



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
)	
MK58 LLC)	Manor House
)	
For a Preliminary Plat,)	
Planned Residential Development, and)	FINDINGS, CONCLUSIONS,
Forest Land Conversion)	AND DECISIONS

SUMMARY OF DECISIONS

The revised applications for forest land conversion, planned residential development, and preliminary plat to subdivide 81.36 acres into 488 single-family and townhome residential lots and 27 tracts using the planned residential development design standards in Thurston County in the City of Lacey’s UGA are **APPROVED** subject to conditions.¹

SUMMARY OF RECORD

Request:

MK58 LLC (Applicant) requested a preliminary plat to subdivide 81.36 acres into 488 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 488 residential lots to be developed with a combination of single-family and multifamily units, multiple open space tracts, a new internal public road system, and stormwater, public sewer, and public water facilities. The project is proposed to be constructed in multiple phases (likely two to four phases), with two existing single-family residences to be retained. The subject property is comprised of 10 tax parcels in the Lacey Urban Growth Area south of Mullen Road SE in unincorporated Thurston County.

¹ Findings begin on page 9 after a complete summary of the record.

Hearing Dates:

The Thurston County Hearing Examiner conducted the initial open record hearing on the PRD, plat, and forest land conversion applications on November 29, 2021. Following the initial hearing, the applications were denied in a Decision issued January 10, 2022. Subsequently, the Applicant requested reconsideration of the denial and an opportunity to supplement the record. The County joined in the request to reopen the record for new evidence and new hearing. On January 28, 2022, the Decision denying the applications was vacated and the matter was remanded for preparation of additional evidence and to schedule a reconvened hearing. The documents related to the first decision, request for reconsideration, and remand are included in the record and listed at Appendix A.

The reconvened open record hearing was conducted virtually on March 22, 2022. The record was held open through March 24, 2022 to allow members of the public who experienced technical or access barriers to joining the virtual remand hearing to submit written comments, with time scheduled for responses from the parties. Post-hearing comments were submitted, and the record closed on March 28, 2022. On the record at hearing, the undersigned requested and the Applicant granted a 10 business day extension of the decision issuance deadline, resulting in a due date of April 25, 2022. The actual decision issuance date was further delayed based on factors unrelated to the instant case.

No in-person site visit was conducted, but the Examiner viewed the site and surroundings on Google Maps.

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 the SEPA appeal was granted by order issued November 15, 2021. The documents relating to the dismissed appeal are included in the record and listed at Appendix B.

Testimony:

At the open record public hearing on November 29, 2021, 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

At the reconvened virtual public hearing on March 22, 2022, the following individuals presented testimony under oath:

Brett Bures, Development Services Manager
Arthur Saint, Civil Engineer, County Public Works
Dawn Peebles, Senior Environmental Health Specialist, PHSS
Mark Steepy, P.E., KPFF, Applicant representative
Aaron Laing, Applicant's Legal Representative (argument and testimony)
Alex Sidles, Legal Representative for Theresa Janzen (argument and testimony)
Gail Grubb
Michelle Murray
Mark Hunter
Christina Peterson
William Stewart

Exhibits:

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

Exhibits admitted through the November 29, 2021 virtual hearing process:

- 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*²
- H. Geotechnical Report by Terra Associates, Inc., dated, December 9, 2019
- I. Geotechnical Report by Terra Associates, 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), dated April 28, 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 Mitigated Determination of Non-Significance 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 11, 2021³
- AA. Logging Site Plan/Drainage Plan, undated
- BB. [stricken - repeat document]

² *Although retained in the record for completeness purposes, the exhibits from the November 2021 hearing record marked with an asterisk were rescinded by the Applicant in the March 22, 2022 hearing record, as noted in *Exhibit 12.GG*. These include Exhibits 1.G, 1.L, 1.LL, 1.CCC, 3, and 6. Exhibit 12.GG explains which documents from the November 2021 proceeding remain valid and unchanged and which documents were revised and resubmitted.

³ The documents at Exhibit 1.Z and 1.AA are not the documents listed in the staff report exhibit list (Exhibit 1), but are instead earlier versions of the forest conversion application and site plan that had been superseded. The correct versions were not provided in the record of the November 29, 2021 hearing, but were provided in the March 2022 record.

- 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
- 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

Exhibits admitted at the reconvened hearing March 22, 2022:

Exhibit 12 Manor House Reconsideration Staff Report, dated March 22, 2022⁴

⁴ Many of the attachments to Exhibit 12 are repeats of identical documents attached to Exhibit 1, sometimes but not always with different document numbering. As examples, Exhibit 1.T is the same document as Exhibit 12.T, while

- A. Applicant’s Response Letter to Hearing Examiner Decision on Reconsideration, dated February 8, 2022
- B. Revised Master Application, dated February 8, 2022
- C. Revised Division of Land Application, date stamped February 16, 2022
- D. Revised Forest Land Conversion Application (undated) with Logging Plan, dated February 8, 2022⁵
- E. Revised Project Narrative, dated February 8, 2022
- F. Revised PRD and Plat Plan set sheets C1 thru C5.1, date stamped February 16, 2022
- G. Revised Landscaping plan sheets L1-1, sheet L1-2 and sheet L2, date stamped February 16, 2022
- H. Cut and Fill Grading Plan, dated April 27, 2021
- I. Thurston Public Utilities Department letter, dated January 19, 2022
- J. Washington Water Letter, dated November 24, 2021
- K. City of Lacey Sewer Availability letter, dated March 31, 2020
- L. Declaration Affirming Validity and Applicability of Reports Prepared for Original Manor House PRD/Subdivision to Reduced Density PRD/Subdivision, dated February 7, 2022
- M. Drainage Report with Appendix A-K, dated April 28, 2021
- N. Integrated Pest Management Plan, dated April 28, 2021
- O. Habitat Management plan, dated October 31, 2019, with complete appendices
- P. Critical Areas Report, dated May 11, 2020
- Q. Mazama Pocket Gopher Screening & Prairie Plant Survey, dated July 25, 2020
- R. Insight Geologic Groundwater Investigation, dated March 16, 2020
- S. Insight Geologic Hydrogeologic Assessment, dated July 15, 2021
- T. Traffic Impact Analysis, dated April 28, 2021
- U. Cultural Resource Assessment, dated April 19, 2021

Exhibit 1.Q is the same as 12.X; Exhibit 1.K is the same as 12.M. As noted elsewhere, Exhibit 12.GG is Applicant’s discussion of which exhibits from the first hearing were revised/replaced, and which are offered unchanged. It is unclear why Planning Staff included some twice. No effort was made in the instant decision to strike repeat documents. In the findings, exhibits are cited either as their exhibit number from the first hearing or the second hearing.

⁵ The exhibit list in Exhibit 12 references a version of the application and logging site plan that are “date stamped February 16, 2022”, but the documents actually attached are not date stamped and the map is dated February 8, 2022.

- V. Terra Associates CJ Assemblage Geotech Report, dated December 19, 2019
- W. James Short Plat Geotech Report, dated April 7, 2020
- X. Open Space Letter High Low Analysis, dated March 20, 2021
- Y. City of Lacey Manor House Traffic Impact Analysis Approval, dated August 6, 2021 with Traffic Impact Area comments email, dated July 7, 2021
 - a. Spurgeon Creek & Yelm Temp Signal Concept Map, dated August 2, 2021
 - b. Spurgeon Creek & Yelm Temp Signal Concept EOPC, dated July 6, 2021
- Z. Declaration of Mark Steepy, P.E., dated January 20, 2022 with attachments:
 - 1. Manor House Project Review Communication Matrix, date stamped February 16, 2022
 - 2. Applicant revised Forest Land Conversion Application (undated) with red-lined Logging Plan, with red-lined logging site plan dated March 12, 2021⁶
 - 3. 3a. Thurston PUD letter, dated January 19, 2022
 - 3b. Murray Smith memo, dated January 18, 2022 updated connection estimate for Pattison Water System
 - 3c. KPFF Technical memorandum for Pattison Water System Analysis of available connections, dated December 16, 2021
 - 3d. Washington Water Service letter, dated November 24, 2021
 - 3e. Thurston PUD letter re: willingness to serve Manor House Development, dated November 24, 2021
 - 3f. RB Engineering letter re: Pattison Water Company Water System Plan limiting factors, dated July 1, 2021
 - 3g. Department of Health letter re: Pattison Water System plan approval, dated May 20, 2021
 - 4. PRD/Plan sheets C1 thru C2.0 with proposed markups from Applicant, dated July 15, 2021
 - 5. Response to County comments from EnviroVector, dated January 28, 2020
- AA. Manor House Water Clarification, dated February 8, 2022
- BB. Summary of EnviroVector Environmental Documents, dated February 8, 2022

⁶ The Exhibit list in Exhibit 12 at page 30 identifies this attachment to Steepy's declaration as date stamped February 16, 2022, but there is no date stamp on the application and the red-lined map is dated March 12, 2021. There is no version of the logging site plan in the record that is date stamped February 16, 2022.

- CC. Applicant's Proposed Revised Manor House conditions, date stamped received February 16, 2022
- DD. EnviroVector Avoidance of Mazama Pocket Gopher Impacts, dated September 14, 2020
- EE. KPFF letter to Brett Bures regarding On Hold Response, dated November 13, 2020
- FF. Email from Brett Bures to Mark Steepy, dated December 7, 2020
- GG. Hearing Examiner Exhibit Summary prepared by KPFF, dated February 8, 2022
- HH. Recommendation for Preliminary Approval Public Works, dated March 3, 2022
- II. Environmental Health Memo from Dawn Peebles, dated March 4, 2022
- JJ. Remand Public Hearing Notice, issued March 10, 2022

Exhibit 13 Public comments received after publication of the staff report:

- a. Madeline Bishop email, March 10, 2022
- b. Linda Green email, March 11, 2022
- c. Kathy Gilbert email, March 14, 2022
- d. Rich Tuttle email, March 16, 2022
- e. Jenni Cowsert email, March 17, 2022
- f. Ryan Manter email, March 18, 2022
- g. Cheyni Schletzbaum, email March 18, 2022
- h. Charlotte Hunter, March 21, 2022
- i. Rita Nicholson and G Gehrman email, March 21, 2022
- j. Alexandra K email, March 22, 2022
- k. Alice Houston, MARCH 22, 2022
- l. Alex Sidles, representing Teresa Janzen

Exhibit 14 Applicant's summary of/response to March 22, 2022 Staff Report

Exhibit 15 Applicant's revised requested conditions (replaces Exhibit 12.CC)

Exhibit 16 Current (as of March 2022 hearing date) draft of County's Habitat Conservation Plan (pending review and approval by US Fish and Wildlife Service)

Exhibit 17 Post-hearing Public Comment:

- a. Jean O'Leary, March 23, 2022
- b. Jenni Cowsert, March 23, 2022

Exhibit 18 Applicant response to post-hearing comment

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 488 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 proposal would also create 27 open space tracts, a new internal public road system, several stormwater ponds, and public sewer and water facilities. The property subject to the applications is comprised of 10 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.⁷ *Exhibits 12, 12.A, 12.B, 12.C, 12.D, 12.E, and 12.F.*
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 purposes 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

⁷ 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 (39.81 acres), 11836330401 (0.99 acres), 11836330700 (4.7 acres), 11836330500 (4.34 acres), 11836330200 (0.03 acres), and 11836330100 (1.1 acres). *Exhibit 12.F (Sheet C1.1).*

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 fronts Mullen Road. Southern portions front 58th Avenue SE, and western portions front Kagy Street SE. The site is generally flat with no significant 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 dispersed individual oak trees. 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 is rural in nature and 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. Finally, after the January 10, 2022 decision denying the permits, the Applicant submitted the current revised proposal with 488 total lots. *Exhibits 12, 12.A, 12.B, 12.C, 12.D, 12.E, and 12.F.*

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 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. 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, 1.QQ, 12.A, and 12.F (Sheet C1.1).*

Proposal

9. The project under consideration in this instant decision seeks to subdivide 81.36 acres into 488 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 488 lot total. All other residences and structures would be removed, except for the existing barn which would be retained within an open space tract. The project is proposed to be constructed in two to four phases. Proposed on the 19.58-acre parcel that fronts Mullen Road SE in the northeast corner of the subject property, Phase 1 would be developed with 130 single-family residential uses and zero townhomes, with construction expected to

commence soon after obtaining final preliminary plat/ PRD approval and approval of construction documents. Future phases would be completed over the following years depending upon market conditions, each to contain a mix of detached single-family residences and attached townhome units. The Applicant has requested, with Planning Staff support, the flexibility to alter the unit mix and dimensions by up to 10% for each phase as the development proceeds in order to respond to market conditions. 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, 12.A, 12.E, and 12.F.* Following the January 10, 2022 Decision denying the permit and in preparation for the instant reconvened hearing following reconsideration, the only changes made to the plans were reducing the number of townhome lots by 17, extending the incompatible use buffer through stub roads at the project boundaries, and calling out tree tracts within already provided open space; no other changes to the project plans were made. *Mark Steepy March 2022 Testimony.*

10. Two existing residences would be retained on two of the proposed lots, a 0.5-acre lot fronting on Kagy Street and a 0.9-acre lot fronting 58th Avenue. Both would continue to use their existing driveways. New single-family detached lots would range in area from 3,060 to 7,544 square feet, with lot widths are proposed to vary from 34 to 40 to 50+ feet in width. 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. Townhome lots are proposed to vary from 24 to 34 feet in width by 90 feet deep, with a minimum lot area of 2,160 square feet. Townhomes 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 25 feet from the right-of-way line and minimum rear setbacks of 15 feet. Townhome structures would have a maximum of four attached units, and maximum structure height would be 35 feet. All lots, of both unit types, would provide a minimum of 300 square feet of private open space with a minimum dimension of 15 feet. *Exhibits 12.A, 12.E, and 12.F.*
11. Where municipal sewer service is provided, property in the MGSA zone may be subdivided to a minimum density of three units and maximum density of six units per acre. *TCC 21.10.035.* At maximum density, the site's 81.36 acres can be divided into 488 units. The proposed density is consistent with code. *Exhibits 12 and 12.E.* The Applicant owns credits for 12 additional lots through the transfer development rights (TDR) process. As of the March 2022 hearing date, Thurston County and City of Lacey do not have a process to allow TDRs to be used within the Lacey UGA. According to the Applicant, the jurisdictions are working on the required process changes that would allow use of TDR credits within the UGA. The Applicant requested that the instant approvals, if granted, be conditioned to allow the additional 12 units within this project should the process be finalized prior to full build out. *Exhibit 12.E; Mark Steepy and March 2022 Testimony; Steve Chamberlain November 2021 Testimony.*

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, which in the MGSA is 35 feet. 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; TC 21.61.120; TCC 21.10.050.C(3)*. As detailed in finding 10 above, the proposed townhouse units would satisfy these development standards. Although the townhouse regulations allow for density increases based on provision of specified amenities, the Applicant has not proposed a density increase based on the townhouse standards. *TCC 21.61.040.B; Exhibit 12.E*. 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. *Exhibits 1 (page 12) and 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 of land area donated to the county for open space purposes within the 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 on-site 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 the existing barn. The remaining tracts would contain landscaping and trails (see Exhibit 12.G), with picnic tables and bench seating provided in some tracts throughout the plat. Several of the tracts either include or are comprised of a minimum 20-foot depth landscaped area around the project perimeter. *Exhibits 1.D and 12.F*. 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 the November 2021 hearing that the City of Lacey 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. The Applicant indicated this

dedication would occur prior to any engineering permit approvals, and Planning Staff noted that it must occur no later than at time of final plat. *Brett Bures November 2021 Testimony; Exhibits 1, 1.Q, 1.AAA, 12.F, and 12.G; Google Maps site view; Mark Steepy March 2022 Testimony.*

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 PRD dwelling unit, visible and accessible from the dwelling unit. *TCC 21.60.140.A(6)*. On the revised plans, lot details on Sheet C2.10 and C2.11 show that each lot provides at least three hundred square feet of private usable open space that is visible and accessible from the associated dwelling unit and buffers adjacent common open space where applicable. *Exhibits 12.A and 12.F.*

15. Pursuant to *TCC 21.80.055(1)(b)*, a subdivision proposing residential lots smaller than 50% of the size of contiguous existing residential development creates lots that are defined as an incompatible use. This 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 the 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 the November 2021 hearing, that variance request was withdrawn. In the November 2021 proceedings, 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. There was public comment that opposed the trail in the perimeter buffer, as a potential security and privacy issue for off-site residences. By the time of the March remand hearing, no trail was proposed. The Applicant proposes to provide the inner 10 feet of perimeter screening buffer width within a landscaping easement across the rear yards of abutting proposed lots. Where tracts abut the “incompatible” perimeter, a 30-foot landscaped depth would be provided. As proposed, the 30-foot wide perimeter buffer would extend east from Kagy Street along the north boundary of the site, turning north along the site boundary to connect with Mullen Road; south from Mullen Road along the east site boundary, jogging with the property line and stopping at 58th Avenue at the south property boundary; and around the parcel 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 side lot line of Lot 475 as shown at Exhibit 12.F, Sheet C2.2. No perimeter buffer is proposed

along the Mullen Road, Kagy Street, or 58th Avenue frontages where contiguous residential development would be separated by a public street. At the locations of the three road stubs in Phase 1, the two road stubs in Phase 2, and the one road stub in Phase 4, the Applicant proposes to continue the perimeter landscape buffer along the 30 feet abutting the exterior boundary of the subject property, rather than develop roadway to the project boundary. While not 30 feet in depth, there would be street trees and rear yard landscaping including trees along the site's 58th Avenue frontage. 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 12.A, 12.F, and 12.G; Mark Steepy March 2022 Testimony.*

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 15,932 lineal feet of new internal roads would be constructed to City of Lacey standards. The roads approaching both main 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 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 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. No private roads are proposed within the project. *Exhibits 12.C, 12.F (Sheets C2.1 - C2.9), 1.K (page 2), and 1.DDD; Arthur Saint November 2021 Testimony; Mark Steepy March 2022 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 2012.⁸ A route between the dead

⁸ The Examiner takes official notice of the following document:

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.⁹ 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. North of proposed Road H, the right-of-way would be dedicated but remain unopened/unimproved until the Marvin Road is constructed to connect with Mullen Road. As detailed in Finding 15 above, the 30-foot wide incompatible use landscaped buffer would be planted along the northern property line through the dedicated Marvin Road right-of-way, and the rest of the unimproved right-of-way would be maintained in landscaping until the road is eventually completed. *Exhibits 1, 12, 12.A, and 12.F; November 2021 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 12.F (Sheets C2.1 - C2.9) and 1.DDD.* The single-family residences would have a two-car garage with a driveway the same width and 20 feet deep. Each townhome would provide one parking stall within the garage and one stall on the driveway. *Steve Chamberlain November 2021 Testimony; Exhibits 12.A and 12.F (Sheet C2.10).*

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, 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

https://cityoflacey.org/wp-content/uploads/sites/3/2022/03/Final-2030-Lacey-Transportation_web.pdf

⁹ 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)

Findings, Conclusions, and Decisions

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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 main site entrances are forecasted to operate at acceptable LOS with minimal queuing in the PM peak hour. *Exhibit 1.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 58th 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 19th 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 out¹⁰; and 2) signalization or a roundabout at the intersection of Meridian Road/Mullen Road by the time the project reaches 50% build out.¹¹ *Exhibit 1.T; November 2021 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.
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.

¹⁰ 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.*

¹¹ 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.*

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. Of note, the project's traffic engineering consultant reviewed the revised 488-lot proposal and determined that the findings, conclusions, and recommendations in the traffic impact assessment prepared for the former 505-lot proposal (Exhibit 1.T) remained an accurate assessment of the current project's traffic impacts and required mitigation. *Exhibit 12.L.*
25. The project would extend nearly 7,500 lineal feet of new eight-inch STEP pressure main along Mullen Road from the intersection of Carpenter/Mullen Roads to the intersection of Kagy Street/Mullen Road. An additional 2,500 lineal feet of new sewer force main would be installed along Kagy Street to 58th Avenue. All lots within the development would have STEP systems. From the project, the STEP main would send effluent north along Kagy Street and west along Mullen Road to the vicinity of Asia Court (near Carpenter Road) and connect into the City of Lacey system. Both retained existing residences 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 November 2021 hearing. Seven existing on-site septic systems would be abandoned. *Exhibits 12.E, 1.M, 12.K, 1.R, 1.DDD, and 12.II; Dawn Peebles November 2021 Testimony.*

26. The Applicant intends to connect the 488 proposed lots, including the two retained residences, to public water provided by Thurston PUD, formerly Pattison Water Company. The PUD's primary source well and main distribution lines are located on tax parcel number 11836330401 within the boundaries of the subject property.¹² 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, on which work was scheduled to begin in early 2022. As of the March 22, 2022 hearing, without any system repairs or infrastructure improvements, the PUD had 80 ERU connections plus another 50 connections available from a Washington Water System (WWS) interim intertie. With system repairs, the PUD is expected to have between 230 and 280 connections available not including the WWS intertie. However, with the major system upgrades currently planned, the number of PUD connections available would increase to 550. As of the March hearing, the PUD and the Applicant had drafted but not yet executed a Developer Agreement for proportionate cost sharing of the system improvements, which will include a 760,000 gallon reservoir planned in open space Tract K. *Exhibits 12.F (Sheets C2.3 and C5.0)*. Other system improvements that would increase PUD's available connections include an 825 gallon per minute production well and an 885 gallon per minute booster station. Thurston PUD submitted a letter indicating availability as of September 2022 to serve the 130 lots of proposed Phase 1 and indicated that they expect their system improvements to be in place by 2024, at which time they will have capacity to serve the entire Manor House project. *Exhibits 12.A, 12.E, 12.I, 12.Z3, and 12.AA*.
27. Thurston County Environmental Health Division (EHD) Staff reviewed the proposed sewer and water service extensions to and through the plat. At the November 2021 hearing, EHD Staff testified the capital improvements planned by the PUD and involving Applicant contribution would address public comments that expressed 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. Staff also noted that two existing wells that currently serve single-family residences within the boundaries of the subject property would be decommissioned if the plat is approved. EHD Staff acknowledged the sewer and water availability letters from the utility purveyors. Finally, EHD Staff recommended approval of the instant plat and PRD applications subject to conditions identified in their comment letter; these conditions were incorporated into those in the March 2022 staff report. *Dawn Peebles November 2021 and March 2022 Testimony; Exhibit 12.II*.
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,

¹² This well is referenced as both the Christmas Tree Well and the Pattison-500 well in the record. *Exhibits 1.X and 1.CCC*.

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. Off-site frontage improvements would add an additional approximately half-acre of new impervious surface area. All told, approximately 29 acres of the site would be converted to or left in pervious surfaces. *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. 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 12.F (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 12.F (sheet C3.0), 1.K, 1.O, and 1.R.*

31. In preparation for the March 2022 remand hearing, the professional engineer who prepared the project's preliminary drainage design and erosion control plan reviewed the revised 488-lot project and confirmed that the site investigation, findings, and conclusions in his previous reports for the former 505-lot project remained in effect and applicable to the current proposal. This is because the drainage report was prepared based on a project of higher residential density and because the current 488-lot project did not change road layouts, stormwater facilities, or other site infrastructure and because the reduction to 488 lots would effectively result in a minor reduction to impervious surface areas on-site. The author of the project's groundwater investigation (Exhibit 1.O) and hydrogeologic assessment (Exhibit 1.R) made the same attestation, for the same reasons. *Exhibit 12.L.*
32. 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 November 2021 and March 2022 Testimony; Exhibit 12.HH.*
33. 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.* The Applicant's cultural resources consultant submitted that the revision of the proposal by reducing the number of lots by 17 did not alter the findings and conclusions in the project's cultural resources assessment (Exhibit 1.V). *Exhibit 12.L.*

Critical Areas

34. 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*.
35. 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*. In preparing for the March 2022 hearing, the professional who prepared the IPMP signed a statement attesting that her previous analysis conducted for the former 505-lot proposal remained accurate and adequate to address the impacts of the current 488-lot proposal. *Exhibit 12.L*.
36. 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 November 2021 Testimony; Exhibit 12.II*. 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 November 2021 Testimony*.

Findings, Conclusions, and Decisions

Thurston County Hearing Examiner

37. Pursuant to TCC 24.25.065.B(4), Oregon white oak woodlands, stands, and certain individual trees are regulated pursuant to the County's critical areas ordinance. The staff report for the November hearing stated that the site contained 42,525 square feet of Oak habitat. *Exhibit 1, page 8*. In the revised materials for the March 2022 hearing, the Applicant indicated that there are 1.2 acres of Oak grove/habitat within proposed Phase 4. The Oak grove is shown as being preserved within Tract A. As of the instant hearing, all oak trees are proposed to be preserved and provided with protective radii that extend a minimum of five feet beyond their drip lines. *Exhibits 12, 12.F, and 12.G*. Further, the 17-lot reduction from the November to March proposals removed five previously proposed townhome lots from the center of Tract K, enlarging the open space in that area for all habitat and open space purposes. *Exhibit 12.Z.4, red-lined Sheet C1.1*.
38. Mazama pocket gopher habitat is considered 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 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 found no regulated prairie habitat on site. *Exhibit 1.QQ*. The gopher affected tax parcels occupy portions of proposed Phases 2, 3, and 4. 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.QQ and 1.SS*.
39. 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.¹³ *Exhibits 1.W and 1.QQ.*

40. 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 visits: September 2 and 29, October 2 and 29, 2019, and May 8, 2020.¹⁴ 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. 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. 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.*
41. 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.*

¹³ 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 at Exhibit 1.W. However, when the document was submitted again as attachment O to Exhibit 12, the protocol was attached, as were other missing appendices. *Exhibit 12.O.*

¹⁴ 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.*

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.

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.*¹⁵

42. 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

¹⁵ The Applicant confirmed that no further critical areas reports were prepared addressing the revised plat lay out. *Mark Steepy November 2021 Testimony.*

“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 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.¹⁶ 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.¹⁷ *Exhibit 1.RR.*

43. The January 10, 2022 Decision denying the permits pointed to the confusion about gopher findings and the lack of clear explanation as to why the record lacked Applicant response to the County Biologists’ questions and response by the County Biologists to the Applicant’s July 25, 2020 memorandum. Further, the record lacked clear explanation of the basis for the County’s recommendation to allow the plat to be approved with a condition for compliance with the yet-to-be-approved County Habitat Conservation Plan. Following the Applicant’s request for reconsideration, materials submitted in the record of the March 22, 2022 hearing included additional documents that had been omitted from the November 2021 hearing record, detailed below.

¹⁶ 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. No such document is in evidence, and it is unclear which report they meant to reference. At the March 2022 hearing, Applicant confirmed there is no such document. *Exhibit 12.A*

¹⁷ The undersigned notes 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. This mystery was not clarified during the March 2022 hearing process.

44. On January 28, 2020, the Applicant’s critical areas consultant prepared a letter addressing the Planning Department’s January 17, 2020 (email) request for additional information. First, this letter contained a detailed list of dominant plant species across the entire subject property as divided into five areas as follows: Area 1 was dominated by pasture grass and contained three Oregon white oaks and scattered Douglas fir; Area 2 was dominated by a conifer canopy (remnants of the former tree farm) with an understory of manicured lawn and about 10 acres of pastureland; Area 3 was also dominated by dense forest with a multilayered understory, and contained one residence with maintained yard; Area 4 was similarly dominated by dense forest with a multilayered understory, and contained one residence with maintained yard; and Area 5 also contained dense forest with a multilayered understory, and contained one residence with maintained yard. None of these areas were characterized by prairie species, and no mima mounds were found. *Exhibit 12.Z.5.*

45. Addressing a question about why the characterization from Mazama pocket gopher to mole mounds had been made, the consultant stated the following in his January 28, 2020 letter:

Below are photographs of the same mounds on 2 September 2019, 2 October 2019, and 29 October 2019. The September 2nd and October 2nd photographs show flat weathered mounds (Insert 1). Old and weathered mole mounds tend to flatten and resemble gopher mounds. These weathered mounds were thought to be gopher mounds because the tunnel entrance appeared to be diagonally angled at the edge of the mound. ...

During the oak tree survey on 29 October 2019, fresh mole activity was identified in the exact same locations of the weathered mounds identified on the earlier dates (Insert 1). I understand that it is not uncommon to find identifiable MPG mounds during one (1) screening and find only newly emerged mole mounds on a future screening and vice versa. I have experienced this in my fifteen (15) years performing Mazama pocket gopher studies. However, fresh mole activity was found in the exact same locations of the weathered mounds identified on the earlier dates, suggesting that the original mounds were created by moles and that the new activity was a result of routine tunnel maintenance (Insert 1). ...

Because these mounds appeared suspicious with shape and contour resembling MPG mounds is why I originally identified them that way. Multiple site visits are necessary to identify fresh activity in areas of suspicious mounds. In fact, the point of multiple site visits is to look for fresh mound activity, especially at suspicious mounds. It would be inaccurate to ignore this fresh activity on a third (3rd) gopher screening twenty-seven (27) days after the last screening.

Exhibit 12.Z.5.

46. Addressing a County assertion that “there is no basis” for stating there is no appreciable habitat that could support the Mazama pocket gopher, the Applicant consultant responded as follows:

The reviewer is incorrect in stating that “there is no basis” for the report to assert that there is ‘no appreciable habitat that could support the Mazama pocket gopher’ in Area 1. Area 1 is impacted by existing and ongoing high-intensity agricultural practices, including heavy livestock grazing and soil compaction, which discourages habitation of the Mazama pocket gopher (Insert 2). ...

My fifteen (15) years of experience performing Mazama pocket gopher studies found that gopher density tends to decrease in heavily grazed pastures consistent with the vast body of scientific literature. Heavily grazed pastureland is less likely to contain gopher activity. Habitat quality can degrade to the extent where no appreciable habitat is available to support the Mazama pocket gopher. That is why Steinberg (1996a) found no gophers on heavily grazed pastures where they had previously existed near Tenino, Littlerock, and Vail. Hunter (1991). Stromberg and Griffin (1996) made similar observations.

Exhibit 12.Z.5.

47. Addressing County comments challenging the Applicant's consultant's characterization of the subject property as containing only "potential low quality MPG habitat... in cleared areas dominated by grass [while p]referred gopher habitat consists of prairie ecosystems, the consultant responded as follows:

I believe that the comment above made an incorrect assumption that I somehow suggested that the Mazama pocket gopher only occur in prairie habitat. Although the prairie environment is their preferred habitat where this species has evolved and flourished, the species also can survive in other grasslands where there are porous, well-drained soils. ...

Many areas of prairie soils no longer support gophers because they have succeeded to forest. Stinson (2019) states that although gophers do not require native prairie vegetation for survival, they do require herbaceous vegetation and are intolerant of overhead cover. Invasion by woody species eventually adversely affects pocket gophers. Thirty two percent (32%) of total prairie loss in western Washington is attributed to invasion by forest (Hall *et al.* 1995). ...

My fifteen (15) years of experience performing Mazama pocket gopher studies supports conclusions consistent with the vast body of scientific literature. Native prairie or grassland in western Washington is prone to invasion of forest because forest is the climax successional community. Prairie soils also can support Douglas fir, which commonly invades western Washington grasslands. Because forest is the successional climax community, onsite grassy areas would likely transform into forests if no longer maintained, no longer providing the marginal habitat that currently supports this species.

Exhibit 12.Z.5.

48. On September 14, 2020, the Applicant consultant submitted a document entitled Avoidance of Mazama Pocket Gopher Impacts. Based on the historic presence of the protected species, this report indicated that the Applicant was revising the initial proposal in order to completely avoid development of the areas where pocket gopher activity had previously been observed. *Exhibit 12.DD.* Following this report, the Applicant prepared a November 13, 2020 letter to the County describing a revised project that sought to avoid impact to the footprint of gopher occupancy. In the November 2020 letter, the Applicant stated that [they were] "not disputing the presence of prior MPG indications on three (3) of the ten (10) parcels of the proposed development, as mapped by EnviroVector in 2019." *Exhibit 12.EE, page 1.* The Applicant's revised proposal included a site plan dated October 6, 2020, that proposed a substantially reduced density (down from 620 to 505 units), avoided development of the observed Mazama Pocket Gopher habitat on-site, avoided the existing Oak grove, provided 30% enhanced open space, and set aside roughly eight acres for gopher habitat. In this request, the Applicant

challenged “the notion that the entire parcel of where the MPG has been mapped is considered occupied.” *Exhibit 12.EE, page 2*. The Applicant requested that the Director use his discretion to justify that only the known habitat where the gopher had been observed be conditioned, not the entire parcel. Alternatively, the Applicant requested that the County allow project review to proceed based on a condition that allowed /required the project to participate in the County Habitat Conservation Plan (HCP) once the plan is adopted by the County following US Fish and Wildlife Service approval, which at the time of this letter was anticipated to occur within roughly 12 months. The Applicant proposed that the project would abide by the future adopted HCP with respect to gopher impact mitigation and agreed that approval under the HCP would have to be in place prior the time to any final development approvals or permits were issued. *Exhibits 12.BB and 12.EE*.

49. The County responded to the November 13, 2020 Applicant proposal by email dated December 7, 2020, and stated that the proposed avoidance strategy was not the County’s suggested path forward, but rather that the County recommended the project proceed to preliminary plat approval subject to a condition of approval that allows/requires the project to participate in the County Habitat Conservation Plan (HCP) after its approval. *Exhibit 12.FF*.¹⁸ The recommended conditions of approval at the time of the November 29, 2021 hearing included the following:

52. No development permits shall be issued until the applicant has either been approved to move forward under the proposed Thurston County Habitat Conservation Plan and the pending Incidental Take Permit for tax parcel numbers 11836330000, 11836330100, and 11836330500.
53. Approval of this Preliminary Plat is conditioned on the applicant’s being issued a Certificate of Inclusion under the HCP and paying associated Mitigation Fees as determined using the methods outlined in the HCP, specifically Appendix H, Credit-Debit Methodology. It is further understood by and accepted by the applicant that the Preliminary Plat approval will proceed, be subject to and will be processed accordingly on the premise that the County and USFWS will be approving and adopting the HCP presently under consideration.

Should the County’s HCP not be approved and an ITP not be issued prior to the Preliminary Plat’s expiration period (10 years from the date of Preliminary Plat approval), the project and applicant acknowledge that it may need to address the potential impacts to Covered Species (Yelm Pocket Gopher) through its own HCP and pursue approval directly from USFWS. It is further acknowledged that the applicant may choose to present its own HCP to USFWS concurrent with this Preliminary Plat submittal by setting land aside on-site or off-site in protected areas as a means of avoidance and mitigation.

Exhibit 1. Revised conditions were discussed between Staff and the Applicant in the March 2022 hearing record. *Exhibits 10.B, 12.CC, and 15*.

¹⁸ Exhibits 12.DD, 12.EE, and 12.FF were not offered in the record at the time of the November 29, 2021 hearing; it is not clear why. *See Exhibit 12.A*.

50. In the materials submitted for the March 2022 hearing, the Applicant explained that they thought the critical areas gap in the record called out in the conclusions of the January 10, 2022 Decision had been closed with the April 29, 2021 updated project submittal, which had addressed all the contents outlined in the County Biologists' memorandum and had implemented the path forward suggested in the December 7, 2020, email from Mr. Bures. Applicant representatives acknowledged the presence of "more preferred" and "less preferred" gopher soils over the entire subject property, but noted that gopher activity was only identified on three of the subject parcels. The Applicant contended that because the County code regulates habitat on the basis of observed gopher presence per TCC 24.25 and not simply the presence of preferred soils. The Applicant conceded the inconsistencies in their gopher studies and have elected to proceed with the conservative assumption that all parcels upon which gopher activity had been observed would be regulated as such, regardless of the inconsistencies. The Applicant requested approvals on the understanding that the permits would be conditioned to prohibit any disturbance on the three parcels on which gopher presence had been observed until the Applicant received the appropriate approvals either under the County HCP or individual permits issued by US Fish and Wildlife. At the March 22, 2022 hearing, the Applicant submitted that the materials in the now complete record were sufficient to demonstrate that all Oak trees are preserved, the CARA and wellhead protection areas are protected as shown by the drainage design, hydrogeologic reports, and the IPMP, and that the Applicant and the County were in agreement that the project would proceed on condition of future compliance with the County's HCP to address Mazama pocket gopher habitat impacts. *Exhibits 12.A, 12.E, and 12.BB*. Planning Staff agreed with the Applicant that, with the recommended conditions, the materials submitted fully addressed County requirements for the protection of gopher habitat and maintained its previous recommended conditions of approval. *Exhibit 12; Brett Bures March 22, 2022 Testimony*.
51. Regarding the current status of the County's proposed Habitat Conservation Plan (HCP), Planning Staff testified that a final proposed plan has been submitted to the US Fish and Wildlife Service, an environmental impact statement was published, and Thurston County has officially submitted its incidental take permit to the federal agency and is now waiting for final approval of its HCP. It is not possible to know when a decision will be issued by the federal agency, but the County hopes for a decision by the second or third quarter of this year, 2022. Assuming federal approval, development permit applicants would apply for incidental take coverage under the County's HCP through certificates of inclusion under the County's incidental take permit. Applicants would then work with the County to apply best management practices to reduce impacts (considered debits) to the maximum extent practicable and would secure a Certificate of Inclusion by paying a mitigation fee, dedicating land, or purchasing credits from an independent mitigation bank. Only after completing this process would developers be able to proceed with covered development activity. On a per-project basis, the County itself would pay the same mitigation fees to secure mitigation credits to offset debits (impacts) from County development projects. At the March 2022 hearing, Planning Staff reiterated that for the purposes of the instant proceedings, preliminary plats and PRDs are land use permits, not development permits, which land use permits would not in themselves authorize any earth disturbance. As proposed and conditioned, even if the plat and PRD are approved,

no earth work could occur - under building permits, grading permits, engineering permits, road and utility construction permits, stormwater facility construction, etc. - until the Applicant has obtained approvals either under the County's HCP or otherwise from the USFWS. *Brett Bures March 2022 Testimony; Exhibit 16.*

Forest Land Conversion Application

52. 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 and scattered ornamental trees. No oaks are proposed to be removed through the forest operation. Three areas of Oregon White Oak would be reserved: one in the northeast corner of the project (proposed Phase 1), one along the southwest site boundary on Kagy Street, and one in the northwest corner of the site (these two last items both in proposed Phase 4). Also, a singularly large Oak is proposed to be preserved if possible along the subject frontage on Mullen Road.¹⁹ The application proposes to retain any healthy mature trees in the required 30-foot perimeter buffer around the exterior of the site. *Exhibit 12.D, logging site plan.*²⁰
53. 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) with preserved or replanted trees. The logging site plan does not call out or quantify retained tree tracts, but it identifies areas that will not be cut, including all of the parcel comprising proposed Phase 1 (which includes Oaks to be retained along the Mullen Road frontage and the northeast boundary), an area in the northwest corner of the site fronting Kagy Street that would include one of the retained residences and some oaks around that proposed lot, and a no cut zone around the other proposed retained residence fronting 58th Avenue in the southwest corner of the site. While not the logging plan, the site plans include identified tree tracts within open space tracts as follows: Tract A, 1.23 acres; Tract E, 0.3 acres; Tract G, 0.07 acres; Tract K, 1.75 acres around the Thurston PUD well site; Tract Q, 0.41 acres; and Tract R, 0.36 acres. This totals 4.12 acres of tree tract dispersed throughout the site, slightly exceeding the 5% of overall site area tree tract requirement. *Exhibit 12.F; see also Exhibit 12.G, note 16.* There is no discussion of the extent to/means by which the tracts would be vegetated with retained or replanted trees in order to achieve the 75% canopy required by TCC 17.25.400.D(5)(d); however, the landscape plan states that tree tracts would be planted with a combination of native and drought tolerant trees. *Exhibit 12.G, note 7.* The logging plan is required to address measures proposed to protect retained trees as stated in TCC 17.25.400.D(5)(c). The revised landscape plan

¹⁹ It is possible the large Oak tree along Mullen Road has roots that extend out into the County right-of-way, meaning that required frontage improvements may impact these roots. The Applicant and County Staff proposed to work together to determine if measures can be implemented to preserve this tree and to preserve it if at all possible. *Exhibit 12.*

²⁰ Comparing the two logging site plans in the materials submitted for the March 2022 hearing, the red-lined logging site plan dated March 12, 2022 attached to Mr. Steepy's declaration at Exhibit 12.Z.2 provides very similar if not identical information as to what is to be cut and what is to be retained as the non-red-lined version at Exhibit 12.D, dated February 8, 2022. This finding is based on the version at 12.D because it is the last revised date.

incompatible use buffer detail states that existing trees in the footprint of the 30-foot buffer that fulfill the screening requirement of TCC 21.80.055 shall be retained and protected. *Exhibit 12.G*. Details of these protections would be shown in the final landscaping plans and individual lot development plans at time of construction drawing approval and/or building permit approval on those associated lots. *Exhibit 12.Z.1, .pdf page 14*.

54. Apparently speaking to TCC 17.25.400.D(1), the logging site plan notes call out the critical aquifer recharge area underlying the entire site and states that the entire site is underlain by “preferred gopher soil critical areas.” Plan notes also state that all Oregon White Oaks on site would be retained and would be provided with “a five-foot tree protection area extending a minimum of five feet beyond the dripline.” *Exhibit 12.D, .pdf page 6*. In the March 2022 hearing, the Applicant contended that no logging of the parcels containing potential evidence of gophers is proposed until such time as the County has an approved HCP to which the Applicant would be required to comply, or the Applicant has obtained their own project-specific HCP, and the Applicant has met the criteria for mitigation of the pertinent plan. Should the County HCP not be approved and/or the County’s federal incidental take permit (ITP) not be issued prior to the preliminary plat’s expiration date, the Applicant acknowledged that they would need to address potential impacts to the Mazama pocket gopher through their own HCP and pursue approval directly from USFWS. *Exhibit 12.Z.1, .pdf pages 7-8*.
55. 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. The landscape plan references this code section in a detail showing plantings proposed for the incompatible use buffer, indicating that one tree would be planted for each lot 4,000 square feet or smaller, and that two trees would be planted for each lot between 4,000 and 8,000 square feet in area. *Exhibit 12.G*. The majority of the existing trees and vegetation within on-site open spaces that are not impacted by utility improvements would also be preserved. Compliance with the tree preservation/planting requirements would be reviewed and ensured through further project review as part of construction document review and approvals. *Exhibit 12.Z.1, .pdf pages 11-12*.
56. 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 application materials; however, Planning Staff recommended a condition of approval addressing this subsection’s required bond. *Exhibit 12*.

Reviewing Agency Comments

57. The Washington State Department of Ecology submitted comments in July 2020 and June 2021, in which they expressed no site-specific concerns, but instead provided information on applicable solid waste management, toxics cleanup, water

quality/watershed resources, and (domestic) water resources requirements. *Exhibits 1.DD and 1.EE.*

58. 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.*
59. 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.*
60. 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 November 2021 Testimony.*

61. 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.*
62. 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.*

Procedural Findings and Public Comment

63. 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.²¹ 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.*

64. 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 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.

²¹ The Staff report for the November 2021 hearing included 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.*

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/PRD 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.*

65. Notice of application (describing the initial 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; the perception of 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 alleged 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.*

66. The County received numerous written public comments in response to notice of the November 29, 2021 hearing, and 13 members of the public, largely neighboring property owners, testified at the November 2021 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-foot 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 an individual federal habitat conservation plan and incidental take permit or a coverage under a yet to be approved County habitat management plan and incidental take permit coverage 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.*
67. 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 it is required by code and does 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 formerly 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-feet 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.*

68. Other neighboring property owners submitted written and verbal comment at the November 2021 hearing 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. [This perimeter trail has since been withdrawn.] 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-aged 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.

November 2021 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.

69. Notice of the reconvened public hearing was mailed to property owners within 300 feet of the site on March 10, 2022 and was published in *The Olympian* on March 11, 2022. *Exhibit 12.JJ.*
70. At the March 2022 hearing, Theresa Janzen was again represented by attorney Alex Sidles, who argued that because the time of platting is when locations are established for earth disturbing infrastructure, the time of platting is the time when critical areas ordinance compliance must be shown. He contended that on remand the Applicant had the opportunity and obligation to provide new evidence demonstrating compliance with the CAO regarding the Mazama pocket gopher, but instead the Applicant continues to

rely on the flawed studies offered at the first hearing and the same flawed suggestion to wait for a future federal HCP. Ms. Janzen’s attorney argued that the record does not show compliance with TCC 24.55.030.D, which requires maintenance of habitat connectivity, nor with TCC 24.25.075.A, which requires a site specific habitat management plan (HMP) that satisfies specific criteria. He contended that the Applicant’s HMP fails to identify any gopher tracts on site, fails to provide any buffer around gopher habitat that is reserved, fails to establish the required monitoring regime, and fails to identify contingency measures in the event of gopher impacts. He contended that the Applicant must obtain a critical area review permit prior to plat approval, which requires a demonstration of no net loss, and the Applicant’s materials do not satisfy this requirement. He contended that the Applicant is not entitled to rely on a speculative future approval of the County’s HCP, because today’s code must be satisfied. The EIS on the County HCP is not even final, and the ultimately adopted County regulations that the Applicant offers to comply are a long time off in the future. Characterizing the recommended conditional approval as “approve the plat now, hope for compliance later,” he contended this approach is inconsistent with the adopted codes that apply to the applications under consideration. *Alex Sidles March 2022 Argument; Exhibit 13.L.*

71. Other neighboring property owners reiterated or stated new concerns relating to the following at the March 2022 hearing.

They argued that maintenance of 10 feet of the required incompatible use perimeter buffer within an easement across lots would be problematic. Immediate neighbors would abut many of the new, smaller lots (neighbors reported that between seven and 17 of the proposed lots would abut their parcels), and having to deal with so many lot owners to ensure the screening is maintained to code should not be an onus placed on existing residences. Neighbors wanted to know what the plan is regarding fencing. One commenter had asked the County whether an easement had ever been used before for part of an incompatible use perimeter buffer and was told no; she is concerned this isn’t consistent with code and shouldn’t be allowed.

Some expressed concern with detailed aspects of plat design such as the placement of a proposed cul-de-sac or new plat road adjacent to their property lines (and in at least one case, adjacent to a bedroom). One neighbor, who uses a wheelchair, asked whether the frontage improvements would be accessible by persons with disabilities consistent with Americans with Disabilities Act. Another neighbor requested to know how much space would be provided between buildings on the proposed small lots, because of increased fire threat in residential areas in recent years. Neighbors expressed concern about the increase in noise in what is currently a rural environment.

Neighbors remain worried that the project’s “exponential increase” traffic will exacerbate what they described as egregious levels of existing congestion on roads in the vicinity. One submitted that the project should be required to provide a school zone for Nisqually Middle School on Marvin, because project traffic will increase safety risks for students who walk to that facility. One objected to a traffic signal at the intersection of Mullen and Meridian.

Neighbors are worried that site grading and impervious surfaces, as well as the design of proposed stormwater ponds, will result in increased stormwater runoff onto their immediately adjacent properties.

Some expressed the opinion that no development should be allowed to proceed until gopher protection requirements are shown to be met for the entire subject property. In addition to the ESA-listed gopher, neighbors reiterated concerns for the wellbeing and displacement of wildlife species that are not protected by County or federal law. They report sightings of and concern for eagles, blue heron, and other common species on the subject property, whose habitat will be destroyed by the proposal. Others expressed concern about inadequate Oak tree preservation.

Others expressed concern that the project would exacerbate climate change. One person submitted that the use of natural gas is a major contributor to climate change. Neighbors remain concerned that reliance on a homeowners association to enforce the IPMP will necessarily result in negative impacts to groundwater quality, and still others continue to worry that approval will impact availability (quantity) of water for surrounding existing uses.

One neighbor challenged the accuracy of several aspects of the revised plan set at Exhibit 12.F, calling out the following (among others): that sheet C2.2 shows sidewalk installed by the Applicant in front of the Grubb property; that the details of the typical townhouse are not to scale on sheet C2.10; that details about fencing are not established with certainty; and other items.

One neighbor reported that many truckloads of something have been delivered to the lot abutting the subject property at which the Applicant is believed to reside.

Some expressed concern for the adequacy of provided open space and requested a large public park be provided. At least two commenters requested that the Applicant consider selling the property for use as a nature reserve instead of developing this proposal.

Some comments expressed the opinion that the comment period was inadequate, that notice was not sent to enough surrounding properties, that the amount of posted notice provided was insufficient, and that the matter merited an in-person meeting rather than the virtual hearing.

Some submitted that the number and sizes of proposed off-street parking spaces are inadequate, especially for townhome units.

March 2022 Testimony of Gail Grubb, Michelle Murray, Mark Hunter, Christina Peterson, and Will Stewart; Exhibits 13.b, 13.d, 13.e, 13.f, 13.g, 13.h, 13.i, 13.j, 13.k, 17.a, and 17.b.

72. One neighbor again submitted support for the proposal, requesting that the Applicant devote a portion of the project to low-income housing and be required to provide a roundabout at the Meridian/Mullen intersection. *Exhibit 13.a.*

Responses to Public Comment

73. 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. *November 2021 Testimony of Dawn Peebles and Brett Bures*. On this issue, Applicant representatives further responded that a strict reading of TCC 24.55.030 would eliminate subdivisions in approximately 70% of Thurston County, that pursuant to TCC Title 24.10.020, residential subdivisions are a permitted use within a critical aquifer recharge areas, and there are no buffers required for critical aquifer recharge areas in TCC Title 24.10. *Exhibit 12.Z.1, .pdf page 13*.
74. 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 November 2021 Testimony*.
75. Responding to public comment, Public Works Staff testified that the other road stubs are required due to the location of the project within the Lacey urban growth area, because even if it is 100 years from now the adjoining properties are expected to eventually 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. The project's sidewalk improvements would be required to blend into existing frontage improvements. The sidewalks would provide a ramp to the road in locations where the sidewalk ends and there is no receiving infrastructure on the other side of the street, and these ramps are intended to satisfy ADA access requirements. 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. Speaking to the neighbors' concerns regarding stormwater runoff from the project, elevations resulting from site

grading would be thoroughly addressed during construction drawing review. No additional runoff would be allowed to be directed to off-site parcels, which would be required to be shown through computer modeling based on the proposed designs. The project as a whole would be designed to maintain existing drainage patterns. Regarding the alleged import of truckloads of materials onto the neighboring believed to be owned by the Applicant, Public Works Staff stated that the County is not aware of any staging for the instant proposal on that parcel; such staging could be allowed but had not yet been reviewed. County Staff noted that neighbors can report suspected violations to the code enforcement unit. *Arthur Saint November 2021 and March 2022 Testimony.*

76. 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 the proposed 488 lots are 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 expressly to address rural community compatibility. Regarding concerns for wildlife species that are not regulated, Planning Staff noted that there are no applicable County or State regulations 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. *Brett Bures November 2021 and March 2022 Testimony.*
77. Regarding the Mazama pocket gopher and critical areas ordinance requirements for a habitat management plan, Planning Staff disagreed with public comment and stated that the Applicant's habitat management plan was submitted and accepted by the County. Regarding the order of steps in critical areas review, Staff submitted that a critical area review permit is not required to be separately issued prior to plat and PRD review. Regarding parcels where Mazama pocket gopher occupancy was detected, the instant applications are vested to County protocol that 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. The County considers earth disturbing permits to be the time at which development occurs. Conversely, for the parcel on which no gopher occupancy was identified, that parcel is also vested to the codes in effect at time of application and is able to be developed without waiting for the process addressing gopher occupancy of the other parcels to be completed. Specifically about the concerns expressed by the County Biologists in Exhibit 1.RR, those concerns remain in effect and they form a part of the basis for the County's recommendation that the proposed development of gopher occupied portions of the subject property not be allowed to proceed until the Applicant obtains coverage under either County or federal approvals. Planning Staff submitted that the recommended conditions provide a path forward for approval of the project that is consistent with all requirements of County Code. Staff submitted that the recommended conditions prohibiting any earth disturbing activity on the gopher-affected parcels until the Applicant obtains authorization either under the

pending County plan and permit (not yet approved by US Fish and Wildlife Service) or authorization under an individual Applicant plan and permit directly from the federal agency adequately satisfy the requirements of the County's critical areas ordinance. *Brett Bures November 2021 and March 2022 Testimony; Exhibit 12.*

78. 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, at the November hearing, Planning Staff did not submit a County position on the question of whether it is allowed by Code. At the March 2022 hearing, Planning Staff acknowledged that while this has never been proposed and approved previously, the County Code does not prohibit the concept or expressly require the full width of the required buffer to be owned in common. Staff submitted that if neighbors feel an adjacent property owner is not maintaining the full 30-foot width of this incompatibility buffer, the call would be to the homeowners association, not the individual lot owners, because the homeowners association would be responsible for the easement even within the private lots. Regarding the questions about whether a fence would be provided, Staff submitted that the Code does not require a fence but noted that one can be provided to supplement the screening function of the buffer. *Brett Bures November 2021 and March 2022 Testimony.*
79. 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 IPMP 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 November 2021 Testimony.*
80. 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 at the November 2021 hearing that the Applicant agrees to provide the screening buffer adjacent to the Friedman property (which fronts Kagy). 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 has withdrawn the proposal to install a path around the perimeter. A qualified landscape architect would design planting plan to meet the requirements of TCC 21.80.055. As shown in the revised plans at Exhibit 12.F, Sheet L.1, the density of plantings in the incompatible use buffer would be the same whether a fence is installed or not. In answer to the question of where the townhomes are located, the revised 488-lot plat layout shows the townhomes 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 aside from gopher issues, the representatives indicated that the current proposal would preserve all Oregon White oaks on the site, including the existing oak grove that is larger than an acre in the northwest corner of the site and the single very large oak near the proposed plat entrance on Mullen Road. Addressing stormwater concerns, he noted that site soils are very sandy and there is little existing runoff. The roads as designed and built would capture drainage and divert to a stormwater system in which water quality treatment would be provided. Addressing the comment that alleged only 10 feet of depth was provided for driveway parking, the Applicant indicated that Exhibit 12.F, Sheet C2.10 Typical Lot Utility Layout shows an 18- by 20-foot driveway, which is standard for residential lots needing two parking spaces, and that there is also a garage in addition to the driveway. Regarding testimony about truck deliveries to the adjacent parcel owned by the Applicant, he stated that loads of gravel have been delivered to that property for use on that property and that there will be no staging on that parcel for this project. Responding to the concern about natural gas, the Applicant indicated that natural gas use is still a standard practice and at this time natural gas to service the project is not being ruled out, as natural gas pipelines are already to and through the subject property. Alternative energy uses may still be explored. The property has been zoned for residential use for more than two decades, and creation of a public park, or open space would require a rezone. Neither the County nor the City have expressed an interest in purchasing the property. The use proposed is consistent with the underlying zoning. *Mark Steepy November 2021 and March 2022 Testimony; Exhibit 18.*

81. 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 for proposed Phases 2 through 4. These processes would most likely allow adequate time to determine whether the County's habitat management plan/incidental take permit would be approved by the US Fish and Wildlife Service, in which case the Applicant would apply under these future County provisions for permits for ground disturbing work on gopher-affected parcels. If the County's HCP and incidental take permit have not yet been approved and/or County regulations not yet adopted, the Applicant would then seek individual habitat conservation plan and incidental take approval directly from the federal agency and not proceed until they are obtained. Approval of the instant land use applications

would not result in ground disturbing work on gopher-affected parcels until all conditions have been met. The Applicant expressly acknowledged that they would be proceeding at their own risk by moving forward before it is known what the future regulations would require, or whether they can obtain approvals from USFWS. *Mark Steepy November 2021 and March 2022 Testimony.*

82. In response to traffic comments, the Applicant's traffic consultant testified that the submitted 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 required extensive frontage improvements would improve conditions on both 58th Avenue and Kagy Street over current day conditions, 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), or if it isn't completed in time by the other builder, the Applicant would be required to build it. *Jeff Schramm November 2021 Testimony.* Applicant representatives submitted that traffic in this vicinity is an existing regional problem that the instant project cannot be held solely liable for fixing. Speaking to the ADA concerns in March 2022 public comment, the Applicant representative stated that development occurs in stages; the County can't condition the instant approvals on a requirement the Applicant address the existing gaps in off-site ADA-accessible sidewalk. This project would improve access over current conditions, but won't provide, and is not required to provide, an uninterrupted accessible sidewalk network throughout the neighborhood. *Mark Steepy March 2022 Testimony.* In response to the comment opposing a traffic signal at Mullen and Meridian, because signalization will improve the overall intersection LOS and significantly reduce delays on Mullen Road, it is not anticipated to increase traffic on neighborhood streets. *Exhibit 18.*
83. Responding to public comment regarding density, an Applicant representative testified/argued that the proposed 488-lot 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 though not required to be used to achieve a sight-obscuring condition per TCC21.80.005(3)(c). 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 commonly held open space. Arguing that critical area buffers can be included as easements within individual residential lots, the Applicant representative contended that this incompatible use buffer should also be allowed to be included within individual lots in easements. 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 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. He contended that the presence of gopher preferred soils is not the test here; the question is evidence of gopher occupancy. There is no evidence of occupancy in proposed Phase 1. Arguing that the Applicant's approach (assuming gophers are still onsite despite the uncertainty in the evidence) is conservative, the attorney for the Applicant argued that testimony insisting the Applicant won't be able to comply with the future adopted County HCP is itself speculative. *Aaron Laing November 2021 and March 2022 Testimony and Argument.*

84. 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 while also providing 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 transportation 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 built, it would not be improved. He expects the dedicated right-of-way could sit with landscaping on it for years. *Steve Chamberlain November 2021 Testimony.*

85. At the March 2022 hearing, Applicant requested some changes to the recommended conditions (that differed slightly from the changes they requested at the November 2021 hearing). Applicant's proposed revised conditions are in the record at Exhibit 15. The first requested condition revision would alter recommended condition 6, which was already imposed by the SEPA MDNS. Public Works and Planning Staff submitted that they have no problem with the revised requested condition 6, because it clarifies and make more specific the required mitigation measure imposed in the MDNS and does not conflict with it. The second requested revised condition is 46 (which was condition 52 in the November 2021 staff report), and the revision requested was already agreed to by Planning Staff, as shown in Exhibit 10.b. The third requested revision was the addition of a new condition 47, and Planning Staff agreed with this additional clarifying condition. Finally, the Applicant requested revision to current condition 47, which was former condition 53. The requested revision is that proposed by Planning Staff in Exhibit 10.b. *Exhibits 1, 10.B, 12, and 15; March 2022 Testimony of Brett Bures and Arthur Saint*
86. Having reviewed the revised project and considered all application materials and public comment, Planning Staff maintained their recommendation for approval subject to the conditions recommended in the March 22, 2022 staff report as modified by the discussion in Finding 85 above. *Exhibit 12; Brett Bures March 22, 2022 Testimony.* Aside from the modifications addressed in Finding 85 above the Applicant representatives waived objection to the recommended conditions. *Mark Steepy March 22, 2022 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.

...

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.

Findings, Conclusions, and Decisions

Thurston County Hearing Examiner

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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.

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:

...

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 24.05.030 (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 24.55.070 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 21.61.040 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.

TCC 21.80.055 Incompatible uses

- 1. An incompatible use is defined as:
 - a. A commercial or industrial zoning district or use adjacent to: (1) a residential lot of two acres or less, or (2) a residential zoning district with a density of one unit per two acres or greater.
 - b. A proposed residential subdivision lot that is less than fifty percent of the square footage of an existing contiguous residential lot.
- 2. Applicability.
 - a. This section applies where the common property line is at least twenty feet in length and where a new proposed use is adjacent to an incompatible use as described in section 1.
 - b. Individual single-family residences, existing, legal non-conforming uses and properties separated by a public road are exempt from the requirements of Section 21.80.055. Development in the Hawks Prairie Business District (Chapter 21.37) and Business Park District (Chapter 21.41) are also exempt from the requirements of Section 21.80.055.
 - c. A variance to reduce the buffer width may be permitted pursuant to TCC 21.90.
- 3. Screening between incompatible uses—Screening shall consist of a thirty-foot wide buffer containing the following:
 - a. A vegetated buffer of predominantly native and drought tolerant species that will provide a very dense sight barrier and physical buffer to significantly separate conflicting uses and land use districts.

- b. Plant materials and ground cover shall be selected and maintained so that the thirty-foot buffer will be fully vegetated within three years.
 - c. A combination of trees, shrubs, earthen berms, and related plant materials or design features may be selected, provided that the resultant effect is sight-obscuring from adjoining properties. In addition, fences and walls may be incorporated into the landscaping buffer.
 - d. A minimum of one tree per twenty-five linear feet shall be planted. Trees shall be a minimum one inch in caliper measured six inches above the base at the time of planting.
 - e. Shrubs must be capable of growing to a minimum of five feet in height, within three years. Shrubs shall be planted on eight-foot centers at minimum.
 - f. Ground cover shall consist of bark, mulch, native grasses and/or native understory vegetation such as salal, Oregon grape, Knickknick, Sword fern, etc.
 - g. Retention and salvage of existing native vegetation and trees is preferred over removal and replacement of vegetation.
4. The thirty-foot buffer required by this section may be used for the following so long as the design standards of subsection 3 can be met.
- a. Storm water treatment facilities.
 - b. Open space.
 - c. Tree tracts.
 - d. Critical area protection.
 - e. Required landscaping.
5. In the event of a conflict between the standards for individual uses and other general requirements of this chapter, the more stringent shall apply. Determination of the appropriate standards shall be made by the department.

Conclusions Based on Findings:

Preliminary Plat Criteria

1. As conditioned, the full record demonstrates that the project would make appropriate provision 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 as follows.
 - a. Conditions would ensure that all internal roads are designed and built to the appropriate City of Lacey road standard for each classification of road. All roads would provide curb, gutter, sidewalk, planter strips, street trees, street lighting, and some on-street parking on most internal roads would be provided. Likewise, the project's frontage on the existing external roads including Mullen Road, Kagy Street, and 58th Avenue would be improved to current City of Lacey standards for each road

- classification, including provision of curb, gutter, sidewalk, planter strips, street trees, and street lighting. In addition, bike lanes and on-street parking would be provided where required/allowed. The proposed internal road network and site frontage improvements would provide vehicular, bicycle, and pedestrian ways consistent with current code requiring multimodal transportation improvements. A condition of approval has been added that expressly requires transit stop improvements consistent with the needs of Intercity Transit. *Findings 16, 17, 61, 68, 71, 74, and 75.*
- b. The project's traffic impacts were studied consistent with applicable County requirements. No competent evidence was submitted that contradicts the findings and conclusions of the traffic study. Extensive mitigation in the form of off-site intersection improvements was imposed through the SEPA review process, which would require major improvements at five off-site intersections in the City of Lacey (unless some of the intersections are improved by other approved projects first). In addition, the Applicant would be required to pay traffic impact fees to City of Lacey to mitigate wider transportation impacts throughout the region. The intersection improvements and traffic impact fees would mitigate the project's traffic impacts to the extent required by code. *Findings 16, 17, 19, 20, 21, 22, 23, 24, 68, 71, and 82.*
 - c. As conditioned, the proponent has demonstrated that public water can be provided to all 488 proposed lots. Two existing domestic water wells would be properly decommissioned as conditioned. *Findings 6, 8, 26, 27, 68, 71, and 73.*
 - d. The materials demonstrate that the project can connect all lots to municipal sewer service. As conditioned, sewer would be extended to each lot and through the subdivision to be available for other nearby developable properties. Conditions would ensure that the seven existing septic systems on site are properly abandoned. *Findings 25 and 27.*
 - e. As proposed and conditioned, the project would capture, collect, treat, and infiltrate all stormwater runoff in conformance with applicable County and State standards. *Findings 28, 29, 30, 31, 32, 73, and 80.*
 - f. As proposed and conditioned, the project satisfies the applicable open space requirement, which in the instant case is established in the PRD provisions and requires 30% of total site area to be dedicated, or 24.41 total acres. The proposed 27 on-site open space tracts would range from 0.13 to 3.79 acres and would total 20.26 acres. Consistent with TCC 21.60.140.A(5), the remaining 4.15 acres of required dedication would be provided in the form of off-site dedication of approximately 20 acres it owns adjacent to the Mullen Road Habitat Preserve located roughly two miles northwest of the site, which dedication was accepted by the County on behalf of the City of Lacey. *Finding 13, 68, 71, 83, and 84.*
 - g. Through the SEPA process, the project has been conditioned to provide school impact mitigation through the payment of school impact fees, or to otherwise demonstrate that school capacity impacts are addressed to the satisfaction of North Thurston Public Schools. At the time of hearing, the per-lot fee was \$4,485 per lot, which would be more than two million dollars. Fees would be assessed based on the fee schedule in effect at time of building permit. Additionally, the project is conditioned

to require the Applicant to coordinate with North Thurston Public Schools to ensure safe school bus stop locations are accessible to school aged residents of the plat.
Findings 60 and 64.

2. Specifically addressing critical areas review, the record contains adequate information to support a conclusion that no prairie habitat exists on the subject property. *Findings 38, 41, 42, and 47.* With respect to Oregon White Oak critical areas requirements, the project would not remove any Oak trees and would preserve the existing Oak grove in the northwest corner of the subject property within an open space/tree tract, which would maintain more than an acre of contiguous existing oak habitat for the benefit of the tree and other species reliant on oaks. The CAO requirements regarding Oregon White Oaks are shown to be met. *Findings 7, 37, 40, 42, 50, 52, 54, and 71.* The record shows that all necessary protections for the critical aquifer recharge area have been provided. *Findings 8, 34, 36, 54, 73, and 79.* Addressing the Mazama pocket gopher, it is true following the March 2022 hearing, as it was following the November 2021 hearing, that the record contains inconclusive evidence as to whether or not the gopher actually occupies the parcels identified in the several critical areas studies of the site. The approach of assuming affirmative gopher occupancy and prohibiting issuance of ground disturbing permits until critical areas processes are completed is a conservative approach that affords adequate protection to the federally protected species. Pursuant to TCC 24.05.030.C(5), it is not appropriate for a critical area permit to be consolidated with the instant applications. The undersigned is not persuaded that a critical area permit is required to be issued prior to the instant plat and PRD hearing, or the resulting decision, because an adequate process has been proposed to ensure all required critical areas permissions would have to be obtained before ground disturbance of any presumed gopher occupied parcels. If approved, the pending County habitat conservation plan and incidental take permit would supersede the current critical areas ordinance provisions. The Applicant would not be allowed to claim to have vested to the current code; rather because of the federal origin of the requirements that would be imposed in the future County HCP/incidental take permit, future development of the presumed gopher-occupied parcels would have to comply with that future adopted plan regardless of critical areas permits that could have been issued before this time. Conditions 46 and 47 as finally recommended in these proceedings would prevent any earth disturbing work in Phases 2 through 4 unless and until the Applicant can obtain coverage under either a County habitat conservation plan and incidental take permit, or an individual HCP and permit approved directly by USFWS. In adopting this scheme, the Applicant bears the risk that arises from a potential future in which no County or Federal permits are forthcoming. There is no risk of take to the endangered species in delaying the demonstration of compliance until such time as it is known whether the County's HCP will be approved. Finally, there is no critical areas ordinance violation from allowing construction of Phase 1 to proceed before gopher approvals are lined up for Phases 2 through 4. At worst, road stubs from Phase 1 to the presumed gopher-occupied parcels would remain unused indefinitely until a future project could obtain the necessary gopher-related approvals. The recommended conditions as revised through the March 22, 2022 hearing are adopted. *Findings 7, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 54, 65, 66, 68, 70, 71, 77, 80, 81, and 83.*

3. The public use and interest would be served by the platting of the proposed project. The 488 proposed lots are consistent with the density allowed in the underlying MGSA zone. The smaller lots and townhome units created through the PRD process, as detailed in the following conclusions, would result in housing units with relatively affordable price points compared to larger lot development, thereby assisting the current unmet societal demand for more affordable housing units. All lots would be served with public sewer and water, which the project would extend at large expense and make available to future redevelopment in the UGA. The project is conditioned to require extensive regional intersection improvements and site frontage improvements that would dramatically improve level of service at currently poorly operating intersections, improving traffic flows and safety in the area. The project was reviewed pursuant to the requirements of the State Environmental Policy Act, and a mitigated determination of non-significance was issued, which became final without successful appeal. *Findings 2, 6, 9, 10, 11, 13, 14, 15, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 50, 51, 60, 61, 63, and 64.*

Planned Residential Development

4. As conditioned, the proposal satisfies all applicable Planned Residential Development criteria and standards.
 - A. The proposal satisfies TCC 21.60.070 and takes into account the relationship of PRD to adjacent uses through proposing residential uses in the MGSA zone and through providing the required 30-foot incompatible use buffer, concentrating the smallest townhome lots on the interior of the project, and providing at least 20 feet of landscaping or larger landscaped open space tracts with stormwater ponds adjacent to public rights-of-way where the incompatible use buffer is not required. As proposed, the 30-foot incompatible use buffer between the PRD lots and the larger lot adjacent residential uses satisfies the requirement of TCC 21.80.055. Per TCC 21.80.055(2)(b), this screening buffer is not required where the adjacent larger residential parcels are separated by a public road; thus, the 30-foot buffer is not required along Mullen Road, Kagy Street, or 58th Avenue. In these locations, however, at least a 20-foot depth of landscaping is provided. In addition, the two residences to be retained on larger lots are proposed along the site frontages of Kagy Street and 58th Avenue, assisting in creating the appearance of transition from the off-site larger lot development to the PRD interior's smaller lots. No provisions in the County Code require the 30-foot incompatible use buffer to be held in common ownership, and thus there is no basis in code for denying the proposal to provide 20 feet of its depth in a common open space tract and the inner 10 feet of its depth in an easement across the rear of lots that abut it, so long as the easement requires the homeowners to maintain the required density and type of plantings. A condition has been added to ensure this requirement is satisfied. As shown in the plans at Exhibit 12.G, the proposed landscaping is consistent with the requirements of TCC 21.80.055(3) and (4). *Findings 5, 9, 15, 17, 53, 55, 68, 71, 78, 80, and 83.*
 - B. The proposal exceeds the minimum site size requirement of two acres for PRDs established in TCC 21.60.080. *Findings 1, 2, and 3.*

- C. The project connects to three larger streets, including Mullen Road, Kagy Street, and 58th Avenue, and further would provide for the regionally needed extension of Marvin Road south through the site to connect with Yelm Highway at some future time, exceeding the requirements of TCC 21.60.090. *Findings 4, 9, 16, 17, 19, 20, 22, and 23.*
- D. The proposed lot sizes are allowed through the PRD process, consistent with TCC 21.60.100. *Findings 3, 9, and 10.*
- E. All lots are provided with at least 20 feet of setback from the exterior subject property/parent parcel boundaries, with homes set even farther back within each lot, consistent with TCC 21.60.110. The proposal provides a minimum of 10 feet between buildings. *Findings 3, 10, and 12.*
- F. All single-family lots would provide a minimum of two garage parking stalls and two driveway parking stalls, while each townhome lot would provide one garage stall and one driveway stall, exceeding the minimum requirements of TCC 21.60.120 and TCC Title 21, Table 21T-13. Some on-street parking would also be provided inside the proposed internal public road network. *Findings 16, 18, 68, 71, and 80.*
- G. As concluded above, the PRD provides 20.26 acres of on-site common open space in landscape, open space, stormwater, and tree tracts. On-site open space tracts would provide such amenities as benches, picnic tables, trails, and landscaping, with all open space tracts accessible to all units in the PRD. The remaining 4.15 acres of required common open space would be satisfied consistent with code through dedication of approximately 20 offsite acres to a nearby nature reserve. The onsite common open space, and all other commonly held amenities, would be owned and managed by the homeowners association, consistent with the requirements of TCC 21.60.140. In addition, each lot would be provided with a minimum of 300 square feet of private open space in a rear yard, with minimum dimensions of 15 by 15 feet. *Findings 1, 3, 9, 10, 12, 13, and 14.*
- H. The proposed 488 total lots are consistent with the maximum density allowed in the underlying MGSA zone, per TCC 21.10.035. *Findings 2, 11, 65, 67, 68, 76, 80, and 83.*
- I. Compliance with the townhouse development standards of TCC 21.61.040 would be ensured by condition of approval 49 requiring the project to obtain design review approval prior to construction permit issuance. *Finding 12.*
- J. The Applicant's request for the approval to include the flexibility to alter the unit mix and dimensions by up to 10% for each phase as development proceeds in order to respond to market conditions is granted.

Forest Land Conversion Criteria

- 5. In the Lacey UGA, residential subdivision is an allowed land use following forest land conversion. As proposed, the project would provide more than 5% of the total parent parcels' site area in designated tree tracts within the various open space tracts throughout the project consistent with TCC 17.25.400(5)(a). Five percent of the 81.36-acre site would be 4.068 acres, and 4.12 acres of tree tracts are called out on the site plans. A

condition of approval would ensure that the final logging site plan and/or other project plans call out the required development safeguards to protect trees and ground cover proposed for retention. A condition would ensure that the trees within each tree tract will afford a canopy spanning at least 75% of the tract at maturity. The project's landscape plans call out extensive tree, shrub, and groundcover plantings. They also call out at least one tree planted per lot equal to or smaller than 4,000 square feet in area and two trees planted on lots between 4,000 and 8,000 square feet in area, to be planted within the perimeter incompatible use buffer, in addition to other landscaping on each lot. Conditions would ensure street trees are planted consistent with applicable road standards. Finally, a condition of approval has been added to ensure the required bond is provided to the County to ensure survival of all newly planted trees for at least two years. *Findings 52, 53, 54, 55, and 56.*

DECISIONS

Based on the preceding findings and conclusions, the requested applications for planned residential development and preliminary plat to subdivide 81.36 acres into 488 single-family detached and townhome attached residential lots using the PRD design standards, and for forest land conversion of the subject parcels, within the City of Lacey UGA are **APPROVED** subject to the following conditions.

SEPA Conditions

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 <https://weblink.co.thurston.wa.us/dspublic/0/15217093/Page1.aspx>. Timing of the contributions may be altered if approved by both the City of Lacey and Thurston County.
2. The Traffic Impact Analysis 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 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 level of service (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 (LOS) with trips from this project impacting it. To mitigate project impacts, a new signalized intersection designed to fit within the existing right-of-way shall be constructed prior to issuance of a building permit for the 256th home to be constructed within the project. The signalized intersection shall be designed to mitigate the project's impacts and result in acceptable LOS.
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 level of service (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), North Thurston Public Schools are over capacity. North Thurston Public Schools 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 four-hundred and eighty-eight (488) proposed lots under this application, this cost of mitigating impacts is determined to be \$2,188,680. Such costs are subject to inflation. See Letter dated May 24, 2021 for further details.

Environmental Health

10. There shall be no sanitary sewer lines located within 50 feet of any existing well.
11. There shall be no stormwater infiltration within 100 feet of any existing well.
12. The seven 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 licensed septic system pumper must be provided.
13. The two existing single-family wells located on the project site (Tax Parcels 11836330100 & 09710001000) 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.
14. The Applicant must grant a non-public restrictive covenant for the existing off-site well located within 100 feet of the property on Tax Parcel 09710002001. The covenant must be submitted to this office for review prior to being recorded with the Thurston County Auditor's Office. A reference to the covenant must also be placed on the final map.
15. City of Lacey sewer utilities must be extended through the subdivision prior to final approval. Confirmation of final sewer construction approval from the City of Lacey must be submitted to Environmental Health.
16. Thurston PUD (Pattison-500, ID 665785) and of Washington Water Service (Holiday Ranchettes, ID 33677F) public water system(s) must be installed through the subdivision prior to final approval. Confirmation of final water system construction approval from Washington State Department of Health Office of Drinking Water for Pattison-500 and/or Holiday Ranchettes water system(s) must be submitted to Environmental Health.
17. An Integrated Pest Management Plan (IPMP) has been developed for this project and will be incorporated into the subdivision CC&Rs. A finalized version of the IPMP with the Project Description updated to reflect the current proposal must be submitted to Environmental Health.

Public Works

Roads

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

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20. All access points with sight distance issues or abutting arterial or collector roadways shall be installed prior to final approval.
21. The County finds it acceptable for the road construction of the proposed stub roads to adjacent properties to stop at 30 feet back to allow the buffers to adjacent properties to remain intact.
22. Right-of-way for the entire future Marvin Road extension as shown in the plan will need to be dedicated but the construction would only need to be completed from Road H to 58th Avenue as shown on the plans.

Traffic Control Devices

23. 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.
24. 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

25. The stormwater management system shall conform to the Drainage Design & Erosion Control Manual.
26. 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.
27. 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.
28. Because proper landscaping is vital to the performance of the stormwater system, the Landscape Plan (if required) shall be signed/sealed by a Washington licensed civil engineer (preferably the engineer who designed the stormwater system).

Utilities

29. 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.
30. 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

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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

31. 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 Mullen Road SE. Upon your request, Thurston County's right-of-way representative will prepare the Quit Claim Deed describing the necessary right-of-way dedication. Please contact the Thurston County Right-of-Way section at 360-867-2356.
32. 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 30 feet of right-of-way lying East of and abutting the existing centerline of Kagy Road SE. Upon your request, Thurston County's right-of-way representative will prepare the Quit Claim Deed describing the necessary right-of-way dedication. Please contact the Thurston County Right-of-Way section at 360-867-2356.
33. 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 30 feet of right-of-way lying North of and abutting the existing centerline of 58th Avenue SE. Upon your request, Thurston County's right-of-way representative will prepare the Quit Claim Deed describing the necessary right-of-way dedication. Please contact the Thurston County Right-of-Way section at 360-867-2356.
34. Permanent survey control needs to be placed to establish all public street centerlines, intersections, angle points, curves, subdivision boundaries and other points of control.
35. 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

36. Payment of the off-site traffic mitigation required in the September 24, 2021 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

37. No work shall take place until a construction permit has been issued by Thurston County Public Works – Development Review Section.
38. 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.
39. 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.
40. When all construction/improvements have been completed, contact the Thurston County Public Works – Development Review Section for a final inspection.
41. 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

42. Once the planning department has issued the official approval, submit two complete full size sets of construction drawings, the final drainage and erosion control report and all applicable checklists along with an electronic copy to Thurston County Public Works – Development Review Section for review and acceptance.
43. 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.

Findings, Conclusions, and Decisions

Thurston County Hearing Examiner

Reconvened Manor House Preliminary Plat/PRD/Forest Land Conversion, No. 2020102143 page 71 of 77

General Information – Final Review

44. 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.
45. 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 storm water 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 Mullen Road, Kagy Road or 58th Avenue.
- 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 \$ _____ per lot. This fee increases on July 1 of each year in accordance with the increase in the Engineering News Record Construction Cost Index and the amount is determined at the date of payment. Payment is required prior to the issuance of a water meter for those lots served by the Lacey Water Utility and prior to building permit issuance for those lots not served by such Utility.
 - 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 storm water 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 storm water runoff from frontage improvements to Mullen Road, Kagy Road and 58th Avenue 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 Mullen Road, Kagy Road and 58th Avenue on the final plat map.
- o. Please clearly label all public and private roads.

Planning

- 46. The Preliminary Plat is comprised of four-phases, though development may proceed in any order, subject to the following. Three of the four phases are comprised in part by Thurston County tax parcels 11836330000, 11836330100 and 11836330500. During project review in 2019, evidence of historical Mazama Pocket Gopher (MPG) mounds was positively identified on each of these three parcels. Accordingly, no development permits shall be issued for any site-disturbing activity within these three parcels, until the Applicant complies with one of the following conditions:
 - 1. The Applicant has been approved to move forward under the proposed Thurston County Habitat Conservation Plan (HCP); or
 - 2. The Applicant applies for and receives approval on an interim basis (or permanent basis, if the HCP is not approved), its own HCP.
- 47. On a temporary basis to support a phase adjacent to Mullen Road not impacted by MPG habitat that is located on Thurston County tax parcels 11836330000, 11836330100 and 11836330500, existing water availability and supply may be provided from a public water purveyor (Attachments 12.I and 12.J) with infrastructure in Mullen Road, or infrastructure provided in Mullen Road by the Applicant, until such time as one of the conditions outlined above in condition 46 are satisfied and infrastructure from the PUD can be constructed and available to all phases.
- 48. Approval of this preliminary plat shall be effective for five years from the date of approval. Phased developments may be approved by extension and may receive one two-year extension for each phase of the development, so long as at least one phase was given final approval within the two years prior to each subsequent extension request. If extensions are requested, the following is required:
 - 1. The Applicant must submit a new written request with the department as least thirty calendar days before the expiration of the initial preliminary approval period or a previously approved extension period.
 - 2. The preliminary plat must be consistent with the adopted comprehensive plan, consistent with applicable health and safety standard, and there are no emerging adverse environmental issues relevant to the project that were unknown or not anticipated at the time of preliminary plat approval.

3. Phased developments must submit a phased development plan with their preliminary plat application.
4. The extension for a preliminary plat must not exceed ten total years of extensions.
49. Prior to construction of the townhouses, the Applicant shall submit an Administrative Design Review application for review and approval by the Thurston County Community Planning and Economic Development Department in accordance with TCC 21.61.
50. Street addresses, lot size, and dimensions for each lot shall be shown on the final map.
51. The final design of this subdivision and future development of lots shall conform with all minimum standards of the Zoning Ordinance (i.e. lot size, lot dimension, setbacks, etc.) and the Platting and Subdivision Ordinance except as modified through the instant PRD approval.
52. All open space and landscaping and tree preservation shall comply with:
 - A. New trees on individual residential lots shall be planted at a rate of one (1) tree for every four thousand (4,000) square feet of lot area at the time of building permit application.
 - B. 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 revised final landscape plan. The revised landscape plan shall be submitted to Thurston County Community Planning and Economic Development Department for review and approval. The final landscape plan shall include the design of the active recreation component to the open space i.e., play equipment, sports court, and irrigation. All landscaping shall be in compliance with the Thurston County Zoning Ordinance (Title 21) and the Thurston County Subdivision Ordinance (Title 18).
 - D. A bond or other such method of financial security in the 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 in compliance with forest land conversion requirements.
 - E. The revised landscape plan, logging plan, or other plan shall call out existing tree canopy cover, or shall call out adequate tree plantings within each tree tract, to demonstrate that the plan will provide canopy spanning 75% of each tree tract at the time of maturity of any required plantings.
 - F. Street trees shall be installed per the applicable street development standards as stated in Chapter 15.04 of the Thurston County Code. Such financial security shall be effective for a two-year period following completion of the planting.

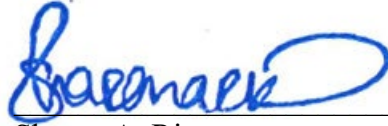
53. A demolition permit is required by Thurston County Building Department and the Olympic Region Clean Air agency.
54. Prior to final plat approval, the Applicant shall submit evidence to the Thurston County Community Planning and Economic Development Department that adequate capacity exists in affected North Thurston School District schools or that the Applicant has entered into an agreement with the North Thurston School District to mitigate the impact the plat will have on the district schools. If the agreement requires payment of mitigation fees or other actions after the final plat is recorded, then such conditions shall be noted on the final plat map.
55. The project's frontage improvements shall include public transit facilities designed and built in coordination with Intercity Transit as detailed in Exhibit 1.KK. Additionally, the Applicant shall coordinate with North Thurston Public Schools regarding the provision of and shall provide safe school bus stop locations and accommodations for students waiting for busses along the site's frontages, with the final design of bus stops and associated waiting areas to be approved by the School District.
56. Prior to final plat application for each phase, the Applicant shall submit to the Community Planning and Economic Development Department for review and approval language for the legally recorded easement establishing the permanent maintenance of the inner 10 feet of incompatible use buffer on the rear portions of all lots and tracts within each Phase that are required to be encumbered to ensure that the full depth of the 30-foot incompatible use buffer is maintained in landscaping that will satisfy the screening requirements of TCC 21.80.055(3) in perpetuity. All required easements shall be recorded at time of final plat. All required incompatible use buffer easements shall be depicted on the final plat map, and each lot encumbered by an incompatible use buffer easement shall be called out in a note on the face of the final plat by lot number.

General Plat Notes for the Final Plat Map

57. The subdivision was reviewed and approved based on standards and allowances of the McAllister Geologically Sensitive Area (MGSA), and the Planned Residential Development Chapter 20.60.
58. All development on the site shall be in substantial compliance with the approved plat. Any alteration of this proposed subdivision will require approval of a new or amended plat. The Thurston County Community Planning and Economic Development Department will determine if any proposed amendment is substantial enough to require Hearing Examiner approval

59. The Applicant shall comply with the Cultural Resource Survey. If an inadvertent discovery is found, immediately stop work and contact Thurston County Community Planning and Economic Development and the Department of Archeologic and Historic Preservation.

Decided May 9, 2022 by



Sharon A. Rice
Thurston County Hearing Examiner

Appendix A: Documents related to the Remand

Manor House Findings, Conclusions, and Decision (Denial), issued January 10, 2022

Applicant's Request for Reconsideration, dated January 20, 2022

Mark Steepy Declaration in support of Reconsideration Request, dated January 20, 2022, with attachments

Thurston County Response to Reconsideration Request, dated January 25, 2022

Reconsideration, Vacation, Remand, and Order to Reconvene Hearing, issued January 28, 2022

Appendix B: Documents related to dismissed SEPA Appeal VE 21-112651

Appeal of Administrative Decision Project No. 2020102143, submitted October 13, 2021

Order Setting Hearing and Pre-Hearing Exchange Schedule, issued October 21, 2021

October 7, 2021 letter from Bricklin Newman incorporated into appeal

Appellant's clarification of alleged errors, dated October 20, 2021

Applicant's revised proposal (withdrawing variance request), dated October 19, 2021

Applicant's Motion to Dismiss, dated October 28, 2021

Appellant's Opposition to Motion to Dismiss, dated November 4, 2021

Applicant's Reply in support of Motion to Dismiss, dated November 8, 2021

Ruling on Motion to Dismiss and Revised Scheduling Order, issued November 15, 2021

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.



Project No. _____ Appeal Sequence No.: _____

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___.