



**DICKSON FROHLICH  
PHILLIPS BURGESS  
PLLC**

HEATHER L. BURGESS | ATTORNEY | HBURGESS@DFPBLAW.COM  
DEANNA L. GONZALEZ | PARALEGAL | DGONZALEZ@DFPBLAW.COM

February 13, 2024

*Sent via email*

[sonja.cady@co.thurston.wa.us](mailto:sonja.cady@co.thurston.wa.us)

Hearing Examiner Sharon Rice  
c/o Sonja Cady, Land Use Clerk  
Thurston County  
3000 Pacific Avenue SE  
Olympia, Washington 98501

RE: **Project Name: Oak Springs Plat (the “Project”)**  
**Project No.: 2013104463**  
**Applicant’s Response to Staff Report**

Dear Hearing Examiner Rice:

This firm represents Conwell Investments, LLC (the “Applicant”) regarding the above-referenced Project.

The Applicant has reviewed the Hearing Examiner Staff Report for the February 13, 2024 Public Hearing and offers the following additional information in support of the application and in response to the Staff Report.

**A. Project Background & Procedural History**

The Applicant submitted a complete application for the preliminary plat of Oak Springs on October 18, 2013. (Att. A to Staff Report). The Project therefore vested to all zoning and land use controls in place as of October 18, 2013, with the exception of stormwater. RCW 58.17.033(1); *Snohomish Cty v. Pollution Control Hearings Board*, 187 Wash.2d 346 (2017) (en banc).

The County issued a Notice of Application for the Project on February 11, 2014, soliciting public and agency comments. (Att. W to Staff Report). Various agencies, the City of Lacey, and several members of the public provided comments in response to the Notice. (Atts. O, R, V, AA, and BB to Staff Report and Ex. 5.25).

The County’s review of the Project was initially delayed due to the need for County staff to have WDFW review and approve the Oak Habitat Assessment and related materials for the Project based on County procedures in place at the time the application was submitted. (Staff Report at 6 and Atts. S, Y, Z, BB, and CC). However, while review of Oak Springs was ongoing by WDFW and internal County departments, the County reviewed and approved the 1,037-lot preliminary plat of Oak Tree Preserve immediately adjacent to the Applicant’s property. (Proj. No. 2009103087). Traffic issues which arose during the review of the Oak Tree Preserve project (and related appeals) caused County Public Works

to conclude that several intersections along the Marvin Road corridor did not meet regulatory transportation concurrency standards.

The County first notified the Applicant of the concurrency issue by memo dated April 16, 2015, enclosing a Concurrency Review procedure memorandum from the County Engineer applicable to projects, like Oak Springs, which contributed traffic to identified Marvin Road Corridor intersections. (Ex. 5.11). The memorandum informed the Applicant that its options were as follows:

**Based on the preceding code language and since the County does not currently have secured funding for the intersection improvements (as identified in #2 above), any proposed projects that contribute additional trips to the impacted intersections must choose one of the following options if they wish to proceed:**

- 1. Place the project on hold until the County secures funding for the intersection improvements (please be aware that this does not stop any expiration clocks from other departments and the applicant will need to talk to those departments directly regarding their expirations); or**
- 2. Move forward through the approval process and the County will condition the project to construct the intersection improvements prior to receiving final approval.**

Two months later, on June 29, 2015, the Applicant received a second memorandum from the County Public Works regarding the concurrency issue. (Ex. 5.12). This memorandum outlined a “third option” which would “allow developers to purchase reserve capacity in order to move forward with their projects.” (*Id.* at 1 and Ex. 5.13 (the “Concurrency White Paper”) (emphasis added). The Concurrency White Paper identified targeted improvements through the horizon year of 2020, and then calculated a “Reserve Capacity” fee for the remaining trips – which would be charged on a “voluntary” basis separate from, and in addition to, any SEPA mitigation or impact fee which may be applicable.

The County’s “Reserve Capacity” fee determination priced the first 83 trips at \$15,000 and the next 82 trips at \$30,000, with the total determined by the number of PM peak hour trips that the Project would contribute to the corridor. (Ex. 5.12). The Oak Springs Traffic Impact Analysis identified 89 PM peak hour trips into the impacted corridor, which would have resulted in a minimum possible fee calculation for the Project as follows:

$$83 \text{ trips} \times \$15,000 + 6 \text{ trips at } \$30,000 = \underline{\underline{\$1,425,000}}$$

Of course, this fee would be significantly greater if any of the \$15,000 trips were purchased by other developers (as would ultimately occur, *see* Exs. 5.16 and 5.18). The only other alternative to achieve concurrency and move forward would have been for the the Applicant to construct the estimated \$6,200,000 of intersection improvements described in the Concurrency White Paper on its own.

After receiving the June 29, 2015 memorandum, the Applicant engaged counsel and consulted with transportation engineers to evaluate the legality of the County’s “Concurrency White Paper” program and evaluate its options. Meanwhile, the Applicant declined to pay the “voluntary” fee, choosing to have the Project remain on hold as outlined in the April 16, 2015 County notice while trying to find a path forward.

The Applicant’s initial approach was to try and find alternatives to achieve concurrency through additional analysis. To do so, the Applicant retained a second traffic engineer (DKS) to review the

original TIA and Concurrency White Paper and develop approaches by which concurrency could be achieved. The Applicant diligently continued this effort from 2016 through 2018, submitting an updated TIA, and repeatedly engaging with County officials to determine the current status of concurrency on the corridor (which relied in part on the pace of the Oak Tree Preserve development) and identify creative solutions. The County rejected every offered alternative, and so the Applicant continued to wait, while the Project remained in suspended animation for purposes of review. (Exs. 5.11-.16).

The Project remained in this involuntary concurrency “hold” when the COVID-19 pandemic began in March of 2020. Throughout 2020 and 2021, as the Oak Tree Preserve development continued pace and more and more “voluntary” fee trips were purchased under the Concurrency White Paper program, the Applicant regularly checked with County Public Works Staff on the status of the application and concurrency. The Applicant even hired yet another traffic engineer, Fehr Peers – a consulting firm which develops traffic impact fee ordinances for local governments, including Thurston County – to try and navigate a path to get the Project to a hearing - all to no avail. (Ex. 5.17). This continued through 2021. (Ex. 5.18).

Finally, on February 17, 2022 – after the Project had been on “hold” for nearly seven years – County Public Works determined that concurrency on the Marvin Road Corridor had been met, and that payment of the “voluntary” fee under the Concurrency White Paper was no longer required, as follows:

**Conclusion:**

Concurrency requirements continue to be met along the Marvin Rd Corridor as set forth in the 2014 “Marvin Rd Corridor Concurrency White Paper”. County and developer contributions towards the corridor strategy have either been fully realized or financially guaranteed. Consequently, there are no longer any limitations to developers that send forecasted vehicular trips onto Marvin Rd. As of the date of this memo, new development may proceed by following traffic mitigation requirements in County code and without need for additional voluntary mitigation or other obligations identified in the 2014 White Paper.

(Att. P to Staff Report).

Upon learning - through its own efforts, as after seven years of waiting, no notice was sent – that concurrency had at last been reached, the Applicant promptly requested that the County resume Project review, issue a SEPA determination, and have the Project set for hearing. (Ex. 5.7). It ultimately took the better part of 2022 for the County to identify a new assigned planner (Ron Buckholt) and for that new planner to begin work. (Exs. 5.7-5.9). However, when that planner also left the County in late 2022, the Project inexplicably stalled again for months. Mr. Bures ultimately assigned himself to the file, and a SEPA determination was issued several months later, on September 18, 2023. (Att. E to Staff Report).

Today’s public hearing on the Project is being held an incredible **3,770 days (or 10 years, 3 months, and 26 days)** from the date of complete application – all through no fault of the Applicant.

**B. Applicant’s Response to Staff Report**

**1. Oak Habitat**

As noted in the Staff Report, the Project contains Oregon White Oak habitat protected under the Critical Area Ordinance (Thurston County Code (“TCC”) 24.25). Following protocols in place at the time of application, the Applicant submitted a professionally prepared Oak Habitat Evaluation and Tree

Plan with the preliminary plat application (Atts. N and S to Staff Report). This, in turn, triggered a requirement for a site visit with the Project biologist, WDFW, and Thurston County staff, which did not occur until January 12, 2015. Following the site visit, the Project biologist prepared a proposed mitigation plan for the Project based on WDFW's recommendations. (Att. Z to Staff Report). WDFW reviewed the plan and provided comments to the County on March 4, 2015. (Att. BB to Staff Report).

WDFW's review of the Applicant's proposed Oak Habitat Management Plan measures was actively underway at the time the Project was placed on "hold" in April 15, 2015 due to the transportation concurrency issue detailed above. In late November 2015, as it continued to work through concurrency, the Applicant followed up with the then-assigned County planner, Tony Kantas, regarding the status of the Project, including approval of the Oak Habitat Management Plan. Emails from this time demonstrate that the WDFW reviewer, Darric Lowery, had informed Mr. Kantas that the Oak Habitat Management Plan had been approved. (Att. CC to Staff Report).

By the time the County resumed review of the Project in February 2022, the original Project biologist and all WDFW reviewers were no longer in their respective positions. To address the Oak Habitat issue, the Applicant retained Landau to review the prior reports and WDFW comments and prepare and submit a final Habitat Management Plan ("HMP") for the Project consistent with the 2015 WDFW comments and final approval. (Att. Y to Staff Report). Despite submittal of the HMP, the Staff Report did not address compliance with HMP requirements in its proposed conditions of approval. The Applicant has proposed an additional condition (Condition 81) to ensure compliance with the HMP in its proposed revised conditions of approval, which are attached at **Tab A**.

## 2. Traffic

The County required a Traffic Impact Analysis ("TIA") for the Project, which was submitted in 2013. (Att. EE to Staff Report). Following review, and in response to public comment on the Notice of Application from the adjacent Evergreen Heights subdivision, Public Works required the Applicant to complete a speed study, which was submitted on May 22, 2014. (Ex. 4).

As detailed above, the Project remained on "hold" for transportation concurrency from April 16, 2015 until February 17, 2022. After the "hold" was lifted, the Applicant's traffic engineer, Aaron Van Aken, contacted Public Works to determine what updates to the TIA may be required for the Project to go to hearing. Public Works consulted with the City of Lacey, as the Project is located in the Lacey UGA, and determined that due to trip generation volumes, only a new Trip Generation Assessment would be required, which was submitted on August 2, 2022. (Att. T to Staff Report; Ex. 5.19). The City of Lacey reviewed the original TIA as well as the updated Trip Generation Assessment and requested mitigation in the form of transportation mitigation fees and construction of frontage improvements within the Project to City standards. (Exs. 5.20 and 5.25). The Project will also pay the County's traffic impact fee under TCC 25.08.010 in effect at the time of building permit issuance, which is currently \$3,630 per single family unit (Central UGA rate), or \$323,070.00.

The Applicant notes that MDNS Condition 1 and the corresponding recommended condition of approval in the Staff Report call for payment of a lump sum traffic impact fee of \$60,148.82 to the City of Lacey prior to final plat approval unless the timing is altered by agreement of Thurston County and the City of Lacey. (Staff Report at 7 and Att. E). The Applicant does not object to this condition. However, the City's 2022 review comments as well as proposed conditions in the February 7, 2024



Public Works recommendation for preliminary plat approval call for a plat note directing payment of the mitigation fee on a per lot basis at the time of building permit, with annual escalations. (Exs. 3 and 5.20). The Applicant proposes striking the second condition calling for the plat note in its proposed revised Conditions of Approval (Tab A) due to lack of consistency with the MDNS.

### **3. School Impacts & Safe Walking Routes**

There is no indication in the record that the North Thurston School District (“NTSD”) commented on the Project application at any point during its history. However, the Project will mitigate impacts to NTSD facilities through payment of school impact fees at the time of building permit issuance as provided for in TCC 25.08.030. School impact fees for the Project are currently \$5,422 per single-family unit, or \$482,558, under the current fee schedule. (Ex. 5.23). The Project’s streets will include required sidewalks, which will in turn connect to an existing safe walking route through Evergreen Heights on 28<sup>th</sup> Way SE to Woodgrove Street SE, and then along Marvin Road until reaching the pedestrian crossing shown below to reach Evergreen Forest Elementary School.



(Google Street View Image, dated May 2023).

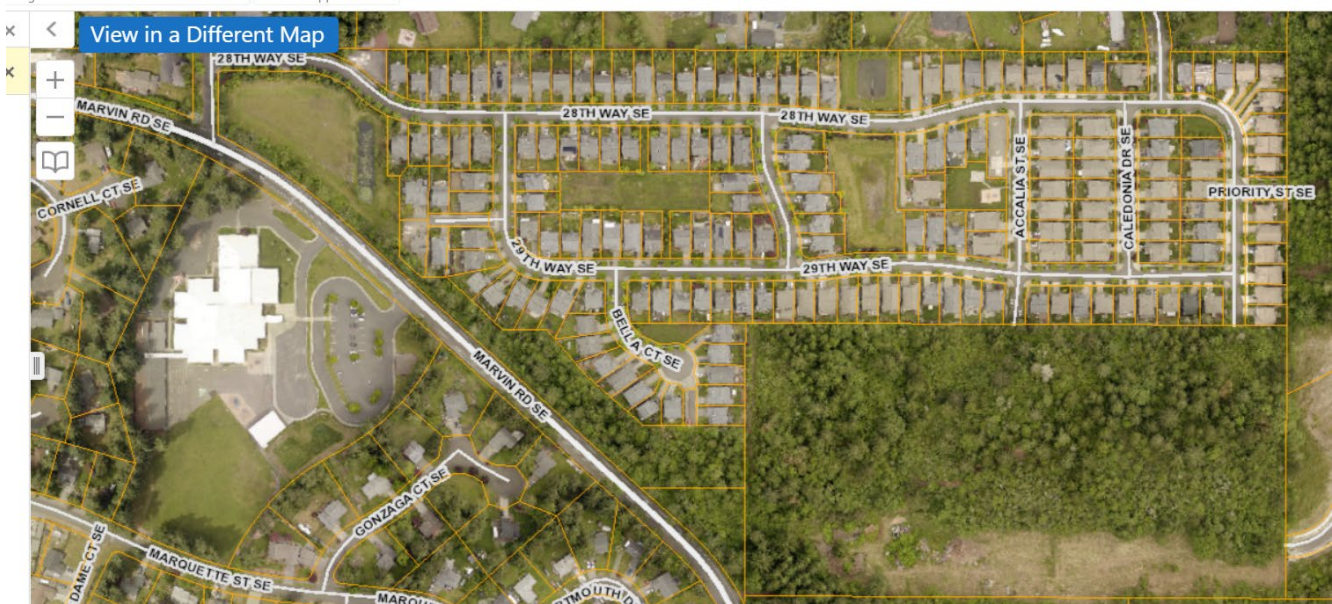
### **4. Mazama Pocket Gopher & Habitat Conservation Plan Compliance**

As described in the Staff Report, the Project is excluded from HCP compliance pursuant to TCC 17.40.020E(1)(a) reviews for Mazama pocket gopher were completed pursuant to County protocols, with no habitat identified. (Staff Report at 5). USFWS in fact issued two “good to go” letters for the Project under County protocols, first in 2014 (Att. O to Staff Report), and again in 2016 (Ex. 5.4). The Applicant completed an additional voluntary gopher review in 2018 while the Project remained on “hold” due to transportation concurrency. (Att. X to Staff Report). The Applicant had a final review done in 2022, after review of the Project resumed. (Ex. 5.5). Each of these reviews confirmed the absence of Mazama pocket gopher.

## 5. Response to Public Comments

The Project received several public comments in response to the publication of the February 11, 2014 Notice of Application, mainly from the adjacent Evergreen Heights subdivision. (Att. AA to Staff Report). Many of these comments, as well as those received prior to today's public hearing, concerned the impacts of increased traffic through the subdivision, suggesting that access should be taken instead directly to Marvin Road. (*Id.*). The County responded to public concerns by requiring the Applicant to complete a speed study (Ex. 4); while the results of that study are from 10 years ago, there have not been any material changes to the subject street or neighborhood since it was completed.

Regarding access directly to Marvin Road, the Applicant does not have any frontage on or legal access to provide a direct connection as an alternative to connecting through the existing Evergreen Heights neighborhood, which was developed to include street connections to the south serving the Applicant's Property at Accalia Street SE and 28<sup>th</sup> Way SE. The streets within Evergreen Heights were developed to required City of Lacey standards, and the Project's streets and proposed connections through and to those streets were reviewed by the City of Lacey. (Ex. 5.25).



(Thurston County GIS Mapping).

Finally, the Applicant notes that even if it had legal access, Marvin Road is classified as an arterial road. Both the County and the City impose access management, and in the County, road standards require that where a property has frontage on more than one roadway, access should be limited to the lowest volume roadway. (Thurston County Road Standards 7.03(B); City of Lacey Development Guidelines at 4B.025 (Access Management)).

## 6. Conditions of Approval

The Applicant has prepared a set of proposed revised conditions of approval attached at **Tab A** for the Hearing Examiner's consideration. The Applicant's proposed revised conditions incorporate the

Public Works recommended conditions of approval of February 7, 2024, renumber accordingly, and request the following modifications:

- Strike out verification language in Condition 21 about the STEP system. Steve Hatton, the Project's engineer, will testify at today's hearing that the "verification" work has already been completed in conjunction with a prior development, so that is no longer required. *See* Ex. 5.22.
- Add "2022" to the drainage manual reference in Condition 60, as the Project will be required to comply with current stormwater standards.
- Strike out the requested plat note under regarding payment of traffic mitigation fees to the City of Lacey (addressed above).
- Add proposed Condition 81 addressing compliance with Oak Habitat mitigation plan (addressed above).

The Applicant looks forward to the opportunity to take this long-pending Project to public hearing.

Respectfully submitted,

**DICKSON FROHLICH PHILLIPS BURGESS PLLC**



Heather L. Burgess

HLB/dlg

Attachments:

**Tab A** – Applicant's Proposed Revised Conditions of Approval

**TAB A**

**Applicant's Proposed Conditions of Approval**

## **Attachment A - Applicant's Proposed Conditions of Approval**

### **SEPA Mitigating Conditions**

1. To mitigate traffic impacts within the City of Lacey, the proponent will need to contribute \$60,148.82 to the City of Lacey per Lacey Ordinance 14.21, and paid prior to final project approval, pursuant to County Road Standards. See attached worksheet prepared by the City of Lacey for a breakdown of this mitigation amount. Timing of the contributions may be altered if approved by both the City of Lacey and Thurston County.
2. All grading and filling of land must utilize only clean fill. All other materials may be considered solid waste and permit approval may be required from your local jurisdictional health department prior to filling. All removed debris resulting from this project must be disposed of at an approved site. Contact the local jurisdictional health department or Department of Ecology for proper management of these materials.
3. If contamination is suspected, discovered, or occurs during the proposed SEPA action, testing of the potentially contaminated media must be conducted. If contamination of soil or groundwater is readily apparent, or is revealed by testing, Ecology must be notified. Contact the Environmental Report Tracking System Coordinator for the southwest Regional Office (SWRO) at (360)-407-6300. For assistance and information about subsequent cleanup and to identify the type of testing that will be required, contact Thomas Middleton with the SWRO, Toxics Cleanup Program at the phone number provided below.
4. Erosion control measures must be in place prior to any clearing, grading, or construction. These control measures must be effective to prevent stormwater runoff from carrying soil and other pollutants into surface waters or storm drains that lead to waters of the state. Sand, silt, clay particles, and soil will damage aquatic habitat and are considered to be pollutants. Any discharge of sediment-laden runoff or other pollutants to waters of the state is in violation of Chapter 90.48 RCW, Water Pollution Control, and WAC 173-201A. Water Quality Standards for Surface Waters of the State of Washington and is subject to enforcement action.

### Construction Stormwater General Permit

The following construction activities require coverage under the Construction Stormwater General Permit:

1. Clearing, grading and/or excavation that results in the disturbance of one or more acres **and** discharges stormwater to surface waters of the State; and
2. Clearing, grading and/or excavation on sites smaller than one acre that are a part of a larger common plan of development or sale, if the common plan of development or sale will ultimately disturb one acre or more **and** discharge stormwater to surface waters of the State.
3. Any size construction activity discharging stormwater to waters of the State that Ecology:



- a) Determines to be a significant contributor of pollutants to waters of the State of Washington.
- b) Reasonably expects to cause a violation of any water quality standard

If there are known soil/ground water contaminants present on-site, additional information (including but not limited to: temporary erosion and sediment control plans; stormwater pollution prevention plan; list of known contaminants with concentrations and depths found; a site map depicting the sample location(s); and additional studies/reports regarding contaminant(s)) will be required to be submitted.

Additionally, sites that discharge to segments of waterbodies listed as impaired by the State of Washington under Section 303(d) of the Clean Water Act for turbidity, fine sediment, high pH, or phosphorous, or to waterbodies covered by a TMDL may need to meet additional sampling and record keeping requirements. See condition S8 of the Construction Stormwater General Permit for a description of these requirements.

#### **Environmental Health Conditions**

5. City of Lacey sanitary sewer must be extended to and through the project and written confirmation of final sewer extension approval from the City of Lacey must be provided to this office **prior to final plat approval**.
6. City of Lacey water service must be extended to and through this project and written confirmation of final water extension approval from the City of Lacey must be provided to this office **prior to final plat approval**.
7. An Integrated Pest Management Plan (IPMP) has been developed for the homeowners of this development. **Prior to final plat approval** a proposal for the method of distribution for the IPMP to future property owners must be submitted to this office. The method of distribution must be accepted by this office prior to final plat approval. (Generally, this is accomplished by including the IPMP into the subdivision covenants).
8. **Prior to final plat approval** the existing well on this property must be decommissioned by a licensed well driller per Washington State Department of Ecology standards. Copies of the well drillers' decommissioning reports (well logs) must be submitted to this office.
9. **Prior to final plat approval** the existing on-site sewage system on this property must be abandoned per Article IV of the Thurston County Sanitary Code. An abandonment permit is required and all abandonment records must be submitted to this office.

#### **Public Works Conditions – City of Lacey**

##### **Specific Water Improvements:**

10. Water mains shall be extended to provide sufficient domestic and fire protection requirements (The minimum main size shall be 8 inch in diameter) shall be installed for

this project by the developer. The water main shall be extended to the property to the South. Also, due to there being two pressure zones in the area, individual pressure reducing valves may be required for each water service.

**General Water Improvements:**

11. Existing wells with associated water rights may remain for irrigation purposes. Wells without water rights shall be decommissioned per Washington State Department of Ecology standards. If a well is to be used for irrigation, a Reduced Pressure Backflow Assembly (RPBA) is required and shall be installed as premise isolation at the public water supply service connection. (DG&PWS, Water, 6.120 E.)
12. For Irrigation lines located in the right-of-way, the following note shall be placed on the plat and is a condition of approval: "The homeowner's association is responsible for maintaining and locating all irrigation lines located in the public right-of-way. In the absence of a homeowner's association, the property owners adjacent to the public right-of-way shall be responsible for maintaining and locating all irrigation lines located within the right-of-way adjacent to their property". (DG&PWS, Water, Irrigation 6.210)
13. In addition to all Federal and State requirements, water system improvements shall meet the requirements of the current City of Lacey City of Lacey Development Guidelines and Public Works Standards Manual, the Coordinated Water System Plan (CWSP), Department of Health (DOH), City of Lacey Water System Plan, AWWA, Department of Ecology, Thurston County Environmental Health and City of Lacey Fire Code Official's standards. Actual main size, loop closures, and possible off-site improvements including the number and location of fire hydrants, will depend on the fire flows required and available to the site. (DG&PWS, Water 6.010)
14. Show all adjacent wells within 100-feet of the proposed plat with their protective radii (this will assure the proposed development will not impact any wells) (DG&PWS, Subdivisions and Short Plats, Chapter 2 – plat checklist). If site improvements encroach on existing well radii, provisions shall be made to assure wells are properly protected.
15. Extend water mains throughout the project to satisfy City of Lacey Water Comprehensive Plan requirements. Also, extend water mains throughout the site to assure fire, water quality and domestic requirements can be satisfied. Water mains shall be extended on North or East sides of roadways or drive aisles six feet off the centerline. (DG&PWS, Water 6.020)
16. Unless approved by the City of Lacey, "deadend" water main cannot be created with this project (DG&PWS, Water 6.020)
17. Each building shall be individually metered. A domestic water service shall be provided for each building (if duplexes are utilized each side of the duplex shall be metered). (DG&PWS 6.120 F and Appendix P)



18. To assure adequate water is present for your project. Modeling of the water system shall occur. Please contact Brandon McAllister (360.413.4386) to coordinate the fire flow modeling.
19. An irrigation meter with a Double Check Valve Assembly backflow prevention device shall be provided for all landscaped areas. (DG&PWS, Water 6.120 F)
20. The builder/applicant/owner is required to purchase each water meter prior to the issuance of each building permit. (DG&PWS Water 6.121)

**Specific Sewer Improvements:**

21. ~~Verification that sewer capacity exists in the existing mains shall be confirmed prior to civil plan approval. If capacity does not exist, sewer mains in conformance with the City of Lacey Sewer Comprehensive Plan shall be extended to the site to provide sewer service to this project by the developer.~~ This site shall be served with individual S.T.E.P. systems for each unit. Appropriately sized sewer mains internal to the plat to support the plat shall also be installed by the developer.

**General Sewer Improvements:**

22. All existing on-site septic tanks and drainfields shall be removed per Department of Ecology and Thurston County Department of Health.
23. All existing and proposed structures shall be connected to sanitary sewer. (DG&PWS, Sewer 7A.010) Public mains with associated appurtenances shall be installed to serve the proposed project with sewer.
24. With the exception of tracts or parcels not intended for buildings, S.T.E.P. service boxes shall be provided to each parcel created with the plat. Sewer main extensions shall be located 6-feet off the centerline of the street/drive area on the South or West side. (DG&PWS, Sewer 7A.010)
25. Adequate room for each S.T.E.P. system meeting all City of Lacey S.T.E.P. requirements shall be provided. S.T.E.P. systems shall not be located within driveway areas or other areas that will be driven upon.
26. In addition to all Federal and State requirements, sanitary sewer improvements associated with this project shall comply with the current City of Lacey Development Guidelines and Public Works Standards Manual, 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. (DG&PWS, Sewer 7A.010 and Subdivisions and Short Plat 2- 21).

27. Please include the following S.T.E.P easement language on the plat document:

**S.T.E.P. SYSTEM PLAT EASEMENT PROVISIONS**

A PERPETUAL EASEMENT HEREBY RESERVED FOR AND GRANTED TO THE CITY OF LACEY, ITS SUCCESSORS AND ASSIGNS, FOR OPERATION, MAINTENANCE, AND REPAIR OF ANY OR ALL PORTIONS OF THE SEPTIC TANK EFFLUENT PUMPS (S.T.E.P.) SYSTEM OR GRINDER SYSTEM INCLUDING BUT NOT RESTRICTED TO: SEPTIC TANKS, PUMP CHAMBERS, PRESSURE/GRAVITY SEWER CONNECTION LINES AND PUMP STATUS PANEL, OVER, UNDER AND THROUGH THE LAND HEREBY PLATTED. THE PURPOSE OF THE EASEMENT AS TO PROVIDE ACCESS FOR CITY OFFICERS AND EMPLOYEES TO THE CITY OWNED PORTION OF THE S.T.E.P. OR GRINDER SANITARY SEWER SYSTEMS. THE WIDTH OF THE EASEMENT HEREIN RESERVED SHALL BE FIVE FEET EACH SIDE OF PIPE AND ELECTRICAL LINES AS CONSTRUCTED. THE WIDTH OF THE TANK EASEMENT SHALL EXTEND FIVE FEET BEYOND THE EDGES OF THE TANK. THE OWNER SHALL MAINTAIN AND IS RESPONSIBLE FOR THE BUILDING LATERAL CONNECTING THE TANK TO THE BUILDING PLUMBING AND INLET TO THE TANK CHAMBER. THE CITY OF LACEY SHALL HAVE THE RIGHT TO TEMPORARILY UTILIZE SUCH AREA BEYOND THE EASEMENT AREA DESCRIBED ABOVE THAT IS NECESSARY FOR THE OPERATION, MAINTENANCE AND REPAIR ACTIVITIES ON THE S.T.E.P OR GRINDER SYSTEM.

IT IS POSSIBLE THAT LANDSCAPING WITHIN THE ABOVE EASEMENT RIGHT-OF-WAY MAY BE DAMAGED DURING THE PERFORMANCE OF OPERATION AND MAINTENANCE ACTIVITIES. THE OWNER WAIVES ANY CLAIM AGAINST THE CITY FOR DAMAGE TO SAID ITEMS IN THE CASE WHERE WORK BY THE CITY IS DONE IN A REASONABLE MANNER. THE OWNER ALSO WAIVES ANY CLAIM AGAINST THE CITY FOR DAMAGES GENERALLY WHICH ARISE FROM "ACTS OF GOD" OR OF THIRD PARTIES NOT INVOLVING FAULT BY THE CITY OF LACEY.

THIS EASEMENT SHALL BE CONSIDERED AN ENCUMBRANCE WHICH TOUCHES AND CONCERNS THE LAND ABOVE DESCRIBED, AND BINDS OWNERS, TRANSFEREES, DONEES, SUCCESSORS AND ASSIGNEES IN INTEREST IN THE SAME MANNER AS IT BINDS OWNERS HEREIN.

NOTE: THE ABOVE EASEMENT PROVISIONS SHALL BE SHOWN ON THE FACE OF THE FINAL PLAT, VERBATIM. LETTERING SHALL NOT BE LESS THAN 0.13 (1/8) INCH IN HEIGHT.

**Specific Stormwater Improvements:**

28. **The City defers to Thurston County for review, approval and construction of stormwater elements of the project. With the civil drawing plan submittal sheets provided to the City, stormwater sheets shall be included for reference only. City approval blocks for stormwater sheets shall be removed.**

**Specific Transportation Improvements:**

29. At a minimum, the roads associated with this development shall be Minor Local Residential roadways.

**General Transportation Improvements:**

30. In addition to all Federal and State requirements street lighting requirements, street lighting levels shall comply with current City of Lacey Development Guidelines and Public Works Standards requirements for roadways and intersections. To comply with these standards and assure street lighting is in conformance with these standards, additional street lighting may be required for all streets adjacent to this project. All street lighting designs shall be prepared by an engineering firm capable of performing such work. (DG&PWS, Transportation, Illumination 4E.010)
31. Until Annexation occurs, maintenance, replacement and operation costs for street lighting shall be the responsibility of the homeowner's association until annexation occurs. In the absence of a homeowner's association, the property owners adjacent to the public right-of-way shall be responsible for maintaining and operational costs of the street lighting. After annexation, the City of Lacey will inspect the existing street lighting and require any needed repairs. After repairs have been made and approved, the City of Lacey will take over maintenance and operation responsibilities. A note stating this shall be included on the final plat map.
32. Fiber optic conduit shall be installed and conform to the standards and requirements as set forth in Chapter 4 (Transportation) from the Development Guidelines & Public Works Standards (DG & PWS, Transportation 4E.035).
33. Access shall be provided to the property as determined and approved by the City. All access points shall meet minimum access spacing, minimum corner clearance, sight distance and minimum or maximum width requirements as outlined in the Development Guidelines & Public Works standards. (DG & PWS, Transportation 4B.025)
34. Traffic mitigations as determined by the Traffic Impact Analysis are required. Conditions of Lacey Municipal Code 14.21 shall be satisfied.
35. Please show all proposed and existing driveways associated with the plat. (DG&PWS Subdivisions and Short Plat 2-21).
36. Minimum intersection curb radii and centerline radius requirements must be satisfied. Please label all radii on the final plat (DG&PWS 4B.020).
37. All public streets within the City and the City's UGA boundary will be planted with trees to create a distinct and pleasant character for those roadways. The street trees located in the Development Guidelines shall be required in or along the public Right-of-Way, including medians. (DG&PWS, Transportation 4G.100).

#### **General Surveying Requirements:**

38. Utility easements are required for all mains, water and sewer located on private property. Easements shall include fire hydrants, water meters, sewer improvements and future extensions of mains to adjacent properties. Easements and stub outs shall be provided to serve adjoining properties as determined by the City. Rather than being designated as water or sewer, all easements shall be identified as "utility" easements on the civil drawings and in the easement document. Specific requirements will be determined at the of plan review. All easements shall be prepared by a licensed land surveyor and submitted prior to release of approved civil drawings (DG&PWS Chapter 3.110).
39. Landscaping within easement areas shall be limited to shrubs and other low growing vegetation without major root systems. Trees are prohibited within easement areas.
40. The City of Lacey Coordinate System is a ground scale coordinate system derived from the Washington Coordinate System, NAD 83/91. Units are expressed in feet. Data can be obtained from Lacey Public Works Department. Civil drawings shall be submitted utilizing the City of Lacey Coordinate System. (DG&PWS 3.025).
41. City of Lacey Vertical Datum has elevations referenced to the National Geodetic Vertical Datum of 1929 (NGVD29). Units are expressed in feet. A benchmark listing can be obtained from Lacey Public Works Department. Civil drawings shall be submitted utilizing the City of Lacey Vertical Datum. (DG&PWS 3.025).

**Civil Engineering drawings submitted the City of Lacey must be on National Geodetic Vertical Datum 1929 (NGVD29). Civil drawings not on this datum will not be accepted and routed for review.**

42. Immediately adjacent to the public Right of Way a 10-foot joint utility easement area shall be dedicated to accommodate the installation of private and public utilities (2017 Development Guidelines and Public Works Standards Roadway details).

#### **Other Requirements:**

43. All improvements shall satisfy City of Lacey Development Guideline Standards in place at the time complete application is obtained (Complete application is determined by the City of Lacey Community Development Department). (LMC).
44. As a condition of utility service, prior to receiving civil drawing approval, a power of attorney for annexation for your property shall be submitted to the City of Lacey.
45. All Public Works improvements must be designed by an engineer licensed in the State of Washington and submitted to the City of Lacey Public Works Department for review and approval. (DGPWS 3.040).
46. Prior to submitting civil drawings for review, Land Use Approval must be obtained.



47. All structures associated with this site shall be connected to City of Lacey utilities (DG&PWS 6.010 and 7A.010).
48. Prior to civil drawing approval, one paper set of drawings along with a PDF copy of the drainage report and civil drawings shall be submitted for all approved final plans. (DG&PWS Chapter 3.040.B).
49. Prior to final Public Works Construction approval, "as-built" bonded paper drawings along with the revised civil drawings in AutoCAD and PDF formats shall be submitted for all approved final plans. (DG&PWS Chapter 3.040, J)
50. City of Lacey civil drawing approval will not be issued until all paperwork required for the project is submitted and approved.
51. Final plat approval will not be issued until all improvements (water, sewer, and street lighting) shown on the approved civil drawings are installed by the applicant and approved by the City. (DG&PWS 4B.080)
52. A 20 percent maintenance bond or financial guarantee of the engineer's estimate or approved bid estimate is required for a period of 24 months upon construction completion and approval of Public Works improvements. The financial guarantee may be released after 18 months if all conditions of approval have been satisfied. The financial guarantee applies to sewer, water, and street lighting improvements (LMC 14.20.025).
53. **In addition to the civil drawings submitted to Thurston County, the following civil submittal shall be submitted directly to the City of Lacey:** The civil review application and the completed, signed and stamped checklist from Chapter 3 of the Development Guidelines, three sets of 24" x 36" civil drawings (all civil elements to assure conflicts are not being created), two drainage reports and one electronic copy of the civil drawings (PDF format). These drawings shall be submitted directly to the City of Lacey Public Works Department. **Drawings submitted to Thurston County or other City of Lacey departments will not satisfy this requirement.** (DG&PWS 3.040, B)
54. The Homeowner's Association shall be responsible for maintaining the planter strip and street trees (weeding, irrigating, mowing, etc.) in a healthy and growing manner in perpetuity. If the planter strip and or trees are being maintained by another group or organization, then a maintenance agreement (or adequate documentation) that verifies the planter strip and/or trees are being (and will continue to be) maintained shall be submitted to the City for review. (Development Guidelines & Public Works Standards, Transportation 4G.100D).
- 54.55. A Bill of Sale for water and sewer improvements being installed with this project is a requirement for approval. Prior to Final Public Works approval of the project, Bill of Sale documents shall be submitted to and approved by the City.

## **Public Works Conditions – Thurston County**

### **ROADS**

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

### **TRAFFIC CONTROL DEVICES**

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

### **DRAINAGE**

- 5.60.** The storm water management system shall conform to the 2022 Drainage Design & Erosion Control Manual.
- 6.61.** All drainage facilities outside of the County right-of-way shall remain private and be maintained by the developer, owner and/or the property owners association.
- 7.62.** Storm water runoff shall be controlled through all phases of the project by facilities designed to control the quality and quantity of discharges and shall not alter nor impact any existing drainage or other properties.
- 8.63.** Because proper landscaping is vital to the performance of the stormwater system, the Landscape Plan (if required) shall be signed/sealed by a WA licensed civil engineer (preferably the engineer who designed the stormwater system).

### **UTILITIES**

- 9.64.** The proposed water and sewer system shall be designed in accordance with the standards and specification of the respective utility purveyor. All water and sewer plans are subject to review and acceptance by the respective utility purveyor.
- 10.65.** Proposed utility work within the Thurston County Right of Way shall conform to the Road Standards and Chapter 13.56 Thurston County Code. These standards do not address

specific city design requirements but rather only items such as restoration of the County right of way and traffic control.

- a. Placement of utilities within the County right of way will require a Franchise Agreement with Thurston County pursuant to Title 13.56 TCC. This agreement shall be executed with Thurston County prior to final approval.
- b. Please note all utilities placed parallel to and within the pavement structure are required to rebuild a minimum of half the road, to include grinding and replacement of a minimum of 0.17' of asphalt concrete pavement.

#### **RIGHT-OF-WAY & SURVEY**

- ~~11-66.~~ Permanent survey control need to be placed to establish all public street centerlines, intersections, angle points, curves, subdivision boundaries and other
- ~~12-67.~~ Permanent survey control monuments shall be installed in accordance provided by the Thurston County Public Works – Survey Division can be reached at 360-867-2378.

davissa  
2009-11-10 23:33:00  
-----  
ENTER DATE OF MDNS

#### **TRAFFIC**

- ~~13-68.~~ Payment of the off-site traffic mitigation required in the 9/13/23 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**

- ~~14-69.~~ No work shall take place until a construction permit has been issued by Thurston County Public Works – Development Review Section.
- ~~15-70.~~ 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.
- ~~16-71.~~ 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.
- ~~17-72.~~ When all construction/improvements have been completed, contact the Thurston County Public Works – Development Review Section for a final inspection.
- ~~18-73.~~ 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**

**19.74.** Once the planning department has issued the official preliminary 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.

**20.75.** PRIOR to construction, the applicant shall:

- a. Pay outstanding construction review and inspection fees\*
- b. Receive an erosion and sediment control permit
- c. Have the erosion and sediment control inspected and accepted
- d. Receive a construction permit
- e. Schedule a pre-construction conference with county staff.

\* The current fee schedule can be found online at Thurston County Permit Assistance Center webpage or the Thurston County Public Works – Development Review Section by phone at (360) 867-2050 or by e-mail at [devrev\\_tech@co.thurston.wa.us](mailto:devrev_tech@co.thurston.wa.us).

#### **GENERAL INFORMATION**

##### **FINAL REVIEW**

**21.76.** 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.

22.77. 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).

a.b. The Homeowner's Association is responsible for maintenance of alleys and private road areas within the subdivision. Maintenance not only includes road surfaces but also stormwater systems supporting these areas.

b.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.

e.d. If seasonal drainage crosses subject property, no filling or disruption of the natural flow shall be permitted.

d.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.

e.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.

f. ~~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.~~

g. Development of the lots within this development is subject to the payment of impact fees required pursuant to TCC Title 25 at the time of building permit issuance or at such other time as authorized by law.

h. 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. \_\_\_\_\_.

**Commented [HB1]:** This should be removed because it is inconsistent with Condition 1 from the MDNS, which requires a lump sum payment.

- i. 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 \_\_\_\_\_.
- j. The area or areas shown on the plat as "Stormwater Easement" shall remain unimproved at all times and be maintained by the homeowners association or Owners of the lot or lots that are traversed by, or adjacent to the said Stormwater Easement. No obstruction to the natural flow of storm water shall be permitted by construction of any type within the Stormwater Easement unless approved by the County. Each property owner shall keep the portion of the Stormwater Easement traversing or adjacent to his property clean and free of debris, silt, and any materials that would result in unsanitary conditions, or obstruct the flow of water. The County shall have the right of ingress and egress for the purpose of inspection and supervision of maintenance work by the property owners.
- k. Maintenance of the landscaping, trees, sidewalk, planter strips and roadside drainage and stormwater facilities such as ditches, swales, bioretention 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, irrigation 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

- a. 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.).

~~1.b.~~ Please clearly label all public and private roads.

~~56.~~

**Planning Conditions**

~~57.78.~~ Street addresses, lot size, and dimensions for each lot shall be shown on the final map.



58.79. 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, improvement 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 for review and approval. The final landscape plan shall include the design of the active recreation components to the open space i.e., play equipment, sports court, and irrigation. All landscaping shall be in compliance with the Thurston County Zoning Ordinance, ~~and~~ the Thurston County Subdivision Ordinance.

80. Prior to final plat approval, the applicant shall submit a maintenance assurance device that is equal at least one hundred twenty percent of the replacement cost of landscaping materials and shall be utilized by the county to perform any necessary maintenance, and to reimburse the county for documented administrative costs associated with action on the device. The maintenance assurance shall be for a minimum period of two years from the completion of planting; however, for Type I landscaping, the period shall be three years.

81. The project contains Oregon white oak habitat areas regulated under TCC 24.25. Project development and the final landscape plan shall comply with the requirements of the Landau Associates, Inc. Oak Habitat Management Plan dated May 31, 2023, including all planting, monitoring, and maintenance requirements. The Oak Habitat Management Plan shall be referenced on the face of the final plat and recorded with the subdivision.

59.