



COUNTY COMMISSIONERS

John Hutchings

District One

Gary Edwards

District Two

Tye Menser

District Three

**HEARING EXAMINER**

*Creating Solutions for Our Future*

**BEFORE THE HEARING EXAMINER  
FOR THURSTON COUNTY**

In the Matter of the Application of	)	NO. 2012102745
	)	
<b>C&amp;H Real Estate Investors, LLC</b>	)	<b>Hewitt Lake Heights</b>
	)	
For a Preliminary Plat and	)	FINDINGS, CONCLUSIONS,
Shoreline Substantial Development Permit	)	AND DECISION
	)	

**SUMMARY OF DECISION**

The requests for approval of a preliminary plat to subdivide 12.37 acres into 38 residential lots, including 20 townhouse lots and 18 single-family detached lots, and a shoreline substantial development permit to construct certain subdivision improvements within 200 feet of Hewitt Lake, are **GRANTED** subject to conditions.

**SUMMARY OF RECORD**

**Request**

C&H Real Estate Investors, LLC (Applicant) requested approval of a preliminary plat to subdivide 12.37 acres into 38 residential lots, including 20 townhouse lots and 18 single-family detached lots, and a shoreline substantial development permit (SSDP) to construct recreation amenities, a private access lane, utilities, and stormwater improvements within 200 feet of Hewitt Lake. The subject property is located at 1910 53rd Avenue SE, Olympia, Washington.

**Hearing Date**

The Thurston County Hearing Examiner conducted a virtual open record public hearing on the request on July 14, 2020. In an abundance of caution, the record was held open two business days to allow for public comment from members of the public may have had difficulty joining the virtual hearings, with additional time arranged for responses by the parties. No post-hearing public comment was submitted, and the record closed on July 16, 2020. On the record, Applicant representatives granted a five-business day extension of the decision issuance deadline.

## **Testimony**

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

Scott McCormick, Associate Planner, Community Planning & Economic Development Dept.  
Arthur Saint, P.E., Thurston County Public Works  
Dawn Peebles, R.S., Thurston County Environmental Health  
Steve Hatton, Hatton Godat Pantier, Applicant representative  
Jeff Pantier, Hatton Godat Pantier, Applicant representative  
Dale Stafford  
Tim Harrington  
Len Seifter  
Daniel Bear  
Chelsie McKinney  
Jessica Juergens  
Jennifer Matthews  
Mallory Fontainola  
Ashley Palmer  
Tom Van Nuys  
Richard Lehman

## **Exhibits**

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

- Exhibit 1 Community Planning and Economic Development Department Report including the following exhibits:
- A. Notice of Public Hearing
  - B. Thurston County Master Application, received November 17, 2017
  - C. Thurston County Division of Land Application, received February 4, 2020 (revised)
  - D. Project Narrative, received August 22, 2019
  - DD. Preliminary plat map, dated March 28, 2019
  - E. JARPA Master Application, received February 24, 2016
  - F. JARPA Application, received February 24, 2016
  - G. JARPA narrative, received February 24, 2016
  - H. Notice of Application, dated February 28, 2013 with attached adjacent property owners list, dated October 1, 2012
  - I. Wetland Report, dated June 19, 2012, received June 21, 2012
  - J. Traffic Impact Analysis Level 1, dated June 2012
  - K. Site distance analysis with cover sheet, received September 3, 2013
  - L. Integrated Pest Management Plan, dated February 12, 2013

- M. Final SEPA Determination, dated November 7, 2019 with adjacent property owners list date October 15, 2019
- N. SEPA Determination, dated October 3, 2019
- O. Environmental Checklist, received August 22, 2019
- P. Plat Name Reservation Certificate
- Q. SEPA Recommendation from the Arthur Saint, Thurston County Public Works Department, dated May 29, 2019
- R. Recommendation for Preliminary Approval from Dawn Peebles, Thurston County Public Health and Social Services, dated January 2, 2020
- S. Recommendation for Preliminary Approval from Arthur Saint, Thurston County Public Works Department, dated December 12, 2019
- T. Comment letter from the Washington Department of Ecology, dated October 17, 2019 and December 5, 2017
- U. Comment email from Olympic Region Clear Air Agency requesting an asbestos survey related to the proposed demolition of an old home on the subject property, dated October 15, 2019
- V. Letter from the Nisqually Tribe, dated October 7, 2019
- W. Email comments from Kelli Root with Thurston County Public Works Right of Way and Survey Section, dated April 30, 2019
- X. Email chain from Mike Kain regarding on-site community meeting, dated December 27, 2017
- Y. Letter from Thurston County to Cheng Yuk Wing, dated December 8, 2017 regarding a hazard tree
- Z. Letter from Cheng Yuk Wing to Thurston County, dated November 25, 2017 regarding a hazard tree
- A1. Email response from Jeff Pantier regarding the hazard tree issue, dated December 5, 2017
- B1. Letter from the City of Olympia, dated October 17, 2017 regarding utilities and mitigation fees
- C1. Clarification Regarding Sewer Service for Hewitt Lake Heights proposed preliminary Plat from Steve Sperr, P.E. Assistant City Engineer with attached map, dated March 20, 2017
- D1. Email from Alan Murley with the City of Olympia regarding use of a grinder pump, dated June 1, 2016
- E1. Letter from the Nisqually Tribe, dated March 17, 2016
- F1. Letter from Jeff Pantier, PLS with attached deed and map. Letter addresses multiple issues including well and waterline, deed, restrictive covenant for well,

the proposed “tot lot” and style of multi-family dwellings from “four-plex” to “duplex”), dated February 17, 2016

- G1. Letter from Jeff Pantier, PLS addressing comments from Alan Murley with the City of Olympia. Letter addresses multiple issues including watermain, private access (Tract E) between the two cul-de-sacs, a stub street (Tract F) and reconfiguration of flag lots. Additionally, the letter addresses sidewalks adjacent to lots 38 and 39, dated May 29, 2015
- H1. Letter from City of Olympia regarding utilities and mitigation fees, dated September 18, 2014
- I1. Letter from City of Olympia regarding parks mitigation and playground equipment, dated September 16, 2014
- J1. Letter from City of Olympia (revised) regarding parks mitigation, dated September 16, 2014
- K1. Letter from City of Olympia regarding SEPA mitigation and play equipment
- L1. Letter from the Olympia School District regarding school mitigation
- M1. Letter from the Washington Department of Ecology, dated July 12, 2012 regarding toxic cleanup and water quality
- N1. Email from Cari Hornbein with City of Olympia, dated July 12, 2012 regarding roads, transportation mitigation fees and City wellhead protection area
- O1. Email Kelli Lee, dated October 30, 2019 forwarding email from Tom Van Nuys, dated October 29, 2019 regarding egress and ingress to site to and from Henderson Blvd.
- P1. Email from Leonard Seifter, dated October 17, 2019 regarding zoning density, public access to Hewitt Lake, impacts to home values, impact to the lake and general environmental impacts (opposes project)
- Q1. Email from Tim Harrington, dated October 14, 2019 regarding the proposed picnic shelter, usage of the lake and native vegetation
- R1. Email from Timothy B. Harrington and Kim M. Harrington, dated December 5, 2017 regarding traffic impacts, proposed multi-family housing and related property values, traffic safety, vegetative buffers and access to lake by homeowners of Cheri Estates
- S1. Letter from Daniel and Pamela Baer, dated December 4, 2017 regarding removal of large trees and traffic impacts
- T1. Email from Patrick Ely, dated March 19, 2013 regarding ownership of roads, traffic and traffic safety
- U1. Email from Paul and Melissa Maloney, dated March 19, 2013 regarding storm drainage, traffic impacts and school impacts

- V1. Email from Steve Dietrich, dated March 18, 2019 regarding compatibility of multi-family housing and related access, the project Traffic Impact Analysis and sight distance
- W1. Email from Heather Baisch, dated March 17, 2013 regarding incompatibility of proposed multi-family housing, increased traffic, impacts to schools, destruction of forest and ecosystem and devaluation of property values, quality of life and crime
- X1. Email from Dale Stafford, dated March 17, 2013
- Y1. Email from Dr. Venn Peterson, dated March 17, 2013 regarding proposed multi-family housing impacts, traffic, impact to schools and overall project impacts
- Z1. Letter from David R. Murray, dated March 10, 2013 regarding property value degradation, higher housing density and traffic
- A2. Email from Dan and Sophia Gashel, dated March 7, 2013 regarding safety, noise, traffic, school impacts, emergency services, property values, wetland impacts, crime and general impacts to the neighborhood
- B2. Email from Ling Shang, dated March 7, 2013 regarding sewer, water quality, traffic and pedestrian impacts, vehicular access, fire access and utilities
- C2. Email from Kim M. Harrington, dated March 6, 2013 regarding noise, safety for children, school impacts, emergency services, multi-family housing types, wetland and wildlife impacts, traffic, impacts to privacy and impact to property values
- D2. Email from Clydia J. Cuykendall, dated March 6, 2013 regarding benefits of the project, including urban infill and need for more urban housing. In favor of project
- E2. Email from Timothy B. Harrington, dated March 2, 2013 regarding loss of privacy, impact to property values, destruction of native vegetation and influx of Scotch broom after clearing
- F2. Email from Justin Baisch, dated March 6, 2013 regarding multi-family development, loss of property values, ecological impacts, traffic impacts and safety for children and change of neighborhood character
- G2. Letter from Steve Deitrich (undated) regarding incompatibility of multi-family housing, traffic and road design and the project Traffic Impact Analysis and site distance study
- H2. Design Review drawings and information
- I2. Preliminary Civil Plans
- J2. Preliminary landscaping plans
- K2. Townhome Exhibit
- L2. Preliminary Drainage and Erosion Control Report revised May 13, 2015

M2. Application, received June 21, 2012

Exhibit 2 Public comments received after publication of staff report, including:

- A. Richard Boysen comment received July 9, 2020
- B. Michael & Erin Harbour comment, received July 12, 2020
- C. Kim Harrington comment, received July 13, 2020
- D. Karen Helland comment, received July 13, 2020
- E. Daniel & Pamela Baer comment, received July 13, 2020
- F. Chelsie McKinney comment, received July 13, 2020
- G. Geoff Baran comment, received July 12, 2020

Exhibit 3 Townhouse calculations submitted by Jeff Pantier, July 15, 2020

Exhibit 4 Arthur Saint email dated July 15, 2020 with clarification of location of duplex referenced in public comment<sup>1</sup>

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

### FINDINGS

1. C&H Real Estate Investors, LLC (Applicant) requested approval of a preliminary plat to subdivide 12.37 acres into 38 residential lots, including 20 townhouse lots and 18 single-family detached lots. Also requested was a shoreline substantial development permit (SSDP) to construct recreation amenities, a private access lane, utilities, and stormwater improvements within 200 feet of Hewitt Lake. The subject property is addressed as 1910 53rd Avenue SE, Olympia, Washington.<sup>2</sup> *Exhibits 1, 1.D, 1.DD, and 1.G.*
2. The preliminary plat application was first submitted on June 21, 2012 and was deemed complete for purposes of commencing review on July 20, 2012. A revised application reducing the number of lots from 41 to 38 was submitted on November 17, 2017. *Exhibits 1.B, 1.C, 1.H, and 1.M2.* Based on testimony, the 2012 vested application did not lapse in the intervening years but remained under active review and was still vested at the time the revised number of lots was proposed. *Testimony of Scott McCormick and Jeff Pantier.*
3. The subject property is heavily forested with mature conifer trees and native understory vegetation. Each of the parcels comprising the subject property contains a single-family

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<sup>1</sup> Exhibit 3, submitted after the end of the hearing, contains information the undersigned requested from the Applicant during the hearing, and is admitted. Exhibit 4 contains clarification of the location of a property mentioned multiple times in public comment, with which the undersigned requested the record be supplemented after close of the hearing; it is admitted.

<sup>2</sup> The legal description of the subject property is a portion of Section 36 Township 18 Range 2W Quarter SW SE BLA10119863TC TR A Document 4186747 & BLA10119863TC TR B Document 4186747; also known as Tax parcel numbers 12836430100 and 12836430101. *Exhibit 1.*

residence, all three of which would be removed in conjunction with the proposed development. *Exhibit 1.*

4. The subject property is located within the Olympia Urban Growth Area and is zoned Residential 4-8 (R 4-8). The purpose of the R 4-8 zone is “to accommodate single-family houses and townhouses at densities ranging from a minimum of four units per acre to a maximum of eight units per acre; to allow sufficient residential density to facilitate effective mass transit service; and to help maintain the character of established neighborhoods.” *Thurston County Code (TCC) 23.04.020(B)(4)*. Consistent with this stated purpose, the R 4-8 zone allows single-family residences and townhouses at a minimum density of four dwelling units per acre and a maximum density of eight dwelling units per acre, with acreage for density purposes excluding critical areas, buffers, and certain other features. *TCC 23.04.080*. However, to develop at the minimum density of four dwelling units per acre requires a transfer of development rights. Otherwise, the minimum required density is five dwelling units per acre, or 38 dwelling units for the subject property’s net area of 7.66 acres. The proposed 38 dwelling units therefore represents the minimum allowed by the zoning ordinance. Due to site constraints, it was not possible to achieve the required density solely with detached single-family residences. *Exhibits 1 and 1.DD; Jeff Pantier Testimony.*
5. Surrounding zoning consists of R 4-8 to the north, east, and south (all within the Olympia Urban Growth Area), and Single Family Low Density within the city of Tumwater to the west. Surrounding development is single-family residential. *Exhibit 1, page 3; Exhibit 1.DD.*
6. The subject parcel is irregularly shaped, with the western portion consisting of a panhandle running along the north side of the existing Cheri Estates subdivision. It is within this panhandle area that the townhouses are proposed. The single-family residences would be located in the eastern portion of the property. The central portion of the property is encumbered by critical areas, and the Hewitt Lake shoreline is at the northeast corner of the site. *Exhibit 1.DD.*
7. There is a hydrologically isolated, kettle-like wetland in the southwest corner of the property. It is 17,040 square feet in area, and is vegetated with water parsley, salmonberry, lady fern, black twinberry, creeping buttercup, Oregon ash, willow, red alder, Douglas spirea, clustered rose, and red-osier dogwood. Based on the critical area regulations in effect at the time of complete application, the wetland is classified as a Class III wetland, requiring a 100-foot wide buffer. The wetland and buffer (totaling 2.42 acres) would be preserved in Tract A. No trees would be removed from that tract. *Exhibits 1.DD and 1.I.*
8. The subdivision design standards applicable to detached single-family residences in the R 4-8 zone include a minimum lot area of 5,000 square feet and a minimum lot width of 50 feet, with lot width variation required to ensure that no more than three consecutive lots are of the same width. *TCC 23.04.080, Table 4.04*. Each of the proposed lots for detached single-family residences would be at least 5,000 square feet in area and 50 feet

wide, but it is not clear from the submitted materials that the lot width variation standard would be satisfied. While lots of varying widths are proposed, in some areas the six-foot variation requirement might not be satisfied. Planning Staff recommended that compliance be demonstrated prior to final plat approval. *Exhibits 1 and 1.DD.*

9. The subdivision design standards applicable to the townhouse portion of the development include a minimum lot area of 2,000 square feet, with an average lot area of at least 3,000 square feet, and a minimum lot width of 18 feet for two-story townhouses. *TCC 23.04.080, Table 4.04.* The proposed townhouse lots would comply with these standards if conditioned to require that the minimum average lot area is provided for both housing types. According to the site plan in the record at Exhibit 1.DD, the smallest townhouse lot would be 2,480 square feet in area with an average townhouse lot size of 2,808 square feet; which would not comply with the minimum average townhome lot area required. The civil plan in the record at Exhibit 1.I2 contains a figure identifying the average townhouse lot area, but the copy in the record is not quite legible. Most of the lots would be 31 feet wide. *Exhibits 1 and 1.DD.* Consistent with the requirements of TCC 23.64.080, the portion of the plat comprised of townhouses would be 3.3 acres (the standard requires less than four). *Exhibit 3.*
10. The proposed attached townhouses would be grouped into duplexes in order to improve compatibility with surrounding development, which is comprised primarily of single-family residences; this is a revision of the original project design incorporating fourplexes. Each townhouse would have a two-car garage, with 16 loaded from a rear alley (Tract F) and four loaded from a new public street. Each would have private outdoor space exceeding the minimum of 200 square feet required by TCC 23.64.040(3). The townhouses would be subject to County design review prior to building permit issuance. *Exhibits 1.DD and 1.K2; Testimony of Jeff Pantier and Scott McCormick.*
11. Open spaces on site, including the wetland and wetland buffer, a lakefront community park (for subdivision residents only) with picnic shelter and tot lot, and storm drainage facilities, would total approximately 5.5 acres or 44% of the total site area. Commonly held open spaces would be preserved in Tracts A, B, C, D, E, F, and G. *Exhibits 1, 1.D, and 1.DD.*
12. Access to the subdivision would be from Cheri Estates Drive SE, which runs along the western and southern boundaries of the subject property. Cheri Estates Drive SE is connected to the public street system by 53rd Avenue SE, which runs east-west between Henderson Blvd SE and the Cheri Estates Drive SE intersection at the northwest property corner. Access to individual lots would be from two new public cul-de-sac streets, a private access lane (Tract E), and a private alley (Tract F). *Exhibits 1.DD and 1.J.*
13. Because the subject property is within the Olympia Urban Growth Area, internal street improvements would be designed in accordance with City of Olympia standards, and would include sidewalks along the public streets. Consistent with the recommendations of the City of Olympia (responding to the original project design), a road stub would be provided to the east property line from the new public road serving the eastern portion of



the subdivision, and a private access lane would be constructed between the cul-de-sac in the western portion of the property and the cul-de-sac in the eastern portion of the property to minimize flag lots in the eastern portion of the site. *Exhibits 1.DD, 1.B1, 1.G1, and 1.I2; see also Exhibit 1.H.*

14. The submitted Level 1 Traffic Impact Analysis was based on the slightly larger original subdivision design, which provided for 22 townhouses and 19 single-family residential lots. Based on the trip rates contained in the Institute of Transportation Engineers (ITE) *Trip Generation*, 8th Edition, that design was expected to generate 398 average daily vehicle trips, including 42 PM peak hour trips. All traffic would enter or exit the neighborhood via the intersection of Henderson Blvd SE and 53rd Avenue SE. During the PM peak hour, 20% of the traffic is expected to travel to or from destinations to the south on Henderson Blvd SE, and 80% is expected to travel to or from destinations to the north on Henderson Blvd SE. Based on AASHTO guidelines, the intersection of 53rd Avenue SE and Henderson Blvd SE provides sufficient entering sight distance in both directions for exiting subdivision traffic.<sup>3</sup> While sight distance to the south is impeded by a crest in Henderson Blvd SE, the measured distance of 395 meets the minimum of 390 feet required for a 35 mile per hour road. *Exhibits 1.J and 1.K.*
15. Offsite traffic impacts would be mitigated through payment of mitigation fees to the cities of Olympia and Tumwater. The Tumwater city limits are just west of the subject property, and the intersection of Henderson Blvd SE and 53rd Avenue SE is under the City of Tumwater's jurisdiction. The fees to Olympia would total \$134,065, and the fees to Tumwater would total \$17,452. *Exhibits 1.Q and 1.B1; Exhibit 1, page 3.*
16. Stormwater facilities would be developed on site in accordance with the requirements of the Thurston County Drainage Design and Erosion Control Manual (DDECM). All runoff would be infiltrated on site. For runoff generated by the public road in the northwest portion of the site, the runoff would be treated by a filter strip prior to discharge into an infiltration trench. The alley in that area would be constructed of pervious pavement. For runoff generated by the public road in the southeast portion of the site, the runoff would be treated by a continuous inflow biofiltration swale prior to discharge into an infiltration pond (Tract D). The runoff from the private access lane would be directed to an infiltration pond in Tract G. *Exhibit 1.L2; Steve Hatton Testimony.*
17. The Thurston County Public Works Department reviewed the development for compliance with Thurston County Road Standards and the Drainage Design and Erosion Control Manual and found that all of the preliminary requirements have been satisfied. The Public Works Department recommended approval of the subdivision, subject to conditions. *Exhibit 1.S; Arthur Saint Testimony.*

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<sup>3</sup> The undersigned takes official notice that AASHTO is the American Association of State Highway Transportation Officials.

18. The subdivision would be served by City of Olympia water and sewer utilities. Both utilities have capacity to serve the development. There is an existing well on site (within Tract B), which serves the residence on the adjacent parcel and would be retained. The Thurston County Environmental Health Division recommended as a condition of plat approval that the Applicant complete a non-public declaration of covenant for the on-site well. *Exhibits 1.B1, 1.R, and 1.F1; Dawn Peebles Testimony.*
19. The subject property is located within a Category I critical aquifer recharge area. The Environmental Health Division reviewed the project and determined that it adequately protects ground and surface water based on subdivision's connection to the public water and sewer systems, the lack of encroaching off-site wells, and the integrated pest management plan (IPMP) that was prepared for the project, which outlines landscape management practices designed to reduce impacts to water resources. In its review, the Environmental Health Division identified areas of the IPMP requiring update and recommended as a condition of plat approval that the final version be submitted for review prior to recording. *Exhibits 1.R and 1.L.*
20. The Shoreline Master Program for the Thurston Region (SMPTR) designates Hewitt Lake as a Shoreline of the State, and the subject property shoreline as a Rural shoreline environment. The regulated shoreline includes a 0.25-acre portion of the northeast corner of the subject property, generally corresponding to Tracts B and E and Lots 37 and 38. *Exhibits 1 and 1.DD; SMPTR Section Five.* Low to medium intensity recreational uses, private access roads serving permitted uses, and utility lines are allowed in the Rural shoreline environment, subject to the applicable regulations of the SMPTR. *SMPTR Section Three, Chapters XIV(D), XVII(D), and XX(D).* A shoreline substantial development permit (SSDP) is required for the development because it is within the regulated shoreline and its anticipated value exceeds the permit threshold of \$7,047.00. *Exhibits 1 and 1.F; Washington Administrative Code (WAC) 173-27-040; Washington State Register (WSR) 17-17-007.*
21. The following non-exempt project activities would occur within shoreline jurisdiction:
- Construction of the picnic shelter and tot lot in Tract B, with associated landscaping.
  - Construction of portions of the Tract E private access lane and Tract G stormwater facilities.
  - Installation of public sanitary sewer and watermain.
- Exhibits 1, 1.DD, 1.F, and 1.G.*
22. The proposed picnic shelter would be located on the site of one of the existing single-family residences proposed for removal. Because the park would serve residents of the subdivision only, no parking lot or restroom facilities are proposed or required. *Exhibits 1.DD and 1.G; Testimony of Dawn Peebles and Jeff Pantier.*

23. The private access lane would serve four of the lots and would provide enhanced emergency service and utility corridor access. The lane would be in the same area as an existing gravel driveway but would be improved with paving and stormwater management that are currently lacking. *Exhibits 1.DD and 1.G.*
24. The proposed utility lines would be placed underground within the private lane corridor, consistent with City of Olympia specifications. The distance between the utilities and the lake would be approximately 150 feet. *Exhibits 1.DD, 1.G, and 1.B1.*
25. No shoreline structure would exceed 35 feet over average grade. *Exhibit 1.*
26. The subject property is within the Olympia School District. Impacts to schools would be mitigated through payment of mitigation fees, which would be due prior to building permit issuance. *Exhibits 1 and 1.L1.*
27. Impacts to City of Olympia parks would be mitigated through payment of mitigation fees. These fees, totaling \$159,558.74, were imposed through the State Environmental Policy Act (SEPA) review process and would be payable prior to final plat approval. The fee amount includes a credit for providing on-site park amenities, provided the Applicant installs playground equipment that meets quality, accessibility, and safety standards identified by the City. If the equipment does not meet those specifications, an additional \$28,400.50 would be required to be paid in parks mitigation. *Exhibits 1.J1, 1.K1, and 1.M.*
28. Students from the proposed development would be bussed to school. A bus stop pad would be provided at the intersection of Cherie Estates Drive and the new road serving the townhouse portion of the development, the design of which would be developed in coordination with the District. Safe walking conditions would be provided by the internal sidewalks and the existing sidewalk on the north side of 53rd Avenue SE. *Jeff Pantier Testimony .*
29. After assuming the role of lead agency, Thurston County reviewed the environmental impacts of the project pursuant to the State Environmental Policy Act and issued a mitigated determination of non-significance (MDNS) on October 3, 2019 and a Final MDNS on November 7, 2019. The Final MDNS imposed mitigation measures addressing erosion and stormwater control, critical area fencing and signage, protection of archaeological resources, construction impacts, spill containment, traffic and parks mitigation, and asbestos abatement. *Exhibits 1, 1.M, and 1.N.*
30. Written notice of the public hearing was sent to owners of property within 300 feet of the site on June 26, 2020 and published in The Olympian on July 3, 2020. Notice was not posted onsite as a result of the Stay Home Stay Healthy Order of the Governor. *Exhibits 1 and 1.A; Scott McCormick Testimony.*
31. Public comment on the application raised numerous issues of concern, including: the site design (e.g., the location of the townhouses and access roads relative to surrounding

development, the inclusion of a park in a quiet area); traffic, particularly at the intersection of 53rd Avenue SE and Henderson Blvd; density; wildlife impacts due to tree removal; school impacts; and the age of the wetland and traffic studies. With respect to site design, the alley serving the townhouses with vehicular access would run along the northern property line, in an existing driveway corridor that runs behind a subdivision of substantially larger single-family residential lots. The public road serving the townhouses would be a short distance to the south, running behind several single-family residential lots within the Cheri Estates subdivision. With respect to traffic, there was a significant amount of testimony that turning onto Henderson Blvd from 53rd Avenue SE is difficult. In addition, the 53rd Avenue SE street section narrows in front of two duplexes near its terminus at Cheri Estates Drive, and passing is difficult when there are cars parked in front of the duplexes. Neighbors reported concerns about a more recently constructed sewer line in an easement on a residential parcel having problems including leaking, and they wondered whether the proposed sewer extension would correct or add to this problem. Several neighbors asked about whether the Applicant would pay for the cost of relocating the Cheri Estates subdivision's monument sign, since its existing location would no longer make sense with the proposed site entrance from 53rd Avenue. *Testimony of Tim Harrington, Len Seifter, Chelsie McKinney, Jessica Juergens, Jennifer Matthews, Mallory Fontainola, Ashley Palmer and Tom Van Nuys; Exhibits 1 and 2.*

32. In response to public comment, the Applicant submitted that impacts to neighbors would be mitigated through a fence and a landscape strip between the alley and the northern property line. The alley-loaded design would place the townhouse living spaces farther to the south, away from the neighboring properties, reducing noise and light impacts. Also, the alley was located in the path of an existing access easement serving an off-site residence, rather than creating yet another vehicle travel way. There would be a buffer (Tract D) between the public road and the Cheri Estates lots. With respect to traffic, an updated report would not result in different mitigation requirements, as the volume of traffic still would not trigger more detailed studies. Applicant representatives expressed the intention of working with adjoining neighbors when it comes to removal of trees along shared property lines for access roads and utilities, as well as working with the Cheri Estates homeowners association regarding relocation of their subdivision monument sign. *Jeff Pantier Testimony; Exhibit 1.K2 and 1.DD.*
33. County Public Works Staff submitted that the City of Tumwater has jurisdiction over 53rd Avenue SE and would be responsible for determining whether or not to require roadway improvements; the City was notified of the instant project moving forward and did not request any additional mitigation beyond impact fee payment. In its current condition, the roadway is adequate to meet minimum requirements for emergency access. County Staff encouraged neighbors to contact the City of Olympia regarding the leaking sewer line in question. *Testimony of Arthur Saint, Dawn Peebles, and Scott McCormick.*

## CONCLUSIONS

### **Jurisdiction**

The Hearing Examiner is granted jurisdiction to hear and decide applications for preliminary plats pursuant to Revised Code of Washington (RCW) 36.70.970, TCC 2.06.010(A), and TCC 18.12.090.

The Hearing Examiner is granted jurisdiction to hear and decide applications for shoreline permits pursuant to RCW Chapter 36.70, WAC 173-27, TCC 19.04.010, and Section One, Part V of the Shoreline Master Program for the Thurston region.

### **Criteria for Review**

#### **Preliminary Plat**

The proposal must satisfy the criteria for preliminary plat approval contained in TCC 18.12.090 to which the application is vested:

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.

#### **Shoreline Substantial Development Permit (WAC 173-27-150)**

To be approved by the Hearing Examiner, the proposed shoreline substantial development permit must be consistent with:

- A. The policies and procedures of the Shoreline Management Act;
- B. The provisions of applicable regulations; and
- C. The Shoreline Master Program for the Thurston Region.

#### **A. Shoreline Management Act**

Chapter 90.58 RCW, the Washington State Shoreline Management Act (SMA) of 1971, establishes a cooperative program of shoreline management between the local and state governments with local government having the primary responsibility for initiating the planning required by the chapter and administering the regulatory program consistent with the Act. The Thurston County Shoreline Master Program (SMPTR) provides goals, policies and regulatory standards for ensuring that development within the shorelines of the state is consistent the policies and provisions of Chapter 90.58 RCW.

The intent of the policies of RCW 90.58.020 is to foster “all reasonable and appropriate uses” and to protect against adverse effects to the public health, the land, and its vegetation and wildlife. The SMA mandates that local governments adopt shoreline management programs that give preference to uses (in the following order of preference) that: recognize and protect the

statewide interest over local interest; preserve the natural character of the shoreline; result in long term over short term benefit; protect the resources and ecology of the shoreline; increase public access to publicly owned areas of the shorelines; and increase recreational opportunities for the public in the shoreline. The public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state is to be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses that are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline, are to be given preference.

*B. Applicable regulations from the Washington Administrative Code*

WAC 173-27-140 Review criteria for all development.

- (1) No authorization to undertake use or development on shorelines of the state shall be granted by the local government unless upon review the use or development is determined to be consistent with the policy and provisions of the Shoreline Management Act and the master program.
- (2) No permit shall be issued for any new or expanded building or structure of more than thirty-five feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines except where a master program does not prohibit the same and then only when overriding considerations of the public interest will be served.

WAC 173-27-190 Permits for substantial development, conditional use, or variance.

- (1) Each permit for a substantial development, conditional use or variance issued by local government shall contain a provision that construction pursuant to the permit shall not begin and is not authorized until twenty-one days from the date of filing as defined in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within twenty-one days from the date of such filing have been terminated; except as provided in RCW 90.58.140 (5)(a) and (b).

*C. Shoreline Master Program for the Thurston Region*

The Shoreline Master Program for the Thurston Region (SMPTR) designates the shorelands on the subject property as Conservancy. The policies and regulations that are applicable to the proposal are contained in the Recreation, Road and Railroad Design and Construction, and Utilities chapters of the SMPTR.

SMPTR Section Three, Chapter XIV, Part B. Policies

1. Priorities for recreational development of shorelines should relate directly to densities and unique characteristics of the population served. Priorities for acquisition should consider need and special opportunities as well as access by public transit.
2. All recreational development projects should be considered on the basis of their compatibility with the environment.
3. Access to recreational locations such as fishing streams and hunting areas should be planned to prevent concentration of use pressures.

4. The linkage of shoreline parks and public access points through provisions for linear open spaces should be encouraged. Such open space could include hiking paths, bicycle paths and/or scenic drives located as close to the water's edge as feasible.
5. Recreational developments should be designed to preserve, enhance, or create scenic views and vistas. Favorable consideration should be given to those projects that complement their environment.
6. Where possible, parking areas should be located inland, away from the immediate edge of the water, and recreational beaches, and should be linked with the shoreline by walkways.
7. Recreational development should comply with all applicable city, county, state, and federal regulations.
8. Facilities for intensive recreational activities should be permitted only where sewage disposal and pest control can be accomplished to meet public health standards without altering the environment adversely.
9. Development of public fishing piers, underwater fishing reefs, and access to public waters and tidelands should be encouraged as part of an overall recreation plan or development.
10. Where appropriate, non-intensive, recreational use should be encouraged in flood plains that are subject to recurring flooding.
11. Artificial marine life habitats should be encouraged in order to provide increased aquatic life for recreation. Such habitats should be constructed in areas of low habitat diversity.

SMPTR Section Three, Chapter XIV, Part C. General Regulations

1. Public access points on lakes must provide parking space appropriate for the intended use.
2. Recreation facilities or structures which are not compatible with the environmental designation in which they are proposed are prohibited.
3. Events and temporary uses in the public interest may be approved by the Administrator in any environment, provided that such uses will not damage the wetland environment.
4. Recreational developments must provide facilities for non-motorized access, such as pedestrian, bicycle, and/or equestrian path links to the shoreline.
5. Sewage disposal and pest control must meet public health standards; waste must not be allowed to enter the water.
6. The following regulations shall apply to artificial aquatic life habitats ... [N/A]

7. Public or private recreation areas which cater to the use of all-terrain or offroad vehicles as the primary recreational activity shall not be allowed in the shoreline areas.
8. All stair towers meeting one of the following conditions must be designed by a licensed civil engineer ... [N/A]
9. Stair towers shall be designed to minimize obstructing the views enjoyed by adjoining residences.

SMPTR Section Three, Chapter XIV, Part D. Environmental Designations and Regulations

2. Rural Environment. Low to medium intensity recreational uses shall be permitted on Rural Environment shorelines, subject to the general regulations and following specific regulations.
  - a. A recreational facility of structure which changes or detracts from the character of the Rural Environment (by building design or intensity of use) shall be prohibited.
  - b. Roads, parking and vehicular camping facilities, including restrooms, shall not be located within fifty (50) feet of the ordinary high-water mark of any shoreline with the exception of access to boat launching facilities. Parking facilities and roadways may be within fifty (50) feet only if they provide access for handicap or for scenic viewpoints. Maintenance or upgrading of existing roads, parking and/or vehicle camping facilities including restrooms is permitted provided the area devoted to these facilities is not enlarged. Pedestrian and hiking trail access shall be provided to link upland facilities with the shoreline.

SMPTR Section Three, Chapter XVII. Road and Railroad Design and Construction.

*B. Policies*

1. Major highways, freeways and railways should be located away from shorelands, except in port and industrial areas, so that shoreland roads may be reserved for slow-moving local or recreational traffic. [N/A]
2. Road and railroad locations should be planned to fit the topography and utilize existing corridors so that minimum alterations of natural conditions will be necessary. This is especially important on flood plains.
3. Roads and railroads should be designed, constructed, and maintained to minimize erosion and to permit natural movement of ground water and flood waters to the extent practical.
4. All debris, overburden, and other waste materials from construction should be disposed of in such a way as to prevent their entry by erosion from drainage, high water, or other means into any surface water body.
5. Scenic corridors containing public roadways should have provision for safe pedestrian and other nonmotorized travel. Also, provisions should be made for viewpoints, rest areas, and picnic facilities in appropriate areas. [N/A]



6. Railroad beds should be screened with trees in scenic areas. [N/A]

### *C. General Regulations*

1. Excess construction materials shall be removed from the shoreline area.
2. Major roads and railroads shall cross shoreline areas by the shortest, most direct route feasible, unless such route would cause significant environmental damage. [N/A]
3. Filling of tidelands, shorelands and marshes for road or railroad rights-of-way shall be prohibited unless no viable alternative exists.
4. All excavation materials and soils exposed to erosion by all phases of road, bridge and culvert work shall be stabilized and protected by seeding, mulching or other effective means, both during and after construction.
5. All debris, overburden and other waste materials from road and railroad construction, if permitted on shorelines, shall be disposed of in such a way as to minimize their entry by erosion from drainage into any water body.
6. Private roads shall follow natural contours where possible. Natural benches, ridge tops and flat slopes are preferred locations. Erodible cuts and filled slopes shall be protected by planting or seeding with appropriate ground cover or matting immediately following construction.
7. Where permitted to parallel shorelines, roads or railroads shall be setback a sufficient distance from the ordinary high-water line to leave a usable shoreline area. [N/A]
8. Storm water runoff shall be controlled to reduce suspended solids before entering any surface water body.

### *D. Environmental Designations and Regulations*

1. Urban, Suburban, Rural and Conservancy Environments. The following roads and railroads are permitted:
  - a. Local public or private access roads to serve uses permitted in the Urban, Suburban, Rural and Conservancy Environment.
  - b. Transportation thoroughfares including major arterials, highways and railways.

### SMPTR Section Three, Chapter XX. Utilities.

#### *B. Policies*

1. Wherever utilities must be placed in a shoreline area, the locations should be chosen so as not to obstruct or destroy scenic views. Utilities should be placed underground, or designed to do minimal damage to the aesthetic qualities of the shoreline area.

2. Where construction connected with utility placement occurs on shorelines, banks should be restored to their pre-project configuration, replanted with native species and maintained until the new vegetation is established.
3. Sewage treatment, water reclamation, desalinization and power plants should be designed and located so as not to interfere with, and to be compatible with recreational, residential or other public uses of the water and shorelands.
4. Sewage outfalls to waterbodies should be avoided in preference to recycling or land disposal of sewage wastes. Where no alternative to outfalls into water exist, location of such outfalls should be part of the appropriate regional plan for solutions to sewage management problems.
5. Utility rights-of-way should be used for public access to and along waterbodies where feasible.
6. If utilities must be located over the water, they should be placed on bridge-like structures rather than fill, and said structures should provide clearance for all marine vessels normally using the area.
7. New major transmission facilities should follow existing utility corridors unless prohibited by the environmental designation and regulations.

#### *General Regulations*

1. Applicants for permits to locate utility lines in the shoreline jurisdictional area shall submit a location plan with their application which shows existing utility routes in the vicinity of the proposed utility line. The proposed utility lines shall follow existing utility, natural drainage or transportation routes where feasible.
2. All utility facilities shall be located on lots or routes no larger than necessary.
3. The approved projects shall identify a method of reclamation which provides for revegetation and protection of wetland areas from erosion. As a minimum, this shall include the restoration of the affected area to pre-development elevation, replanted with native or pre-existing species and provisions for maintenance care for the newly planted or seeded vegetation until it is established.
4. Utility services accessory to individual projects shall be regulated by the specific use regulations for the activity in addition to the standards of this section and shall not require separate Substantial Development Permits for utility service installations.
5. Where feasible, utilities shall be placed underground unless such undergrounding would be economically or technically prohibitive or significantly detrimental to the environment.

6. Utility facilities shall be designed for minimal environmental and aesthetic impact and shall be coordinated with local comprehensive plans.
7. Underwater utilities shall be located at a depth sufficient to prevent interference between the utility and other shoreline use activities.
8. All utility facilities must provide safeguards to ensure that no long-term damage will be caused to the adjacent or downstream environment should an accident occur involving the utility.
9. No discharge of waste material which could result in decertification of aquacultural areas or products or cause lowering of water quality ratings is permitted.
10. No new hydroelectric generating facilities are allowed on the Nisqually River pursuant to the recommendations of the Nisqually River Management Plan.

*D. Environmental Designations and Regulations*

1. Urban and Rural Environments. The following utility facilities are allowed in the Urban and Rural Environments:
  - a. Utility lines.
  - b. Control, collection or distribution facilities including, but not limited to, telephone exchanges, sewage treatment plants, water reservoirs, electrical substations and gas metering stations.
  - c. Power generating facilities except on the Nisqually River and transmission lines.

SMPTR Section Two, Chapter V. Regional Criteria.

- A. Public access to shorelines shall be permitted only in a manner which preserves or enhances the characteristics of the shoreline which existed prior to establishment of public access.
- B. Protection of water quality and aquatic habitat is recognized as a primary goal. All applications for development of shorelines and use of public waters shall be closely analyzed for their effect on the aquatic environment. Of particular concern will be the preservation of the larger ecological system when a change is proposed to a lesser part of the system, like a marshland or tideland.
- C. Future water-dependent or water-related industrial uses shall be channeled into shoreline areas already so utilized or into those shoreline areas which lend themselves to suitable industrial development. Where industry is now located in shoreline areas that are more suited to other uses, it is the policy of this Master Program to minimize expansion of such industry.
- D. Residential development shall be undertaken in a manner that will maintain existing public access to the publicly-owned shorelines and not interfere with the public use of water areas fronting such shorelines, nor shall it adversely affect aquatic habitat.

- E. Governmental units shall be bound by the same requirements as private interests.
- F. Applicants for permits shall have the burden of proving that a proposed substantial development is consistent with the criteria which must be met before a Permit is granted. In any review of the granting or denial of an application for a permit as provided in RCW 90.58.18.180 (1), the person requesting the review shall have the burden of proof.
- G. Shorelines of this Region which are notable for their aesthetic, scenic, historic, or ecological qualities shall be preserved. Any private or public development which would degrade such shoreline qualities shall be discouraged. Inappropriate shoreline uses and poor quality shoreline conditions shall be eliminated when a new shoreline development or activity is authorized.
- H. Protection of public health is recognized as a primary goal. All applications for development or use of shorelines shall be closely analyzed for their effect on the public health.

### **Conclusions Based on Findings**

#### *Preliminary Plat*

1. With conditions, including the mitigation measures imposed in the MDNS, the proposed plat makes appropriate provisions for public health, safety, public ways, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and all other relevant factors. Public health would be addressed through connection to public water and sewer, and public safety would be addressed by the proposed road improvements and payment of traffic mitigation fees. Although credible testimony was presented regarding traffic in the area, the Hearing Examiner is persuaded that the project satisfies applicable requirements and that the project should not be denied on the basis of a pre-existing off-site condition. With respect to parks and recreation, the plat makes provision for on-site recreation through the proposed tot lot and off-site recreation through payment of parks mitigation fees. Nearly half of the site area would consist of open spaces, including the site's most important wildlife habitat, which would be retained in a large tract in perpetuity. With respect to schools, mitigation fees would address capacity issues. Students would have access to sidewalks both within the subdivision and along 53rd Avenue SE along which they would be able to safely travel to school bus stops once designed by the District. As proposed and conditioned, stormwater runoff would be controlled in accordance with County requirements. *Findings 11, 12, 13, 14, 15, 16, 17, 18, 26, 27, 28, 29, 31, 32, and 33.*
2. As conditioned, the public use and interest would be served by the subdivision. Although there was testimony questioning the compatibility of the townhouses and the overall project density with surrounding development, the project represents the minimum allowable density on this highly environmentally constrained urban growth area site, while simultaneously retaining the critical area in an open space tract in perpetuity. Applicable zoning standards would be satisfied, and a fence and landscape buffering would be provided, which would mitigate the visual and privacy impacts of the new

townhomes on existing off-site residential development. The townhouses would be arranged into duplexes (of which the nearest off-site example is immediately adjacent to the site at the Cheri Estates Drive and 53rd Avenue intersection); the proposed duplexes would be subject to design review, during which process compatibility with surrounding existing development would be closely considered. The public interest would also be served by preservation of nearly 2.5 acres of wetland and buffer in a natural state, providing habitat and water quality functions. *Findings 1, 4, 5, 6, 7, 8, 9, 10, 11, 31, 32, and 33.*

#### *Shoreline Substantial Development Permit*

1. As conditioned, the proposal is consistent with the policies and procedures of the Shoreline Management Act. The proposed road, utility, and recreation improvements are reasonable uses of the shoreline, which would not adversely affect the ecology of the shoreline. The proposed road and utility improvements minimize impacts by following an existing driveway corridor. *Findings 20, 21, 22, 23, and 24.*
2. As conditioned, the proposal complies with applicable regulations in the Washington Administrative Code. None of the structures within shoreline jurisdiction would be more than 35 feet over average grade. *Finding 25.*
3. As conditioned, the proposal is consistent with the applicable policies and regulations of the Shoreline Master Program for the Thurston Region. The recreational improvements would not affect scenic vistas, as they would occupy space currently occupied by a residence. The play equipment would be required to comply with safety standards identified by the City of Olympia. There would be no parking or restroom facilities. The park and shoreline would be accessible by foot to residents of the proposed plat. No high-intensity recreational amenities are proposed. Use of these amenities would be subject to the County noise ordinance. The proposed private access lane would utilize an existing corridor and would be subject to erosion control measures. No shorelands would be filled for construction of the access lane. The road would be set back from the shoreline sufficiently to allow for development of the park in Tract B. Stormwater runoff from the road would be managed in accordance with County requirements. The utilities would be placed underground, and not over or under the water. They would be a significant distance from the shoreline. *Findings 16, 17, 18, 21, 22, 23, 24, 27, and 29.*
4. As conditioned, the proposal is consistent with the applicable regional criteria. Environmental impacts have been reviewed and mitigated through the SEPA process. No adverse impacts to aquatic habitat or to the public health have been identified. An Integrated Pest Management Plan would be implemented on the site to protect water resources. *Findings 19 and 29.*

### **DECISION**

Based on the preceding findings and conclusions, the request for approval of a preliminary plat to subdivide 12.37 acres into 38 residential lots, including 20 attached townhouse lots and 18 single-family detached lots, and a shoreline substantial development permit to construct certain

subdivision improvements within 200 feet of Hewitt Lake, are **GRANTED** subject to the following conditions:

**Public Works Conditions:**

**ROADS**

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

**TRAFFIC CONTROL DEVICES**

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

**DRAINAGE**

5. The storm water management system shall conform to the Drainage Design & Erosion Control Manual.
6. All drainage facilities outside of the County right-of-way shall remain private and be maintained by the developer, owner and/or the property owners association.
7. 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. Because proper landscaping is vital to the performance of the stormwater system, the Landscape Plan (if required) shall be signed/sealed by a Washington licensed civil engineer (preferably the engineer who designed the stormwater system).

**UTILITIES**

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

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

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

#### RIGHT-OF-WAY & SURVEY

11. Permanent survey control need to be placed to establish all public street centerlines, intersections, angle points, curves, subdivision boundaries and other points of control.
12. 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

13. Payment of the off-site traffic mitigation required in the November 7, 2019 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. No work shall take place until a construction permit has been issued by Thurston County Public Works – Development Review Section.
15. Development within the City of Olympia 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. 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. When all construction/improvements have been completed, contact the Thurston County Public Works – Development Review Section for a final inspection.
18. 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. Once the planning department has issued the official preliminary approval, a construction permit application shall be submitted along with a complete set of construction drawings and the final drainage and erosion control report to Thurston County Public Works – Development Review Section for review and acceptance.
20. PRIOR to construction, the applicant shall:
  - a. Pay outstanding construction review and inspection fees\*
  - a. Receive an erosion and sediment control permit
  - b. Have the erosion and sediment control inspected and accepted
  - c. Receive a construction permit
  - d. Schedule a pre-construction conference with county staff.

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

#### GENERAL INFORMATION

#### FINAL REVIEW

21. Prior to receiving final approval from this department, the following items shall be required:
  - a. Completion of all roads and drainage facilities.
  - a. Final inspection and completion of all punch list items.
  - b. Record drawings submitted for review and acceptance. The record drawings shall include street names and block numbers approved by Addressing Official.
  - c. Receive and accept Engineer's Construction Inspection Report Form (Appendix I-C, Volume I of the Drainage Design and Erosion Control Manual).
  - d. Receive and accept Maintenance Agreement Form (Appendix I-E, Volume I of the Drainage Design and Erosion Control Manual).
  - e. 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.
  - f. Execute an agreement with financial security for the maintenance and operation of the drainage facilities in accordance with Thurston County Code 15.05.040.
  - g. Approve the Final Plat Map.
  - h. Property owners articles of incorporation and covenants in accordance with Volume I, Section 2.4.11 of the Drainage Design and Erosion Control Manual.
  - i. Completion of required frontage improvements.
  - j. Completion of required signing and striping.
  - k. Payment of any required permitting fees.



1. Payment of any required mitigation fees.
22. 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 or driveways within or providing access to property described in this plat. The building, maintenance, repair, improvement, operation or servicing of the storm water facilities outside the county rights of way are the responsibility of the property owner(s).
- b. Increased storm water 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 Cheri Estates Drive SE.
- c. If seasonal drainage crosses subject property, no filling or disruption of the natural flow shall be permitted.
- d. 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. 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. Per Thurston County Resolution 14820, impact fees shall be paid prior to issuing any building permits associated with this project.
- g. 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. \_\_\_\_\_.
- h. 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 \_\_\_\_\_.
- i. The property described herein is required to accommodate storm water runoff from frontage improvements to Cheri Estates Drive SE and all natural tributary areas

abutting said property.

- j. Maintenance of the landscaping, trees, sidewalk and roadside drainage and stormwater facilities such as ditches, swales and ponds within the public right-of-way is the sole responsibility of the (property owners) or (homeowners association) within this subdivision. Thurston County has no responsibility to maintain or service said landscaping, trees, sidewalks or roadside stormwater facilities.

**Delineate on the Plat**

- k. 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.).
- l. Delineate the access restrictions by showing a "no access" strip, written and hatched, between the County approved access points along the frontage of Cheri Estates Drive SE on the final plat map.
- m. Please clearly label all public and private roads.

**Environmental Health Conditions:**

**REQUIREMENTS FOR FINAL SUBDIVISION SUBMITTAL:**

23. City of Olympia sanitary sewer must be extended to and through the City of Olympia water and sewer utilities must be extended through the subdivision prior to final approval. Confirmation of final water and sewer construction approval from the City of Olympia must be provided to this office.
24. The Applicant must complete a non-public declaration of covenant for the existing well located on-site that serves neighboring Tax Parcel 12836430502. The covenant must be submitted to this office for review prior to being recorded with the Thurston County Auditor's Office. A well access and maintenance agreement is strongly recommended.
25. The two existing on-site septic systems must be properly abandoned per Article IV of the Thurston County Sanitary Code. Abandonment permit applications are required to be submitted with copies of all abandonment documentation from a licensed septic system pumper.
26. A finalized version of the Integrated Pest Management Plan (IPMP) must be submitted for review prior to recording the document with the Thurston County Auditor's Office.

**City of Olympia Conditions:**

27. In order to mitigate traffic impacts within the City of Olympia, the proponent will need to contribute \$ 134,065.00 to the City prior to final project approval, pursuant to County Road Standards. Timing of the contributions may be altered if approved by both the City of Olympia and Thurston County.

28. In order to mitigate park impacts, the City of Olympia requires the applicant to contribute \$159,558.74 to the City in a lump sum prior to final plat approval.
29. Playground equipment provided for Tract "B" must be commercial-grade play equipment, provide play opportunities for both pre-school and 5-12 year old children, be compliant with the Americans with Disabilities Act Accessibility Guidelines, and comply with Consumer Product Safety Commission and American Society for Testing and Materials safety standards.
30. Should the playground not be constructed to the specifications outlined above, or not constructed at all, SEPA mitigation fees in the amount of \$28,400.50 in the category of Neighborhood Parks shall be assessed.

**City of Tumwater Condition:**

31. In order to mitigate traffic impacts within the City of Tumwater, the proponent will need to contribute \$ 17,452.00 to the City prior to final project approval, pursuant to County Road Standards. Timing of the contributions may be altered if approved by both the City of Tumwater and Thurston County.

**CPED Conditions:**

32. A critical area buffer fencing and signage plan shall be submitted prior to applying for final plat approval. Critical area fencing and signage shall meet all of the standards of TCC Ch. 24.60.
33. Excess construction materials shall be removed from the shoreline area.
34. Residential density calculations and allowances meeting the Thurston County Zoning Code and Shoreline Master Program for the Thurston Region shall be clearly stated on the face of the final plat.
35. The maximum impervious surface limits within the 200 foot Rural Shoreline Environment is 30%. All future development shall comply with this standard.
36. Prior to final plat approval submit a final landscaping plan to the Thurston County Community Planning and Economic Development for review and approval.
37. Prior to final plat approval comply with all conditions of the Final Mitigated Determination of Non-Significance dated November 7, 2019 (Exhibit 1.M).
38. Prior to final plat approval evidence that all necessary roads and public parks mitigation have been paid shall be submitted to Thurston County Community Planning and Economic Development.


39. Encroachment into setbacks: Required setback (yard) areas shall be kept free of any building or structure taller than thirty inches in height, except as otherwise provided by TCC 23.04.080.H.5.
40. Prior to construction of the townhome portion of the project, Administrative Design Review approval is required.
41. Where design review is required, no county permit shall be issued nor work begun until the department has approved the proposed activity, and no substantial changes shall be made after such approval until the department has approved the proposed changes.
42. Street addresses, lot size and dimensions for each lot shall be shown on the final map.
43. The final design of this subdivision and future development of lots shall conform to all minimum standards of the Zoning Ordinance (i.e. lot size, lot dimension, setbacks, etc.) and the Platting and Subdivision Ordinance.
44. 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 and verified prior to final occupancy approval.
45. Mitigation fees for schools, parks and roads shall be paid prior to building permit issuance.
46. The following notes shall be shown on the final plat map:
  - A. This subdivision was reviewed through project number 2012102745 and approved based on standards and allowances of the Residential four to eight (R 4-8) zoning district in the Olympia Urban Growth Area (TCC 23.04.080).
  - B. 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.
  - C. Regulated wetlands and their associated buffers have been identified on site. Pursuant to Thurston County Code, Chapter 24.30, these areas are designated as critical areas in Thurston County. To prevent disturbance of the sensitive area, no development or construction activities shall be allowed within wetlands or their associated buffers. Due to the importance of the wetlands for wildlife habitat, pollution control, ground water recharge and flood water storage, no clearing, filling, grading or other construction activities shall be allowed within the sensitive area except where exempted by and when prior authorization is obtained from Thurston County Development Services. Future development proposals within the sensitive area may require submittal of a wetland delineation and classification report prepared

by a person with wetlands ecology expertise who is knowledgeable of wetland conditions within the Thurston region and who derives his/her livelihood from employment in this occupation.

47. A school bus stop pad shall be provided at the intersection of Cheri Estates Drive and the new access to the townhome section of the plat.
48. Prior to construction and site clearing, all wetland buffers shall be clearly delineated and marked on site by installing orange construction fencing along the outside perimeter of all wetland buffers. After wetland buffers are delineated and fenced on site the applicant shall contact Thurston County Development Services to request an inspection.
49. Site clearing may not begin until the applicant obtains written permission from the Thurston County Public Works.
50. No chemical fertilizers or herbicides shall be used immediately adjacent to or within the wetland buffers on-site. Any control of noxious weeds or invasive plants shall be done by hand or small hand operated tools rather than chemical application.
51. Prior to final plat submittal permanent wetland buffer fencing and signage must be installed along the outer edge of all regulated wetland buffers on-site in accordance with Thurston County code, TCC 24.60 – Critical Area Signs and Fencing. Wetland buffer signs shall be installed at minimum 100-foot intervals and within 10-feet of the intersection with property lines. Critical Area fencing may be low split rail, board or vinyl fencing at least three-feet in height or may be solid wood fencing. If open type fencing is used, solid wire strands shall be included to inhibit dogs from entering wetland buffers. A wetland buffer fencing and signage plan shall be submitted by the applicant to Thurston County Planning and Environmental Review Section for review and approval prior to final plat submittal.
52. Provision of a minimum of two hundred square feet of private, usable yard space for each townhouse dwelling unit is required. This may include decks and patios.
53. Enclosed or screened solid waste storage and collection areas are required for the townhome development.
54. Each townhouse occupancy shall have recorded with the county auditor a perpetually binding common party wall agreement as a covenant to each deed establishing the rights and obligations of each owner relative to the common party wall and foundation, and providing for easements for purposes of maintenance and fire protection. Such agreement shall include provisions for upkeep and maintenance of all common areas including landscape, stormwater facilities, utilities, play areas or other facilities.
55. Townhouse units shall not be rented or sold, nor occupancy permits issued until final plat or final short plat approval.

56. Prior to final plat approval the plat shall be designed to meet the requirements of TCC 23.04.080(G), "lot width must vary by six-foot increments to avoid monotonous development patterns, except for attached townhomes."
57. There shall be no more than one builder per townhouse structure.
58. The average size of townhome lots shall not be less than 3,000 square feet.
59. A good faith asbestos survey must be conducted on structures to be demolished by a certified Asbestos Hazardous Emergency Response Act (AHERA) building inspector. If asbestos is found during the survey, an Asbestos Removal Notification must be completed and all asbestos containing material must be properly removed prior to demolition and if the structure is 120 square feet or greater, a Demolition Notification must be submitted regardless of the results of the asbestos survey.
60. In the event that archaeological deposits or skeletal material or features of a burial/interment situation are encountered, all work in the vicinity of the discovery area must stop immediately and contact made with the Washington State Historic Preservation Officer, the Nisqually & Squaxin Indian Tribal archaeologists and Thurston County Community Planning and Economic Development.
61. Provision should be made to minimize the tracking of sediment by construction vehicles onto paved public roads. If sediment is deposited, it should be cleaned every day by shoveling or sweeping. Water cleaning should only be done after the area has been shoveled out or swept.
62. During construction, all releases of oils, hydraulic fluids, fuels, other petroleum products, paints, solvents, and other deleterious materials must be contained and removed in a manner that will prevent their discharge to waters and soils of the state. The cleanup of spills should take precedence over other work on the site.
63. All development on the site shall be in substantial compliance with the approved plat. Any alteration of this site plan will require approval of a new or amended plat. The County Planning and Environmental Review Section will determine if any proposed amendment is substantial enough to require Hearing Examiner approval.

**DECIDED** August 4, 2020.



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Sharon A. Rice  
Thurston County Hearing Examiner

NOTE: Pursuant to TCC 22.62.020(C)10, affected property owners may request a change in valuation for property tax purposes.





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

<b>NOTE:</b> 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).
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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 **\$750.00** for a Request for Reconsideration or **\$1,041.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Building Development Center on the second floor of Building #1 in the Thurston County Courthouse complex no later than 4:00 p.m. per the requirements specified in A2 and B2 above. **Postmarks are not acceptable.** If your application fee and completed application form is not timely filed, you will be unable to request Reconsideration or Appeal this determination. The deadline will not be extended.

\* Shoreline Permit decisions are not final until a 21-day appeal period to the state has elapsed following the date the County decision becomes final.



Project No. \_\_\_\_\_  
Appeal Sequence No.: \_\_\_\_\_

☐ Check here for: **RECONSIDERATION OF HEARING EXAMINER DECISION**

THE APPELLANT, after review of the terms and conditions of the Hearing Examiner's decision hereby requests that the Hearing Examiner take the following information into consideration and further review under the provisions of Chapter 2.06.060 of the Thurston County Code:

(If more space is required, please attach additional sheet.)

☐ Check here for: **APPEAL OF HEARING EXAMINER DECISION**

TO THE BOARD OF THURSTON COUNTY COMMISSIONERS COMES NOW \_\_\_\_\_  
on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, as an APPELLANT in the matter of a Hearing Examiner's decision  
rendered on \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ relating to \_\_\_\_\_

THE APPELLANT, after review and consideration of the reasons given by the Hearing Examiner for his decision, does now, under the provisions of Chapter 2.06.070 of the Thurston County Code, give written notice of APPEAL to the Board of Thurston County Commissioners of said decision and alleges the following errors in said Hearing Examiner decision:

Specific section, paragraph and page of regulation allegedly interpreted erroneously by Hearing Examiner:

1. Zoning Ordinance \_\_\_\_\_
2. Platting and Subdivision Ordinance \_\_\_\_\_
3. Comprehensive Plan \_\_\_\_\_
4. Critical Areas Ordinance \_\_\_\_\_
5. Shoreline Master Program \_\_\_\_\_
6. Other: \_\_\_\_\_

(If more space is required, please attach additional sheet.)

AND FURTHERMORE, requests that the Board of Thurston County Commissioners, having responsibility for final review of such decisions will upon review of the record of the matters and the allegations contained in this appeal, find in favor of the appellant and reverse the Hearing Examiner decision.

### **STANDING**

On a separate sheet, explain why the appellant should be considered an aggrieved party and why standing should be granted to the appellant. This is required for both Reconsiderations and Appeals.

Signature required for both Reconsideration and Appeal Requests

APPELLANT NAME PRINTED \_\_\_\_\_

SIGNATURE OF APPELLANT \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

Please do not write below - for Staff Use Only:

Fee of ☐ \$750.00 for Reconsideration or \$1,041.00 for Appeal. Received (check box): Initial \_\_\_\_\_ Receipt No. \_\_\_\_\_  
Filed with the Community Planning & Economic Development Department this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.