the lots by municipal sewer is protective of the critical aquifer recharge area. Proper decommissioning of the on-site septic systems and service by sewer would remove nitrate contribution to the groundwater regime. *Exhibits 1, 1.N, 1.O, and 1.R*.
34. The Applicant had an integrated pest management plan (IPMP) prepared to address potential point sources of groundwater contamination. The IPMP provides guidance to future homeowners in the project to identify and mitigate potential contamination on subject including: plant selection, weed control, noxious/invasive species control, lawn care, pest control, fertilizer use, irrigation, and other topics. Compliance with the IPMP would be a condition of final plat approval, and the plan would be recorded against each lot and all commonly held areas through the covenants, conditions, and restrictions (CCRs). All owners of lots in the project are required to be members of the HOA, which entity would be responsible for management of common open spaces consistent with the IPMP. Each lot owner would be responsible for compliance with the IPMP on their property. Of note, the IPMP in the record, dated April 2021, reflects an earlier iteration of the proposal on a smaller overall subject property and including the formerly proposed apartment complex. *Exhibit 1.N*.
35. Environmental Health Division (EHD) Staff testified that the Applicant's hydrogeological reports had been reviewed and accepted by the County hydrogeologist. Considering the conclusions of the hydrogeological reports, EHD Staff determined that the IPMP, modified to accurately reflect the final proposal, satisfies code requirements for protection of groundwater within the sensitive wellhead protection radius. *Dawn Peebles Testimony*.<sup>15</sup> Planning Staff accepted the Applicant's hydrogeological studies as adequate documentation to satisfy critical area studies requirements and determined that the Applicant's studies show the project can comply with the critical aquifer recharge regulations. *Exhibit 1, page 10; Brett Bures Testimony*.

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<sup>15</sup> There are no comments from the County Hydrogeologist in the record, and no comments in writing from EHD or Public Works.

36. Mazama pocket gopher habitat is defined as a fish and wildlife habitat conservation area, as defined in TCC 24.03.010, regulated pursuant to the County’s critical areas ordinance and TCC Chapter 24.25. Prior to submitting applications for any development of the subject property, the Applicant commissioned Mazama pocket gopher study of the site. The Applicant’s consultant’s first Habitat Management Plan, Mazama Pocket Gopher & Prairie Plants report, dated October 16, 2019, indicated findings of Mazama pocket gopher mounds in three of the then-eight subject parcels (40.77-acre parcel 1183633000, 1.16-acre parcel 11836330100, and 4.34-acre parcel 11836330500). *Exhibit 1.QQ, page 10*. These parcels encompass the majority of the western portion of the subject property. The gopher mounds, observed on-site during September 2 and October 2, 2019 site inspections, were described as densely concentrated and well defined, and gopher occupancy was identified as covering an area totaling 74,961 square feet. *Exhibit 1.QQ, page 10*. Areas of observed mounds are shown in Figures 3 and 4 (with slightly different square footage); the mounds are shown in photographs in Appendix A. This report concluded that there would be no impact to the Mazama pocket gopher because no development was proposed. This report found no regulated prairie habitat on site. *Exhibit 1.QQ*. The gopher affected tax parcels occupy portions of proposed Phases 2, 3, and 4, and are outlined in green on the final site plan and final phasing plan. In one area, Mazama pocket gopher mounds were described as being around the existing barn and extending into the adjacent pasture. Exhibit 1.QQ, Figure 4 shows observed gopher mounds near or within the area proposed for the Marvin Road extension through the site. *Exhibit 1.D (Sheet C1.1), 1.QQ, 1.SS, and 6*.
37. Two weeks later, on October 31, 2019, the same consultant issued a second Habitat Management Plan, Mazama Pocket Gopher & Prairie Plants report for the same eight parcels of the subject property. This report was based on site inspections dated September 2, October 2, and October 29, 2019. The executive summary (page i) repeats the executive summary from the October 16, 2019 report. On page 5, this second report states that, “No occupancy of the Mazama pocket gopher is documented to occur on the subject property since April 2014 to the best of our knowledge.” No explanation is stated as to the same consultant’s own positive gopher occupancy findings from a report dated two weeks earlier. Page 10 of the October 31st report repeats the language from the first report that “densely concentrated gopher mounds were found, this time on two of the eight parcels, totaling 69,862 square feet of gopher occupancy. Regarding 1.16-acre parcel 11836330100, the October 31st report states that the mounds described on October 16th as gopher were likely mole mounds and that fresh mole mounds were present. The October 16th and 31st reports both mentioned that the observed gopher habitat was low quality habitat occurring in maintained grassland portions of the subject property, which if no longer maintained would cease to be gopher habitat.”<sup>16</sup> *Exhibits 1.W and 1.QQ*.
38. On May 11, 2020, the same consultant completed a critical areas study of the subject property (including nine parcels, adding 4.7-acre parcel 09710005003), citing five site

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<sup>16</sup> The October 31, 2019 report states that the Thurston County Site Inspection Protocol and Procedures for Mazama Pocket Gopher are appended at Appendix E; however, the protocol is not attached to the report and it does not appear to be anywhere in the record. This protocol is also referenced in Exhibits 1 and 1.RR.

visits: September 2 and 29, October 2 and 29, 2019, and May 8, 2020.<sup>17</sup> This report confirmed that the subject property contains no wetlands, streams, or regulated slopes, and acknowledged that the site contains Oregon White Oak trees and habitat.<sup>18</sup> The study indicated that the subject property is located within 595 feet and 600 feet of two mapped Mazama pocket gopher points and polygons (*page 6*); however, while the wildlife section of the report mentions western gray squirrel, crow, and starling, it does not mention Mazama pocket gophers. The critical areas study does not acknowledge or address the Mazama pocket gophers documented on site in the October 16th and October 31st reports by the same author. Addressing Oregon white oaks and associated habitat, the study identified 23 Oregon White Oaks on-site and 21 Oregon White Oaks off-site, and stated that there were additional oaks on private property within 300 feet. A total of 42,525 square feet of oak habitat was called out on-site in three identified areas in currently proposed Phases 1 and 4. Based on the then-proposed development (620 units including the formerly proposed apartment complex), the study concluded that impacts to oaks were unavoidable. A mitigation plan was proposed featuring creation of a proposed 5.4-acre oak preserve (called Manor Oaks Park located centrally, see *Figure 7*), replacement of removed Oaks at a 3:1 planting ratio, and replacement of impacted Oak habitat at a 4:1 ratio through planting of one-acre of prairie seed mix in the park/open space areas, with invasive species removal, monitoring, maintenance, and other standard best management practices. *Exhibit 1.BBB*.

39. On July 25, 2020, the consultant submitted a Mazama pocket gopher screening and prairie plant survey. The executive summary of this document states that the survey is based on field investigations conducted September 2 and 29, October 2 and 29, 2019, May 8, June 12, and July 14, 2020. This document references the 620-unit former proposal. The executive summary states:

No active Mazama pocket gopher (*Thomomys mazama*) mounds were observed on the subject property. No prairie habitat was identified on the subject property. ... No appreciable impacts to Mazama pocket gopher habitat are expected to occur on the subject property. No prairie impacts will occur because no regulated prairie habitat was identified on the subject property. (*page i*)

Under the heading “Purpose”, the survey states:

The Mazama pocket gopher screenings have been updated *at the request of the applicant*. Mazama pocket gopher screenings were performed in 2019. This report updates the Mazama pocket gopher screenings for 2020. (*page 3, emphasis added*)

Under the heading “Field Results”, it states:

No mounds characteristic of that created by the Mazama pocket gopher have been identified on the subject property during the 12 June 2020 and 17 July 2020 gopher screenings. No identifiable Mazama pocket gopher mounds were observed.

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<sup>17</sup> The total area stated for the nine parcels was both 82.23 acres and 81.24 acres. It is not obvious what the discrepancy from the actual 81.36-acre site area results from. *Exhibit 1.BBB*.

<sup>18</sup> There is a four-page discussion of wetlands, ending in the conclusion that there are none on site. *Exhibit 1.BB, pages 3-7*.

The 2019 gopher screenings identified mounds with characteristics resembling those created by the Mazama pocket gopher. Characteristics used for identification of pocket gopher mounds can be obscured by weathering of soft soils. Although mounds shown in photographs taken in Areas 2 & 5 exhibit characteristics of pocket gopher mounds, these mounds were not fresh and no fresh Mazama pocket gopher mounds were identified during the 2019 screenings.

During the first two (2) 2019 gopher screenings in Area 4, researchers identified several old, weathered mounds exhibiting characteristics that resembled those of gopher mounds. However, the third (3rd) screening on the 29 October 2019 identified fresh mole activity on top of those old, weathered mounds. Individual old mounds previously identified as gopher, contained fresh mole activity. The new mole mounds that formed on top of the old mounds contained characteristics created by moles, which included conical shape and blocky texture.

An additional gopher screening was performed in Area 4 during the 2019 study revealing fresh mole activity on top of individual weathered mounds previously thought to exhibit characteristics created by pocket gophers.

The County requires two (2) screenings because additional number of screenings provide greater accuracy and minimizes false determinations. Areas of old, weathered mounds identified in 2019 were re-evaluated in 2020 for fresh activity. No pocket gopher activity was found during the 2020 pocket gopher screenings. However, during the 2020 screenings, fresh mole activity was identified in these areas. *(page 10)*

Under the heading “Conclusion”, it states:

No mounds characteristic of that created by the Mazama pocket gopher have been identified on the subject property. No prairie habitat has been identified on the subject property. Thereby, no impacts to the Mazama pocket gopher or prairie habitat is expected to occur on the subject property. *(page 19)*

*Exhibit 1.JJ.*<sup>19</sup>

40. In written comments on this report issued on July 20, 2020, two County Biologist Staff members submitted comments on the Applicant’s critical areas reports. They questioned the Applicant’s consultant’s change in position regarding parcel 11836330100 on October 31, in which the consultant concluded that the mounds described on October 16th as Mazama pocket gopher mounds were likely mole mounds. County Biologists asserted that no evidence was provided to support this change and noted that the original data sheets did not indicate any variability in the observed gopher mounds; there were no “likely” or “indeterminate” mounds reported during the first two site visits. They also noted that it was almost two full months between the first site visit, which identified gopher mounds, and the third site visit, during which those mounds were recharacterized as mole mounds; they stated this is concerning because gopher mounds weather and lose shape over time, and it is not uncommon to find identifiable gopher mounds during one screening and only weathered, unidentifiable mounds or newly-emerged mole mounds on the next screening. They questioned why no justification was provided for why the

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<sup>19</sup> The Applicant confirmed that no further critical areas reports were prepared addressing the revised plat lay out. *Mark Steepy Testimony.*

parcels were re-surveyed rather than retaining the original determinations, and also noted that development was proposed on the other two parcels with remaining 2019 gopher mound determinations. The Staff Biologists challenged the consultant's assertion that gopher mounds were initially observed in maintained grassland, and that if these areas were no longer maintained, these areas would revert to forests and cease to be gopher habitat. The biologists opined that this argument is not applicable to the current conditions in the non-forested sections of the subject property and further asserted that Mazama pocket gophers have been known to persist for years on landscapes with woody plant encroachment occurring, including in areas colonized by Scotch broom.<sup>20</sup> Regarding prairie habitat, County Biologists questioned the dates of the consultant's prairie plant assessments and thus the conclusion of no prairie habitat on site. Regarding oak habitat, they pointed out that the proposed "unavoidable" impacts to mature Oaks on site could be avoided by relocating the tree tract to the location of existing oaks. They challenged the adequacy of replanting oaks at a 3:1 ratio because the trees take 80 years to reach full maturity (thus 80 years failure to provide oak habitat). Additionally, the County Biologists noted with concern that instead of referencing US Fish and Wildlife gopher requirements, which went into effect when the species was federally listed as endangered in 2014, the Applicant's consultant assesses the proposal for compliance with Washington Department of Fish and Wildlife Mazama pocket gopher management guidance.<sup>21</sup> *Exhibit 1.RR*. While the Applicant's last critical areas document is dated July 25, 2020, it does not acknowledge or respond to any of the concerns raised by the County Biologists. There is no response in the record by County Staff to the Applicant's July 25, 2020 submittal.

41. It is not clear from the staff report whether Planning Staff concluded that the pocket gopher evidence submitted by the Applicant satisfies the applicable requirements of the CAO. The staff report notes:

Gopher habitat is a critical area regulated under Thurston County Title 24, the Critical Areas Ordinance (CAO), and the Endangered Species Act. Thurston County uses a screening method based on a protocol recommended by USFWS intended to minimize the risk of unauthorized take of Mazama Pocket Gopher. This protocol states that no further screening will be conducted following the detection of MPG mounds.

In early 2020, Thurston County reviewed a revised consultant report prepared by Curtis Wambach of Envirovector (*sic*), dated October 31, 2019 (see attachment W). The report states an additional visit was conducted on October 29, 2019 and that no fresh activity of MPG was observed. The report states that MPG mounds previously found on parcel 11836330200 were later determined to be mole mounds.

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<sup>20</sup> In their comments, the County biologists reference a "Critical Areas Report & Mitigation Plan, Habitat Management Plan and Narrative", which they say was submitted to the County in June 2020. This document is not in evidence. Biologist Staff could possibly have meant the May 11, 2020 critical areas report, but this seems unlikely, because it is simply titled Critical Areas Report and it does not contain a section entitled "Narrative." Given the July 20, 2020 date of the Biologists' letter, it is not clear whether they had seen an earlier draft of the Applicant's consultant's July 25, 2020 letter and were responding to that. .

<sup>21</sup> The undersigned notes with concern that, on page 2, the County Biologists' letter references materials prepared for a previous critical area review permit process conducted in 2019. No outcome of a 2019 CARP application process is indicated in the record.



In July 2020, a consultant report prepared by Curtis Wamback (*sic*) of Envirovector dated July 25, 2020 was submitted (see attachment JJ). The report states no activity of MPG was observed during the 2020 gopher screenings.

*Exhibit 1, page 6 (emphasis added).* Planning Staff makes no reference to the extensive concerns from the County Biologists, nor addresses whether/why the further screening conducted “at the request of the Applicant” serves to override earlier positive gopher findings. Planning Staff states the following options for proceeding with the PRD and plat review without addressing these apparent irregularities.

Currently, the options for properties with MPG mounds include:

1. Mitigation per Thurston County’s Critical Area Ordinance. Even if a County Critical Area Review Permit is issued it may not satisfy the requirements of the USFWS criteria under the Endangered Species Act and additional Federal permits may be required to be obtained.
2. Work directly with USFWS to avoid “take” and/or develop an individual Habitat Conservation Plan (HCP) to obtain your own individual Federal Take Permit (ITP).
3. Wait until the county can provide federally authorized take coverage through a countywide HCP and county Federal Take Permit (ITP), the County’s Habitat Conservation Plan (HCP) is under review by the U.S. Fish and Wildlife Service (USFWS). The county’s Habitat Conservation Plan will also provide mitigation options for applicants who need them.

*Staff Response:*

Current County process dictates that MPG occupied sites are reviewed at the parcel level, and development proposals cannot be approved without an approved habitat conservation plan (HCP) and incidental take permit (ITP) from USFWS if the proposal cannot meet avoidance. This applies to subdivisions. Avoidance is not possible with the current plat proposal. Working with USFWS to approve an individual HCP and ITP or waiting until the County has an approved HCP will be required for preliminary plat approval for the current project design.

As of April 29, 2021, the applicant stated they intended to work with the County to condition the plat with participation in the pending County HCP.

As a condition for this preliminary plat the applicant agrees that it will pursue coverage under the County’s Habitat Conservation Plan (HCP) and Incidental Take Permit (ITP) as such time as the US Fish and Wildlife Service (USFWS) approves the HCP and issues an ITP and the Thurston county Board of County Commissioners have adopted the HCP through resolution and adopted associated Development codes through ordinance anticipated to occur.

*Exhibit 1, page 7.* While the last paragraph is proposed as a condition to address the uncertainty regarding gopher occupancy as a means of allowing project review to proceed, in the absence of Planning recommendation to approve or deny the proposal, neither the staff report nor testimony offered at hearing provides an understandable analysis of compliance of the proposal with the applicable provisions of the CAO such that the undersigned is clear on the Planning Department’s position.

42. In pre-hearing submittals related to the dismissed appeal, Applicant representatives indicated that the Applicant is aware of the requirement to obtain approval of and comply with a Mazama pocket gopher management plan, either through the County's future gopher review processes currently pending approval by US Fish and Wildlife Service (USFWS) or individually, directly through the USFWS. They submitted that the project could be conditioned to require compliance with this aspect of the critical areas ordinance and that the code does not mandate that critical area permits be issued before other land use approvals. *Aaron Laing Argument; Applicant's Legal Briefs in Appendix B.*
43. Regarding oak habitat, which per TCC 24.25.065.B(4) is also protected pursuant to the CAO, the Staff report states: "Oak habitat was identified on the subject property totaling 42,525 square feet. This area is fully protected within the proposed plat." *Exhibit 1, page 8.* Oak habitat is depicted in multiple discrete areas in current Phases 1 and 4, in the figures attached to Exhibit 1.BBB. The oak preservation area proposed in that study is no longer proposed. The existing oak habitat in Phase 1 appears to be proposed for residential development in Exhibit 1.D, as does an area of on-site oak habitat along Kagy Street. While Tract A appears to retain the third significant and largest area of oak habitat, it is titled "Open Space, Oak Tree Mitigation", and no details are provided about how much oak habitat would be retained and how it would be protected. Because oak habitat preservation is not addressed in the current site plan and is not addressed in graphic or narrative form anywhere in the record, Staff's assertion that it is fully protected does not appear to be supported by evidence. *Exhibits 1.D, 1.SS, and 1.BBB.*

#### *Forest Land Conversion Application*

44. The proposal includes an application for forest land conversion, stating an intention to harvest 53 acres of timber. Approximately 10 of these acres are the remnants of the former Christmas tree farm, while the remainder contain a scattering of Douglas fir. No oaks are proposed to be removed through the forest operation. The application proposes to remove approximately 90% of the timber. Of note, the logging site map provided contains a former site plan that has been superseded by a later final site plan, and it requires updating. *Exhibit 1.Z and 1.AA.*
45. Pursuant to TCC 17.25.400.D(5)(a), tree tracts comprising 5% of the total site area are required to be dedicated as separate tract(s). Critical areas and their required buffers may be applied toward this requirement, but only portions containing trees to be preserved. No information is provided in the forestland conversion materials demonstrating compliance with this requirement. Only one of the 27 open space tracts references trees, 1.3-acre "Tract A, Open Space, Oak Tree Mitigation." *Exhibit 1.D, Sheet C2.0.* TCC 17.25.400.D(5)(g) requires the retention of existing trees or the planting of new trees on individual residential lots required at a rate of one tree for every four thousand square feet of lot area. Neither the site plans, the landscape plans, the logging site plan, nor any narrative information calls out how this requirements is met. The plan set does not appear to address the forest land conversion application. *Exhibits 1.C, 1.D, 1.E, 1.Z, and 1.AA.* TCC 17.25.400.D(5)(i) requires a bond or other such method of financial security in the amount equal to 125% of the cost to purchase and install the required trees, based upon a contractor's estimate accepted by the County, to secure the successful

establishment of newly planted trees. The bond is not mentioned in the record. In presenting its analysis of the forestland conversion application, the Staff report states, “The proposed development and subsequent Forest Lands Conversion application has met the requirements of TCC 17.25.” *Exhibit 1, page 6*. This assertion is inadequate evidence of compliance, and no evidence was offered that calls out how the project complies with the applicable provisions cited above. Of note, forest land conversion applications are required to demonstrate compliance with the critical areas ordinances in TCC Title 24 and TCC Chapter 17.15. *TCC 17.25.400.D(1)*.

*Reviewing Agency Comments*

46. The Washington State Department of Ecology submitted comments in July 2020 and June 2021, in which they expressed no site-specific concerns, but instead provide information on applicable solid waste management, toxics cleanup, water quality/watershed resources, and (domestic) water resources requirements. *Exhibits 1.DD and 1.EE*.
47. The Squaxin Island Tribe Cultural Resources Department submitted a comment requesting that a cultural resources survey be conducted. *Exhibit 1.XX*. No follow up comment from the Tribe was included in the record. The Nisqually Indian Tribe did review the cultural resources assessment and submitted comments indicating they agreed with its recommendation for implementation of an inadvertent discovery plan. *Exhibit 1.CC*.
48. Washington State Department of Health Office of Drinking Water (State DOH) Staff reviewed the proposal and submitted comments dated June 24, 2021. In addition to their comments previously addressed in the water utility findings above, State DOH Staff noted that the CARA is not addressed in the critical areas portion of the application, the SEPA checklist, or the critical areas report (Envirotech, May 11, 2020). DOH Staff submitted that it appeared there had been no evaluation of the development specific to the CARA, which they interpreted as requiring a Type II critical area review permit per TCC 24.40.020. DOH Staff indicated that their primary concern is water quality in light of the adjacency of planned stormwater Pond 10 on Tract K, which is located within the six-month time of travel for the Pattison-500 well. DOH recommended hydrogeological review at a minimum to ensure protection of the highly important groundwater resource but also recommended moving all ponds as far from the well as possible. Further, DOH Staff questioned whether the County’s review of the proposal considered the provisions in TCC 24.55.020, which prohibit lots that are located wholly within a critical area from being subdivided unless they can show a contiguous portion of each proposed lot is located outside of the critical area that is of sufficient size, and the provision defined sufficient size for lots served by sewer at least five thousand square feet or the minimum lot size, if less than five thousand square feet. *Exhibit 1.X*.
49. The subject property is located within the North Thurston Public Schools service area (School District). School aged residents of the plat would be served at Woodland Elementary, Nisqually Middle, and Timberline High Schools. The School District submitted three comment letters on the application, the first two addressing impacts to

capacity and requested school impact mitigation through payment of fees per dwelling unit, preliminarily calculated at over two million dollars. The third letter provided the following comments on the safety of school aged residents of the plat:

North Thurston Public Schools does not oppose the overall scope of the project but would like to enter into record the need to consider safety concerns for safe student travel as well as safe travel for bus transportation. We believe safety concerns both within and outside the development should be considered. Given the size of the project the potential impact to future access to the District's adjoining property seems to be addressed but transportation of students is a concern. Listed are the key areas of concern for the District.

- 1) Road widths within the development and parking must be spacious enough to accommodate bus travel and turning radius throughout. Bus length of 474", wheel base length of 270" and width of bus of 96" should be considered in the design of roads and sidewalks.
- 2) Sidewalks should be fully accessible for student travel.
- 3) The use of small roundabouts is discouraged for safety reasons. Bus length and turning radius can seldom clear curbed center area where pedestrians stand and students inside the bus being jostled as the bus rides up on the raised edges creating a safety concern.
- 4) The increased student count generated by the proposed development may require the use of the main roadways such as Mullen Road, Kagy Street, and 58th Avenue for future student pickup points. The frequent stops required by the bus will obstruct traffic causing driver frustration and traffic congestion as this is a major throughfare for traffic heading to 1-5 and JBLM. This typically causes drivers to place students and others at risk when frustrated drivers try to pass the bus, out of frustration. For greater safety and greater flow of traffic we would recommend vehicle pullouts installed on main roads to accommodate bus pickup of students. The pullouts would also allow for a safe location for the large numbers of students to wait safely without overflowing into the road or homeowners' properties.
- 5) We assume the required lighting will be included within the development and along road frontage improvements. The added ability to light the pullout drives would create increased safety for students during early morning and late evening pickups.

*Exhibits 1.FF, 1.GG, and 1.HH.* Applicant representatives testified that the Applicant would coordinate with North Thurston Public Schools on the location and design of a bus waiting shelter and lighting. *Mark Steepy Testimony.*

50. Intercity Transit (IT), the public transportation serving Lacey, Olympia, Tumwater, and Yelm, was sent notice of the project and submitted comments regarding a stop proposed to be installed along the site's Mullen Road frontage. Due to the placement of a tree that the Applicant would preserve, IT requested that its bus stop be placed on the near side/west of the subdivision's Mullen Road site entrance, and that the Applicant be required to install an ADA-accessible, 24-foot wide concrete bus landing pad in the planter strip between the sidewalk and curb. This would allow riders to use the front and back doors of IT's standard 40-foot buses. The transit authority also requested that there be at least a 50 foot clear zone around the bus stop – free of street trees – to ensure that the stop is accessible and waiting riders are visible. When the frontage improvements and bus pad are completed, IT would install a bus stop pole. *Exhibit 1.KK.*

51. The Olympic Region Clean Air Agency (ORCAA) was sent notice of the proposal and submitted comments indicating that applicable ORCAA regulations require: an asbestos survey by a certified Asbestos Hazardous Emergency Response Act (AHERA) building inspector for all demolition projects; provision of ORCAA Asbestos Removal Notification if asbestos is found; and, for structures 120 square feet or greater, an ORCAA Demolition Notification submitted regardless of the results of the asbestos survey and compliance with the mandatory 14-day waiting period after notification. *Exhibit 1.MM.*
52. The record does not contain review memoranda from internal Thurston County reviewing departments, although Environmental Health Division and Public Works Staff testified at hearing.

*Procedural Findings and Public Comment*

53. Thurston County acted as lead agency for review of the environmental impacts of the proposal under the State Environmental Policy Act (SEPA). Having reviewed the preliminary plat plans, habitat management plan, critical areas report, hydrogeological report, geotechnical report, drainage report and stormwater plans, integrated pest management plan, traffic impact analysis, landscape plans, and the cultural resources assessment, the County's SEPA responsible official issued a mitigated determination of non-significance (MDNS) on September 24, 2021. The MDNS was appealed.<sup>22</sup> Pre-hearing appeal procedures commenced on October 19, 2021. Consistent with the pre-appeal hearing document exchange schedule, the Applicant timely moved to dismiss the SEPA, which motion was eventually granted, rendering the MDNS final for County review purposes. *Appendix B.*
54. The MDNS imposed nine mitigation measures requiring the following:
  1. To mitigate traffic impacts within the City of Lacey, the proponent will need to contribute \$429,354.75 to the City of Lacey per Lacey Ordinance 14. 12, and paid prior to final project approval, pursuant to County Road Standards. See worksheet prepared by the City of Lacey for a breakdown of this mitigation amount at [URL]. Timing of the contributions may be altered if approved by both the City of Lacey and Thurston County.
  2. The TIA indicates that three signalized intersections in the City of Lacey that are impacted by the project will be at level of service F in the project's horizon year. These intersections are all located in strategy corridors, which are areas that are exempt from level of service standards because they are in areas where road widening is not the preferred option to address congestion. Instead, alternative strategies need to be identified to address congestion. The extension of Marvin Road from Mullen Road to 58th Avenue is an acceptable strategy to mitigate the impacts of the development. Please continue to work with Thurston to construct the section of Marvin Road within the limits of the project.
  3. According to the Thurston Regional Planning Council's 1999 Household Travel Survey, 5.6% of all trips are made by bicycling or walking. This project is expected to generate a

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<sup>22</sup> The Staff report includes a statement indicating that the MDNS was not appealed and became final on October 15, 2021, which for the record is incorrect. *Exhibit 1, page 4.*

similar number of pedestrians and cyclists. The Transportation Comprehensive Plan identifies the need for sidewalk, bike lanes and other facilities to accommodate multi-modal transportation. The multi-modal impacts from this project shall be mitigated by constructing frontage improvements according to Lacey's standards.

4. The traffic study indicates that the intersection of Yelm Highway and Spurgeon Creek will be below acceptable level of service with trips from this project impacting it. The Developer agrees to pay for the cost of a temporary signal at that intersection or install it at the County's discretion.
5. The traffic study indicates that the intersection of Kagy Street and Mullen Road will be below acceptable level of service with trips from this project impacting it. The Developer shall provide a refuge lane for northbound left-turning vehicles which would result in acceptable LOS prior to final plat recording of the 256th lot.
6. The traffic study indicates that the intersection of Meridian Road and Mullen Road will operate below acceptable level of service with trips from this project impacting it. To mitigate project impacts, improvements shall be constructed or mitigated by the Developer at this intersection as deemed appropriate by the County Engineer, which would result in acceptable LOS prior to final plat recording of the 256th lot.
7. This project impacts the intersections listed below, which do not have capacity for the additional traffic, and are projected to operate at below acceptable LOS in the future even without the project. Improvements to these intersections to mitigate the impact of this development, if not already completed by others, shall be constructed or mitigated prior to final plat approval.

Intersections:

- a. Mullen Road SE and Marvin Road SE
  - b. Union Mills Road SE and Marvin Road SE
  - c. 19th Avenue SE and Marvin Road SE
8. External to the site, an 8-inch S.T.E.P. force main will need to be extended from the intersection of Carpenter / Mullen Roads to the intersection of Kagy / Mullen Roads and then down the intersection of Kagy Road / 58th Avenue.
  9. As described in the district's Capital Facilities Plan (CFP), NTPS (North Thurston Public Schools) are overcapacity. NTPS does not own sufficient land for additional schools nor sufficient facilities to house the projected additional students generated by the proposed development. Purchase of land with available water and sewer service, temporary classrooms and future facilities to house children are anticipated as a result of the increased enrollment projected from new residences such as this subdivision. In addition, sidewalks and bus facilities must be created to provide safe walking routes and transportation services for school children.

The cost of purchasing land and temporary classrooms and constructing new school facilities is estimated to be \$4,485 per each new single family and/ or townhome residential unit. This assessment of cost is based upon Appendix A of the CFP, Tables 18 and 19. The district adjusts this assessment annually to reflect the district's current costs. Therefore, for the five-hundred and three (503) proposed lots under this application, this cost of mitigating impacts is determined to be \$ 2,255,955. Such costs are subject to inflation. See Letter dated May 24, 2021 for further details.

*Exhibit 1.S.* The MDNS mitigation measures would be imposed as plat conditions if approval is granted. *Exhibit 1; Testimony of Brett Bures and Arthur Saint.* The record

includes a conceptual design and an estimated construction cost bid for the Spurgeon Creek Road / Yelm Highway intersection temporary signal required by number 4. Exhibits 1.NN and 1.OO.

55. Notice of application (describing the 620-unit project) was issued on June 19, 2020, mailed to owners of property within 300 feet of the subject property, advertising a 20-day public comment period. *Exhibits 1 and 1.YY*. The County received approximately 57 comment letters in response to notice of application. A couple of comments expressed approval of the proposed affordable housing in light of the current statewide and local housing crisis and housing market crunch; however, the vast majority of comments on the notice of application opposed approval of the project, citing the following areas of concern (among others, addressed in more detail in the following findings): excessive density; significant unwelcome change to the rural character of the vicinity; excessive traffic on already congested roadways in an area with limited points of access; the narrow, rural nature of roads along the property frontage and their incapacity to handle vehicular, pedestrian, and bicycle traffic from this many units; adverse impacts to adjacent properties and uses, including livestock, horses, and other animal husbandry; adverse aesthetic impacts; and impacts to wildlife, including but not limited to the Mazama pocket gopher and its habitat. *Exhibit 1.PP; see Appendix B*.
56. Notice of application and open record hearing was mailed to property owners within 300 feet of the site on September 24, 2021 and on November 12, 2021, published in *The Olympian* on November 19, 2021, and posted on-site on November 19, 2021. *Exhibits 1, 1.S, 1.PP, 1.WW, and 11; Mark Steepy Testimony*.
57. The County received numerous written public comments in response to notice of hearing, and 13 members of the public, largely neighboring property owners, testified at hearing. The first was Theresa Janzen, who owns the parcel to the south across 58th Avenue SE and was the SEPA appellant. Ms. Janzen was represented at hearing by attorney Alex Sidles and landscape architect expert Mary Ellen Russell. On Ms. Janzen's behalf, Mr. Sidles argued that the Applicant's proposal to provide the inner 10-feet of the incompatible development screening buffer required by TCC 21.80.055 as an easement across lots rather than provide one continuous 30-foot wide buffer tract is inconsistent with TCC 21.60.070, which requires a PRD to take into account the relationship of the site to the surrounding areas and to design a PRD perimeter so as to minimize undesirable impact of the PRD on adjacent properties. He argued that, should the proposed perimeter screening buffer fail to adequately screen the PRD from Ms. Janzen's property, she would be required to sue the HOA and all property owners whose easements are within any portion of the screening buffer she finds inadequate. Secondly, Mr. Sidles asserted that all of the subject property is underlain by preferred gopher soils and that none of the critical areas documents in the record adequately assess the site for gophers nor address applicable habitat management plan requirements that must be considered at the pre-land use approval stage. He pointed out that the critical areas ordinance regulates "important habitats and species" including federally listed species and associated habitats, which include animal and plant species listed under the federal Endangered Species Act as endangered, threatened, or candidates for listing and their habitats of primary association.

He argued that the County's process followed to date in the instant project erred in not requiring the Applicant to apply for and obtain a critical area review permit prior to or consolidated with the instant plat. He contended that allowing critical area review to be deferred until ground disturbing permits are applied for is inconsistent with the critical area ordinance. He pointed out that the critical area documents in the record contain no identified gopher tracts, no gopher monitoring or contingency plans, no discussion of habitat connectivity, and no 'no net loss' analysis. Mr. Sidles submitted that there is uncertainty, even on the part of the Applicant's own consultant, as to whether Mazama pocket gophers are present on the site, but that it is certain that Mazama pocket gopher critical habitat is present on the site. Mr. Sidles contended that conditioning the project to require approval of either a federal habitat conservation plan and incidental take permit or a County habitat management plan and critical area review permit prior to earth disturbing permit issuance is inadequate protection of the endangered species and its habitat. He submitted that this process puts the public at risk in that the first phase of the plat could be constructed, including roads and infrastructure designed to connect with improvements proposed in gopher soils, prior to HMP issuance in violation of the critical areas ordinance and federal law. *Exhibit 2.B; Alex Sidles Argument.*

58. Also on behalf of Ms. Janzen, Registered Landscape Architect Mary Ellen Russell testified that the project as currently proposed would result in adverse aesthetic impacts to Ms. Janzen's property. Ms. Russell contended that the Applicant's proposed perimeter screening buffer is not shown everywhere they are required by code and do not meet the width and planting density requirements in the code. In particular, the plan does not show any buffer along the 15 proposed lots that back onto 58th Avenue SE. In her professional opinion, the lots along 58th Avenue are required to be screened with a 30-foot wide buffer as specified in TCC 21.80.055. Further, she submitted that the proposed 20-foot buffer width with an optional eight-foot wide path would not satisfy the code requirements; the buffer is required to be 30-foot wide and densely vegetated. Ms. Russell additionally contended that when lots front onto an internal road and back onto an existing road, it creates hostile architecture that is unwelcoming to neighbors outside of the PRD, as well as leaving the residents of those lots without privacy in their backyards and exposes their homes to traffic sounds on both sides. In her opinion, any proposed homes that both front and back onto roads should have a 30-foot width vegetative buffer that meets the requirements of TCC 21.80.055 located at the back of the lot. *Mary Ellen Russell Testimony; Exhibit 2.D.*
59. Other neighboring property owners submitted written and verbal comment expressing the following (paraphrased, abbreviated, and consolidated) concerns, among others.

Many expressed concern that the review of likely traffic from the proposal was inadequate. Particular concern was expressed about delays at Marvin / Mullen Roads Kagy Street / Mullen Road, 58th Avenue / Meridian Road, Meridian / Yelm Highway, and Meridian / Mullen Roads. Others submitted that existing traffic speeds on 58th Avenue and Mullen Road are already hazardous, and that Kagy Street and 58th Avenue are narrow without adequate shoulders; they argued that adding so many trips to the network will make it even more unsafe than it already is for anyone to bicycle or walk



in the area. One commenter's spouse was killed by a vehicle while walking on the surrounding roads. Several expressed a desire that the project be required to do something about the railroad Bridge on Mullen Road, another existing safety hazard that would be exacerbated, and others requested speed bumps on 58th Avenue. They expressed frustration at existing intersection delays and incredulity that so many trips can be added to already overburdened roads. Some questioned the trip count, submitting it is unrealistically low, noting that most households have more than one car and more than one employed person. Some contended that the traffic mitigation imposed would not adequately mitigate the increased delays and other concerns resulting from project trips. Some questioned whether adequate parking would be provided, noting it is common for garages to be occupied by storage.

Neighbors asserted that the density and intensity of the proposal is inconsistent with the MGSA zoning, which they asserted primarily exists to protect groundwater and agricultural uses. Several testified that they moved into the unincorporated County expressly to get out of cities and they are disappointed that urban development is proposed in this rural area, which (as one example) is at least a mile from the nearest grocery store. Some conceded that urban development is intended in the UGA but still opposed building at maximum density given the existing neighborhood character and sensitivity of the groundwater and habitat on site. Some expressed concerns about increased crime and impacts to property values. Many expressed frustration with the available information about the proposal, which with multiple iterations and even with current plans was hard for them to understand. Many were concerned about where the townhomes would be placed. More than one comment opined that the proposed density would make the area feel like Seattle, which would be a negative. At least one requested a development moratorium until roads are brought up to capacity to handle existing development.

Multiple commenters objected to the future road stubs that dead-end into or suggest future roads through their properties, while others expressed alarm at seeing Marvin Road being depicted going through their properties and structures between Mullen Road and the site.

Several neighbors expressed opposition to the Applicant's proposal to provide the inner 10 feet of required incompatible use screening buffer in the form of easement across proposed private parcels, noting that any issues with adequacy of screening or other conflict between neighbors would require engagement with every individual abutting owner and not just the HOA. Several urged that the entire 30-foot width of the required screening buffer should be owned by the HOA alone. Neighbors agreed with Ms. Janzen's attorney's argument that a critical area review permit should be required prior to plat and PRD approval.

Regarding the proposed perimeter trail in the screening buffer, several neighbors expressed concern that this space would be used for inappropriate purposes, including homeless encampments, drug deals or use, dumping, and other malicious mischief. Even without active mischief, the presence of the trail would reduce privacy for existing parcel owners. Others opposed the proposal to provide some of the required

open space off-site, submitting that doing so increases density beyond a reasonable point.

Regarding wildlife and habitat, neighbors expressed concern for animals that currently reside on the subject property, including the Mazama pocket gopher but also species not protected by regulations, like deer, raccoons, squirrels, fox, coyotes, birds, raptors, and owls. These animals would be displaced and would necessarily have to use the larger residential parcels more intensely than they currently do. A request to retain a specific large Oak tree near Mullen road was also submitted, and several expressed concern about removal of so many mature trees. Adjoining property owners testified that they have Mazama pocket gophers on their parcels. Others noted that domestic animals commonly kill gophers.

Comment included support for the proposal due to the housing crisis, but this person expressed concern that the Applicant be required to comply with affordable housing standards set by the Thurston Regional Planning Council.

Neighbors expressed concern that the stormponds would cause adverse impacts to groundwater and their private and group wells. Others challenged counting stormponds as open space, since they cannot be actively used. Some expressed concern that lot owners within the PRD would just ignore the IPMP and use whatever chemicals they like without concern for ground water protection. Some questioned the enforcement mechanism for the IMPM. Others submitted that the project's demand for water would overwhelm the community systems in the area.

Some expressed doubt that school impact fees alone would address the increased demand the project would place on public schools and stated concern for the safety of school agreed residents on the area roads.

The owners of the five-acre parcel surrounded on three sides by the subject property expressed concern that the proposed trail on three sides of their property could introduce security and safety issues for the horses they raise on-site. Off-site aggressive dogs already interfere with horses' ability to access the entire pasture, and if the trail is used by dog walkers, those dogs could add to stress. They requested an eight-foot tall cedar fence. Another owner of a parcel that would abut the development on two sides keeps goats on his parcel and is concerned that users of the perimeter trail would throw things into his property that would hurt his animals. He expressed concern about who would be responsible for maintaining a cedar fence and expressed a desire to retain his existing chain link fence, which is goatproof. Another neighbor also requested chain link fence for ease of maintenance. He requested that the 30-foot screening barrier be farm animal friendly, since several neighbors keep farm animals. Another nearby property owner testified that he keeps bees, which he considers part of the agricultural character of the area and incompatible with urban development. He expressed concern that urban yard maintenance practices would contribute to colony collapse disorder in his hives. Another owner adjacent to proposed Phase 1 keeps alpacas and emus, which cannot be allowed to ingest evergreen plants and are very sensitive to disturbance. She expressed concern that what is planted in the 30-foot perimeter buffer could harm her animals. Some questioned whether they would be allowed to keep their farm animals in light of the proposed urban development.

Linda Friedman, who owns the parcels containing the Thurston PUD infrastructure along Kagy Street, asked why no 30-foot screening buffer is provided on the three sides of her parcel that abut the subject property. The Applicant treats her property as commercial, but it contains her residence, and once the PUD's new infrastructure is in place, even the water easement will be gone.

*Testimony of Madeline Bishop, Gail Grubb, Mark Hunter, Maddi Bongiorno, Christina Peterson, William Stewart, Debra Bond-Yancey, Linda Friedman, Alice Huston, Kelly Spacek, and James Robertson; Exhibits 1.PP and 2.A.*

#### *Responses to Public Comment*

60. Addressing the State's water quality concern in Exhibit 1.X, County Environmental Health Division Staff testified that following County review of the Applicant's hydrogeological reports and on placement of storm ponds outside the 100-foot wellhead control radii for the wells in question, EHD determined that the proposed stormwater ponds would not result in adverse impacts to the critical aquifer recharge area or wellhead protection areas. Addressing DOH's question about minimum lot sizes, County Staff submitted that the PRD provisions allow waiver of minimum lot sizes. *Testimony of Dawn Peebles and Brett Bures.*
  
61. In response to public comment regarding road alignments, County Public Works Staff testified that the County, City, and Applicant have gone back and forth regarding the alignment of the necessary through connection for Marvin Road, of which the north leg must tie into the proposed roundabout at Mullen Road. One primary issue is the community wellhead radius that must be avoided. In arriving at the current proposed alignment, they had to balance minimizing property impacts and avoiding the well. Staff noted that the County might have an opportunity to acquire properties and the alignment - which is not yet final - is also driven by those locations. *Matt Unzelman Testimony.*
  
62. Responding to public comment, Public Works Staff testified that the other road stubs are required because the project is within the Lacey urban growth area, because even if it is 100 years from now, the adjoining properties are expected to redevelop, and planning for connectivity contributes to reduction in intersection delay. Public Works Staff noted that construction of intersection improvements at Mullen / Marvin Roads, Union Mills / Marvin Roads, and 19th Avenue / Marvin Road would be required by MDNS condition 7. Condition 5 requires the Applicant to construct improvements at Kagy Street/ Mullen Road, and Condition 6 requires the Applicant to improve the Meridian / Mullen Road intersection to provide capacity for project trips. Staff reiterated that improvements at Marvin Road/ 19th Avenue and at Mullen / Marvin Roads are already planned and would be built by others. The Applicant would be required to bring all site frontage along Kagy Street, 58th Avenue, and Mullen Road up to current standards, which as noted above would require sidewalks and all other improvements on the subject property's side of each street. Remaining needed improvements at 58th Avenue / Meridian Road could in part be funded by the traffic impact fees the Applicant is required to pay to both Lacey and Thurston County. The amounts of the traffic impact fees would be those in effect at the time at building permit. *Arthur Saint Testimony.*

63. Planning Staff answered that yes, surrounding property owners would be allowed to keep their animals and uses if approval is granted. Citing TCC 18.47.080, Staff noted that stormwater ponds are allowed to be included in open space. Addressing the many comments about density and character, Staff reiterated that the subject property is in the urban growth area and that 505 lots is consistent with density allowed in the zone. The character of the proposal is specifically contemplated in the adopted regulations, with which the project must be compatible. The 30-foot screening buffer - which Staff stressed is a buffer not a setback - is required in order to address rural community compatibility. Addressing the objections to the proposal to provide the inner 10 feet of the required 30-foot screening buffer as an easement on adjacent lots, Planning Staff testified that they had not seen the proposal, and no County position on the question of whether it is allowed by Code was offered for the record. Regarding concerns for wildlife species that are not regulated, Planning Staff noted that there are no applicable County or State code provisions that require protections for the common rural wildlife species. Members of the public could consult other agencies with wildlife jurisdiction if they think there should be regulations protecting other species. Staff testified that impacts to the pocket gopher were thoroughly reviewed under SEPA. Citing TCC 24.05.030, Planning Staff submitted that required critical area review permits may be considered through the SEPA process. Staff submitted that a critical area review permit was not required to be separately issued prior to plat and PRD review. Regarding parcels where Mazama pocket gopher occupancy was detected, the County protocol uses a “whole parcel rule,” which means no portion of a tax parcel on which gopher occupancy was observed can be developed without appropriate approvals. Planning Staff recommended conditions that provide paths forward for approval of the plat that require authorization either under the pending County plan and permit (not yet approved by US Fish and Wildlife Service) or authorization under an individual plan and permit directly from the federal agency. Recommended conditions prohibit any earth disturbing activity on the gopher-affected parcels until one or the other gopher-related permit is in place.  
*Brett Bures Testimony.*
64. Responding to water quality and aquifer protection comments, Environmental Health Division Staff testified that the County is always concerned about individual property owners handling and storing hazardous materials, because most of the County is within critical aquifer recharge area. The subject property overlays both critical aquifer recharge area and wellhead protection areas for two community wells. Because of these facts the proposed number of lots, an IPMP is required. An IMPM is a guidance document; it is not “enforceable.” There is always the risk that a homeowner will mishandle pesticides. The Thurston PUD (formerly Pattison) has a source well on the subject property. This Group A community water well is subject to a comprehensive monitoring plan for bacteria and chemical contaminants and is monitored on a regular basis. Results are required to meet both state and federal rules. If approval is granted, this well and water system would continue to be regularly monitored for water quality. The Applicant’s - hydrogeological report reviewed neighboring well logs. Through this review, it was identified that most neighboring wells draw from depths of 137 to 230 feet deep. There are two confining layers above these groundwater levels that would shield the water

supply from contaminants originating on-site. Staff testified that residential use is considered lower in risk compared to agricultural uses in terms of the potential for impact to groundwater. Staff also confirmed that the proposal's preliminary stormwater management plan has been reviewed and approved, and that compliance with technical standards would be ensured through future permitting processes. *Dawn Peebles Testimony.*

65. In response to public comment, an Applicant representative agreed that the code requires an incompatible use screening buffer (not a setback), but he asserted that the code doesn't state that it can't be provided through an easement. He acknowledged that no screening buffer is proposed along 58th Avenue, and argued that TCC 21.80.055(2)(b) exempts the project from screening incompatible uses located across a public road. Mark Steepy testified that the Applicant agrees to provide the screening buffer adjacent to the Friedman property. As for the make-up of the screening buffer, he indicated the Applicant is happy to forego a cedar fence, pleased to retain existing chain link fencing, and also happy not to install a path around the perimeter. A qualified landscape architect would design planting plan to meet the requirements of TCC 21.80.055. In answer to the repeating question of where the townhomes are located, he referenced Exhibit 3, which shows the townhomes with a dark blue circle, and stated that they are arranged around the existing wellhead in the middle of the property, where they are not adjacent to existing off-site incompatible uses. Addressing the question of critical area review, the representative testified that the Applicant are preserving the existing oak grove that is larger than an acre in the northwest corner of the site and is also planning to retain the single very large oak near the proposed plat entrance on Mullen Road. Regarding the uncertainty with respect to Mazama pocket gopher presence, the Applicant indicated that if approval is granted, the required water system improvements would take least 18 months to build and obtain approval. During that time, the Applicant can proceed with the engineering drawings and get plan approval. These processes would allow adequate time to determine whether the County's habitat management plan/critical areas regulations would be approved by the US Fish and Wildlife Service, and then the Applicant would apply under these future County provisions for permits for ground disturbing work on gopher-affected parcels, or whether the Applicant must seek and obtain individual habitat conservation plan and incidental take approval directly from the federal agency. Approval of the instant applications wouldn't result in ground disturbing work on gopher-affected parcels until all conditions have been met. The Applicant agrees to proceed at their own risk. *Mark Steepy Testimony.*
66. In response to traffic comments, the Applicant's traffic consultant testified that the TIA satisfied all City and County standards. He noted the project is subject to seven costly traffic conditions, testifying that impact fees to Lacey alone would be \$2.5 million dollars. The frontage extensive improvements would improve conditions on both 58th Avenue and Kagy Street, providing wider travel lanes, sidewalks, planter strips, and all other required elements, and in addition, MDNS condition 5 requires the Applicant to bring the Kagy Street / Mullen Road intersection to an acceptable LOS. The problematic intersection of Marvin / Mullen Roads would either be fully improved with an already approved roundabout by a previously approved subdivision (Oak Tree Preserve), but if it

isn't completed on time by the other builder, the Applicant would be required to build it.  
*Jeff Schramm Testimony.*

67. Responding to public comment regarding density, an Applicant representative testified/argued that the proposed density is not only consistent with the adopted regulations, but urban densities were mandated by the Growth Management Act. Projects like the instant proposal were intended when the zoning was adopted. In response to comments from Ms. Janzen's landscape architect, he argued that being able to view the backs of other houses in a residential zone is not novel or "hostile." The current procedural posture does not involve SEPA's requirement to consider aesthetic impacts and the instant permits do not require design review-like consideration of architectural styles for the houses along 58th Avenue. Regarding the perimeter screening buffer, he asserted that fences and walls are expressly allowed to be used to achieve a sight-obscuring condition per TCC21.80.005(3)(c), and that trails are expressly allowed in open space per TCC 21.60.145.A. The Applicant's representative argued that ownership of the screening buffer is not established in the code, and that code does not require it be dedicated as open space. Whether area within the required screening buffer is owned by the HOA or individual owners, the Applicant's representative argued, there is no right to sue regarding landscaping not being maintained. If individual lot owners cut down trees or other screening vegetation, the path to remedy would be code enforcement. The project would have robust CCRs and notes on the face of the plat that would address the 30-foot sight-obscuring screening buffer, both of which would be enforceable through code enforcement. Construction of the overall project would require various performance and maintenance bonds associated with the project's overall landscaping plan, which calls for more than \$3 million dollars in landscaping. Regarding Ms. Janzen's argument that a critical area review permit was required to be processed prior to review of the applications for PRD and preliminary plat, he argued that there is no circumstance in which the hearing examiner decides a critical area review permit; rather the examiner can hear appeals of critical area review permit decisions. He argued that the code allows for critical area review to be done through the SEPA review process, per TCC 24.05.030.A. He contended that critical area review permit is not required prior to plat approval. Addressing public comment that issuance of a critical area review permit decision after the plat hearing would allow damage to critical areas to be done through plat development, he denied this and asserted that no earth disturbing work would happen on the gopher parcels unless and until a condition requiring critical area review permit approval is met. He testified that there was no gopher activity on the parcel containing the water infrastructure and stated that development of water system improvements was not being delayed by the instant project due to gopher-related uncertainty.<sup>23</sup> *Aaron Laing Testimony and Argument.*
68. The Applicant testified that he currently lives adjacent to the east boundary of the subject property and is very familiar with the area. He testified that there is a critical shortage of housing in the County and that the proposed differing lot sizes would provide for growth

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<sup>23</sup> This last statement, which is also included in Exhibit 10.C, is not supported by evidence in the record. The Thurston PUD infrastructure is located on Parcel 11836330000, which is the largest gopher-affected parcel.

while also providing varying lot sizes intended to provide more affordable housing options, such as the townhomes and smaller single-family lots. He concedes that no one living in a rural area wants to look at a subdivision. The subject property has largely been heavily treed. The required screening buffer would retain and supplement existing vegetation in the location of the required buffer, and additional plantings would fill it in and make the project a nice place to live, as well as screen it from off-site views. If the proposal to provide the inner 10 feet of the screening buffer as easements on the rear of lots is approved, he stated that there would probably be fences along the rear of the lots, because owners tend to want to enclose their yards. The HOA would be well aware of the 30-foot wide screening requirement and would be charged with ensuring it is provided. He speculated that the buffer would likely be thickened by homeowners adding landscaping. The rest of the screening buffer around the outside of the property would be owned and controlled by the HOA, which will ensure it is not a dumping site. He envisioned the cedar fence because, in his opinion, it would make the project one of the nicer developments in the area. Regarding public comment about displaced wildlife, he testified that there are no animals “living” on the property except for his cows, because a chain link fence has blocked animal migration onto the site. If the project is approved, almost 25% of the site would remain open space that would continue to provide some open area for birds and small animals. Regarding the Marvin Road alignment, while the project is not on the County six year transportation improvement plan, it is on Lacey’s six year plan. The municipalities and Applicant consultants have gone to great pains to figure out how Marvin Road can best align to connect Mullen Road to Yelm Highway. He stated that he would be happy not to build Marvin Road, but from a regional transportation standpoint, it is needed. The segment of Marvin Road right-of-way within his property would be dedicated for public road construction but until the connections on either side are construction, it would not be wholly built. He expects the dedicated right-of-way could sit with landscaping on it for years. *Steve Chamberlain Testimony.*

## CONCLUSIONS

### **Jurisdiction:**

The Thurston County Hearing Examiner is granted jurisdiction to hear and decide applications for planned residential developments within the Lacey UGA pursuant to TCC 2.06.010.B and TCC 21.81.040. The Examiner is granted jurisdiction to hear and decide preliminary plats of lands within unincorporated Thurston County pursuant to TCC 2.06.010.A, TCC 18.10.030, and TCC 21.60.050.B. Pursuant to TCC 20.60.020(3), TCC 17.225.400.E(3), and TCC 20.60 Table 2, the Hearing Examiner is granted jurisdiction to hear and decide applications for Type III forest land conversion applications.

### **Criteria for Review:**

#### ***Preliminary Plat Criteria***

Pursuant to TCC 18.12.090.B, preliminary plat approval may be granted if the following criteria are shown to be 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. If the hearing examiner finds that the proposed subdivision and dedication make such appropriate provisions and that the public use and interest will be served, then the hearing examiner shall approve the proposed subdivision and dedication. Dedication of land to any public body, provision of public improvements to serve the subdivision, and/or impact fees imposed under RCW 82.02.050 through 82.02.090 may be required as a condition of subdivision approval. Dedications shall be clearly shown on the final plat. The county shall not as a condition to the approval of any subdivision require a release from damages to be procured from other property owners.

### ***Planned Residential Development***

#### *TCC 21.60.050 Relationship to other ordinance provisions*

- A. Zoning Requirements. The provisions of the Zoning Ordinance pertaining to land use of the underlying zoning district shall govern the use of land in a planned residential development. The specific setback, lot size, height limits and other dimensional requirements are waived, and the regulations for PRDs shall be those indicated in Section 21.60.140.
- B. Platting Requirements. A PRD shall be exempt from the specific design requirements of the Subdivision Ordinance, except that when any parcel of land in a PRD is intended for individual ownership, sale or public dedication, the platting and procedural requirements of the Subdivision Ordinance and applicable state laws pertaining to the subdivision and conveyancing of land and the preparation of maps shall be followed.

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#### *TCC 21.60.070 Relationship of PRD site to adjacent areas*

The design of a planned residential development shall take into account the relationship of the site to the surrounding areas. The perimeter of the PRD shall be so designed as to minimize undesirable impact of the PRD on adjacent properties and, conversely, to minimize undesirable impact of adjacent land use and development characteristics on the PRD.

#### *TCC 21.60.080 Site acreage*

The minimum site for a planned residential development shall be a full block or a portion of a block if it was a numbered block in the original plat of the county, or a numbered block of a subdivision recorded prior to the adoption of the ordinance codified in this title. For all previously unplatted areas, the minimum site shall be two acres.

#### *TCC 21.60.090 Access to public right-of-way*

The major internal street serving the PRD shall be connected to at least one major arterial, secondary arterial or collector street.

#### *TCC 21.60.100 Lot size*

The minimum lot size provisions of other chapters of the zoning title are waived in a planned residential development.

### *Findings, Conclusions, and Decision*

#### *Thurston County Hearing Examiner*



*TCC 21.60.110 Setback and side yard requirements*

- A. Setbacks from the exterior boundary line of the PRD area shall be comparable to or compatible with those of the existing development of adjacent properties, or, if adjacent properties are undeveloped, the type of development which may reasonably be expected on such properties given the existing zoning of such properties or the projections of the comprehensive plan. In no event shall such setback be less than twenty feet.
- B. Setbacks or Side Yards Between Buildings. The standard setbacks and yard requirements between buildings may be waived in a PRD. Buildings may have common walls and, therefore, built to the property line as in townhouse construction. Wherever buildings are separated, a minimum distance of ten feet shall be maintained between such buildings.

*TCC 21.60.120 Off-street parking*

Off-street parking shall be provided in a PRD in the same ratios for types of buildings and uses as required for the underlying zoning district, and as described in Chapter 21.72 of this title.

*TCC 21.60.140 Design standards*

- A. Open space requirements shall be as follows:
  - 1. Common Open Space. Each planned residential development shall provide not less than thirty percent of the gross land area for common open space which shall be either:
    - a. Held in single ownership where such ownership assumes full responsibility for maintenance and operation; or
    - b. Held in common ownership by all of the owners in the development area; or
    - c. Dedicated for public use, if acceptable to the county.
  - 2. Common open space may contain such complementary structures and improvements as are necessary and appropriate for the benefit and enjoyment of residents of the PRD, provided that the building coverage of such building or structure combined with the building coverage of the residential structures shall not exceed the maximum permitted by the underlying zone.
  - 3. Up to fifty percent of the common open space requirement may be satisfied by the preservation of tall stands of trees and/or wetland and/or critical area habitat and required critical area buffers in consideration of the significant passive recreation opportunities provided by said lands. Development shall be configured to take advantage of these areas as a significant site amenity. These areas should be visually accessible to the public rather than walled off from view. To the extent possible, trail networks should be integrated with these areas. For example, a trail along the wetland buffer is a desirable option. The remaining fifty percent of the common open space area must meet the criteria in subsection (4) below.
  - 4. Common open space must meet the following design criteria:

- a. Must be usable and accessible. All common open spaces intended for public use shall be physically and visually accessible from the adjacent street or major internal pedestrian route. Open spaces shall be in locations accessible to intended users—rather than simply left—over or undevelopable space in locations where very little pedestrian traffic is anticipated. Locations integrated with transit stops, for instance, would be encouraged, as there is likely to be pedestrian traffic in the area.
- b. Open space area shall have convenient access for residences of the development and shall be consolidated to provide maximum access, visibility, usability, minimization of impacts to residential uses, and ease of maintenance.
- c. Must be inviting. Inviting open spaces feature amenities and activities that encourage pedestrians to use and explore the space. On a large scale, it could be a combination of active and passive recreational uses. It could include a fountain, sculpture, children's play area, special landscaping element, or even a comfortable place to sit and watch the world go by. In order for people to linger in an open space, it must be comfortable. For instance, a plaza space should receive ample sunlight, particularly at noon, and have design elements that lend the space a "human scale," including landscaping elements, benches and other seating areas, and pedestrian-scaled lighting. No use shall be allowed within the open space that adversely affects the aesthetic appeal or usability of the open space. (See Table 21T-83.)
- d. Must be safe. Safe open spaces incorporate Crime Prevention through Environmental Design (CPTED) principles:
  - (1) Natural surveillance—which occurs when parks or plazas are open to view by the public and neighbors. For example, a plaza that features residential units with windows looking down on space means that the space has good "eyes" on the park or plaza.
  - (2) Lighting that reflects the intended hours of operation.
  - (3) Landscaping and fencing. Avoid configurations that create dangerous hiding spaces and minimize views.
  - (4) Entrances should be prominent, well lit, and highly visible from inside and outside of the space.
  - (5) Maintenance. Open spaces shall utilize commercial grade materials that will last and require minimal maintenance costs. Walls, where necessary, shall be designed and treated to deter graffiti. Use and maintain landscape materials that reduce maintenance cost and maintain visibility, where desired.
- e. Provides for uses/activities that appropriately serve the anticipated residents and users of the development. For example, common open space that serves a variety of functions will attract greater usage. When designing open spaces,

project applicants should consider a broad range of age groups, from small children, to teens, parents, and seniors.

- f. Must be designed and placed in consideration of existing and potential open space on adjacent parcels to provide consolidation or opportunities for future consolidation of neighborhood open space areas.
- g. Additional Criteria.
  - (1) Consolidation of open space is encouraged to provide maximum access, visibility, usability, minimization of impacts to residential uses, and ease of maintenance.
  - (2) Existing trees and significant vegetation shall be retained in open space unless an alternative park/landscaping plan consistent with the criteria herein is approved by the department.
- 5. Cash or like value of land area and improvements may be donated to the county for open space purposes to fulfill up to fifty percent of open space requirements within that specific parks planning area. Acceptance will be at the discretion of the county.
- 6. Private Open Space. Developments are encouraged to conform to usable open space provisions of the applicable zone. However, at a minimum, three hundred square feet of private, usable open space having a minimum of fifteen feet in depth and width shall be provided for each ground level dwelling unit PRD. Such private open space should be visible and accessible from the dwelling unit. When adjacent to common open space, such private open space is to serve as a buffer between dwelling units and common open space.
- B. Land Area and Dwelling Unit Computations. Open space, street area, etc., are computed as follows:
  - 1. Street Right-of-Way. Streets in a PRD shall be computed at twenty percent of the gross land area, regardless of the amount of land actually used for streets in the final design.
  - 2. Density. The density of the underlying zone governs unless a density increase is granted as provided in this chapter.
  - 3. Density Increase. The county may approve an increase in the dwelling unit density up to:
    - a. In the low density district, fifteen percent;
    - b. In the moderate density district, twenty percent;
    - c. In the high density district, twenty-five percent; rounded to the nearest whole number, provided that the environmental and recreational amenities sought by this title are met.
  - 4. Development Formula. The computation of the number of dwelling units permitted, and other space requirements shall be as follows:

DU =  $N/M \times 1.2$  (1.2 is the incentive factor)

G Gross land area in square feet

S Street area (i.e., twenty percent of G) in square feet

DU Number of dwelling units

M Minimum land area per dwelling unit

N Net buildable site (G-S) in square feet

Example: In a hypothetical five acre site in the moderate density residential district, thirty-two dwelling units are permitted under conventional development procedures, assuming a minimum lot area of five thousand four hundred forty-five square feet, no dedication for other public use, and twenty percent of the land area dedicated for public right-of-way. The calculations are as follows:

G = 5 acres = 217,800 square feet, gross land area

S = 20% of G = 43,560 square feet of public R.O.W.

G-S = 174,240 square feet

DU =  $174,240/5,445 = 31/6 = 32$  dwelling units

On the same five acre site, under PRD procedure, thirty-eight dwellings are permitted using the formula shown below:

DU =  $N/M \times 1.2$

N = G-S = 217,800 – 43,560 = 174,240 square feet

M = 5,445 square feet minimum lot area

DU =  $174,240/5,445 \times 1.2 = 38.4 = 38$  dwelling units

*TCC 21.60.170 Final review and approval – Application – Filing time limitation*

An application for final review and approval shall be filed by the applicant within five years of the date on which preliminary approval was given by the county. An extension not exceeding one year may be granted by the hearing examiner. If application for final approval is not made within five years or within the time for which an extension has been granted, the plan shall be considered abandoned, and the development of the property shall be subject to the normal requirements and limitations of the underlying zone and the Subdivision Ordinance.

*TCC 21.60.180 Final review and approval—Application—Partial PRD area*

An application for final review and approval may be filed for part of a PRD area for which preliminary approval has been granted by the county. A final plan for a part of a PRD shall provide the same proportion of open space and the same overall dwelling unit density as the overall preliminary plan. If that portion of the PRD for which final approval is requested does not provide such open space, the developer shall file in escrow a quit-claim deed in favor of the county for such additional land area adjacent and accessible to the site, and of sufficient size to provide the open space required to meet the standards of this title. In the event that the

developer abandons the remaining portions of the PRD, the escrow agent shall deliver the quit-claim deed to the county or to such other public or private entity as the county may direct.

Note: Final approval of a PRD development plan shall not be construed to be final plat approval. Plat approval is a separate action and shall be in compliance with state and local subdivision and platting regulations (as stated in Section 21.60.050B).

*TCC 21.60.190 Final review and approval—Application—Required documentation*

The applicant shall submit the final development plan of the proposed development to the department for its review. The final development plan shall comply with the conditions imposed on the preliminary development plan. In addition, if the development is being subdivided, the data required of regular plats as required by the subdivision ordinance must be submitted. The plan shall include the following:

- A. Final elevation and perspective drawings of project structures;
- B. Final landscaping plan;
- C. Final plans of and including profiles of the drainage, water, sewer, lighting, streets, and sidewalks or pathways;
- D. Such other documentation, information and data not lending itself to graphic presentation such as restrictive covenants, incorporation papers and bylaws of homeowners' associations, dedications of easements, rights-of-way, and other conditions specifically required by the hearing examiner for the particular PRD.

No final development plan shall be deemed acceptable for filing unless all of the above information is submitted in accurate and complete form sufficient for the purposes of department review. After receiving the final development plan, the planning department shall route the same to all appropriate county departments, and each department shall again submit to the planning department comments and recommendations. If the county departments determine that the final development plan conforms fully with all applicable regulations and standards, the final plan shall be presented to the hearing examiner or BOCC for final approval.

*TCC 21.60.200 Permit issuance*

Building permits and other permits required for the construction or development of property under the provisions of this chapter shall be issued only when in the opinion of the enforcing official, the work to be performed meets the requirements of the final plan and program elements of the PRD.

***Forestland Conversion Criteria***

Pursuant to TCC 17.25.400.D, forest lands conversions within the north county urban growth area shall comply with all of the applicable provisions of the following:

1. Title 24 of the Thurston County Code otherwise known as the Thurston County Critical Areas Ordinance and Chapter 17.15 of the Thurston County Code, otherwise known as the Thurston County Agricultural Activities Critical Areas Ordinance;

....

5. Residential Subdivisions. Applications for residential subdivisions submitted to the resource stewardship department after September 29, 1997 are subject to the following:
- a. Except in the R ½ and RLI 2-4 districts (Olympia Urban Growth Area, TCC 23.04), at least five percent of the property being subdivided must be preserved or planted with new trees and dedicated as a separate tract(s). Critical areas and their required buffers may be applied toward this five-percent requirement, but only the portion that contains trees to be preserved. The director may waive the dedication requirement if some other equivalent means of retention or replanting is provided by the development proposal. In the R ½ and RLI 2-4 districts, tree tracts shall comply with Sections 23.04.080(J)(5) and (6), respectively.
  - b. Any part of a tree tract located outside of critical areas and their associated buffers shall count toward open space required for the development by TCC 18.47 Open Space Standards, and 20.32 Open Space, consistent with the provisions of those chapters.
  - c. The plan shall identify what site development safeguards shall be employed to protect trees and ground cover proposed to be retained with the development of the site.
  - d. Where sites proposed for subdivision do not contain healthy trees that can be incorporated in the project and remain windfirm following development, the tree tract shall be planted with trees. The trees to be planted shall be of a type and spacing that, upon maturity, will provide a canopy spanning at least seventy-five percent of the tract. At the time of planting, evergreen trees shall be at least four feet tall and deciduous trees shall be at least one and one-half-inch caliper.
  - e. Where disturbed, critical area buffers may be planted with trees as necessary to improve the buffers for slope stability, wildlife habitat, wetland improvement, screening, etc.
  - f. All common areas in residential subdivisions shall be landscaped or planted with new trees.
  - g. The retention of existing trees or the planting of new trees on individual residential lots shall be required at a rate of one tree for every four thousand square feet of lot area.
  - h. Street trees shall be installed per the applicable street development standards as stated in Chapter 15.04 of the Thurston County Code.
  - i. A bond or other such method of financial security in an amount equal to one hundred twenty-five percent of the cost to purchase and install the required trees, based upon a contractor's estimate accepted by the county, shall be provided to the county to secure the successful establishment of newly planted trees. The county shall draw upon this surety as needed to replace any trees that die, upon failure of the developer or other responsible party to do so within the time period specified by the county. The developer shall not be required to replant trees which die or suffer severe degradation as a result of a water purveyors failure to supply adequate water, acts of vandalism or other actions of unrelated third parties acting beyond the developer's control. Such

financial security shall be effective for a two-year period following completion of the planting.

**Additional Applicable Provisions**

*TCC 21.10.035 - Density (McAllister Springs Geologically Sensitive Area Residential District)*

When sewer is provided, density may range from not less than three to no more than six units per acre. When not provided, a density of no greater than one unit per five acres is allowed.

Permitted density on properties with critical areas shall be adjusted as shown in Chapter 21.53.

*TCC 24.01.010 Purpose—Statement of policy for critical areas*

These regulations are intended to:

...

- B. Identify and protect the functions and values of unique, fragile, and vulnerable elements of the environment such as fish and wildlife habitats, wetlands, and other ecosystems;
- C. Maintain water quality and quantity to meet human and wildlife needs;
- D. Recognize and address cumulative adverse impacts that could degrade or deplete water resources, wetlands or fish and wildlife habitat, or exacerbate flooding and landslide hazards;

...

- F. Protect critical areas, associated buffers designed to protect the functions of critical areas, and their functions and values while allowing reasonable use of property by: directing activities not essential in such areas to other locations; providing for review of proposed uses and activities on properties containing critical areas or their buffers to achieve compliance with standards designed to minimize impacts to critical areas and associated buffers; and providing for mitigation of unavoidable impacts;

...

- H. Implement the Washington State Growth Management Act (RCW 36.70A), including consideration of best available science in the designation, protection, and management of critical areas, with special consideration for the protection of anadromous fish; and
- I. Carry out the goals and policies of the Thurston County Comprehensive Plan.

*TCC 24.05.022 Third party review*

- A. The purposes of third party review are to protect critical areas, maintain public safety, protect public health and property, and to ensure that the nature and extent of critical areas and any associated buffers are correctly determined.
- B. The county shall attempt to resolve any issues with the original author(s) or applicant before requiring third party review.
- C. The approval authority may, at the applicant's expense, require a third party review of any submission if there is reason to determine that:
  - 1. The submission contains factual errors, omissions, or incomplete analysis; or
  - 2. Inconsistencies exist between the submitted materials and observable data, and/or accepted scientific or technical criteria; or

3. The submission contains faulty analysis, faulty analytical procedures, substantive differences of interpretation of submitted data or analysis, or other findings made through the review of the proposal that support commissioning third party review; or
  4. Specialized expertise is required for adequate review of a proposal.
- D. The approval authority shall select the third party reviewer.

*TCC 24.05.030 (Administrative Procedures) Coordination with other application reviews*

A proposed project action involving a permit under this title shall be processed in a consolidated manner, as specified below:

- A. Decisions on and review of critical area review permits under Chapter 24.40 TCC associated with other related development applications may occur with the State Environmental Policy Act review and determination required under Chapter 17.09 TCC. However, the decision on the critical area review permit is a separate decision.

...

- C. Critical area review permits may be combined with the underlying permit when the requested action does not include:

...

5. Permits that require hearing examiner approval;

*TCC 24.10.005 (Critical Aquifer Recharge Areas) Purposes*

The purposes of this section are to:

- A. Protect the public health and welfare by safeguarding critical aquifer recharge areas (CARA) and vital groundwater resources that serve as the county's primary potable water source. This includes avoiding or, where that is not possible, minimizing the risks of ground water contamination from new, existing, expanded and altered land uses and activities, consistent with state water quality standards.

....

- E. Be consistent with RCW 36.70A.170 and 36.70A.172; public water systems penalties and compliance, Chapters 70-119A RCW; Washington State Wellhead Protection Program and the Public Water Supplies, Chapter 246-290 WAC; dangerous waste regulations, Chapter 173-303 WAC; the Water Quality Standards for Groundwater of the State of Washington, Chapter 173-200 WAC; Articles III, IV, and VI of the Thurston County Sanitary Code; County adopted water resource inventory area watershed management plans; and County adopted water system plans and wellhead protection plans.

*TCC 24.10.010 (Critical Aquifer Recharge Areas) Applicability*

This chapter applies to proposals for new development and alteration and expansion of existing uses listed in Table 24.10-1 that are located in an area defined as a critical aquifer recharge area in this title. These regulations also apply to the one-, five- and ten-year time of travel zones of wellhead protection areas meeting the criteria in this chapter. ...

- A. "Category I, extreme aquifer sensitivity" includes:

1. Those areas which provide very rapid recharge with little protection, contain coarse soil textures and soil materials, and are derived from glacial outwash materials. The



- predominant soil series and types are those listed as Category I in Table 24.10-4 at the end of this chapter; and
2. Wellhead protection areas as defined by Chapter 24.03 TCC, including their one-, five-, and ten-year time of travel zones.

*TCC 24.25.005 (Fish and Wildlife Habitat Conservation Areas) Purposes*

The purposes of this section are to:

- A. Protect habitat and healthy functioning ecosystems to support viable populations of priority and locally important fish, wildlife, and plants in Thurston County.
- B. Preserve the functions and values of locally important habitat.
- C. Protect the functions and values of priority habitats such as, but not limited to, prairies, Oregon white oak, and riparian areas along streams and marine waters.
- D. ...
- E. Provide for connectivity among fish and wildlife habitats.

*TCC 24.25.075 Important habitats and species—Identification and buffers*

- A. Applications for uses and activities on sites containing a habitat or species subject to this section shall include a critical area report (see Chapter 24.35 TCC) prepared by a qualified professional that evaluates the potential impacts of the proposed use or activity on the habitat and/or species, as applicable. The process for determining whether critical area reports are required, and the extent of information required is outlined in Chapter 24.05.027 TCC. Critical area reports that pertain to important habitats and species may also be referred to as habitat management plans.
- B. The approval authority shall establish buffers for the habitat or species on a case-by-case basis, in consultation with the WDFW or others with expertise, based on the critical area report and the WDFW management recommendations for Washington's priority habitats and species, if available. The buffers shall reflect the sensitivity of the specific habitat(s) and/or species to be protected.
- C. No clearing, grading, or other activity shall occur prior to approval by the review authority.
- D. Prairie Habitat. The approval authority, in consultation with the WDFW and DNR Natural Heritage Program, shall establish buffers for prairie habitat that extend outward from the outer boundary of the habitat the greater of fifty feet, measured on the horizontal plane, or the minimum distance recommended in the critical area report, whichever is greater. When setting the buffer width, the approval authority shall consider the recommendation and supporting rationale in the applicant's critical area report and the following:
  1. The habitat functions and their sensitivity to disturbance, the risk that the adjacent proposed land use poses for those functions (e.g., from noise, light, stormwater runoff, introduction of invasive or non-native plant species, pesticides, herbicides, and domestic animals) and, if applicable,

...

*TCC 24.35.015 (Special Reports) Mitigation sequencing*

All proposals that require submittal of a mitigation plan due to impacts to a critical area or buffer shall employ the following sequence in order to reduce those impacts. Redesign, reconfiguration or relocation of a proposal to avoid impacts shall be preferable to submittal of a mitigation proposal. Mitigation actions associated with development proposals impacting critical areas shall adhere to the following mitigation sequence:

- A. Avoiding the impact altogether by not taking a certain action or parts of an action;
- B. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
- C. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
- D. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
- E. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and/or
- F. Monitoring the impact and taking appropriate corrective measures.

*(emphasis added)*

*TCC 24.35.017 (Special Reports) Monitoring and contingency requirements*

- A. A contingency plan shall be established for compensation in the event the mitigation project is inadequate or fails. The contingency plan is to provide specific corrective measures for such common mitigation plan failings as plant mortality, undesirable vegetation, vandalism, damage due to wildlife grazing, grading errors, damage caused by erosion, settling, or other geomorphological processes, and hydro-regime problems. A financial guarantee shall be provided per Chapter 24.70 TCC. Financial guarantees shall be based on an estimate submitted to the County detailing the work to be accomplished and the current cost.
- B. Requirements of monitoring programs are as follows:
  1. Scientific procedures are to be used for establishing the success or failure of the project.
  2. Monitoring reports prepared by a fish or wildlife biologist are to be submitted for department review. Monitoring reports generally will include discussions of wildlife utilization of the site, habitat structure establishment, water quality, and existing or potential degradation.
  3. Monitoring reports for wetland mitigation projects shall be prepared per the Monitoring Report Checklist in Appendix M of Wetland Mitigation in Washington State, Part 2: Developing Mitigation Plans (Version 1, Publication #06-06-011b, March 2006, as amended).

4. For critical aquifer recharge areas, the approval authority may require water quality or quantity monitoring as a condition of approval and to document compliance with permit conditions. This may include establishment of baseline conditions for water quality and quantity. Said monitoring shall be performed by a qualified individual or entity, approved by the county. Monitoring may also be delegated to an appropriate county department and paid for by the applicant. The approval authority shall periodically review the need for continued monitoring and shall authorize termination of the monitoring if it is determined that it is no longer warranted.
5. Monitoring may include, but is not limited to:
  - a. Evaluation of the project's status relative to the project's performance standards and goals in the approved mitigation plan.
  - b. Evaluation of vegetation plots to track changes in plant species composition and density over time;
  - c. Using photo stations to evaluate vegetation community response;
  - d. Sampling surface and subsurface waters to determine pollutant loading and changes from the natural variability of background conditions (e.g., pH, nutrients, heavy metals);
  - e. Measuring base flow rates and stormwater runoff to model and evaluate water quality predictions, if appropriate;
  - f. Measuring sedimentation rates, if applicable;
  - g. Wildlife utilization of the site. If warranted, sampling fish and wildlife populations may be required to determine habitat utilization, species abundance and diversity;
  - h. Existing degradation; and
  - i. Hydric soil characteristics monitored through the use of one or a combination of the following: Munsell soil color, pH, particle size, redox potential, organic content, microbial activity, time and duration of saturation or ponding, and alkalinity. The duration and extent of water on site can be approximated by periodic field visits to verify depth and extent of hydrology. Alternatively, continuous data loggers could be installed that monitor the hydroperiod.
6. Monitoring reports for mitigation projects specific to vegetative restoration or enhancement shall comply with the following:
  - a. Monitor for a period of time appropriate to the nature of the project (single-family versus commercial) and the complexity of the mitigation project. The majority of monitoring programs will last a minimum of five years (ten years for forested and scrub-shrub communities) and are to be submitted according to the following schedule:
    - i. At completion of construction of mitigation project (as-built report);
    - ii. Thirty days after completion;
    - iii. Early in the first growing season after construction;
    - iv. End of the first growing season after construction;

- v. Twice the second year; and
  - vi. Once in years 3, 5, 7 and 10.
- b. Deviation from this schedule may be allowed based upon project specific conditions.
7. Monitoring reports for mitigation projects whose goals are other than vegetative restoration or enhancement are to be submitted to the department for a period of time, and upon a schedule, appropriate for the species or habitat of concern. The specifics of such mitigation projects will be determined on a project by project basis.
- C. As a condition of approval for permits requiring monitoring, the county shall be provided the ability to enter property to verify monitoring reports and compliance with conditions of permit approval.
  - D. Failures in the mitigation project shall be corrected as required by the county, such as, but not limited to:
    - 1. Replace dead or undesirable vegetation with appropriate plantings.
    - 2. Repair damage caused by erosion, settling, or other geomorphological processes.
    - 3. If necessary, redesign the mitigation project and implement the new design.
  - E. Correction procedures shall be approved by the fish or wildlife biologist and the director or designee.

*TCC 24.55.030 Areas eligible for subdivision*

Parcels that are located wholly within critical aquifer recharge areas, erosion hazard areas, volcanic hazard areas, mine hazard areas, seismic hazard areas or partially within other critical areas and associated buffers, may be divided provided the applicant demonstrates all of the following:

- A. A contiguous portion of each proposed lot is located outside of the critical area, hazard area or associated buffer that is of sufficient size and configuration to contain all structures and all related appurtenances associated with the allowed use. Sufficient size means the minimum required by the environmental health division for an on-site sewage disposal system. If the lot will be served by sewer, it shall be at least five thousand square feet or the minimum lot size, if less than five thousand square feet;
- B. The proposed lots shall be accessible by a legally existing road or a proposed road located outside of critical areas or hazard areas, or as otherwise provided for by this title;
- ...
- D. Where possible, subdivisions must be able to be designed to maintain adequate habitat connectivity, as determined by the review authority; and
- E. Also see requirements for critical area tracts and easements (Chapter 24.65 TCC).

*TCC 24.55.050 Utilities*

All subdivision of land under this title shall provide for the location and construction of public utilities and facilities, such as sewer, gas, electrical and water systems, in a manner that

eliminates or, where that is not possible, minimizes potential for flood damage, consistent with Chapter 14.38 TCC, and avoids adverse impacts to critical areas and their associated buffers.

*TCC 24.55.060 Plat map*

Base flood elevation data and other critical areas and associated buffers shall be identified on the preliminary and final plat maps of land by a licensed engineer or surveyor. A note shall be placed on the plat identifying any use restrictions on individual lots required pursuant to the Thurston County Critical Areas Ordinance (Title 24 TCC) and indicating that future development may be subject to review for compliance with Chapter 14.38 TCC. (*emphasis added*)

*TCC 24.55.070 Practices for the use of pesticides to protect critical areas*

Residents of subdivisions with more than eight lots and that have critical areas within the subdivision boundaries shall be required to use integrated pest management practices for pest control to protect critical areas and their species. The requirement to use integrated pest management shall be noted on the plat and the title of all lots. As a condition of subdivision approval, the applicant shall provide educational materials pertaining to Integrated Pest Management to each initial home owner in the subdivision.

*TCC 21.60.010 (Planned Residential development) Intent*

It is the intent of this chapter to:

- A. Encourage imaginative design and the creation of permanent open space by permitting greater flexibility in zoning requirements than is generally permitted by other chapters of this title;
- B. Preserve or create environmental amenities superior to those generally found in conventional developments;
- C. Create or preserve usable open space for the enjoyment of the occupants;
- D. Preserve to the greatest possible extent the natural characteristics of the land, including topography, natural vegetation, waterways, views, etc.;
- E. Encourage development of a variety of housing types;
- F. Provide for maximum efficiency in the layout of streets, utility networks, and other public improvements;
- G. Provide a guide for developers and county officials in meeting the purpose and provisions of this chapter.

*TCC 21.61.040 Townhouse Development standards*

- A. Density. The density of the underlying zone governs unless a density increase is granted as provided in this chapter.
- B. Density Increase. [not applicable]
- C. Lot Area and Width of Each Townhouse Unit. A townhouse lot shall contain a minimum area of one thousand six hundred square feet and a minimum lot and building width of twenty feet.

- D. Height. The maximum height of any townhouse shall not exceed that allowed in the district in which the development is located.
- E. Setback Variation. No more than two abutting townhouses or townhouse cluster within the townhouse project site shall have a common front building setback. Variations in the setback of front building faces shall be at least four feet.
- F. Right-of-Way Setback. No townhouse dwelling unit shall be located closer than twenty-five feet to any public right-of-way nor within fifteen feet of a private drive, access road or common open parking area to the front or rear of such a dwelling unit.
- G. Rear Yard Requirements. The minimum rear yard requirement shall be fifteen feet to the rear property line. Provided, that townhouses with a rear load may have garages within three feet of the rear lot line or paved alley.
- H. Private Yard Area. Every lot containing a townhouse must provide a private yard of at least three hundred square feet, oriented to either the building rear or side, enclosed visually by fences or walls at least five feet in height or plantings to screen first level views from adjacent units.
- I. Side Yard Requirements. The minimum side yard requirement shall be the same as the underlying zone.
- J. Minimum Distances Between Townhouse Groups. No portion of a townhouse, accessory structure or other building type in or related to one group or cluster of contiguous townhouses shall be nearer than ten feet to any portion of a townhouse or accessory structure of another townhouse building or cluster.
- K. Access. When the only driveway is from the street, each pair of units must share a common curb cut.

**Conclusions Based on Findings:**

1. If there is evidence in the record demonstrating compliance with the requirements of the applicable subsections TCC 17.25.400.D(5), it was not discovered during extensive review of the materials. The forest logging site plan reflects the 620-unit proposal and shows the former tree mitigation Manor Oaks Park, which is no longer proposed. Of note, TCC 17.25.400.D(1) requires a forest land conversation to comply with the County's critical areas regulations in TCC Title 24 and TCC Chapter 17.15. The project would remove timber from parcels shown to be gopher-occupied and to contain regulated Oak habitat. Beyond a statement that no oaks are proposed to be harvested, there is no information addressing the compliance of the project's forest land conversion with critical areas regulations in the record. The criteria for forest land conversation have not been shown to be met. *Findings 33, 34, 35, 36, 37, 38, 39, 40, 41, 43, 44, and 45.*
2. Vast portions of the subject property are encumbered by critical areas, including critical aquifer recharge area and Oak habitat in all proposed phases and gopher habitat in proposed Phases 2 through 4. There remains an unaddressed (and in the opinion of the undersigned, valid) question in the record about whether the subject property possibly contains prairie habitat. *Findings 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, and 43.* Considering the purpose of the critical areas ordinance as a whole, and the purposes of

the regulations applicable to both critical aquifer recharge areas and fish and wildlife habitat conservation areas, the critical areas documentation submitted is inadequate to make the required public interest findings for the preliminary plat. The critical areas information is also inadequate to enter findings and conclusions that the benefit provided to the public through the discretionary PRD provisions justifies the requested relief from the bulk dimensional standards of the underlying zone. *TCC 18.12.090, TCC 24.01.010, TCC 24.10.001, TCC 24.25.005, and TCC 21.60.010.* The following specific omissions are the basis for concluding that the critical areas review is inadequate.

- a. There is nothing in the record addressing the requirements of TCC 24.55.030, which if strictly applied would prohibit the project as proposed, because the project is not capable of proving buildable area outside of each lot that is outside of the CARA. The MSGA zone requires a minimum lot size of 5,000 square feet if no alleys are proposed, which is the same minimum lot area required in TCC 24.55.030.A. As noted in the State Department of Health comments (Exhibit 1.X), strict application would prohibit subdivision within the Lacey UGA, which arguably would be an absurd result. That said, while the PRD ordinance expressly waives most bulk dimensional standards of the zoning ordinance and the subdivision ordinance, it doesn't expressly waive the requirements of the critical areas ordinance. TCC 24.55.030 also applies to Mazama pocket gopher and Oregon White Oak habitat. Considering the codified purposes of the critical areas ordinance, the critical area aquifer recharge regulations, the fish and wildlife habitat conservation areas, and planned residential developments, the decision to delay demonstration of critical areas compliance to a post-hearing process makes it impossible to enter conclusions that the project is consistent with the public interest. *Findings 7, 8, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 48, 55, and 59.*
- b. The concerns expressed by the County Biologists in Exhibit 1.RR were not addressed in the record. It is not clear why the County accepted re-screening of the parcels after initial gopher occupancy documentation in apparent contravention to the County protocol (as acknowledged in Exhibits 1 and 1.RR). Having reviewed the Applicant's critical areas, gopher/prairie plan screening reports, and habitat management plan, the undersigned concludes that the County Biologists' concerns required response. With due respect, without responses from the Applicant's consultant to these concerns, the sum of Applicant's critical areas information lacks credibility. *Findings 7, 9, 36, 37, 38, 39, 40, 41, 55, 57, and 59.*
- c. Further, the sum of the critical areas information submitted fails to demonstrate compliance with the mitigation sequencing required by TCC 24.35.015 and the monitoring and contingency requirements in TCC 24.35.017. There is no discussion in the record from the parties satisfactorily explaining how it is possible to design and approve the layout of so many lots without consideration of these basic critical areas requirements earlier in the process than after preliminary plat approval. Anticipating the response that development of Phase 1 would not impact gopher-occupied parcels, the undersigned concludes on the record submitted that approval would create impact

to Oak habitat in Phase 1 for which critical area requirements are not demonstrated to be satisfied. *Findings 7, 9, 11, 36, 37, 38, 39, 40, 41, 55, 57, and 59.*

- d. Regardless of any other ‘order of operations’ explanation/rationale that could have been submitted (but wasn’t), TCC 24.55.060 requires critical areas and buffers to be shown on the preliminary plat map. While many open space tracts are shown, and one is labeled “Oak Tree Mitigation,” the plans do not appear to contain the words “critical area” or “buffer.” *Exhibits 1.D, 1.SS, 3, and 6; Findings 7, 9, 11, 13, 36, 37, 38, 39, 40, 41, 43, 55, 57, and 59.*
  - e. It is true that TCC Chapters 24.05 and 24.40 make the Director the approval authority and the Examiner the appellate reviewer for a Type II critical area review permit. It is also true that neither TCC Chapters 24.40 nor 24.04 establish a timeline, or order of operations, by which a critical area review permit must be decided before an associated Type III land use application or at any other identified point in the process.<sup>24</sup> However, TCC 24.55.060 requires critical areas and associated buffers to be depicted on the preliminary plat map. Also, TCC 24.55.050 requires subdivision of land containing critical areas to demonstrate that the location and construction of public utilities and facilities, including sewer and water systems, are proposed to be installed in a manner that minimizes adverse impacts to critical areas and their associated buffers. These provisions suggest that a minimum amount of credible information regarding the location and proposed treatment of critical areas within a development - sufficient to support the extension of such permanent and expensive infrastructure as sewer / water mains and street systems - is expected to be provided prior to preliminary plat approval. Based on the record submitted, the minimum necessary information regarding critical areas has not been provided. Despite the entirety of the site being encumbered by at least one, and in large portions of the site up to three regulated features - in which areas hundreds of lots are proposed - critical areas and buffers are not shown on the site plans. *Findings 7, 8, 9, 10, 11, 12, 13, 24, 25, 26, 27, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 48, 55, 59, and 63.*
3. Additional omitted and conflicting information in the record also contribute to denial. As noted in footnote 7, there is no citation to authority in the record directing the inclusion of half of the right-of-way frontage in density calculations, and the undersigned was unable to find it in TCC 21.60.140.B or elsewhere. Without such authority, 81.36 acres allows a maximum of 488 units at six units per acre. As noted in footnotes 5 and 6, the number and type of lots in each phase is not stated in the record and information about proposed lot dimensions is inconsistent among the various site plans and narrative documents.

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<sup>24</sup> County Staff submitted that critical area review could be conducted through the SEPA process. With due respect, the September 24, 2020 MDNS does not reference the critical areas on-site beyond asserting that review included “habitat management plan, critical areas report, hydrogeological report, geotechnical report, drainage report and stormwater plans, integrated pest management plan” (among others). Also, the critical area review conducted through SEPA was based on evidence of which some, as concluded herein, lacks credibility and/or is not sufficiently complete in its present form, and therefore is not sufficient critical area review to meet the minimum threshold to support preliminary plat approval.



While the PRD provisions excuse PRD lots from the bulk dimensional standards of the underlying zone without setting minimums for lot size (subject to compliance with design standards), a PRD proposal still needs to explicitly request approval for specific lot dimensions and numbers of types of units. Although Applicant witnesses testified that the Thurston PUD water infrastructure is located on a segregated tax parcel within Parcel 11836330000, which testimony was apparently intended to serve as the basis for the assertion that the Thurston PUD's infrastructure is not on a parcel with observed gopher-occupancy, the record contains no evidence of this separate parcel other than testimony; it is not identified on the plans, and the well believed to be Thurston PUD/Pattison-500 is shown on the largest gopher-occupancy parcel. That said, as detailed in footnote 4, it is not clear from the materials which water system is which. Nor is it clear how many Group A water connections are currently available, and given the conflicting evidence and all the "moving parts" between the present and the construction of water system improvements, it is not possible to know when 505 connections will be available. Many of the documents (the forest site logging plan, the IPMP, many others) have not been updated to reflect either the redesign of the project to exclude the apartment complex, or the relocation of the "oak mitigation" tract into the northwest corner of the site, or the reversal in order of proposed phasing and thus timing of construction; as an example, in the plans Lot 1 is in proposed Phase 4. Other missing and conflicting information is detailed in the findings, the depth and breadth of which, when combined with issues in the previous conclusions, renders it impossible to grant the requested permits. *Findings 8, 9, 10, 11, 25, 26, 27, 34, 35, 36, 37, 38, 39, 40, 42, 43, 44, 45, 48, 55, 57, 59, 65, 67, and 68.*

### DECISIONS

Based on the preceding findings and conclusions, the requested applications cannot be approved on the record submitted, and they must therefore be **DENIED**.

**Decided** January 10, 2022 by



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Sharon A. Rice  
Thurston County Hearing Examiner



**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 Community Planning & Economic Development 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 **\$804.00** for a Request for Reconsideration or **\$1,093.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Building Development 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> _____ <b>Appeal Sequence No.:</b> _____
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**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  \$804.00 for Reconsideration or \$1,093.00 for Appeal. Received (check box): Initial \_\_\_\_\_ Receipt No. \_\_\_\_\_  
 Filed with the Community Planning & Economic Development Department this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_.