



COUNTY COMMISSIONERS

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HEARING EXAMINER

Creating Solutions for Our Future

**BEFORE THE HEARING EXAMINER
FOR THURSTON COUNTY**

In the Matter of the Application of)	NO. 2022105125
)	
SSHI LLC dba D.R. Horton)	FINDINGS, CONCLUSIONS,
)	AND DECISIONS
)	
For a Preliminary Plat and)	
<u>Forest Land Conversion</u>)	

SUMMARY OF DECISIONS

The request for a preliminary plat and forest land conversion to subdivide 36.22 acres into 182 single-family residential lots is **GRANTED** subject to conditions.

SUMMARY OF RECORD

Request:

SSHI LLC doing business as D.R. Horton requested a preliminary plat to subdivide 36.22 acres into 182 single-family residential lots to be developed with a mixture of detached single-family residences and attached fee simple townhouse residences, and a forest land conversion to harvest approximately 160,000 board feet of timber. The subject property is addressed as 2402 Marvin Road SE within the Lacey Urban Growth Area of Thurston County.

Hearing Date:

The Thurston County Hearing Examiner conducted a virtual open record public hearing on the request on April 9, 2024. The record was held open through April 11, 2024 to allow any members of the public having difficulty joining the virtual hearing to submit written comments, with an additional two days scheduled for responses by the parties. No post-hearing public comment was submitted, and the record closed on April 11, 2024.

On April 26, 2024, the applications were remanded to the Applicant for revision addressing the required incompatible use buffer. The remand offered the Applicant the following options: revise the plat layout to provide the required buffer depth; apply for a Type III variance from the

buffer width requirement; or appeal the remand as a denial. On May 1, 2024, the Examiner received a revised proposal from the Applicant responding to the remand requirements and requesting that a final decision be issued as soon as possible. By post-hearing order, the Examiner requested that Planning Staff respond to the revised proposal by May 6th, and offered the Applicant a final comment by May 7th, stating that if these were timely submitted the final decision would issue May 8, 2024.

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

Testimony:

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

Brett Bures, Development Services Manager, Thurston County Community Planning & Economic Development Department

Arthur Saint, Civil Engineer, Thurston County Public Works Department

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

Jeff Pantier, PLS, Hatton Godat Pantier, Applicant Representative

Chloe McIntire, PE, Hatton Godat Pantier

Raelyn Hulquist, Entitlements Manager, D.R. Horton

Clint Lucas, Division Vice President, D.R. Horton

Chris Wambaugh, Senior Biologist, EnviroVector

Kimberly Goetz

Becky Lindauer

Cathy Cook

Exhibits:

The following exhibits were admitted in the record through the virtual open record hearing process:

- Exhibit 1 Community Planning and Economic Development Report, including the following attachments:
- A. Master Application, submitted October 6, 2022
 - B. Forest Land Conversion Application and Map, submitted October 6, 2022
 - C. Division of Land Application, submitted October 6, 2022
 - D. SEPA Cover Letter, submitted October 6, 2022
 - E. SEPA Checklist, submitted October 6, 2022
 - F. Preliminary Plat Map, submitted July 11, 2023

- G. Civil Plan Set, submitted July 11, 2023
- H. Critical Areas Report, submitted July 11, 2023
- I. Cultural Resources Survey, submitted July 11, 2023
- J. Department of Archaeology and Historic Preservation Review Letter, submitted August 2, 2023
- K. Oregon White Oak Habitat Management Plan, submitted July 11, 2023
- L. Integrated Pest Management Plan, submitted July 11, 2023
- M. Drainage Report, submitted July 11, 2023
- N. Arsenic and Lead Soil Sampling and Testing Report, dated May 24, 2023
- O. SEPA Mitigated Determination of Non-Significance, issued December 1, 2023
- P. Stormwater Pollution Prevention Plan (SWPPP), submitted July 11, 2023
- Q. Maintenance Plan, submitted July 11, 2023
- R. Traffic Impact Analysis, submitted July 11, 2023
- S. Public Works Preliminary Approval Letter, dated February 13, 2024
- T. Environmental Health Preliminary Approval Letter, dated October 20, 2023
- U. Squaxin Island Tribe Comments, dated December 11, 2023
- V. Citizen Comment, dated December 15, 2023
- W. Department of Ecology Comments, dated December 13, 2022
- X. Notice of Application, issued November 23, 2022
- Y. Affidavit of Public Notice Posting
- Z. Legal Notice, issued March 29, 2024
- AA. City of Lacey Comments, dated November 1, 2022
- Exhibit 2a Comment from Cathy Cook, received April 2, 2024
- Exhibit 2b Comment from Becky Lindauer, received April 8, 2024
- Exhibit 3 Groundwater Monitoring Report, by Reilly Group, dated August 16, 2022
- Exhibit 4 Updated Geotech Report - Soil Characteristics and Slopes, dated January 19, 2024
- Exhibit 5 Sight Distance Analysis, Dan McKinney, dated April 5, 2024
- Exhibit 6 Prairie Plant Survey, dated June 11, 2022
- Exhibit 7 Mazama Pocket Gopher Screening Report, dated July 14, 2022
- Exhibit 8 Department of Ecology Letter, dated November 11, 2023
- Exhibit 9 Preliminary Landscape Plan, dated September 19, 2022

- Exhibit 10 Sleater Landing Decision, dated December 14, 2022
- Exhibit 11 Colored Plat Map (Illustrative Only), dated April 1, 2024
- Exhibit 12 2544 Marvin Road SE Plat, dated August 17, 2023
- Exhibit 13 The Enclave at Oaktree Landslide Hazard Analysis, dated March 7, 2023
- Exhibit 14 Written testimony from Kimberly Goetz, dated April 9, 2024
- Exhibit 15 Project Narrative
- Exhibit 16 Revised proposed plat layout providing a 30-foot incompatible use buffer depth, submitted in response to remand (letter and plat map), dated April 30, 2024
- Exhibit 17 Planning Staff response to the revised plan layout, dated May 6, 2024
- Exhibit 18 Applicant final comment, dated May 7, 2024

Also included in the record of these proceedings are:

- Findings, Conclusions, and Remand Decision issued April 26, 2024 following the public hearing
- Post-Hearing Order issued May 1, 2024 (allowing for County response to Exhibit 16 and for Applicant reply to County response)

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

FINDINGS

1. SSHI LLC doing business as D.R. Horton (Applicant) requested a preliminary plat to subdivide 36.22 acres into 181 single-family residential lots to be developed with a mixture of detached and townhouse residences, and a forest land conversion to harvest approximately 160,000 board feet of timber. The subject property is located at 2402 Marvin Road SE within the Lacey Urban Growth Area of Thurston County.¹ Note that at time of hearing, the proposal was for 182 lots, but that following remand, the Applicant reduced the requested number of lots to 181. *Exhibits 1.A, 1.B, 1.C, and 16.*²
2. The subject property is undeveloped. Surrounding land uses include the McAllister Meadows subdivision to the north, an American Legion post to the west, a church and a single-family residence to the southwest, and single-family residences to the south and east. *Exhibit 1.G.*

¹ The legal description of the subject property is: portions of Sections 23 and 26, Township 18 North, Range 1 West, W.M.; also known as Tax Parcel Numbers 1182340100, 11826110000, and 11826110300. *Exhibits 1 and 1.G.*

² Note, the project as finally proposed is shown and discussed in Exhibit 16. The civil plan set is no longer consistent with the final proposal and would need to be updated. Exhibit 1.F is no longer the proposed play layout.

3. The subject property is within the Lacey Urban Growth Area (UGA) and is underlain by two zoning designations. The northern half of the subject property (18.64 acres, or 11.95 acres net of undevelopable critical areas) is zoned Low Density Residential (LD 3-6). The southern half of the subject property (17.58 acres) is zoned Moderate Density Residential (MD 6-12). *Exhibits 1 and 1.G.* Detached single-family residences and townhouses are permitted uses in both zones, provided the density requirements of each zone are satisfied. *Thurston County Code (TCC) 21.61.030.* For the LD 3-6 zoned portion of the property, the minimum required density is three dwelling units per acre and the maximum allowed density is six dwelling units per acre. *TCC 21.13.010 and .020.* Thirty-eight of the proposed lots would be within the LD 3-6 zone, for a density of 3.18 dwelling units per acre based on net area. All of these lots would be developed with detached single-family residences. For the MD 6-12 zone, the minimum required density is six dwelling units per acre and the maximum density is twelve dwelling units per acre. *TCC 21.15.020.* One hundred and forty-three of the proposed lots would be within the MD 6-12 zone, for a density of 8.13 dwelling units per acre. Fifty-one of the lots would be developed with townhouses, and the remainder would be developed with detached residences. The overall project density would be 6.08 dwelling units per acre. *Exhibits 1.G, 11, 15, and 16.*
4. The project would be developed in up to three phases. As described in the project narrative, Division 1 would include 59 single-family detached lots and 24 townhouse lots in the northern portion of the property, Division 2 would include 27 single-family detached lots and 27 townhouse lots in the central portion of the property, and Division 3 would include the remaining single-family detached lots in the southern portion of the property. *Exhibits 11, 15, and 16.* It is possible that Divisions 2 and 3 would be simultaneously built. *Jeff Pantier Testimony.*
5. The dimensional standards for lots within the LD 3-6 zone include a minimum lot area of 4,500 square feet and a minimum lot width of 40 feet where alleys are utilized, or a minimum lot area of 5,000 square feet and a minimum lot width of 50 feet where alleys are not utilized. *TCC 21.15.050.* Within the MD 6-12 zone, the minimum required lot area is 3,000 square feet and the minimum lot width is 30 feet where alleys are utilized, or a minimum lot area of 4,000 square feet and a minimum lot width of 40 feet where alleys are not utilized. *TCC 21.15.050.* For townhouses in both zones, the minimum lot area is 1,600 square feet and the minimum lot width is 20 feet. *TCC 21.61.040.C.*
6. Because no alleys are proposed for access to the residences, the larger dimensional standards of the zones apply. All single-family detached lots in the LD 3-6 zone would be at least 50 feet wide and 5,000 square feet in area, and all single-family detached lots in the MD 6-12 zone would be a minimum of 40 feet wide and 4,000 square feet in area. The townhouse lots would be a minimum of 24 feet wide and 2,400 square feet in area, exceeding the minimum requirements established in *TCC 21.61.040.C.* *Exhibit 16.*
7. The proposed townhouses would be grouped in buildings of four units, with the exception of Lots 104, 105, and 106, which would be developed as a triplex. Townhouse developments of more than four units are subject to the design review requirements of

TCC 21.70. The design review process would occur prior to building permit issuance. *TCC 21.61.050; Exhibit 16; Brett Bures Testimony.*

8. Access to the subdivision would be from Marvin Road SE to the west, with the subdivision entrance aligning with existing Terri Court SE, and from Olivia Street SE to the north. The internal street system would stub at exterior property lines in three places to allow for future street connections to parcels to the southwest and southeast. *Exhibits 12 and 16.*
9. Frontage improvements would be provided along Marvin Road SE to arterial street standards, including curb, gutter, sidewalk and planter strip. A 19-foot width of right-of-way would be dedicated along the property frontage. *Exhibit 1.G.*
10. Access to all lots within the plat would be from an internal network of public streets designed to City of Lacey standards. No lots would take direct access from Marvin Road SE. All internal streets would be improved with sidewalks and planter strips. *Exhibit 1.G.*
11. Based on the trip generation rates contained in the Institute of Transportation Engineer's publication *Trip Generation*, 11th Edition, the proposed subdivision is expected to add 152 PM peak hour trips to the local street system. This traffic would not cause the level of service (LOS) of any of the studied intersections (including Marvin/Steilacoom, Union Mills/Pacific, Marvin/Pacific, Marvin/Union Mills, Marvin/22nd, Marvin/25th, and Marvin/Mullen) to fall below the applicable LOS standard. All intersections, including the new access from Marvin Road, would operate at LOS D or better. *Exhibit 1.R.*
12. Pursuant to TCC Table 21T-13, each single-family unit must provide a minimum of two off-street vehicle parking stalls. *TCC Title 21, Table 21T-13.* The proposed dwelling units would have garages for parking. Compliance with the parking standard would be confirmed at building permit issuance. *Exhibit 15.*
13. Pursuant to TCC 21.80.055(1)(b), proposed subdivision lots that are smaller than 50% of the size of the contiguous residential lots are defined as an incompatible use. When the shared property line is at least 20 feet in length, incompatibility is required to be screened by a 30-foot wide vegetated buffer planted with predominantly native and drought tolerant species that provides a very dense sight barrier and physical buffer to significantly separate conflicting uses. A combination of trees, shrubs, berms, fences, and related design features may be selected, provided that the result is sight-obscuring from adjoining properties. Retaining mature vegetation is preferred. *TCC 21.80.055(3).*
14. For the proposed development, there are several areas where the incompatible use buffer would apply: the west side of Lot 181, the south side of Lots 159 through 181, the east side of Lot 159, the south side of Lots 46 and 47, and the east side of Lots 39 through 46. The Applicant proposes to provide the standard 30-foot incompatible use buffer on the south sides of Lots 46 and 47, the west side of Lot 181, and the east side of Lot 159, and in all other areas proposes a 20-foot buffer in a tract along the rear property lines and 10

feet of buffer width in the rear of the back yards in an easement. *Exhibit 16 (see “incompatible use lot layout detail” above the engineer’s stamp)*. The preliminary landscaping plan depicts a mix of trees, shrubs, and groundcover in all locations where the incompatible use buffer is required, except that no trees or shrubs are depicted along west side of former Lot 182 or the east side of Lot 159. The final plat map (*Exhibit 16*) contains a note intended (according to the accompanying letter) to act as a commitment to landscape the entire buffer consistent with the requirements of TCC 21.80.055(3). As described at hearing, eight-foot cedar fences were to be installed just inside the property boundaries with the aesthetic side facing neighbors, and would be owned and maintained by the project’s homeowners association. The revised plat layout materials do not address the height of the fence. While eight-foot fences are allowed, they are not required by code; however, testimony at hearing established that the additional fence height would benefit the privacy of both the future lot owners and the adjacent off-site residences. *Exhibits 9 and 16; Testimony of Clint Lucas and Jeff Pantier; Google Maps site view.*

15. At hearing, the Applicant submitted a preliminary plat map for a project currently under development on the adjacent property between the southern portion of the subject property and Marvin Road, called the 2544 Marvin Road SE Plat, which appears to be proposed on property currently developed with the American Legion Post. The plat map, prepared by Patrick Harron Associates, is dated August 2023. The status of this adjacent proposal was not clearly established in the record. The adjacent plat’s internal road system would apparently connect to the western stub of the southmost road in the instant plat. Also not clearly established in the record, it appears that the existing single-family residential parcel at 2636 Marvin Road SE is not included in the 2544 Marvin Road SE Plat, which would mean that the west side boundary of proposed Lot 181 would abut a residential parcel of 0.94 acres and thus be subject to the incompatible use buffer. The revised plat layout submitted after remand provides the 30-foot buffer on the west side of Lot 181. *Exhibits 12 and 16; Google Maps site view; Thurston County Parcel Viewer data for Parcel 11826120101.*
16. Although the incompatible use buffer was required adjacent to Lots 159 through 182 (as proposed at hearing), Lot 46, and Lots 39 through 47 (33 lots), there was no analysis of the requirement as applied to the proposal in the staff report. *Exhibit 1.* While the project narrative mentioned provision of an incompatible use buffer in various tracts, as of the hearing, there was no analysis or discussion of the initially proposed reduced buffer width or how the then-proposed buffer, which differed from that required by code, satisfied TCC 21.80.055. *Exhibit 15.* In support of the previously proposed reduced incompatible use buffer, the Applicant argued at hearing that the eight-foot fence exceeds code requirements and would be sight-obscuring consistent with the intent of the buffer requirement, and that the reduced buffer width is warranted due to the amount of critical area preservation on-site. *Exhibit 10; Jeff Pantier Testimony; Duana Koloushkova Argument.*
17. In the plat revision and letter received following remand, the Applicant references a previous similar proposal in the Manor House project, also in the Lacey UGA, and

submits that the revised instant proposal would screen the proposed incompatible new lots from abutting larger residential lots in the same way as was approved in Manor House. The Applicant requested that a similar condition as that imposed in Manor House be implemented in the instant case. The Manor House condition stated as follows:

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.

Exhibit 16; Reconvened Manor House Preliminary Plat/PRD/Forest Land Conversion, No. 2020102143, Findings, Conclusions, and Decisions issued May 9, 2022.

18. Although TCC 21.80.055.3(g) specifies that the retention of existing native vegetation within the incompatible use buffer is preferred over the removal and replacement of vegetation, the ability to retain existing trees and vegetation around the subject site's perimeter is limited by site slopes and the amount of grading required for the project, particularly along the eastern property line. Retaining walls would be constructed along the east side of the lots, with 2:1 slopes created between the walls and the east property boundary. *Exhibits 1.G and 9; Chloe McIntyre Testimony.*
19. The northern portion of the subject property contains 2.61 acres of a 4.58-acre Category III wetland. Due to the wetland's habitat score of 4, the minimum buffer required by the Thurston County critical areas ordinance (CAO) is 140 feet. The Applicant proposes to preserve the wetland and buffer within proposed Tract A. Although the preliminary plat map calls out a 25% buffer reduction on the east side of the wetland within storm drainage Tract D, no development of the area is proposed; the civil plans depict that the drainage pond would be constructed outside of the wetland buffer. The extent to which construction might affect the buffer was not made clear in the project materials, and the Applicant did not address the buffer reduction criteria of TCC 24.30.310, if applicable. *Exhibits 1.H and 16.* An Applicant representative testified that an earlier iteration of the proposal had considered proposing a 25% wetland buffer reduction and that some of the graphics still showed that reduced buffer's extent, but that the project as finally designed and under consideration in these proceedings does not propose or rely on any reduction of the wetland buffer width. *Jeff Pantier Testimony.*
20. The subject property does not contain any landslide hazard slopes. The steepest slope on-site is 12% in grade. *Exhibit 13.*

21. The subject property has been screened for *Mazama* pocket gophers, a threatened species under the Endangered Species Act that is protected by the CAO. No *Mazama* pocket gopher mounds were detected during the screening, which was conducted consistent with County protocols. Further, the wetland and densely forested areas of the site are not known to be pocket gopher habitat. *Exhibit 7*.
22. The subject property contains three major vegetation types. The northwestern portion of the property consists of an Oregon white oak woodland, which is designated an important habitat by the CAO. A small number of individual Oregon white oak trees are located outside of the woodland along the western property line and in the northcentral portion of the property. Individual oaks are protected by the CAO when within one-half mile of an oak woodland. *TCC 24.25.065.B.4*. The eastern and southern portions of the subject property consist of a Douglas fir dominated forest, with no Oregon white oaks. The central and western portions of the property consist of European lawn grasses, scotch broom, Himalayan blackberry, and associated lawn herbs. *Exhibit 1.K*.
23. A total of 209 Oregon white oak trees have been identified on-site. The Applicant proposes to preserve the Oregon white oak woodland within proposed Tract B. The individual Oregon white oaks on-site outside of the woodland would also be preserved except for one isolated tree with a 1.25-inch diameter in the central portion of the site. *Exhibit 1.K; Curtis Wambach Testimony*. As mitigation for removal of one small, isolated oak, which does not have measurable habitat value, the Applicant would enhance the oak woodland by removing non-native invasive weeds, trash, and debris from the understory. The enhancement would improve the habitat value of the woodland by allowing for oak sapling and native understory plant growth. *Exhibit 1.H; Curtis Wambach Testimony*. The undersigned notes that it was not made clear whether or how many trees potentially including oaks would have to be removed in the 19-foot wide portion of the property that would be dedicated for frontage improvements on Marvin Road in order to achieve required entering sight distance.
24. The subject property also contains a Douglas fir tree containing (as of the July 2023 date of the critical area report) an active red-tailed hawk nest. *See Exhibit 1.K, Figure 2*. Although the red-tailed hawk is not a state-listed priority species, it is protected under the Migratory Bird Treaty Act, which has permitting requirements for removal of an active nest. In this case the Applicant proposes to retain the tree, which is on the west property line, in an area roughly corresponding to the northwest corner of Lot 80. While protection of the tree is not indicated on the submitted landscaping plan, Applicant representatives testified that it would be preserved. *Exhibits 1.H, 1.K, and 9; Curtis Wambach Testimony*.
25. The proposal includes an application for forest land conversion, stating an intention to harvest approximately 160,000 board feet from 28 acres of the subject property. The oak woodland, wetland, and buffer (which also includes some oak trees) would be excluded from the harvest area. *Exhibit 1.B*. The criteria for forest land conversion require that at least 5% of the property being subdivided be preserved or planted with new trees and dedicated as a separate tract. The County may waive the dedication requirement if an

equivalent means of retaining or planting trees is provided in the development proposal. *TCC 17.25.400.D(5)(a)*. To meet the tree tract requirement, the Applicant proposes to retain trees within Tract B (0.93 acres), which corresponds to the oak woodland, and Tract A (7.08 acres), which corresponds to the wetland and buffer. Tracts A and B, which combined contain 375 trees, would constitute 22% of the site area and thus exceed the minimum tree tract requirement. *Exhibit 16*.

26. In addition to the tree tract requirement, the forest land conversion ordinance requires a tree plan identifying safeguards to be employed to protect retained trees, the landscaping or planting of all common areas within the subdivision, the retention or planting of new trees on individual lots at a rate of one tree for every 4,000 square feet of lot area, and the installation of street trees. *TCC 17.25.400.D(5)(c), (f), (g), and (h)*. The Applicant submitted a landscaping plan (based on a previous iteration of the plat) depicting the installation of street trees and the landscaping of open space and stormwater tracts. The submitted landscape plan indicates that no trees are required to be planted on the lots, based on an interpretation of *TCC 17.25.400* that the trees retained within the tree tracts would count towards that requirement. *Exhibit 9*. Planning Staff's recommended conditions of preliminary plat approval include a requirement to plant trees on individual lots consistent with the ordinance. *Exhibit 1*.
27. Pursuant to *TCC 18.47.040.B*, the minimum usable open space requirement within the Lacey UGA is 10% of the total site area. Up to half of the open space may be satisfied by wetlands, buffers, and tree tracts. The open space may also include stormwater facilities designed for active or passive recreation. In this case, the usable open space requirement is 3.62 acres, half of which may be satisfied by the wetland and tree tracts, which total 8.01 acres. Active recreation opportunities would be provided on-site through a playground in proposed Tract E (0.19 acres), and through the two proposed storm ponds (Tracts C and D, totaling 3.29 acres) that would be landscaped with lawn grass. The total open space provided (including the previously identified tracts along with the incompatible use buffers) would be 12.5 acres.³ *Exhibits 1, 9, and 16; Jeff Pantier Testimony*.
28. The subject property is within Category I, II, and III aquifer recharge areas, designations which do not prohibit residential development, but which require the project to include best management practices designed to protect groundwater. *Exhibit 1.T; TCC 24.10.020; TCC 24.10.030; TCC 24.10.195*. The Applicant has prepared an integrated pest management plan (IPMP) that provides a process for pest management that would minimize the application of chemicals within the subdivision. *Exhibit 1.L*. County Environmental Health Staff recommended that the plan be revised to also address landscape practices occurring during the development phase. *Exhibit 1.T*.

³ The total open space proposed differs between the final proposal under consideration in these findings (*Exhibit 16*) and that proposed at time of hearing (*Exhibit 1.F*) due to the revisions to the incompatible use buffer. Tract F is reduced from 0.43 to 0.23 acres in area because the buffer is no longer proposed along the rears of Lots 31 through 38, and Tract H increased in area from 0.53 to 0.59 acres due to the removal of Lot 182. *Exhibits 1.F and 16*.

29. The subject property is located within the North Thurston Public Schools service area (School District). Students from the subdivision would be bussed to school from bus stop locations to be coordinated with the School District. *Jeff Pantier and Raelyn Hulquist Testimony*. Impacts to school capacity from the additional students who would reside in the plat would be mitigated through payment of impact fees pursuant to TCC 25.08.030. *TCC 25.08.030*.
30. Intercity Transit provides public bus service along Marvin Road. There is an existing bus stop at the north end of the site, at the proposed plat entrance across from Terri Court. *Exhibit 1.E*.
31. The lots within the subdivision would be connected to the City of Lacey water and sewer systems, which have capacity to serve the subdivision. *Exhibit 1.T*.
32. The proposed stormwater management system would be designed consistent with the 2022 Thurston County Drainage Design and Erosion Control Manual. Stormwater runoff would be infiltrated on-site within infiltration treatment ponds to be developed within Tracts C and D and an infiltration trench. Water quality treatment would be provided through use of pre-settling basins and 24-inch amended treatment liners within the infiltration ponds. The amount of runoff from the subject property is expected to be reduced as compared to existing conditions. For storms exceeding the 100-year level, the ponds would overflow to the wetland, consistent with existing conditions. *Exhibits 1.G and 1.M; Chloe McIntyre Testimony*.
33. The Applicant has developed a Construction Stormwater Pollution Prevention Plan (SWPPP) to address erosion and sediment control to comply with Department of Ecology requirements. *Exhibits 1.M, 1.P, and 1.W*.
34. The Thurston County Public Works Department reviewed the project for compliance with the Thurston County Road Standards and the Drainage Design and Erosion Control Manual and determined that the preliminary requirements have been satisfied. Public Works recommended approval of the project, subject to conditions. The recommended conditions address, among other things, right-of-way dedication for road improvements and payment of mitigation fees. *Exhibits 1.S*.
35. The Thurston County Environmental Health Division reviewed the project for compliance with the Thurston County Sanitary Code and recommended approval, subject to conditions. The recommended conditions require existing wells and any septic systems on-site to be decommissioned/abandoned in accordance with applicable standards, City of Lacey water and sewer to be extended through the site, and the IPMP to be revised and approved. *Exhibit 1.T*.
36. The Applicant commissioned an archaeological survey of the subject property, which found no cultural resources. The Washington Department of Archaeology and Historic Preservation (DAHP) concurred with the survey results. DAHP recommended that a

standard inadvertent discovery plan be followed during all ground disturbing activities. *Exhibit 1.J.*

37. Thurston County acted as lead agency for review of the environmental impacts of the proposal under the State Environmental Policy Act (SEPA). The County issued a mitigated determination of non-significance (MDNS) on December 1, 2023. The MDNS contains conditions requiring the Applicant to pay \$104,957.84 in traffic mitigation to the City of Lacey, construct street frontage improvements, use only clean fill, test potentially contaminated materials, test the soil on-site for arsenic and lead contamination from the Asarco smelter, control erosion, and comply with Department of Ecology water quality requirements. The MDNS was not appealed and became final on December 22, 2023. *Exhibit 1.O.*
38. The Applicant conducted the soil sampling specified in the MDNS in May of 2023. The average soil concentrations of arsenic and lead were below state cleanup levels, and no individual sample exceeded the maximum allowable concentration for arsenic or lead. The Department of Ecology reviewed these results and confirmed that no soil remediation is required. *Exhibit 8.*
39. Notice of the open record hearing on the applications was mailed to property owners within 300 feet of the subject property on March 20, 2024, published in *The Olympian*, and posted on-site on March 29, 2024. *Exhibits 1.Z and 1.Y.*
40. Public comment on the application included the following concerns: that the project would adversely impact the wetland and great horned owls identified in the area; that the new access from Marvin Road would flood due to its close proximity to the wetland on-site, and that the flooding would divert project traffic through the neighborhood to the north; that there is inadequate sight distance at the proposed plat entrance; and that proposed grading might damage adjacent fences and landscaping, and would result in adverse erosion impacts. There was also objection to the proposed project density. *Exhibits 2A, 2B, 1.V, and 14; Testimony of Cathy Cook, Becky Lindauer, and Kimberly Goetz.*
41. Flooding of the access from Marvin Road is not anticipated because groundwater monitoring within the road footprint did not indicate inundation and because the road would be elevated seven feet over existing grade. *Chloe McIntyre Testimony; Exhibits 1.G and 3.* The proposed road corridor could not be moved and remain consistent with arterial access spacing requirements and Oregon white oak protection requirements. *Arthur Saint Testimony.*
42. The Applicant submitted a sight distance analysis, prepared by a transportation engineer, for the proposed site entrance from Marvin Road. The conclusion of the analysis was that there is adequate stopping sight distance in both directions and adequate entering sight distance to the north of the driveway, but inadequate entering sight distance to the south of the driveway due to obstructing vegetation within the right-of-way. With

removal of the obstructing vegetation during construction of required frontage improvements, the entering sight distance would be adequate. *Exhibit 5.*

43. Addressing potential wildlife impacts and the request for perimeter tree retention, Applicant witnesses submitted that the great horned owl is not a state priority species and is not protected by County or federal regulations that apply. The project would retain a large portion of undisturbed wetland and buffer, would retain all but one small oak, and would enhance existing oak woodlands, improving habitat functions on-site. Applicant engineering consultants indicated that the minimum amount of existing vegetation disruption is the project goal but that it would not be possible to retain any trees in the incompatible use buffer where there are slopes due to the required grading. The Applicant intends to follow all adopted regulations with respect to the protection of migratory birds and would coordinate site activities to avoid impacts during nesting windows. *Testimony of Curtis Wambach and Chloe McIntyre; Duana Kolouskova Argument.* County Staff further noted that the critical areas report provided by the Applicant was accepted by the County biologist. *Brett Bures Testimony.*
44. In response to neighbor concerns about off-site backyard security during construction, Applicant witnesses testified that the builder would coordinate with property owners to the south prior to removal of any fences or trees by directly contacting neighbors. At a minimum, temporary fencing would be set up to ensure neighboring yards remain enclosed during fence installation, which typically takes two days. The proposal is for an eight-foot tall cedar fence that would be built just within the subject property boundaries. Approximately 1.5 to two feet of level ground would be retained inside the fence before the land slopes down at a 2:1 grade to the proposed rear yards. The aesthetic side of the cedar fence would face out, and the perimeter fence would be maintained by the project's homeowners' association. *Testimony of Clint Lucas and Jeff Pantier.*
45. The revised plat layout would provide an incompatible use buffer a full 30 feet in width with 10 feet of its width provided in an easement across the rear yards of Lots 39 through 46 and 159 through 181. While this revision cost the project one lot, the Applicant submitted that the revised layout would be more efficient than seeking a variance to the buffer width and more consistent with Code. *Exhibit 16.*
46. Planning Staff reviewed the proposed revised plat creating 181 lots and providing 10 feet of incompatible use buffer width within easements across the rear of affected lots. Staff submitted that the revised proposal appears to satisfy TCC 21.80.055(3) but noted that the revised materials include the preliminary plat map only and stated that, if approved, a complete set of plans and drawings would be needed for County files. *Exhibit 17.* In final reply, the Applicant requested as follows: "The 'final engineering' plans for this project have already been submitted and are in the files with the County. We request that those plans be updated, in conjunction with the future final plat as appropriate, to provide the buffer tract/easements as noted on the updated preliminary plat." *Exhibit 18.*

CONCLUSIONS

Jurisdiction:

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

Criteria for Review:

Preliminary Plat Criteria

Pursuant to TCC 18.12.090.B, preliminary plat approval may be granted if the following criteria are shown to be satisfied:

1. Appropriate provisions are made for the public health, safety, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and
2. The public use and interest will be served by the platting of such subdivision and dedication. If the hearing examiner finds that the proposed subdivision and dedication make such appropriate provisions and that the public use and interest will be served, then the hearing examiner shall approve the proposed subdivision and dedication. Dedication of land to any public body, provision of public improvements to serve the subdivision, and/or impact fees imposed under RCW 82.02.050 through 82.02.090 may be required as a condition of subdivision approval. Dedications shall be clearly shown on the final plat. The county shall not as a condition to the approval of any subdivision require a release from damages to be procured from other property owners.

Forestland Conversion Criteria

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

1. Title 24 of the Thurston County Code otherwise known as the Thurston County Critical Areas Ordinance and Chapter 17.15 of the Thurston County Code, otherwise known as the Thurston County Agricultural Activities Critical Areas Ordinance;
2. Chapter 19.04 of the Thurston County Code, otherwise known as the Thurston County Shoreline Master Program;
3. Chapter 15.05 of the Thurston County Code, otherwise known as the Drainage Design and Erosion Control Manual for Thurston County;
4. Chapter 15.04 of the Thurston County Code, otherwise known as the Minimum Design Standards for Urban and Rural Street Construction in New Developments;
5. Residential Subdivisions. Applications for residential subdivisions submitted to the resource stewardship department after September 29, 1997 are subject to the following:

- a. Except in the R 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 Provision

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, kinnikinnick, 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:

1. As conditioned, the proposal satisfies the criteria for a preliminary plat.
 - A. Appropriate provisions would be made for public health, safety, public ways, transit stops, potable water, sanitary wastes, parks and recreation, playgrounds, schools, and all other relevant facts. Significant open space would be provided on-site, including open space with recreational amenities; the open space provided would be 34.5% of the overall site area, exceeding code minimums. With respect to safe walking conditions, the plat includes sidewalks, including along the Marvin Road frontage, and students residing in the subdivision would be bussed to their respective schools. School mitigation fees would be paid to address capacity impacts. Transportation, water, and sewer infrastructure would be provided consistent with Thurston County and City of Lacey requirements. Adequate sight distance would be available at the site entrance. Storm drainage would be infiltrated on-site. Public health would be addressed through the conditions of the County Environmental Health Division and the MDNS. The soils on-site have been evaluated for arsenic and lead contamination and have been found to satisfy state standards. *Findings 8, 9, 10, 11, 20, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37, 38, 40, 41, 42, 43, 44, 45, and 46.*
 - B. The public use and interest would be served by the subdivision. The proposed development density and lot sizes would be consistent with LD 3-6 and MD 6-12 standards. Adequate off-street parking would be provided in garages and driveways. Off-site impacts would be minimized through fencing, tree retention, landscaping, and payment of mitigation fees. Critical areas including the wetland, its associated buffer, and the oak woodlands would be retained undisturbed. The conditions of approval require the Applicant to complete the design review process for the townhouses prior to building permit issuance. An inadvertent discovery plan would be implemented during construction to ensure protection of cultural resources. The proposal was reviewed for compliance with SEPA and an MDNS was issued. *Findings 3, 4, 5, 6, 7, 12, 19, 20, 21, 22, 23, 24, 25, 27, 28, 36, and 37.*

C. The request to provide the inner 10 feet of incompatible use buffer width with an easement across the rear of Lots 39 through 46 and 159 through 181 is approved. Considering the extent to which the site is encumbered by critical areas including wetland and oak woodlands that would be retained undisturbed, and that the plat would provide the full code-required wetland buffer, and that the overall density just meets the minimum required in the zones, the proposal to provide 10 feet of incompatible use buffer width within the lots is justified. The proposed full buffer width, with the portion of the buffer within private lots and a solid wood fence at the rear lot lines, would be capable of providing the screening required by the incompatible use buffer provisions. A condition of approval is added that would ensure the portion of the buffer within private lots is called out in plat notes and that all easements are legally recorded prior to final plat, to ensure future purchasers of the lots are notified in advance of the requirement to preserve the screening landscaping in the rears of the affected lots. With respect to the Applicant's request not to be required to update the civil plans until "prior to final plat," the request is denied. The civil plans need to be updated to show the correct number and configuration of lots and incompatible use buffer tracts prior to earth disturbing work. *Findings 13, 14, 15, 16, 17, 18, and 46.*

2. As conditioned, the criteria for forest land conversion are satisfied. The wetland and regulatory buffer would be protected from development in accordance with the CAO. It should be noted that no wetland buffer reduction is authorized by this decision, as insufficient evidence was submitted to support a reduction; it does not appear that a reduction is actually proposed. If a reduced wetland buffer is required for any reason, the Applicant must apply for an administrative critical area permit. Conditions of approval incorporate the Public Works Department's recommended conditions to ensure compliance with the Drainage Design and Erosion Control Manual and applicable road standards. More than five percent of the overall site area would be preserved as combined critical areas and tree tracts, street trees would be planted, and common areas would be landscaped. The conditions of approval would ensure that requirements for tree protection during construction and bonding are addressed. *Findings 19, 20, 21, 22, 23, 25, 26, 27, 32, 33, 34, and 37.*

The conditions of approval reflect the Hearing Examiner's interpretation of the forest land conversion tree retention/planting requirements at TCC 17.25.400.D(5)(g) that trees must be retained or planted on individual lots at a rate of one tree per 4,000 square feet of lot area in addition to the trees retained within Tracts A and B. The Hearing Examiner is not persuaded by the interpretation suggested on the landscape plan, for the following reasons:

- The requirement to retain or plant trees on the lots is within a separate lettered paragraph from the requirement to set aside five percent of the site area as a tree tract, and there is not an "or" between the paragraphs.
- The tree tract must contain trees irrespective of the number of trees required by paragraph 5.g of TCC 17.25.400.D. This is evidenced by paragraph 5.d, which expresses the planting requirement for tree tracts in terms of canopy coverage.

- To interpret paragraph 5.g as meaning that developers may (1) retain trees *in the tree tract* or (2) plant trees on individual lots effectively adds language to the paragraph that does not exist and negates the function of the tree tract if planting on individual lots is selected.
- An interpretation of paragraph 5.g that requires trees to be retained on the lots or planted on the lots is consistent with past Thurston County interpretation of the ordinance, including in the Sleater Landing decision entered into the record as Exhibit 10.

DECISIONS

Based on the preceding findings and conclusions, the requested preliminary plat creating 181 lots and forest land conversion permits are **GRANTED** subject to the following conditions:

SEPA Mitigating Conditions

1. To mitigate traffic impacts within the City of Lacey, the proponent will need to contribute \$104,957.84 to the City of Lacey per Lacey Ordinance 14.21, which must be 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. 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 City of Lacey standards.
3. 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.
4. 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.
5. This proposed project is located in an area that may have been contaminated with heavy metals due to the air emissions originating from the old Asarco smelter in north Tacoma,

(visit Ecology's Tacoma Smelter Plume map search tool:
<https://fortress.wa.gov/ecy/smeltersearch/>).

Soil contamination from the former Asarco smelter poses a risk to human health and the environment. Children are at especially high risk from direct exposure contaminated soil. Construction workers, landscaper, gardeners, and others who work in the soils are also at risk.

Ecology recommends that the lead agency include the following as conditions of approval, prior to the issuance of any site development permits or the initiation of grading, filling, or clearing:

- Sample the soil and analyze for arsenic and lead following the 2012 Tacoma Smelter Plume Guidance. The soil sampling results shall be sent to Ecology for review. If the project includes open space areas, contact the Technical Assistance Coordinator, Eva Barber, for assistance in soil sampling methodology within the open space area.
- If lead or arsenic are found at concentrations above the Model Toxics Control Act (MTCA) cleanup levels (Chapter 173-340 WAC), the owners, potential buyers, construction workers, and others shall be notified of their occurrence. The MTCA cleanup level for arsenic is 20 parts per million (ppm) and lead is 250 ppm.
- If lead, arsenic, and/or other contaminants are found at concentrations above MTCA cleanup levels, the Applicant shall:
 - 1) Develop a soil remediation plan and enter into the Voluntary Cleanup Program with Ecology. For more information on the Voluntary Cleanup Program, visit Ecology's website at <http://www.ecy.wa.gov/programs/tcp/vcp/vdpmain.html>.
 - 2) Obtain an opinion letter from Ecology stating that the proposed soil remediation plan will likely result in no further action under MTCA. The Applicant shall provide the opinion letter from Ecology to the local land use permitting agency.
 - 3) Prior to finalizing site development permits, provide to the local land use permitting agency a "No Further Action" determination from Ecology, indicating that the remediation plans were successfully implemented under MTCA.
- If soils are found to be contaminated with arsenic, lead, or other contaminants, extra precautions shall be taken to avoid escaping dust, soil erosion, and water pollution during grading and site construction. Site design shall include protective measures to isolate or remove contaminated soils from public spaces, yards, and children's play areas. Contaminated soils generated during site construction shall be managed and disposed of in accordance with state and local regulations, including the Solid Waste Handling Standards regulation (Chapter 173-350 WAC). For information about soil disposal, contact the local health department in the jurisdiction where soils will be disposed.

The link below provides a fact sheet that explains how the arsenic and lead cleanup levels were set and why Ecology sees that they are protective for human health:
<https://fortress.wa.gov/ecy/publications/SummaryPages/1109095.html>.

For assistance and information about the Tacoma Smelter Plume and soil contamination, the Applicant shall contact Eva Barber with the Toxics Cleanup Program at (360) 407-7094 or via email at Eva.Barber@ecy.wa.gov.

6. 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 habitats 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. For additional information on contaminated construction sites, please contact Evan Wood at evan.wood@ecy.wa.gov, or by phone at (360) 706-4599.

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. To see if your site discharges to a TMDL or 303(d)-listed waterbody, use Ecology's Water Quality Atlas at: <https://fortress.wa.gov/ecy/waterqualityatlas/StartPage.aspx>.

The Applicant may apply online or obtain an application from Ecology's website at: <http://www.ecy.wa.gov/programs/wq/stormwater/construction/-Application>.

Construction site operator must apply for a permit at least 60 days prior to discharging stormwater from construction activities and must submit it on or before the date of the first public notice.

Environmental Health Conditions

Requirements for final subdivision approval:

7. City of Lacey utilities must be extended through the subdivision prior to final approval. Confirmation of final water and sewer construction approval from the City of Lacey must be submitted to Environmental Health.
8. All existing wells located on the project site must be decommissioned by a licensed well driller per Washington State Department of Ecology standards prior to final plat approval. Copies of the decommissioning reports must be submitted to Environmental Health.
9. Prior to final approval, a finalized version of the Integrated Pest Management Plan (IPMP) must be submitted to Environmental Health with the recommended revisions and specifying what landscape installation is going to be performed during the development stage and what IPM practices will be implemented during that stage.
10. In the event an existing on-site septic system is located during site development, it must be properly abandoned per Article IV of the Thurston County Sanitary Code. An abandonment permit is required and copies of all abandonment documentation from a certified septic system pumper must be provided.

Public Works Conditions

Roads

11. The proposed roadway in concept and design shall conform to the Roads Standards of the City of Lacey and development guidelines.
12. A construction permit shall be acquired from the Thurston County Public Works - Development Review Section prior to construction.

Traffic Control Devices

13. 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 and 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.

14. 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

15. The stormwater management system shall conform to the Drainage Design and Erosion Control Manual.
16. 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.
17. 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.
18. 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

19. 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.
20. 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 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 and Survey

21. 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 Quick Claim Deed describing the necessary right-of-way, being a strip of land which when added to the existing right-of-way totals 49 feet of right-of-way lying East of and abutting the existing centerline of Marvin Road SE. Upon your request, Thurston County's right-of-way representative will prepare the Quick Claim Deed describing the necessary right-of-way

dedication. Please contact the Thurston County Right-of-Way section at (360) 867-2356.

22. Permanent survey control needs to be placed to establish all public street centerlines, intersections, angle points, curves, subdivision boundaries, and other points of control.
23. 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

24. Payment of the off-site traffic mitigation required in the December 1, 2023 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 the respective jurisdiction and Thurston County.

General Conditions

25. No work shall take place until a construction permit has been issued by Thurston County Public Works - Development Review Section.
26. 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.
27. 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 and Erosion Control Manual.
28. When all construction/improvements have been completed, contact the Thurston County Public Works - Development Review Section for a final inspection.
29. 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

30. 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.

31. 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 the Thurston County Building Development Center webpage or by contacting 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.

General Information

Final Review

32. Prior to receiving final approval from Thurston County Public Works - Development Review Section, 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 the 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 and 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 and agreement with financial security for the maintenance and operation of the drainage facilities in accordance with Thurston County Code 15.05.040.
 - h. Approval of 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. Completion of the right-of-way dedication process.

33. The final plat map shall note or delineate the following:

Required Plat Notes

- a. "ATTENTION": Thurston County has no responsibility to build, improve, maintain, or otherwise service private roads, alleys, or driveways within or providing access to property described in this plat. The building, maintenance, repair, improvement, operation, or servicing of the stormwater facilities outside the County rights-of-way are the responsibility of the property owner(s).
- b. Increased stormwater runoff from the road(s), building, driveway, and parking areas shall be retained on-site and shall not be directed to roadway ditches adjacent to Marvin Road SE.
- c. The Homeowners' Association is responsible for the maintenance of alleys and private road areas within the subdivision. Maintenance not only includes road surfaces but also stormwater systems supporting these areas.
- d. 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. If seasonal drainage crosses subject property, no filling or disruption of the natural flow shall be permitted.
- f. 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.
- g. The owner and/or Homeowners' Association shall be responsible to operate and maintain the streetlights until such time as the property is annexed to the City.
- h. 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 water meters for those lots served by the Lacey Water Utility and prior to building permit issuance for those lots not serviced by such Utility.
- i. 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.
- j. 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. _____.
- k. Easements are hereby granted for the installation, inspection, and maintenance of utilities and drainage facilities as delineated on the plat for subdivision _____, including unrestricted access for Thurston County staff to any and all

stormwater system features for the purpose of routine inspections and/or performing maintenance, repair, and/or retrofit as may become necessary. No encroachment will be placed within the easements shown on the plat which may damage or interfere with the installation, inspection, and maintenance of utilities. Maintenance and expense thereof of the utilities drainage facilities shall be the responsibility of the Property Owners' Association, as established by covenant recorded under Auditor's File No. _____.

- l. 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 stormwater 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.
- m. The property described herein is required to accommodate stormwater runoff from the frontage improvements to Marvin Road SE and all natural tributary areas abutting said property.
- n. Maintenance of 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

- o. 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.).
- p. Delineate the access restrictions by showing a "no access" strip, written and hatched, between the County approved access points along the frontage of Marvin Road SE on the final plat map.
- q. Please clearly label all public and private roads.

Planning Conditions

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

35. Prior to issuance of permits for earth disturbing work, the Applicant shall submit updated civil plans, landscaping plan(s), and any other required project drawings consistent with the approved layout in Exhibit 16 creating 181 lots and providing the full 30-foot width of incompatible use buffer with 10 feet of buffer width within the rear of Lots 39 through 46 and 159 through 181.
36. Open space, landscaping, and tree preservation shall comply with the following:
 - 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 not later than the time of building permit application for the residence on that lot.
 - b. All conditions, improvements, or maintenance requirements associated with the landscaping plan shall be shown on the final plat map.
 - c. All trees to be retained - both in and outside of the tree tracts, including those on property lines - shall be clearly shown on the landscape plans, together with proposed tree protection measures. Prior to any earth disturbing work, tree protection fencing or other approved measures shall be installed/implemented in the field.
 - d. Prior to final plat approval, the Applicant shall submit a revised final landscape plan 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, sport court, and irrigation. All landscaping shall be in compliance with Thurston County Zoning Ordinance and the Thurston County Subdivision Ordinance.
37. Prior to final plat approval, the Applicant shall submit a maintenance assurance device that is equal to 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 the 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.
38. Prior to building permit application, 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 21.60.
39. All development on the site shall be in substantial compliance with the approved preliminary plat (Exhibit 16), except that no reduction of wetland buffer adjacent to Tract D is approved. 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.
40. The Applicant shall comply with the Cultural Resources 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.

41. This 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 Oregon White Oak Habitat Management Plan (which is provided in the critical area report in the record at Exhibit 1.H), including monitoring and maintenance requirements. The Oregon White Oak Habitat Management Plan in the critical area report dated July 5, 2023 shall be referenced on the face of the final plat. Prior to construction the project must follow the tree protection requirements outlined in TCC 24.25.070.
42. Prior to final plat application for each phase (if phases are final platted separately), 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 not later than 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.

Decided May 8, 2024 by



Sharon A. Rice
Thurston County Hearing Examiner

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

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

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

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

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

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

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

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

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

D. FILING FEES AND DEADLINE If you wish to file a Request for Reconsideration or Appeal of this determination, please do so in writing on the back of this form, accompanied by a nonrefundable fee of **\$861.00** for a Request for Reconsideration or **\$1,174.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Building Development Center at 3000 Pacific Ave SE, Suite 100 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 ☐ \$861.00 for Reconsideration or \$1,174.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
Filed with the Community Planning & Economic Development Department this _____ day of _____, 20____.