



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 Application of	)	NO. 2021101836
	)	
<b>Pacific Northwest Development &amp; Land Company LLC</b>	)	<b>Sleater Landing</b>
	)	
	)	FINDINGS, CONCLUSIONS,
For a Preliminary Plat and	)	AND DECISION
Forest Land Conversion	)	

**SUMMARY OF DECISION**

The applications for preliminary plat and forest land conversion to subdivide 46 acres into 199 single-family residential lots are **GRANTED** subject to conditions.

**SUMMARY OF RECORD**

**Request:**

Pacific Northwest Development & Land Company LLC (Applicant) requested a preliminary plat to subdivide 46 acres into 199 single-family residential lots to be developed with a mixture of detached and townhouse residences, and a forest land conversion to harvest approximately 300,000 board feet of timber. The subject property is located at 2235 Sleater Kinney Road NE within the Lacey Urban Growth Area of Thurston County.

**Hearing Date:**

The Thurston County Hearing Examiner conducted a virtual open record public hearing on the request on November 22, 2022. The record was held open through November 24, 2022 to allow members of the public who may have had technology or access difficulties joining the virtual hearing to submit written comments, with time scheduled for responses from the parties. The record was also held open for the parties to submit documents referenced during the hearing, and was reopened on November 28, 2022 for additional information on a variance request (Exhibit 3) that had not been previously analyzed.<sup>1</sup> Post-hearing public comment, responses to the public comment, and the requested documents were timely submitted and the record closed on November 30, 2022.

<sup>1</sup> The variance request was formally withdrawn in response to a post-hearing order. *Exhibit 13.*

**Testimony:**

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

Ron Buckholt, Senior Planner, Thurston County Community Planning & Economic Development Department

Arthur Saint, Civil Engineer, Thurston County Public Works Department

Dawn Peebles, Senior Environmental Health Specialist, Thurston County Public Health and Social Services Department

Jeff Pantier, PLS, Hatton Godat Pantier, Applicant Representative

Chloe McIntire, PE, Hatton Godat Pantier, Applicant Representative

Raelyn Hulquist, Entitlements Manager, DR Horton, Applicant Representative

Kurt Wilson, Edgewood Terrace Estates LLC, Applicant

Carolyn Finchum

Diane Larsen

Stan Springer

**Exhibits:**

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

Exhibit 1 Community Planning & Economic Development Department Report, with the following attachments:

- A. Notice of Public Hearing
- B. Thurston County Master Application, submitted on April 13, 2021
- C. Thurston County Division of Land Application, submitted on April 13, 2022
- D. Thurston County Forestland Conversion Application, submitted on April 13, 2021
- E. Project Narrative
- F. Tacoma Smelter Plume Letter, dated July 6, 2021
- G. Plat Map - Site Plan
- H. Landscape Plan
- I. Mitigated Determination of Non-Significance, issued August 26, 2022
- J. Notice of Application
- K. Memorandum re: Plat Recommendation from Arthur Saint, Thurston County Public Works Department, dated October 24, 2022
- L. Memorandum re: SEPA Recommendation from the Arthur Saint, Thurston County Public Works, dated February 10, 2022

- M. Plat Recommendation letter from Thurston County Health Department, dated April 14, 2022
  - N. City of Lacey Water and Sewer Acknowledgment Letter, dated November 17, 2021
  - O. North Thurston School District comment letter, dated May 11, 2021
  - P. Ecology SEPA comments, dated February 3, 2022
  - Q. SEPA comments from Nisqually Indian Tribe, dated August 26, 2022
  - R. Comment email from Squaxin Island Tribe, dated March 21, 2022
  - S. Cultural Resources Survey Report, dated July 2021
  - T. Updated Tree Preservation Plan, dated June 27, 2022
  - U. Traffic Impact Analysis, dated October 22, 2021
  - V. Critical Area - Wetland Report, dated April 5, 2021
  - W. Public comments received on Notice of Application
  - X. Integrated Pest Management Plan, dated May 17, 2021
  - Y. Preliminary Drainage Report, dated April 9, 2021
  - Z. Comments received on Public Hearing Notice
  - AA. City of Lacey Transportation Comments, dated February 7, 2022
  - BB. High Groundwater Hazard Area letter, dated June 23, 2022
  - CC. Water and sewer availability letter from the City of Lacey, dated March 29, 2021
- Exhibit 2 Updated Preliminary Plat Map, dated November 15, 2022
  - Exhibit 3 Front Building Setback Variance Request for Reloaded Townhomes, dated November 16, 2022
  - Exhibit 4 Amendment to Agreement Water with neighboring owner
  - Exhibit 5 Preliminary Civil Engineering Plans 2021
  - Exhibit 6 Landscape Detail, dated April 26, 2022
  - Exhibit 7 Tract P Landscape Plan
  - Exhibit 8 Alternative Landscape Plan for Incompatible use Buffer on Lot 85 and 86
  - Exhibit 9 Hearing Examiner Decision for Emerson Crossing, dated August 7, 2018
  - Exhibit 10 Prepared Colored Rendering that shows cuts and fills through project
  - Exhibit 11 Post Hearing Public Comment
    - 11a. Comment from Vanessa Brammeier, received November 23, 2022
    - 11b. Comment from Joanne Broome, received November 23, 2022
    - 11c. Comment from Cheryl and Larry Bush, received November 23, 2022

- 11d. Comment from Kelli Schmidtke, received November 23, 2022
- 11e. Comment from Elaine & Dennis Biber, Received November 27, 2022
- 11f. Comment from Mr. and Ms. Alan Horenstein, received November 28, 2022
- 11g. Comment from Arlynn Benson, received November 28, 2022

Exhibit 12 Applicant's Alternate Language Addressing Trail Crossing

12b. Public Works Response

Exhibit 13 Applicant's request to withdraw request for a variance in response to the Order Reopening the record, dated November 28, 2022<sup>2</sup>

Exhibit 14 Applicant's Response to Public Comments, dated November 28, 2022

Exhibit 15 Staff's Response to Public Comments, dated November 28, 2022

Also included in the record is a November 28, 2022 Order Reopening Record requesting the parties address the variance requested in Exhibit 3.

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

### FINDINGS

1. Pacific Northwest Development & Land Company LLC (the Applicant) requested a preliminary plat to subdivide 46 acres into 199 single-family residential lots to be developed with a mixture of detached and townhouse residences, and a forest land conversion to harvest approximately 300,000 board feet of timber. The subject property is located at 2235 Sleater Kinney Road NE within the Lacey Urban Growth Area of Thurston County.<sup>3</sup> *Exhibits 1, 1.B, 1.C, 1.D, 1.E, and 2.*
2. The applications were submitted on April 13, 2021 and determined to be complete for the purpose of commencing project review on May 11, 2021. *Exhibit 1.J.*
3. The subject property is currently developed with two single-family residences, both of which would be removed from the site. Surrounding land uses include the Chehalis Western Trail along the western site boundary, single-family residences in the Village at Mill Pond subdivision (City of Olympia) to the west of the trail, single-family residences in the Trailside Estates subdivision to the south of the subject property, and larger residential lots to the northeast of the subject property. *Exhibits 1, 1.E, and 2.*
4. A portion of a Category III wetland extends over the northwest portion of the subject property. Due to the wetland's habitat score of 5, the minimum buffer required by the Thurston County critical areas ordinance (CAO) is 160 feet. The Applicant proposes to

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<sup>2</sup> The requested variance was withdrawn per Exhibit 13.

<sup>3</sup> The legal description to the subject property is a portion of Section 8, Township 18 North, Range 1 West, WM; also known as Tax Parcel Numbers 11808210300, 11808210500, 11808210800, 11808240100, 11808240200, and 11808240303. *Exhibits 1.B and 2.*

preserve the wetland and buffer within proposed Tract A, which would be 7.01 acres in area. *Exhibits 1.V and 2.*

5. The subject property is not within an area that has been identified by the Washington Department of Ecology (DOE) as potentially contaminated with arsenic and lead due to air emissions originating from the old Asarco smelter in north Tacoma. The distance between the subject property and the mapped impact area is approximately 4,400 feet. *Exhibit 1.F.*
6. The subject property is within the Lacey Urban Growth Area and contains two zoning designations. The northern half of the subject property (26.16 acres, or 19.70 acres net of undevelopable critical areas) is zoned Low Density Residential (LD 3-6). The southern half of the subject property (19.84 acres) is zoned Moderate Density Residential (MD 6-12). *Exhibits 1 and 2.* Detached single-family residences and townhouses are permitted uses in both zones, provided the density requirements of each zone are satisfied. *Exhibit 1; Thurston County Code (TCC) 21.61.030.* For the LD 3-6 zoned portion of the property, the minimum density is three dwelling units per acre, and the maximum density is six dwelling units per acre. Fifty-nine of the proposed lots would be within the LD 3-6 zone, for a density of 3.0 dwelling units per acre based on net area. For the MD 6-12 zone, the minimum density is six dwelling units per acre, and the maximum density is twelve dwelling units per acre. One hundred and forty of the proposed lots would be within the MD 6-12 zone, for a density of 7.06 dwelling units per acre. The overall project density would be 5.03 dwelling units per acre. *Exhibits 1 and 2.*
7. The dimensional standards for lots within the LD 3-6 zone include a minimum lot area of 4,500 square feet and a minimum lot width of 40 feet where alleys are utilized, or a minimum lot area of 5,000 square feet and a minimum lot width of 50 feet where alleys are not utilized. *TCC 21.15.050.* Within the MD 6-12 zone, the minimum required lot area is 3,000 square feet and the minimum lot width is 30 feet where alleys are utilized, or a minimum lot area of 4,000 square feet and a minimum lot width of 40 feet where alleys are not utilized. *TCC 21.15.050.* In both zones, the minimum townhouse lot area is 1,600 square feet, and minimum lot width is 20 feet. *TCC 21.61.040.*
8. Although the project narrative (Exhibit 1.E) and the Staff Report (Exhibit 1) describe the project as including 28 townhouse lots<sup>4</sup>, the “plat notes” portion of the revised plat map submitted at the hearing identifies 36 townhouse lots. The plat note appears to be correct because the 36 lots identified as townhouse lots are also marked as townhouse lots on the map, and they are too narrow to be developed with detached residences under the

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<sup>4</sup> It appears that this number came from the “Density Calculations” portion of the plat map, which indicates 28 townhouses in the MD 6-12 portion of the site to demonstrate compliance with TCC 21.15.020, which requires that 20% of the housing in the MD 6-12 zone be comprised of multi-family housing. There is not a comparable requirement in the LD 3-6 zone, and the density calculations do not specify the number of townhouses within that portion of the plat (8). *Exhibit 2.* Of note, the Planning Department recommended approval of the proposed duplex townhouse units as multifamily uses despite their apparent exclusion from the definition of multifamily in TCC 21.06.532. *Exhibit 1.*

applicable zoning standards.<sup>5</sup> Each townhouse lot would be at least 29 feet wide and at least 2,610 square feet in area, far exceeding the minimum width and area for townhouse development. Thirty-two of the townhouses would be served by a rear alley or access easement, with the fronts of these units facing a street or open space tract. The remaining 163 lots would be developed with detached single-family residences. Each of the lots which would satisfy the minimum width and area requirements of their respective zones. In addition to the residential lots, 11 open space tracts (Tracts A, B, C, D, E, F, G, M, N, O, and P) are proposed throughout the project to be used for landscaping, open space, tree retention, recreation, and stormwater management. Six additional tracts would be improved with private roads (Tracts H, I, J, K, and Q), and in one case (Tract L) an alley, which would each provide access to discreet numbers of lots. All tracts would be owned and maintained by a homeowners association. *Exhibit 2; Jeff Pantier Testimony.*

9. Access to the subdivision would be from Sleater Kinney Road NE to the east, 26th Avenue NE to the north, 20th Avenue NE to the south, and, possibly, from 22nd Avenue NE to the west. The connection to 22nd Avenue NE would require crossing the Chehalis Western Trail, the right-of-way for which runs along the entire western boundary of the subject property. Twenty-second Avenue NE stubs at the eastern boundary of the Village at Mill Pond, and the Applicant designed the internal road system to provide a connecting road stub. The street connection is consistent with the City of Olympia Comprehensive Plan, which calls for additional connections between Lilly Road and Sleater Kinney Road NE between 26th Avenue NE and Martin Way NE, and the neighborhood connectivity requirements of adopted road standards. *Exhibits 1.U and 2; Arthur Saint Testimony.*<sup>6</sup> The City of Olympia Comprehensive Plan Transportation 2030 Plan identifies 22nd Avenue NE as a future neighborhood collector.<sup>7</sup>
10. The reason that the status of the 22nd Avenue NE access is unknown is that crossing the Chehalis Western Trail would require permission from the Thurston County Parks Department, a subdivision of Thurston County Public Works, which owns the trail but did not participate in the hearing process. If the crossing is approved, the traffic impact analysis predicts that 25 of the project's 182 PM peak hour trips would enter or exit the site from the west via 22nd Avenue NE; however, if the crossing is not approved, the traffic could be accommodated on the surrounding street network. The Applicant is willing to provide the connection as it is in the plans, consistent with applicable plans and road standards, but would support a Parks Department decision to not allow the crossing. *Exhibits 1, 1.U, 2, 12, and 14; Arthur Saint Testimony; Jeff Pantier Testimony.*

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<sup>5</sup> The undersigned considers the color coding on Exhibit 2 to be for illustrative/conceptual purposes only, and not as an accurate indicator of housing type. Although the color coding suggests 38 townhouse lots, two of the lots with townhouse color coding (Lots 15 and 16, which are not included in the plat note) are noticeably larger than the townhouse lots, with sufficient width to meet zoning standards for detached residences. *Exhibit 2.*

<sup>6</sup> See also Transportation chapter of City of Olympia Comprehensive Plan, which includes a discussion of the need for additional east-west transportation corridors in the northeast portion of the city.

<sup>7</sup> <https://www.codepublishing.com/WA/Olympia/?compplan/OlympiaCPNT.html>

11. Frontage improvements would be provided along Sleater Kinney Road, including dedication of additional right-of-way and installation of a sidewalk and planter strip. *Exhibits 5 and 1.1.*
12. Access to all lots in the plat would be from an internal network of public streets, designed to City of Lacey standards, with short private streets (Tracts H, I, J, K, and Q) providing access to a limited number of lots. A private alley (Tract L) would provide garage access to several of the proposed townhouses, with the townhouses served facing other public or private streets. *Exhibit 2.*
13. Based on the trip generation rates contained in the Institute of Transportation Engineer's publication *Trip Generation Manual, 10th Edition*, the proposed subdivision is expected to generate 1812 average weekday trips, including 138 AM peak hour trips and 182 PM peak hour trips. This traffic would not cause the level of service (LOS) of most affected intersections to fall below forecasted levels for 2024. With respect to those intersections that would have a reduction in LOS, for the intersection of Sleater Kinney Road NE and 6th Avenue NE, the LOS would fall from C to D (an acceptable LOS under adopted standards), but for the intersection of Sleater Kinney Road and 15th Avenue NE, the LOS would fall from E to F (an unacceptable LOS). At present, neither Thurston County nor the cities with jurisdiction have identified improvements to the intersection within their transportation improvement programs. To mitigate the impact of traffic from the proposed subdivision, the Applicant proposes to construct intersection improvements that would raise the LOS to LOS C. As recommended by Thurston County Public Works, the improvements would include a traffic signal, a southbound left turn lane, a northbound right turn lane, bike lanes, and shoulders. Traffic mitigation fees would also be paid to Thurston County and the City of Lacey based on numbers of trips and types of housing unit. *Exhibits 1.1, 1.L, 1.U, and 1.AA; Jeff Pantier Testimony.*
14. Pursuant to TCC 21.60.120 and Table 21T-13, each single-family unit must provide a minimum of two off-street vehicle parking stalls. *TCC Title 21, Table 21T-13.* The Applicant proposes to meet or exceed the requirement through a combination of garage parking spaces and driveway parking spaces. Each front-loaded lot would have a two car garage with two stalls in driveways. The rear loaded townhomes would each have a two-car garage and parking along the lot frontage. On-street parking would also be available along much of the internal road network. *Jeff Pantier Testimony.*
15. Pursuant to TCC 21.80.055(1)(b), proposed subdivision lots that are smaller than 50% of the size of the contiguous residential lots are defined as an incompatible use. When the shared property line is at least 20 feet in length, 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 Hearing Examiner has authority to approve modifications of landscaping requirements. *TCC 21.80.060*.

16. For the proposed development, there are three small areas where the incompatible use buffer would apply: the north and east sides of proposed Lot 85 and the north side of proposed Lot 86, both in the northeast corner of the subject property. Lot 85 is at the terminus of Tract K, an access tract. The lot is 60 feet wide and the northern property line is a side lot line. The eastern portion of the lot abuts Tract K, from which it would take access. Proposed Lot 86 is 55 feet wide, and its northern property line is a side lot line. The Applicant proposed an alternative landscaping plan for the northern boundary of both lots, which would provide a 20-foot wide landscape buffer with a solid eight-foot fence. The Hearing Examiner approved a similar modification of the incompatible use buffer for the Plat of Emerson Crossing in 2018, which reduced the required incompatible use buffer width to 15 feet. Planning Staff supported the request to reduce the incompatible use buffer to 15 feet. With respect to the eastern boundary of Lot 85, the Applicant proposed to extend Tract K to the north, such that Lot 85 would not abut the adjacent larger lot for a distance exceeding 20 feet. *Exhibits 1, 2, 8, and 9; Jeff Pantier Testimony*. In the case of Lot 86, which is only 55 feet wide, a 20-foot wide incompatible use buffer would reduce the development envelope to 35 feet in width.<sup>8</sup>
17. Recreation opportunities would be provided within the plat through a sport court, tot lot, and lawn area within proposed Tract C, and through a walking path, benches, and picnic tables adjacent to the proposed stormwater pond (Tract B). The proposed walking path would connect to the internal street system. In addition, connections would be provided to the Chehalis Western Trail through Tract N (between Lots 159 and 166), at 26th Avenue NE, and at the extension of 22nd Avenue NE. *Exhibits 1.H, 2, and 6; Testimony of Ron Buckholt and Jeff Pantier*.
18. The subject property is forested with a mixture of red alder, Douglas fir, redcedar, and associated species. The proposal includes an application for forest land conversion, stating an intention to harvest approximately 300,000 board feet from 39.5 acres of the subject property. *Exhibits 1.D and 1.T*. The criteria for forest land conversion require that at least five percent of the property being subdivided be preserved or planted with new trees and dedicated as a separate tract. The County may waive the dedication requirement if an equivalent means of retaining or planting trees is provided in the development proposal. *TCC 17.25.400.D.5.a*. To meet this requirement the Applicant proposes to retain trees within Tract A, a combined wetland protection and tree tract, which at 6.73 acres would far exceed five percent of the site area. Two hundred and

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<sup>8</sup> The undersigned notes that while Planning Staff recommended reduction to a 15-foot wide densely planted buffer consistent with the standards at TCC 21.80.055 in combination with an eight-foot tall solid wood fence, at hearing the Applicant submitted a plan depicting a 20-foot incompatible use buffer. The discrepancy in this buffer width (recommended 15 feet, proposed 20 feet) was not addressed in testimony. The Applicant's illustrative exhibit only calls out a proposed incompatible use buffer for the north boundary of Lot 85. At hearing, Planning Staff confirmed that the code requires such a buffer to be provided along the north boundaries of both Lots 85 and 86, and along the east boundary of Lot 85. *Exhibit 8; Testimony of Jeff Pantier and Ron Buckholt*.



seventy-six trees would be preserved within Tract A. There might also be opportunity to retain trees within open space Tract C. *Exhibits 1.T and 2; Jeff Pantier Testimony.*

19. In addition to the tree tract requirement, the forest land conversion ordinance requires a tree plan identifying safeguards to be employed to protect retained trees, the landscaping or planting of all common areas within the subdivision, the retention or planting of new trees on individual lots at a rate of one tree for every 4,000 square feet of lot area, and the installation of street trees. *TCC 17.25.400.D(5)(c),(f), (g), and (h).* The Applicant submitted landscaping plans depicting the installation of street trees and the landscaping of open space and stormwater tracts, and although the builder intends to plant at least one tree in the front yard of each lot, the submitted plans indicate that no trees are required to be retained or planted on the lots, based on an interpretation of TCC 17.25.400 that the trees retained within Tract A could count towards the requirement stated in TCC 17.25.400.D(5)(g).<sup>9</sup> *Exhibits 1.H and 1.T; Raelyn Hulquist Testimony.*
20. The subject property is within Category II and III aquifer recharge areas, designations which do not prohibit residential development, but which require the project to include best management practices designed to protect groundwater. *Exhibit 1.M; TCC 24.10.020; TCC 24.10.030.* The Applicant has prepared an integrated pest management plan (IPMP) that provides a process for pest management that would minimize the application of chemicals within the subdivision. *Exhibit 1.X.*
21. 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 Pleasant Glade Elementary, Chinook Middle, and North Thurston High Schools. The School District commented that its schools are over capacity, and that it anticipates the need to purchase land and construct additional facilities due to increased enrollment from the proposed and other residential developments. The School District requested mitigation fees of \$4,485 for each new single-family detached and townhouse unit. *Exhibit 1.O.* The School District's requested mitigation was included as a condition of the SEPA mitigated determination of non-significance (MDNS) that was issued for the proposal. *Exhibit 1.I.* It is expected that students would be bussed to schools. *Exhibit 1.*
22. Intercity Transit provides public bus service in the vicinity of the subject property. The nearest existing bus stop is at the intersection of Lilly Road and 12th Avenue NE. A concrete pad for a future new bus stop would be provided along the subject property's Sleater Kinney Road frontage. *Exhibits 1.U and 1.I; Jeff Pantier Testimony.*

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<sup>9</sup> This interpretation was forwarded by the Applicant's arborist. When questioned about whether the interpretation constituted a change from previous interpretation and application of the provision to previous forest land conversation applications, the Applicant representative acknowledged (something to the effect) that subsection (g) had previously uniformly been interpreted to require a separate requirement for one tree per 4,000 square feet of lot area on the lots, over and above the tree retention required in the tree tract, but that the arborist had convinced him that this is a correct interpretation. *Jeff Painter Testimony.* When asked if the Department found the arborist's novel interpretation acceptable, Planning Staff stated (something to the effect of), "There is an 'or' in there." *Ron Buckholt Testimony.*

23. The subdivision would be connected to the City of Lacey water and sewer systems, which have capacity to serve the subdivision. Water and sewer service would be subject to providing improvements such as transmission mains. *Exhibits 1.N and 1.CC; Dawn Peebles Testimony.*
24. The proposed stormwater management system would be designed consistent with the Thurston County Drainage Design and Erosion Control Manual. The site is not suitable for infiltration. Stormwater runoff from the developed site would be conveyed via catch basins and pipes to onsite wet ponds and detention ponds for treatment and flow control. The ponds, which would be located in the central (Tract B) and northwest (Tract O) portions of the property, would be lined to exclude groundwater seepage. Treated stormwater would be discharged to an existing roadside ditch along Sleater Kinney Road. The discharge pipe would be oversized to allow for extreme precipitation. *Exhibits 1.Y and 2; Chloe McIntyre Testimony.*
25. The Thurston County Public Works Department reviewed the project for compliance with the Thurston County Road Standards and the Drainage Design and Erosion Control Manual and determined that the preliminary requirements have been satisfied. Public Works recommended approval of the project, subject to conditions. The recommended conditions address right-of-way dedication for road improvements, mitigation fees, trail crossing requirements, and required plat notes. With respect to the trail crossing condition, the Applicant submitted proposed alternate language that has been accepted Public Works. The alternate language clarifies that it is the Parks Department that has the authority to approve the crossing and specifies that the road improvements will terminate at the west property line if approval is denied. *Exhibits 1, 1.K, 12, and 12b.*
26. The Thurston County Environmental Health Division reviewed the project for compliance with the Thurston County Sanitary Code and recommended approval, subject to conditions. The recommended conditions require existing wells and septic systems onsite to be decommissioned, City of Lacey water and sewer to be extended through the site, and the final IPMP approved and distributed. *Exhibits 1 and 1.M.*
27. The Applicant had an archaeological survey conducted on site. No cultural materials were observed during the survey, which included both pedestrian and subsurface investigation. *Exhibit 1.S.*
28. 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, technical reports, environmental checklist, agency comments, and other documents, the County's SEPA responsible official issued a mitigated determination of non-significance (MDNS) on August 26, 2022. The MDNS contains conditions requiring the following mitigation measures: payment of traffic and school mitigation fees; construction of intersection improvements to mitigate for impacts to the Sleater Kinney Road/15th Avenue intersection; construction of frontage improvements on Sleater Kinney Road to City of Lacey standards; development of a future bus stop along the Sleater Kinney Road frontage; installation of landscaping to screen Tract O

from the adjacent streets; use of protective fencing to prevent accidental removal of retained trees; installation of City of Lacey water and sewer utilities; removal of existing wells and septic systems; use of clean fill; removal of hazardous materials prior to demolition of existing structures; implementation of erosion and stormwater control best management practices; protection of archaeological deposits discovered during construction; containment of pollutants; and compliance with applicable laws. The MDNS was not appealed and became final on September 16, 2022. *Exhibits 1 and 1.1.*

29. Notice of the open record hearing was mailed to property owners within 300 feet of the subject property on November 11, 2022 and published in *The Olympian* on November 4, 2022. *Exhibit 1.A.*
30. Several issues of concern were raised in public comment on the proposal, which primarily related to increased traffic in the adjacent residential neighborhood, the potential for the trail crossing to result in hazardous conditions for trail users, and concerns regarding vegetation removal. Neighbors opposed the increased traffic in the subdivision to the west that would result from the crossing on the bass that they already experience enough problems with nonresidents in the neighborhood, including traffic congestion, house break-ins, fires on the Trail, thefts off porches, stolen recycling and garbage bins, car prowling, etc. At least one commenter felt that notice of the proposal should have been required to be posted along the trail, because the project will impact trail users, and others questioned the notice radius expressing surprise that neighbors received mailed notice but they did not. *Exhibits 1.W, 1.Z, and 11; Testimony of Carolyn Finchum, Diane Larsen, and Stan Springer.*
31. With respect to vegetation removal, concern was expressed that the project would impact the wooded character of the Chehalis Western Trail, and request was made that additional buffering be provided along the trail to screen trail users from adjacent residential uses. At least one commenter requested that the 30-foot wide incompatible use buffer be required along the trail. *Exhibits 1.W and 11; Testimony of Diane Larsen and Stan Springer.* The Chehalis Western Trail right-of-way is 66 feet wide, within which the roughly centered paved trail is approximately 12 to 15 feet wide. The distance between the edge of pavement and the west property line of the subject property is approximately 27 feet. Approximately 20 feet of that width consists of existing vegetated buffer that would not be disturbed as a result of the development. No trees would be removed from the trail right-of-way. Six-foot perimeter fencing would be provided along the western subdivision boundary behind the lots. *Testimony of Jeff Pantier Testimony and Raelyn Hulquist.*
32. With respect to traffic and street improvements, commenting residents of the Village of Mill Pond expressed opposition to the 22nd Avenue NE street connection due to increased traffic within their neighborhood, especially traffic seeking a new route to Lilly Road. They also expressed safety concerns for children using the playgrounds abutting 22nd Avenue NE, for kids who currently play in the streets, and for pedestrians and cyclists using the Chehalis Western Trail who may be impacted by vehicle traffic as it crosses the trail. Opponents argued that the crossing is unnecessary due to the existing

crossing at 26th Avenue NE. *Exhibits 1.W and 11(a) through 11(g); Stan Springer Testimony.*

33. In response to public comment, County Public Works Staff emphasized that the proposed subdivision design discourages through traffic, as there would not be a direct route to Sleater Kinney Road and no direct route to Lilly Road either. In addition, the crossing would be stop sign controlled, with vehicular traffic required to stop prior to crossing the trail. An elevated trail gradient at the crossing (or other acceptable method) would potentially serve as a traffic calming device. Finally, while street connectivity is promoted and encouraged (and was planned for throughout the UGA including this area that directly borders the City of Olympia boundary), the final decision of whether to allow a trail crossing at this location would be made by the Parks Department. *Exhibit 15; Arthur Saint Testimony.*
34. In response to the public comment opposing the trail crossing before, at, and after the public hearing, Applicant representatives reiterated that they understand the concerns of the neighbors and would support a Parks Department denying the connection, as requested by the neighbors. *Exhibit 14; Jeff Pantier Testimony.*
35. Having heard all testimony, Planning Staff maintained their recommendation that if permit approvals are granted, the conditions stated in the staff report should be imposed. *Exhibit 1; Ron Buckholt Testimony.* Applicant representatives waived objections to the recommended conditions, although they did request amended language for the condition addressing the fact that the decision of whether to require the trail crossing is pending and would be made by a different agency. Planning Staff agreed with the need to revise the language of that condition. *Testimony of Jeff Pantier, Kurt Wilson, and Ron Buckholt; Exhibit 12.*

## CONCLUSIONS

### **Jurisdiction:**

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.

### ***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;
2. Chapter 19.04 of the Thurston County Code, otherwise known as the Thurston County Shoreline Master Program;
3. Chapter 15.05 of the Thurston County Code, otherwise known as the Drainage Design and Erosion Control Manual for Thurston County;
4. Chapter 15.04 of the Thurston County Code, otherwise known as the Minimum Design Standards for Urban and Rural Street Construction in New Developments;
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 1/2 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 1/2 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.

**Conclusions Based on Findings:**

- 1. As conditioned, the proposal satisfies the criteria for a preliminary plat.
  - A. Appropriate provisions are made for public health, safety, public ways, transit stops, potable water, sanitary wastes, parks and recreation, playgrounds, schools, and all other relevant facts. The plat provides for on-site recreation facilities and would be required to pay park mitigation fees. With respect to safe walking conditions, the plat includes sidewalks, including along the Sleater Kinney Road frontage. Students residing in the subdivision would be bussed to school. School mitigation fees would be paid. Transportation, water, and sewer infrastructure would be provided consistent with Thurston County and City of Lacey requirements, extending public utilities service at Applicant cost. Public health concerns are addressed through the conditions submitted by the County Environmental Health Division and imposed in the MDNS. The proposal would not impact the on-site wetland or its code-required buffer, which would be retained in an open space tract, and an IPMP would ensure that critical aquifer recharge area protections are provided consistent with Code and long standing County practice.

With respect to the extension of 22nd Avenue, the plat is approvable without this through street connection, and the final decision of whether to build the connection

rests the Parks Department, which agency must consent to the trail crossing. If Parks denies the crossing, the plat would still have adequate, although lesser, connectivity to the surrounding road network. However, the instant approval requires the through connection to be constructed, if approved by the Parks Department, as recommended by Public Works and Planning Staff. Appropriate intersection safety measures would be implemented, including vehicle stop signs and an elevated trail gradient at the crossing (or other traffic calming feature) to physically alert all users of the rights-of-way that they must carefully observe traffic conditions at the point of the crossing. The through connection in the plat map is consistent with City of Olympia and County planning documents and road standards, and would contribute generally to the public welfare by effectively dispersing traffic and providing additional emergency access routes to the benefit of all properties in the vicinity. *Findings 6, 7, 8, 9, 10, 11, 12, 13, 14, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, 33, 34, and 35.*

B. The public use and interest would be served by approval of the subdivision. The overall development density proposed is consistent with LD 3-6 and MD 6-12 standards. Offsite impacts would be minimized through landscaping and payment of mitigation fees. The request to modify the incompatible use buffer along the north boundaries of Lots 85 and 86 is granted to a minimum width of either 15 or 20 feet. The proposal to extend Tract K to the north to the point that the length of Lot 85 that abuts the larger residential parcel is shorter than 20 feet is accepted; no incompatible use buffer would be required along the east boundary of Lot 85. The standard buffer would occupy half or more than half of the lots. Requiring lots to be eliminated to create additional buffer would be unreasonable due to the low density of the subdivision relative to the allowed density range of the LD 3-6 zone. The proposed reduced buffer with taller fence would adequately mitigate potential off-site impacts. *Findings 6, 7, 8, 15, 16, 17, 18, and 35.*

2. As conditioned, the criteria for forest land conversion are satisfied. The wetland and buffer would be protected in accordance with the CAO. Conditions of approval incorporate the Public Works Department's recommendations to ensure compliance with the Drainage Design and Erosion Control Manual and applicable road standards. More than five percent of the site area would be preserved as a combined critical areas and tree tract, the required street trees would be planted, and common areas are proposed to be landscaped. The conditions of approval address tree protection during construction and bonding requirements.

A condition of approval is needed to ensure that trees are retained or planted on individual lots at a rate of one tree per 4,000 square feet of lot area in addition to the trees retained within Tract A. The Hearing Examiner is not persuaded by the interpretation forwarded by the Applicant's consultant (despite its being agreed to by the Applicant and Staff), for the following reasons:

- The requirement to retain or plant trees on the lots is within a separate lettered paragraph from the requirement to set aside five percent of the site area as a tree tract, and there is not an "or" between the paragraphs.

- The tree tract must contain trees irrespective of the number of trees required by paragraph 5.g of TCC 17.25.400.D. This is evidenced by paragraph 5.d, which expresses the planting requirement for tree tracts in terms of canopy coverage.
- To interpret paragraph 5.g as meaning that developers may (1) retain trees *in the tree tract* or (2) plant trees on individual lots effectively adds language to the paragraph that does not exist and negates the function of the tree tract if planting on individual lots is selected.

An interpretation of paragraph 5.g that requires trees to be retained on the lots or planted on the lots is consistent with past Thurston County interpretation.

The Hearing Examiner notes that the requirement to provide trees on individual lots should not be found to be onerous in this case due to Applicant testimony that trees would be planted on the lots anyway to ensure they are attractive to buyers and future residents. *Findings 1, 6, 18, 19, and 35.*

- C. To address specific concerns forwarded by the public, the following conclusion is entered. While some neighbors felt that notice should be mailed to more properties farther away from the subject property, and that notice should have been required to be posted on the trail to notify users, nothing in the record indicates that the notice provided failed to comport with the notice requirements in County Code. *Finding 29.* Further, while neighbors expressed frustration that their nearly universal opposition to the contemplated street crossing of the Chehalis Western Trail at 22nd Avenue NE didn't result in an immediate removal of the proposed crossing from the proposal, the submitted neighbor concerns about potential safety concerns for trail users, increased crime, and increased traffic in the existing neighborhood west of the subject property do not amount to evidence that the contemplated crossing fails to comport with adopted County and City of Olympia Transportation planning documents and policies. Washington courts have repeatedly held that "while the opposition of the community may be given substantial weight, it cannot alone justify a local land use decision." *Sunderland Servs. v. Pasco*, 127 Wn.2d 782, 797 (1995); *Maranatha Mining, Inc. v. Pierce County*, 59 Wn. App. 795, 805 (1990); *Kenart & Assocs. v. Skagit County*, 37 Wn. App. 295, 303; review denied, 101 Wn.2d 1021 (1984).

## DECISIONS

Based on the preceding findings and conclusions, the applications for preliminary plat and forest land conversion are **GRANTED** subject to the following conditions:

### **A. Public Works Conditions:**

#### *Roads*

1. The proposed roadway in concept and design shall conform to the Road Standards and the City of Lacey standards and development guidelines.
2. A construction permit shall be acquired from the Thurston County Public Works – Development Review Section prior to any construction.



### *Traffic Control Devices*

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

### *Drainage*

5. The stormwater management system shall conform to the Drainage Design & Erosion Control Manual.
6. All drainage facilities outside of the County right-of-way shall remain private and be maintained by the developer, owner and/or the property owners association.
7. Stormwater runoff shall be controlled through all phases of the project by facilities designed to control the quality and quantity of discharges and shall not alter nor impact any existing drainage or other properties.
8. Because proper landscaping is vital to the performance of the stormwater system, the Landscape Plan (if required) shall be signed/sealed by a Washington state licensed civil engineer (preferably the engineer who designed the stormwater system).

### *Utilities*

9. The proposed water and sewer system shall be designed in accordance with the standards and specification of the respective utility purveyor. All water and sewer plans are subject to review and acceptance by the respective utility purveyor.
10. Proposed utility work within the Thurston County Right-of-Way shall conform to the Road Standards and Chapter 13.56 Thurston County Code. These standards do not address specific city design requirements but rather only items such as restoration of the County right-of-way and traffic control.
  - a. Placement of utilities within the County right-of-way will require a Franchise Agreement with Thurston County pursuant to Title 13.56 TCC. This agreement shall be executed with Thurston County prior to final approval.
  - b. Please note all utilities placed parallel to and within the pavement structure are required to rebuild a minimum of half the road, to include grinding and replacement of a minimum of 0.17 feet of asphalt concrete pavement.

### *Right-of-Way & Survey*

11. In order to meet the requirements of the Road Standards, additional right-of-way may be

required. Please have your legal representative or surveyor prepare a Quit Claim Deed describing the necessary right-of-way, being a strip of land which when added to the existing right-of-way totals 36 feet of right-of-way lying West of and abutting the existing centerline of Sleater Kinney Road NE. Upon your request, Thurston County's right-of-way representative will prepare the Quit Claim Deed describing the necessary right-of-way dedication. Please contact the Thurston County Right-of-Way section at 360-867-2356.

12. In order to meet the requirements of the Road Standards, additional right-of-way may be required. Please have your legal representative or surveyor prepare a Quit Claim Deed describing the necessary right-of-way, being a strip of land which when added to the existing right-of-way totals 36 feet of right-of-way lying South of and abutting the existing centerline of 26th Avenue NE. Upon your request, Thurston County's right-of-way representative will prepare the Quit Claim Deed describing the necessary right-of-way dedication. Please contact the Thurston County Right-of-Way section at 360-867-2356.
13. Permanent survey control needs to be placed to establish all public street centerlines, intersections, angle points, curves, subdivision boundaries and other points of control.
14. Permanent survey control monuments shall be installed in accordance with the standards provided by the Thurston County Public Works – Survey Division. The Survey Division can be reached at 360-867-2378.

#### *Traffic*

15. Payment of the off-site traffic mitigation required in the August 26, 2022 Mitigated Determination of non-significance is required prior to final approval in accordance with the Thurston County Road Standards. Timing of such payments to the other jurisdictions may be altered upon agreement with respective jurisdiction and Thurston County

#### *General Conditions*

16. No work shall take place until a construction permit has been issued by Thurston County Public Works – Development Review Section.
17. Development within the City of Lacey urban growth boundary, requiring review by both Thurston County and the corresponding City jurisdiction, shall be designed to the more stringent standards of the two jurisdictions.
18. The proposed grading or site work shall conform to Appendix J of the International Building Code, Title 14.37 of the Thurston County Code and Drainage Design & Erosion Control Manual.
19. When all construction/improvements have been completed, contact the Thurston County Public Works – Development Review Section for a final inspection.
20. This approval does not relieve the Applicant from compliance with all other local, state

and/or federal approvals, permits, and/or laws necessary to conduct the development activity for which this permit is issued. Any additional permits and/or approvals shall be the responsibility of the Applicant. One permit that may be required is a Construction Stormwater Permit from the Washington State Department of Ecology. Information on when a permit is required and the application can be found at: <http://www.ecy.wa.gov/programs/wq/stormwater/construction/permit.html>. Any additional permits and/or approvals shall be the responsibility of the Applicant.

*Project Specific Conditions*

21. Once the planning department has issued the official preliminary approval, a construction permit application shall be submitted along with a complete set of construction drawings and the final drainage and erosion control report to Thurston County Public Works – Development Review Section for review and acceptance.
22. If Thurston County Parks Department approves a roadway crossing from the project to the existing 22nd Avenue crossing the Chehalis Western Trail, the crossing shall be constructed per Thurston County Public Works Department requirements and recommendations. Improvements shall include signing, traffic calming, and other measures to minimize potential conflicts of vehicular traffic with trail users. A Trail Crossing Permit shall be required prior to any clearing or construction activity on the trail property. If the Parks Department does not approve the roadway crossing, all conditions from Thurston County Public Works within this paragraph are removed and roadway construction shall be terminated at the west property line.
23. Prior to construction, the Applicant shall:
  - a. Pay outstanding construction review and inspection fees\*
  - b. Receive an erosion and sediment control permit
  - c. Have the erosion and sediment control inspected and accepted
  - d. Receive a construction permit
  - e. Schedule a pre-construction conference with County staff.

\* The current fee schedule can be found online at Thurston County Permit Assistance Center webpage or contact Ruthie Padilla with the Thurston County Public Works – Development Review Section by phone at (360) 867-2046 or by e-mail at [padillr@co.thurston.wa.us](mailto:padillr@co.thurston.wa.us).

General Information:

Final Review

24. Prior to receiving final approval from this department, the following items shall be required:
  - a. Completion of all roads and drainage facilities.
  - b. Final inspection and completion of all punch list items.

- c. Record drawings submitted for review and acceptance. The record drawings shall include street names and block numbers approved by Addressing Official.
  - d. Receive and accept Engineer's Construction Inspection Report Form (Appendix I-C, Volume I of the Drainage Design and Erosion Control Manual).
  - e. Receive and accept Maintenance Agreement Form (Appendix I-E, Volume I of the Drainage Design and Erosion Control Manual).
  - f. Execute an agreement with financial security for the maintenance and operation of the right-of-way improvements in accordance with Thurston County Code 18.24.010.
  - g. Execute an agreement with financial security for the maintenance and operation of the drainage facilities in accordance with Thurston County Code 15.05.040.
  - h. Approve the Final Plat Map.
  - i. Property owners articles of incorporation and covenants in accordance with Volume I, Section 2.4.11 of the Drainage Design and Erosion Control Manual.
  - j. Completion of required frontage improvements.
  - k. Completion of required signing and striping.
  - l. Payment of any required permitting fees.
  - m. Payment of any required mitigation fees.
  - n. Complete the right-of-way dedication process.
25. The final plat map shall note or delineate the following:

*Required Plat Notes*

- a. "ATTENTION": Thurston County has no responsibility to build, improve, maintain or otherwise service private roads, alleys or driveways within or providing access to property described in this plat. The building, maintenance, repair, improvement, operation, or servicing of the stormwater facilities outside the County rights-of-way are the responsibility of the property owner(s).
- b. Increased stormwater runoff from the road(s), building, driveway, and parking areas shall be retained on site and shall not be directed to roadway ditches adjacent to Sleater Kinney or 26th.
- c. Thurston County has no responsibility to control road runoff that flows down driveways that are constructed below road grade. Homeowners are responsible for grading their access point and adjacent property to manage any runoff from the roadway.
- d. If seasonal drainage crosses subject property, no filling or disruption of the natural flow shall be permitted.

- e. Private roads are required to remain open at all times for emergency and public service vehicle use. Any future improvements (gates, fencing, etc.) that would not allow for “open” access will need to be approved by all applicable departments of Thurston County.
- f. The owner and/or Homeowners Association shall be responsible to operate and maintain the streetlights until such time the property is annexed to the City.
- g. Approval of this subdivision is conditioned upon payment of City of Lacey Traffic Mitigation Fees in the amount of \$942.59 per single family detached lot and \$581.77 per townhome lot. This fee increases on July 1st of each year in accordance with the increase in the Engineering News Record Construction Cost Index and the amount is determined at the date of payment. Payment is required prior to the issuance of a water meter for those lots served by the Lacey Water Utility and prior to building permit issuance for those lots not served by such Utility.
- h. Per Thurston County Resolution 14820, impact fees shall be paid prior to issuing any building permits associated with this project.
- i. This plat is subject to the RESIDENTIAL AGREEMENT TO MAINTAIN STORMWATER FACILITIES AND TO IMPLEMENT A POLLUTION CONTROL PLAN”, as recorded under Auditor’s File No. \_\_\_\_\_.
- j. Easements are hereby granted for the installation, inspection, and maintenance of utilities and drainage facilities as delineated on the plat for subdivision \_\_\_\_\_ including unrestricted access for Thurston County staff to any and all stormwater system features for the purpose of routine inspections and/or performing maintenance, repair and/or retrofit as may become necessary. No encroachment will be placed within the easements shown on the plat which may damage or interfere with the installation, inspection, and maintenance of utilities. Maintenance and expense thereof of the utilities and drainage facilities shall be the responsibility of the Property Owners’ Association as established by covenant recorded under Auditor’s file number \_\_\_\_\_.
- k. The property described herein is required to accommodate stormwater runoff from frontage improvements to Sleater Kinney and 26th and all natural tributary areas abutting said property.
- l. Maintenance of the landscaping, trees, sidewalk, planter strips, and roadside drainage and stormwater facilities such as ditches, swales, and ponds within the public right-of-way is the sole responsibility of the (property owners) or (homeowners association) within this subdivision. Thurston County has no responsibility to maintain or service said landscaping, trees, sidewalk, planter strips, or roadside stormwater facilities, and the property owner(s) adjacent to the right-of-way shall be responsible for maintaining the planter strip and street trees (weeding, pruning, irrigating, mowing, etc.) in a healthy and growing manner in perpetuity.

*Delineate on the Plat*

- m. Provide language on the plat describing the drainage design requirements for all projected hard surfaces and lawn/landscape areas within individual building lots (drywell design/sizing, storm drain connection points, incorporated into pond design, etc.).
- n. Delineate the access restrictions by showing a "no access" strip, written and hatched, between the County approved access points along the frontage of Sleater Kinney and 26th on the final plat map.
- o. Please clearly label all public and private roads.

**B. Environmental Health Division Conditions:**

- 1. The two existing on-site septic systems located on the project site must be properly abandoned per Article IV of the Thurston County Sanitary Code prior to final plat approval. Abandonment permits are required and copies of all abandonment documentation from a certified septic system pumper must be provided.
- 2. The five monitoring wells and two drinking water wells located on the project site must be decommissioned by a licensed well driller per Washington State Department of Ecology standards prior to final plat approval. Copies of the decommissioning reports (well logs) must be provided to Environmental Health.
- 3. City of Lacey water and sewer utilities must be extended through the subdivision with water also extended to adjacent Tax Parcel 11808210600 prior to final approval. Confirmation of final water and sewer construction approval from the City of Lacey must be submitted to Environmental Health.
- 4. An integrated pest management plan (IPMP) has been developed for this project. A finalized version of the IPMP with the current project description and map must be submitted to and approved by Environmental Health. The final IPMP must include the method of distribution to future homeowners. This is typically done by incorporating a copy of the accepted IPMP into the subdivision CC&Rs. Other methods may be allowed provided they assure future property owners will receive a copy of the IPMP at the time of sale.

**C. Planning Conditions:**

- 1. Development pursuant to the instant permits shall comply with all mitigation measures identified in the Mitigated Determination of Non-Significance dated August 26, 2022 (Exhibit 1.I).
- 2. Street addresses, lot sizes, and lot dimensions for each lot shall be shown on the final plat map.

3. The instant project is subject to compliance with the following policies and regulations, including any applicable mitigation requirements: Thurston County Comprehensive Plan; Zoning Ordinance (TCC Title 21); Subdivision Code (TCC Title 18); Forest Lands Conversion Ordinance (TCC 17.25); Critical Areas Ordinance (TCC Title 24); Stormwater Drainage Design and Erosion Control Manual (TCC Chapter 15.05); Uniform Building Code (TCC Title 14); and the State Environmental Policy Act (SEPA) Ordinance (TCC Chapter 17.09). The final design of this subdivision and future development of lots shall conform with all minimum standards of the zoning, platting, subdivision and townhouse ordinances (i.e. lot size, lot dimension, setbacks, design, open space, private yards, etc.) except as modified by the instant approvals.
4. All open space and landscaping and tree preservation shall comply with the following:
  - a. 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. In addition to retaining trees within the designated tree tract, trees shall be retained or planted on individual residential lots at a rate of one (1) tree for every four thousand (4,000) square feet of lot area at the time of building permit application.
  - b. All landscaping shall be planted as shown on the approved final landscape plan prior to final plat approval. Any conditions, improvements or maintenance requirements associated with the landscaping plan shall be shown on the final plat map.
  - c. Prior to final plat approval, the Applicant shall submit a final landscape plan to the Thurston County Community Planning & Economic Development Department for review and approval. The final landscape plan shall include the design of the active recreation component within the designated open space i.e. play equipment, sports court, and irrigation. All landscaping and irrigation shall be in compliance with the Thurston County Zoning Ordinance (Title 21) and the Thurston County Subdivision Ordinance (Title 18).
  - d. The preliminary landscaping plan shall be updated and submitted to the Planning Department prior to final plat submittal in order to reflect the code required Type I – 30 ft wide standard screening around the stormwater pond in the NW corner of the subject plat.
  - e. Subject to compliance with the criteria in TCC 21.80.060(B), a final landscaping plan consistent with the conclusions above permitting reduction in the Type I incompatible use buffer from 30 feet to 15 or 20 feet along the north lines of proposed Lots #85 and #86 shall be submitted to the Planning Department for review and approval prior to submittal for final plat. An eight-foot tall cedar fence shall be provided along the north lot lines of both Lots 85 and 86. The plat map shall be revised to extend Tract K farther to the north within Lot 85 such that the length of the lot's east boundary abutting the residential parcel offsite to the east is less than 20 feet.
5. The following notes shall be shown on the final plat map:

- This subdivision was reviewed and approved based on standards and allowances of the Low Density Residential District (LD 3-6) and Moderate Density Residential District (MDR) (TCC 21.13 and 21.15, respectively).
  - 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.
  - All future development must conform to the requirements of the Zoning, Townhouse, Platting and Subdivision Ordinances.
6. Preliminary landscaping plan shall be updated to reflect the tree preservation plan in order to memorialize the tree retention area within Tracts A and C, in terms of location and quantity and protective buffering measures to prevent harm or accidental removal of said trees.
  7. The proposed townhouses related to the project are subject to administrative site plan and design review and approval prior to final plat application. The Applicant shall make a formal site plan and design review application submittal and pay applicable application review fees.
  8. All development on the site shall be in substantial compliance with the approved plat. Any alteration of this site plan will require approval of a new or amended plat. The Thurston County Community Planning & Economic Development Department will determine if any proposed amendment is substantial enough to require Hearing Examiner approval.
  9. Prior to issuance of the certificate of occupancy, the required landscaping must be installed. In no case may the property owner/developer delay performance for more than one year after occupancy.
  10. Prior to final plat approval, a landscaping maintenance assurance device or a performance device must be submitted to the county (TCC 21.80.080 or TCC 21.80.090).
  11. Prior to final plat approval, evidence that all necessary school, roads, and public parks mitigation have been paid shall be submitted to Thurston County Community Planning and Economic Development.
  12. A minimum of two off-street parking spaces shall be provided per dwelling unit (TCC 21.71).
  13. Before approval of the final development plan may be granted, the Applicant shall submit to the County covenants, deeds and/or homeowners' association bylaws and other documents guaranteeing maintenance, construction, common fee ownership, if applicable, of open space, community facilities, stormwater facilities, private roads and drives, and all other commonly owned and operated property. These documents shall be



reviewed and approved by the County Staff to ensure that they comply with the requirements of this chapter prior to approval of the final development plan by the county. Such documents and conveyances shall be accomplished and be recorded, as applicable, with the County Auditor as a condition of any final development plan approval.

14. Prior to final plat approval, a note shall be incorporated on the face of the final plat memorializing that the common open space will be owned and maintained by an HOA.
15. Erosion control measures must be in place prior to any clearing, grading, or construction. These control measures must be effective to prevent stormwater runoff from carrying soil and other pollutants into surface water or storm drains that lead to waters of the state. Sand, silt, clay particles, and soil will damage aquatic habitat and are considered to be pollutants. To the extent possible, land-disturbing activities associated with the project should be performed during dry weather to reduce opportunities for erosion to occur.
16. Logging activity shall be limited to the hours of 7:00 am to 7:00 pm to minimize associated noise. All activities onsite shall fully comply with noise limitations outlined in WAC 173-60.
17. Provision shall be made to minimize the tracking of sediment by construction vehicles onto paved public roads. If sediment is deposited, it should be cleaned every day by shoveling or sweeping. Water cleaning should only be done after the area has been shoveled out or swept.
18. Clearing limits and/or any easements or required buffers should be identified and marked in the field, prior to the start of any clearing, grading, or construction. Some suggested methods are staking and flagging or high visibility fencing. A permanent vegetative cover should be established on denuded areas if not otherwise permanently stabilized.

**Decided** December 14, 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\_\_\_.