

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF TUMWATER**

In the Matter of the Application of)	Nos. TUM-21-1895 and TUM-22-0036
)	
Evan Mann, Copper Ridge, LLC)	Three Lakes Crossing Preliminary
)	Plat and Planned Unit Development
)	
)	
For Approval of a Preliminary Plat and)	FINDINGS, CONCLUSIONS,
<u>Planned Unit Development</u>)	AND DECISION

SUMMARY OF DECISION

The request for a preliminary plat and planned unit development, to subdivide a 9.68-acre property into 45 lots for single-family residential development, with associated appurtenances and improvements, at 6609 and 6715 Henderson Boulevard, is **APPROVED**. Conditions are necessary to address specific impacts of the proposal.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held an open record hearing on the request on June 22, 2022, utilizing a hybrid approach allowing for live participation or participation by remote access technology.

Testimony:

The following individuals provided testimony under oath at the open record hearing:

Alex Baruch, City Associate Planner
Evan Mann, Applicant Representative
Scott Kaul, P.E.

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, dated June 15, 2022
2. Preliminary Plat Plan Set (10 Sheets), dated April 25, 2022
3. Vicinity Map
4. Mitigated Determination of Nonsignificance, dated May 13, 2022; SEPA Environmental Checklist, reviewed May 9, 2022; Critical Areas Report, EnviroVector, dated September 15, 2021; Mazama Pocket Gopher Screening Report, EnviroVector, dated September 28, 2021; Traffic Impact Analysis and Traffic Queuing Report, Heath and Associates, Inc., dated December 10, 2021
5. Notice of Public Hearing, dated June 9, 2022

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6. Preliminary Plat Application, received December 16, 2021
7. Notice of Application, dated January 18, 2022
8. Zoning Map
9. Certification of Public Notice, dated June 9, 2022
10. Notice of Application Comments:
 - a. Comment from Squaxin Island Tribe, dated January 18, 2022
 - b. Comment from Nisqually Indian Tribe, dated January 2022
 - c. Comment from Bryon Agan, dated January 27, 2022, with email string
 - d. Applicant Response to Comments, dated February 3, 2022, with email string
 - e. Comment from Robert Kondrat, dated February 15, 2022
11. Transportation Concurrency Ruling, dated February 8, 2022
12. SEPA Comments
 - a. Comment from Bryon Agan, dated May 15, 2022, with email string
13. Tree Replacement Plan, AHBL, dated December 8, 2021
14. Critical Areas Report, EnviroVector, dated September 15, 2021
15. Mazama Pocket Gopher Screening Report, EnviroVector, dated September 28, 2021
16. Traffic Impact Analysis and Traffic Queuing Report, Heath and Associates, Inc., dated December 10, 2021
17. Comment from Washington Department of Archaeology and Historic Preservation, dated May 12, 2022
18. Geotechnical Report, Insight Geologic, Inc., dated December 16, 2021

The Hearing Examiner enters the following findings and conclusions based upon the admitted testimony and exhibits:

FINDINGS

Application and Notice

1. Evan Mann, of Copper Ridge, LLC (Applicant), requests approval of a preliminary plat and planned unit development to subdivide a 9.68-acre property into 45 lots for single-family residential development, with associated infrastructure and amenities. Associated improvements would include three open space and tree tracts; active and passive open space areas; two private shared access tracts; a wetland buffer tract; utility extensions; stormwater management features; construction of 68th Avenue SE through the plat; and street frontage improvements along Henderson Boulevard. The property is located at 6609 and 6715 Henderson Boulevard.¹ *Exhibit 1, Staff Report, pages 1 through 3; Exhibit 2; Exhibit 3; Exhibit 6; Exhibit 13.*
2. The City of Tumwater (City) determined that the application was complete on January 11, 2022. On January 13, 2022, the City provided notice of the application by mailing or emailing notice to property owners within 300 feet of the subject property and to

¹ The property is identified by Thurston County Tax Parcel Nos. 12701320105, 7930000010, 79300000101. *Exhibit 1, Staff Report, page 1; Exhibit 3.*

reviewing departments and agencies and by posting notice on-site, with a comment deadline of February 2, 2022. On January 18, 2022, the City published notice of the application in the *Olympian* and posted notice on the City website. On June 9, 2022, the City provided notice of the open record hearing associated with the application in the same manner. *Exhibit 1, Staff Report, page 5; Exhibit 5; Exhibit 7; Exhibit 9.*

3. The City received the following comments from reviewing agencies and from members of the public in response to its notice materials:
- The Squaxin Island Tribe and the Nisqually Indian Tribe submitted comments noting that the project area has a high potential for the location of cultural resources and requesting that a cultural resources survey and report be completed for the project. As discussed below, the Applicant later submitted a cultural resource assessment that was reviewed by the Washington State Department of Archaeology and Historic Preservation (DAHP).
 - DAHP stated that it reviewed the cultural resource assessment for the site and that it agreed with the assessment's results and recommendations. It noted that no cultural resources were found during the survey, and, therefore, DAHP does not recommend further direct archaeological supervision of the project but recommends that a standard Inadvertent Discovery Plan should be followed during all ground disturbing activities.
 - Bryon Agan raised concerns about the proposed development's traffic and safety impacts at the intersection of Henderson Boulevard and 68th Avenue, noting existing issues at the intersection with regard to safe crossing conditions for bicyclists and pedestrians. He requested that the Applicant be required to conduct a traffic impact analysis addressing the proposal's impacts to the intersection. Mr. Agan also inquired about why the proposal would construct a new vehicular access point on Henderson Boulevard rather than completing an extension of Dennis Street SE to connect to Henderson Boulevard. City staff provided a response, which noted that the proposal would be reviewed for traffic considerations, explaining that an extension of Dennis Street SE would not be feasible due to the presence of wetlands. The Applicant also provided a response, which noted that a full traffic impact analysis was submitted for the proposed development.
 - Robert Kondrat raised concerns about the proposal's traffic impacts, particularly at the intersection of Henderson Boulevard and Tumwater Boulevard. He also expressed concerns about the increased development in the area generally impacting the historic character of the neighborhood. In addition, Mr. Kondrat raised concerns about the environmental impacts of the proposed development, particularly with regard the removal of trees that would be required for the project.

Exhibit 1, Staff Report, pages 5 and 6; Exhibit 10; Exhibit 17.

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State Environmental Policy Act

4. The City Community Development Department (CDD) acted as lead agency and analyzed the environmental impacts of the proposal under the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington RCW (RCW). CDD reviewed the Applicant's environmental checklist and other information on file and determined that, with mitigation measures, the proposal would not have a probable significant adverse impact on the environment. Accordingly, CDD issued a Mitigated Determination of Nonsignificance (MDNS) on May 13, 2022, with a comment deadline of May 27, 2022, and an appeal deadline of June 3, 2022. The City received one comment on the MDNS from Bryon Agan, who expressed concerns that the SEPA analysis did not adequately address the proposal's traffic and safety impacts to the intersection of 68th Avenue and Henderson Boulevard. The MDNS was not appealed. The MDNS would require the Applicant to construct a new intersection at Henderson Road and 69th Avenue SE to ensure safe traffic movements and to either construct a roundabout at the intersection of northbound Interstate 5 On/Off Ramp and Tumwater Boulevard or pay a mitigation fee to help fund the City's planned transportation improvements to the intersection. *Exhibit 1, Staff Report, pages 1, 7, and 8; Exhibit 4; Exhibit 12.*

Comprehensive Plan and Zoning

5. The property is within the Brush Prairie Neighborhood and is designated "Single Family Low Density Residential" and "Single Family Medium Density Residential" under the City Comprehensive Plan. The Single Family Low Density Residential land use designation allows for a density of four to seven dwelling units per acre. *Comprehensive Plan, Land Use Element, page 34.* The Single Family Medium Density designation allows for a density of six to nine dwelling units per acre. *Comprehensive Plan, Land Use Element, page 34.* The Comprehensive Plan provides that the density of new development within the Single Family Low Density Residential and the Single Family Medium Density Residential land use designations "should be averaged over the entire site in order to reach the maximum densities required to accommodate future population" and that it "is not the intent of the City to require that lots be a specific size but that densities are met as an average of the overall site." *Comprehensive Plan, Land Use Element, pages 34 and 35.* The proposed development would provide a density of six dwelling units per acre in the portion of the property designated Single Family Low Density Residential and eight dwelling units per acre in the portion of the property designated Single Family Medium Density Residential. City staff determined that the proposal would be consistent with the Comprehensive Plan. *Exhibit 1, Staff Report, page 3.*
6. The property is located in both the "Single-Family Low Density Residential" (SFL) zoning district and the "Single-Family Medium Density Residential" (SFM) zoning

district. The intent of the SFL zoning district is to preserve and establish peaceful, low-density neighborhoods in which owner-occupied, single-family structures are the dominant form of dwelling unit; to guide residential development in a manner that encourages and plans for the availability of public services and community facilities; and to encourage the development of attractive residential areas that provide a sense of community, establish a pedestrian-friendly atmosphere, and contain a variety of housing types. *Tumwater Municipal Code (TMC) 18.10.010*. The intent of the SFM zoning district is to provide for a high standard of development for residential areas of moderate density in which single-family housing is the primary form of development; provide designated areas in which a minimum net density of six units per acre and a maximum net density of nine units per acre apply to promote the efficient use of land; guide residential development in such a manner as to encourage and plan for the availability of public services and community facilities such as utilities, police and fire protection, streets, school, parks and recreation; encourage development of attractive residential areas that provide a sense of community, establish a pedestrian-friendly atmosphere and contain a variety of housing types; and to ensure that development without municipal utilities is at a density and in a configuration that enables cost effective urban density in-fill development when municipal utilities become available. *TMC 18.12.010*.

Single-family detached housing is allowed in both the SFL and the SFM zoning districts. *TMC 18.10.020; TMC 18.12.020.A*. The SFL zone requires a minimum net density of four units per acre and a maximum net density of six units per acre, with a maximum net density of seven dwelling units per acre allowed through the purchase of transfer of development rights, and the SFM zone requires a minimum net density of six units per acre and a maximum net density of nine units per acre. *TMC 18.10.050; TMC 18.12.050*. The proposed development would provide a density of six dwelling units per acre in the portion of the property zoned SFL and eight dwelling units per acre in the portion of the property zoned SFM zone, in accord with the density requirements of the respective zoning districts. *Exhibit 1, Staff Report, pages 9 and 10; Exhibit 2; Exhibit 8*.

7. TMC 18.10.050 provides development standards applicable to the SFL zoning district, which include required minimum lot sizes of 3,200 square feet and minimum lot widths of 50 feet, with a minimum lot width of 40 feet for lots with an alley located adjacent to a side property line. *TMC 18.10.050.D*. TMC 18.12.050 provides development standards applicable to the SFM zoning district, which provide minimum lot and width requirements identical to those of the SFL zoning district. The Applicant's project plans show that the smallest lot within the subdivision would measure 3,998 square feet, satisfying the minimum lot size requirements in both zoning districts. The project plans indicate that 26 of 45 proposed lots would be less than 50 feet wide and not adjacent to an alley. The Applicant, however, proposes to develop the property as a Planned Unit Development (PUD) to provide relief from the minimum lot width requirement, as discussed in detail later in this decision. The SFL and SFM zoning districts require minimum front yard setbacks of 10 feet, side yard setbacks of 5 feet, and rear yard

setbacks of 20 feet. *TMC 18.10.050.I; TMC 18.12.050.I*. Because the Applicant proposes to develop the property under the City’s PUD provisions, the setback requirements for the SFL and SFM zones apply only to the perimeter boundary lines of the site. *TMC 18.36.080.C*. The Applicant’s project plans demonstrate that the proposed development would comply with applicable setback requirements.

Development standards for the SFL and SFM zoning district also require new development projects to designate a minimum of 10 percent of the gross site area as open space with both passive and active recreation facilities for the enjoyment of residents. *TMC 18.10.050.K; TMC 18.12.050.K; TMC 17.12.210.A and .G*. The Applicant proposes to meet this requirement by providing 0.97 acres of open space within five tracts that would contain active and passive recreation elements, which amounts to approximately 10 percent of the 9.68-acre site. As conditioned, the proposal would comply with all other development standards applicable to the SFL and SFM zoning districts. *Exhibit 1, Staff Report, pages 3, and 9 through 12; Exhibit 2; Exhibit 6; Exhibit 13*.

8. The property is located in the Aquifer Protection (AQP) overlay zoning district. The AQP overlay district is intended to “protect vulnerable and/or critical aquifer recharge areas within the city and urban growth area” by “controlling the use and handling of hazardous substances and uses of land that pose a threat to groundwater.” *TMC 18.39.010*. The proposed residential subdivision is not a restricted use within the AQP overlay district. *TMC 18.39.040. Exhibit 1, Staff Report, page 10*.

Existing Site, Critical Areas, and Surrounding Development

9. The 9.68-acre subject property is relatively flat and slopes down on the western portion of the site. The site is currently developed with a home, a business, and miscellaneous outbuildings, which would be demolished. Surrounding land uses are mainly residential in nature, except one property to the south that is zoned Neighborhood Commercial. The property to the north is zoned Multifamily Medium Density Residential. The parcels to the east, west, and southwest are zoned SFL, with a portion of these properties being developed as the Tumwater Boulevard Plat. The surrounding area is developed with a mixture of newer subdivisions that are in the site development/final plat process stage, older residential uses, small businesses, and undeveloped parcels. EnviroVector prepared a Mazama Pocket Gopher Screening Report for the Applicant, dated September 28, 2021, which determined that the site does not contain any mounds characteristic of those created by Mazama pocket gophers and that the subject property and vicinity contains only a marginal potential for Mazama pocket gopher habitat.

EnviroVector also prepared a Critical Areas Report (CAR) for the Applicant, dated September 15, 2021. The CAR identified an offsite 1.03-acre Category III wetland (Wetland A) 58 feet south of the property. The 150-foot buffer associated with the offsite wetland extends onto the southern portion of subject property. All proposed development

would occur outside of the on-site buffer area, and the on-site buffer area would be protected within a wetland buffer tract (Tract F). *Exhibit 1, Staff Report, pages 2, 6, and 8; Exhibit 2; Exhibit 4; Exhibit 14; Exhibit 15.*

Trees

10. Chapter 16.08 TMC regulates the removal and preservation of existing trees on a development site. AHBL prepared a tree plan for the proposal, dated December 8, 2021. TMC 16.08.070.R requires that, when land clearing is performed in conjunction with a specific development proposal, not less than 20 percent of the trees, or not less than 12 trees per acre (whichever is greater), must be retained. The property contains 368 trees. Based on the size of the property and the number of existing trees, TMC 16.08.070.R would require that a minimum of 80 trees be retained on the project site. According to the Applicant's tree plan, a total of 10 trees would be retained on-site. When the required number of trees cannot be retained on-site, the City's tree code allows mitigation in the form of planting three replacement trees for each tree removed in excess of the retention standard. *TMC 16.08.070.R.3.* The Applicant proposes to plant 210 replacement trees on-site to mitigate for the 70 trees that would be removed in excess of the 80 trees required to be retained, in accord with this requirement and the Applicant's calculations related to such requirement. City staff reviewed the Applicant's tree plan and determined that it would comply with the City's tree protection and replacement ordinance.² *Exhibit 1, Staff Report, page 8; Exhibit 13.*

Stormwater

11. Insight Geologic, Inc., prepared a geotechnical and stormwater investigation for the Applicant, dated December 16, 2021. Stormwater runoff from pollution-generating impervious surfaces would be collected and conveyed to an on-site infiltration system. The Applicant's final stormwater drainage design would be required to comply with the 2018 City of Tumwater Drainage Design and Erosion Control Manual. *Exhibit 1, Staff Report, pages 2 and 12; Exhibit 4; Exhibit 18.*

Utilities and Services

12. Water and sewer service to the subdivision would be provided by the City. Utility extensions necessary for public water and sewer service to the property would be installed in accordance with the requirements of the Tumwater Development Guide. Puget Sound Energy would provide electricity and natural gas services, Comcast and CenturyLink would provide telecommunication services, and garbage collection would

² Although the staff report indicates that City staff reviewed the Applicant's calculations concerning tree retention and replacement requirements, the Hearing Examiner's own review has left him with the impression that there may be a miscalculation. Accordingly, City staff shall reassess the Applicant's materials to ensure that no unintentional errors have occurred.

be provided by Pacific Disposal. All utilities on-site would be underground pursuant to TMC 17.12.200. *Exhibit 1, Staff Report, pages 2, 3, and 9; Exhibit 2.*

Access, Parking, and Traffic

13. Access to the property and to lots within the subdivision would be provided by an extension of a public road, 68th Avenue SE, which would complete a connection from Henderson Boulevard to Tumwater Boulevard. The public street extensions through the subdivision would include sidewalks that would connect to sidewalks that would be installed as part of required frontage improvements to Henderson Boulevard, which would ensure safe walking conditions for students residing in the subdivision. The Applicant would be required to provide two paved off-street parking spaces for each lot within the subdivision. Heath and Associates, Inc., prepared a traffic impact analysis (TIA) for the proposed development, dated December 10, 2021. The TIA determined that the proposed development would generate 424 new average daily trips, with 31 AM peak-hour trips and 42 PM peak-hour trips. The TIA further determined that all studied intersections would continue to operate at an acceptable level of service following a full build-out of the project. Heath and Associates also prepared a Traffic Queuing Report for the proposed development, dated December 10, 2021, which determined that the proposal would provide an adequate queuing distance for vehicles entering and leaving the subdivision. The City Transportation Manager reviewed the Applicant's Transportation Concurrency Application and determined that, with conditions, the proposal would meet City concurrency requirements. These conditions include requirements that the Applicant pay required transportation impact fees, construct transportation improvements as shown on the formal site plan, and either construct a roundabout at the northbound Interstate 5 On/Off Ramp and Tumwater Boulevard intersection or pay a mitigation fee to help fund the City's planned transportation improvements to the intersection. City staff reviewed the proposal and determined that it would be consistent with the City's Transportation Plan. *Exhibit 1, Staff Report, pages 2 through 7, and 16; Exhibit 2; Exhibit 6; Exhibit 11; Exhibit 16.*
14. The City has adopted a Sustainable Development Plan for the Thurston Region to reduce vehicle miles traveled and to preserve sensitive areas, farmland, forestland, prairies, and rural lands. The project site is located more than a half-mile from an urban center but within an area designated for residential growth. City staff determined that the proposed development would be consistent with the Sustainable Development Plan for the Thurston Region by providing compact development in an urban area while protecting environmentally sensitive lands by developing residential uses at a low density. *Exhibit 1, Staff Report, pages 4 and 5.*

Schools and Parks

15. Children residing within the proposed subdivision would be served by the Tumwater School District. School impact fees would be assessed for each dwelling unit in the subdivision at the building permit stage. As noted above, the Applicant would install

sidewalks along the streets within the subdivision and would construct frontage improvements along Henderson Boulevard that would include installation of sidewalks, which would ensure safe walking conditions for students residing within the subdivision. *Exhibit 1, Staff Report, page 12; Exhibit 2.*

16. The Parks and Recreation element of the Comprehensive Plan does not identify any neighborhood or community parks in the vicinity of the project site. As noted above, the Applicant proposes to set aside 0.97 acres of open space within three tracts that would contain active and passive recreation elements, which would satisfy the open space requirements for the proposed plat. Park impact fees would be assessed for each dwelling unit in the subdivision at the building permit stage, which could be used to fund park improvements. City staff determined that the proposal would be consistent with the Parks and Recreation element by the payment of the required park impact fees and by the Applicant providing active and passive open space areas within the subdivision that would exceed the minimum requirements of the municipal code. *Exhibit 1, Staff Report, pages 3 and 4; Exhibit 2.*
17. The City participates in the Thurston Regional Planning Council, which adopted a Thurston Regional Trail Plan in December 2007. City staff determined that the proposed project would not affect implementation of this plan. *Exhibit 1, Staff Report, page 4.*

Planned Unit Development

18. The Applicant requests approval to develop the property as a planned unit development (PUD) in order to provide relief from the minimum lot width standards generally applicable to the SFL and SFM zoning districts. The intent of PUDs is to encourage new development not limited by strict application of the City's zoning code. *TMC 18.36.010.A.* More specifically, the purpose of PUDs is to (1) encourage flexibility in design and development that will result in a more efficient and desirable use of land; (2) permit flexibility of design, placement of buildings, use of required open spaces, circulation facilities, and off-street parking areas, and otherwise better utilize the potential of sites characterized by special features, such as geography, topography, size or shape; (3) provide for maximum efficiency in the layout of streets, utility networks, and other public improvements; (4) produce an integrated or balanced development of mutually supportive uses that might otherwise be inharmonious or incongruous; and (5) provide a guide for developers and City officials who review and approve developments meeting the standards and purposes of this chapter. *TMC 18.36.010.B.*

PUDs achieve these purposes by providing relief from the minimum requirements of the underlying zone, with the following exceptions:

- A. Minimum Project Size. There is no minimum project size for a planned unit development.
- B. Project Densities. Densities established by the underlying zone district shall prevail.

- C. Setbacks. Project setbacks as required by the underlying zoning district shall prevail on all perimeter boundary lines.
- D. Land Coverage. Maximum land coverage, as established by the underlying zone district, may be exceeded by no more than 25 percent.
- E. Uses Allowed. The use of the development shall be limited to those allowed either as permitted, accessory, or conditional uses in the underlying zones.
- F. Open Space/Park. The open space/park dedication requirements of the underlying zoning district shall prevail.

TMC 18.36.080.

Under TMC 18.36.050, all PUDs must (1) substantially conform to the Comprehensive Plan, (2) harmonize with the surrounding area or its potential future use, and (3) ensure the size of the proposed overlay can accommodate the proposed development. City staff reviewed the proposal and determined that it would meet all requirements related to approval of a PUD. *Exhibit 1, Staff Report, pages 10 and 11; Exhibit 2; Exhibit 6.*

Testimony

19. City Associate Planner Alex Baruch testified generally about the application review process, explaining that the City reviewed the application for consistency with the Comprehensive Plan, zoning requirements, and critical areas ordinances. Mr. Baruch described how the City provided notice of the application, associated public hearing, and MDNS, consistent with state and local requirements. He noted that the Squaxin Island Tribe requested a cultural resource survey, which was later completed by the Applicant. Mr. Baruch also explained that a few public comments were received in response to the City's notice materials that expressed concerns about increased traffic in the area and potential impacts to area wildlife from further development. Mr. Baruch noted that the City reviewed the traffic information provided by the Applicant and, ultimately, determined that the proposal would meet concurrency requirements. Mr. Baruch also discussed environmental review under SEPA and testified that the MDNS issued by the City was not appealed. Mr. Baruch clarified several details about the proposal, including explaining more about the property being split-zoned, and detailed how the Applicant's use of the planned unit development overlay (PUD) ordinance would allow for flexibility in sight design. *Testimony of Mr. Baruch.*

20. Applicant Representative Evan Mann testified about several technical aspects of the proposal, including providing further detail about how stormwater on-site would be managed, how the Applicant would ensure there is a safe location for a bus stop for school-age children residing within the development to walk to (as there are no schools within walking distance currently), and how the Applicant would utilize the PUD ordinance in relation to the proposal, including reducing minimum lot widths. *Testimony*

of Mr. Mann.

21. Scott Kaul, P.E., also testified on behalf of the Applicant and explained that most of the stormwater on-site would be infiltrated and would likely travel toward the southwest (after percolating underground), providing for the potential of hydrologic recharge to the wetland adjacent to the property. *Testimony of Mr. Kaul.*

Staff Recommendation

22. Mr. Baruch testified that City staff recommends approval of the preliminary plat and preliminary planned unit development, with conditions. Mr. Mann testified that the Applicant would adhere to the recommended conditions. *Exhibit 1, Staff Report, pages 11 through 18; Testimony of Mr. Baruch; Testimony of Mr. Mann.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner has authority to hear and decide applications for preliminary plats and planned unit developments. The Hearing Examiner may grant, deny, or grant with such conditions, limitations, modifications, and restrictions as the Hearing Examiner finds necessary to make the application compatible with applicable laws and regulations, including but not limited to compatibility with the environment, the Comprehensive Plan, other official policies and objectives, and land use regulatory enactments. *TMC 2.58.090.A; TMC 2.58.130.A.2; Table 14.08.030.*

Criteria for Review

Preliminary Plat

The Hearing Examiner shall inquire into the public use and interest proposed to be served by the establishment of the proposed land division. *TMC 17.14.040.A.* Under TMC 17.14.040.A, the Hearing Examiner shall determine whether

appropriate provisions are made for, but not limited to, the public health, safety and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, other grounds, transit stops, potable water supplies, sanitary wastes, parks and recreation playgrounds, schools and school grounds, fire protection and other public facilities, and shall consider all other relevant facts, including the physical characteristics of the site, and determine whether the public interest will be served by the land division. Further, consideration shall be given for sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school.

If the Hearing Examiner finds that the proposed division of land makes appropriate provisions, and makes written findings to that effect, then it shall be approved. If the Hearing Examiner

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finds that the proposed land division does not make such appropriate provisions or that the public use and interest will not be served, then the Hearing Examiner shall disapprove the proposed division of land. *TMC 17.14.040.A.*

Dedication of land, provision of public improvements to serve the land division, and/or payment of impact fees allowed by state law, to any public body, may be required as a condition of land division approval. The Hearing Examiner shall not, as a condition of approval, require an Applicant to obtain a release from damages from other property owners. The Hearing Examiner will consider the physical characteristics of a proposed land division site and may disapprove a proposed division because of flood, inundation, or wetland conditions. Construction of protective improvements may be required as a condition of approval. *TMC 17.14.040.B, C, and D.*

The subdivision provisions of the Tumwater Municipal Code are substantially similar to RCW 58.17.110(2), which provides:

A proposed subdivision and dedication shall not be approved unless the city, town, or county legislative body makes written findings that: (a) Appropriate provisions are made for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds 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 (b) the public use and interest will be served by the platting of such subdivision and dedication. If it finds that the proposed subdivision and dedication make such appropriate provisions and that the public use and interest will be served, then the legislative body shall approve the proposed subdivision and dedication.

Planned Unit Development

TMC 18.36.050 provides the following, specific to planned unit developments:

The application for a planned unit development shall be heard before the hearing examiner of the city at a duly published public meeting. The hearing examiner's decision to approve or deny the development shall be based on at least, but not limited to, the following criteria:

- A. Substantial conformance to the Tumwater comprehensive plan;
- B. The proposal's harmony with the surrounding area or its potential future use; and

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- C. The adequacy of the size of the proposed overlay to accommodate the contemplated developments.

The criteria for review adopted by the Tumwater City Council are designed to implement the requirement of Chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with City development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

Conclusions Based on Findings

Preliminary Plat

1. **With conditions, the preliminary subdivision would make appropriate provisions for the public health, safety, and general welfare and for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, and schools and school grounds.** Part of the property is designated Single Family Low Density Residential under the City Comprehensive Plan and is located in the Single-Family Low Density Residential (SFL) zoning district, which requires a minimum net density of four units per acre and a maximum net density of six units per acre, with a maximum net density of seven dwelling units per acre allowed through the purchase of transfer of development rights. The proposal is for a subdivision with a net density of six dwelling units per acre in this area. The other portion of the property is designated Single Family Medium Density Residential under the City Comprehensive Plan and is located in the Single-Family Medium Density Residential (SFM) zoning district, which requires a minimum net density of six units per acre and a maximum net density of six units per acre, with a maximum net density of nine dwelling units per acre. This area of the property would have a net density of eight dwelling units per acre. The Applicant would set aside approximately 0.97 acres of the gross site area for open space that would contain both passive and active recreation elements to meet the recreational needs of future residents of the subdivision, exceeding the 10 percent of open space required under the municipal code.

The Applicant's project plans demonstrate that the proposed development would comply with all applicable development standards for the SFL and SFM zones through application of the City's Planned Unit Development (PUD) provisions. The project's compliance with the requirements of the PUD provisions is addressed in Conclusion 3 below. The property is located in the Aquifer Protection overlay zoning district (AQP) and would meet all requirements of the overlay district. Single-family residential development is not a restricted use within the AQP overlay zone district. The proposed development would be compatible with surrounding development, which is characterized by a mixture of newer subdivisions that are in the site development/final plat process stage, older residential uses, small businesses, and undeveloped parcels.

A critical areas report prepared for the proposed development identified an off-site Category III wetland, which requires a standard 150-foot protective buffer that extends onto the southern portion of the subject property. All proposed development activities would occur outside of the wetland buffer, and the on-site buffer area would be protected within a wetland buffer tract. No other regulated critical areas or associated buffers were identified on or near the property. Following verification of tree retention calculations and requirements by City staff, the Applicant would retain 10 of the 368 trees currently on the property and would plant replacement trees on-site in a quantity to satisfy the City's tree retention and replacement ordinance. The Applicant proposes to manage stormwater on-site by collecting and conveying stormwater runoff from pollution-generating surfaces to a pre-settling cell for water quality treatment before being routed to an on-site infiltration system. The City would review the Applicant's final engineered stormwater drainage design for compliance with the 2018 City of Tumwater Drainage Design and Erosion Control Manual.

Access to the property and to lots within the subdivision would be provided by an extension of 68th Avenue SE, a public road, through the subdivision, which would complete a connection between Henderson Boulevard and Tumwater Boulevard. The Applicant would construct grading and frontage improvements on Henderson Boulevard and at the intersection of Henderson Boulevard and 68th Avenue SE, including the installation of curbs, gutters, sidewalks, landscape strips, bicycle lanes, street lighting, and storm drainage facilities. The public road extensions through the subdivision would include sidewalks on both sides that would connect to sidewalks on Henderson Boulevard and that would be installed as part of the required frontage improvements. Applicant Representative Evan Mann testified at the hearing that the Applicant would ensure that there would be a safe location for a bus stop for school-age children residing within the development to walk to.

The Applicant's TIA determined that the proposed development would generate 424 new average daily trips, with 31 AM peak-hour trips and 42 PM peak-hour trips. The Applicant would be required to pay transportation impact fees to mitigate for the project's impacts to the City's transportation network. The TIA further determined that all studied intersections would continue to operate at an acceptable level of service following a full build-out of the project. The City Transportation Manager reviewed the proposal and determined that, with conditions, the proposal would meet City concurrency requirements. These conditions include requirements that the Applicant pay required transportation impact fees, construct the transportation improvements described above, and either construct a roundabout at the northbound Interstate 5 On/Off Ramp and Tumwater Boulevard intersection or pay a mitigation fee to help fund the City's planned transportation improvements to the intersection. Two paved off-street parking spaces would be provided for each lot within the subdivision. There are adequate utilities to

serve the proposed development. The City would provide water and sanitary sewer service to the development.

Conditions, as detailed below, are necessary to ensure that the project satisfies all local and state requirements for preliminary plat approval. *Findings 1, 5 – 22.*

2. **With conditions, the proposed subdivision would be consistent with development regulations, considering land use type, development level, infrastructure, and development characteristics, such as development standards, as required by Chapter 58.17 RCW and Title 17 TMC.** The City provided reasonable notice and opportunity to comment on the proposal. The City received several comments on the proposal from members of the public in response to its notice materials, who generally raised concerns about tree removal and the proposal's traffic impacts, stormwater impacts, wetland impacts, and impacts to wildlife habitat. As discussed above in Conclusion 1, the proposal would comply with the City's tree protection and replacement ordinance. The proposal also includes required street frontage improvements that would improve the existing condition of Henderson Boulevard and the intersection with 68th Avenue SE, and, as conditioned, the proposed development would meet City concurrency requirements. Stormwater impacts of the proposed development would be addressed by the City through its review of the Applicant's final engineered stormwater drainage design for compliance with the 2018 City of Tumwater Drainage Design and Erosion Control Manual. The project would comply with the City's critical areas ordinance by restricting development to outside of the on-site buffer associated with an offsite Category III wetland to the south and by protecting the on-site buffer area within a dedicated wetland buffer tract. The geographic area of the property is known to be occupied by Mazama pocket gophers, but a Mazama Pocket Gopher Screening Report conducted for the proposal determined that the site does not contain any mounds characteristic of those created by the Mazama pocket gopher and that the subject property and vicinity contains only a marginal potential for Mazama pocket gopher habitat.

The City also received an agency comment from the Squaxin Island Tribe, which requested that a cultural resources survey be completed for the project. A cultural resources survey was later completed for the project, which did not identify evidence of cultural or archaeological resources being located on the property. As a condition of preliminary plat approval, the Applicant would be required to immediately halt construction activity and notify appropriate agencies if archeological artifacts are encountered during construction.

Environmental impacts of the proposed development were considered, as required by SEPA, and the City issued an MDNS on May 13, 2022, which was not appealed. With approval of the requested planned unit development addressed in Conclusion 3 below, the preliminary plat would provide residential development consistent with all applicable

development regulations. City staff determined that, with conditions, the proposal would be consistent with all applicable local and state requirements, including the applicable Comprehensive Plan, municipal code, and development standards, and that the public interest would be served by the platting of the subdivision. The Hearing Examiner concurs with this assessment. Conditions, as detailed below, are necessary to ensure that the proposal meets all criteria required for plat approval. *Findings 1 – 22.*

Planned Unit Development

- 3. With conditions, the proposal would be consistent with the requirements for a planned unit development under TMC 18.36.050.** Under TMC 18.36.010, the purpose of using a PUD overlay is to (1) encourage flexibility in design and development that would result in a more efficient and desirable use of land; (2) permit flexibility of design, placement of buildings, use of required open spaces, circulation facilities, and off-street parking areas, and otherwise better utilize the potential of sites characterized by special features, such as geography, topography, size or shape; (3) provide for maximum efficiency in layout of streets, utility networks, and other public improvements; (4) produce an integrated or balanced development of mutually supportive uses that might otherwise be inharmonious or incongruous; and (5) provide a guide for developers and City officials who review and approve developments.

Approval of the PUD would provide relief from the minimum lot width requirements of the SFL and SFM zones. In addition, approval of the PUD would allow the development to waive setback requirements applicable to the SFL zone, apart from required setbacks from the perimeter boundary lines of the site. Providing relief from the minimum lot width requirement would allow for a sensible lot layout while protecting on-site critical areas and providing passive and active open space areas satisfying code requirements. The PUD overlay would be adequate in size to accommodate the contemplated development and, as discussed above in Conclusions 1 and 2, the proposal, with conditions, would be consistent with all applicable local and state requirements, including the applicable Comprehensive Plan, municipal code, and development standards, and would be harmonious with surrounding development. The public interest would be served by the platting of the subdivision and planned unit development. As discussed in the above conclusions, and as detailed below, conditions are necessary to ensure that the proposal meets all criteria required for plat approval and approval of a planned unit development. *Findings 1, 5 – 22.*

DECISION

Based on the preceding findings and conclusions, the request for a preliminary plat and planned unit development, to subdivide a 9.68-acre parcel into 45 lots for single-family residential

development, with associated appurtenances and improvements, at 6609 and 6715 Henderson Boulevard, is **APPROVED**, with the following conditions:³

1. Stormwater from impervious surfaces associated with the project shall be managed in accordance with the City of Tumwater 2018 Storm Drainage Manual.
2. Erosion and sediment control measures that comply with the City of Tumwater 2018 Storm Drainage Manual shall be implemented during construction of the project to prevent sediment-laden runoff from entering surface waters.
3. A Site Development/Grading Permit shall be obtained from the City for grading, street, sidewalk and utility construction, tree removal, and construction of storm drainage facilities.
4. Should contaminated soils be encountered during construction, all of the following shall apply:
 - A. Construction activity shall be immediately suspended;
 - B. The contractor shall immediately notify the Washington State Department of Ecology;
 - C. Contaminated materials shall be properly handled, characterized, and disposed of consistent with applicable regulations.
5. Should archeological artifacts be encountered during construction, all of the following shall apply:
 - A. Construction activity shall be immediately suspended;
 - B. The contractor shall immediately notify the City of Tumwater Community Development Department; and
 - C. The contractor shall immediately notify the Washington State Department of Archeology and Historic Preservation; and
 - D. The contractor shall immediately notify potentially affected tribal nations including, but not limited to, the Squaxin Island Tribe, Chehalis Tribe, and Nisqually Tribe.
6. Fill for the project shall be clean material, void of solid waste or organic debris.
7. Disposal of construction debris and overburden associated with construction and grading activity that is not suitable for fill is required to be disposed of at an approved location.

³ Conditions include legal requirements applicable to all developments as well as requirements designed to mitigate specific impacts of the proposal.

8. The Applicant shall secure a National Pollutant Discharge Elimination System (NPDES) Construction Storm Water General Permit from the Washington State Department of Ecology.
9. Street frontage improvements including curb and gutter, sidewalk, landscape strip, bike lane, street illumination, and storm drainage facilities complying with the design requirements of the Tumwater Development Guide shall be constructed along the property frontage on Henderson Boulevard. Adequate right-of-way shall be dedicated to contain the improvements.
10. The 68th Avenue SE improvements shown on the site plan shall be shown on the site development grading plan submittal and constructed prior to final plat approval.
11. Full lane overlays are required after patching. Additional improvements might be required on the opposing frontage, such as widening, realigning the crown to centerline of right-of-way or feathering to meet City of Tumwater standards. All accesses will meet City standards.
12. The City's water and sewer utilities shall be extended to serve the needs of the subdivision. The utility extensions shall be in accordance with the Tumwater Development Guide requirements in place at the time the preliminary plat application was vested. All necessary right-of-way and/or easement will need to be dedicated.
13. A 16-inch water main is required in Henderson Boulevard.
14. The project must meet minimum fire flow requirements. If the required fire flow cannot be achieved, residential fire sprinklers shall be required in the dwelling units.
15. A separate permit and engineered design are required for any retaining walls on-site if the height of the wall is over 4 feet measured from the bottom of the footing or if the wall is supporting a surcharge.
16. A final geotechnical engineering report shall be submitted for the grading and site work. The report shall include conclusions and recommendations for grading procedures, soil design criteria for structures or embankments required to accomplish the proposed grading and recommendations and conclusions regarding the site geology.
 - A. All grading and filling work shall be conducted in accordance with the approved geotechnical report. Compaction testing of the soils under the building foundations and utility trenches shall be verified by the geotechnical engineer of record and the Washington Association of Building Officials (WABO) registered special inspection agency and inspectors.

17. Fire hydrants shall be provided at all intersections and at approximately 600-foot spacing along the internal streets.
18. Demolition permits are required to be issued by the City prior to removal of existing structures on the property. A separate permit is required for each structure.
19. A demolition permit is required to be issued by the Olympic Region Clean Air Agency for each structure proposed to be removed from the property. Olympic Region Clean Air Agency (ORCAA) regulations require an asbestos survey for all demolition projects. Prior to any demolition project, the following must be completed:
 - A. A good faith asbestos survey must be conducted on the structure by a certified Asbestos Hazardous Emergency Response Act (AHERA) building inspector;
 - B. 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 the demolition; and
 - C. If the structure is larger than 120 square feet, a Demolition Notification must be submitted regardless of the results of the asbestos survey.
20. All water wells on the site shall be abandoned in accordance with Washington State Department of Ecology requirements. A permit from the Department of Ecology shall be obtained for each well to be abandoned.
21. All septic systems on the property shall be abandoned in accordance with Thurston County Environmental Health requirements. A permit shall be obtained from Thurston County Environmental Health for each separate system that will be abandoned.
22. The project proponent shall be responsible for providing the City with all costs associated with the installation of water, sewer, street, and storm drainage systems that are dedicated to the City of Tumwater
23. All engineering designs and construction will need to be in accordance with the City of Tumwater's Development Guide and WSDOT standards
24. All street construction, utility installation, and storm drainage work require engineered plans certified by a professional engineer licensed to practice in the State of Washington. The plans shall be submitted for review and approval by the City.
25. Any public or private utility relocation necessary to construct the project is the sole responsibility of the project proponent.
26. The Applicant is required to submit a performance surety and surety agreement prior to release of the Site Development/Grading Permit to ensure successful completion of the

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- required public improvements. The amount of the surety shall be 150 percent of the proponent engineer's estimate of completing the required public improvements.
27. The Applicant shall be responsible for the maintenance and timely repair of all public improvements for a period of 30 months following final certification by the City and shall submit a surety and surety agreement for maintenance equal in value to fifteen (15) percent of the total value of the required public improvements certified by the Public Works Director.
 28. Maintenance of the on-site storm water system will be the responsibility of the project proponent, their successors, or assigns. A stormwater maintenance agreement will be recorded against the property prior to or concurrent with final plat approval.
 29. Back flow prevention is required on all irrigation services in accordance with the AWWA Cross Connection Control Manual.
 30. A landscape and irrigation plan must be submitted with Site Development and Grading Permit application for the proposed street planter strips, proposed open space tracts, and the storm water facilities showing proposed plantings, tree types and heights, and other vegetation. Street trees are required to be installed along Henderson Boulevard and the proposed interior public streets in accordance with the Tumwater Development Guide and Comprehensive Street Tree Plan.
 31. Each residential lot shall have a building site no less than 3,200 square feet in area within which a suitable building can be built and served by utilities and vehicular access unless dedicated or restricted by covenant for open space, park, recreation, or other public use.
 32. The maximum lot-coverage for impervious surface shall be 75 percent of the total area of the lot, consistent with the increased maximum lot coverage allowed with a PUD under the municipal code.
 33. Two off-street parking spaces are required for each lot. Driveways shall be a minimum of 18 feet in length.
 34. Residences must provide pathway from building entry to sidewalk separate from the driveway, provide weather protection at entries, and at least 8 percent of front facade shall include transparent windows or doors.
 35. Where lots abut an alley, the garage must take access from the alley.
 36. Garages must be set back from the public street at least 5 feet further than the enclosed portion of the house, and garage doors shall occupy no more than 50 percent of the ground-level façade facing the street.

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37. Impact fees for traffic, community parks, and schools will be assessed to each dwelling unit in the subdivision as building permits are issued. The impact fees will be in accordance with the most current fee resolution adopted by the City at the time of vesting of the building permit applications. Credit shall be given for the existing residential uses on the site.
38. An integrated pest management plan approved by the Thurston County Environmental Health must be submitted prior to final plat approval.
39. All legal descriptions on documents submitted to the City must be accompanied with an appropriate drawing that the City can use to verify the legal description.
40. The Professional Land Surveyor responsible for the surveying of the project must obtain a permit from Department of Natural Resources before any existing survey monuments are disturbed.
41. The Applicant must provide and maintain a current Plat Name Reservation Certificate approved by the Thurston County Auditor.
42. Property taxes must be paid in full for the current year, including any advance and delinquent taxes, before a Final Plat can be recorded.
43. The Applicant shall comply with the City's Tree Protection and Replacement Standards, following review and reassessment by City staff of the materials provided by the Applicant related to this issue. Replacement trees must be planted in proposed tree protection open spaces, prior to other placement on site. The size of the tree protection open space area(s) associated with the project is required to be a minimum of 5 percent of the buildable area of the site.
44. The following condition will be required to be noted on the Final Plat:
 - A. All landscaped areas in public rights-of-way shall be maintained by the owner and his/her successor(s) and may be reduced or eliminated if deemed necessary for or detrimental to City road purposes.
45. A Homeowners Association is required. Prior to final plat approval, the project proponent shall supply the City with copies of the grantee organization's articles of incorporation and bylaws, and with evidence of a binding commitment to convey. The articles of incorporation shall provide that membership in the organization shall be appurtenant to ownership of land in the land division; that the corporation is empowered to assess such land for costs of construction and maintenance of the improvements and

property owned by the corporation, and that such assessments shall be in lien upon the land.

46. The Applicant shall comply with the mitigation measures contained in the SEPA Mitigated Determination of Nonsignificance, issued on May 13, 2022.

DECIDED this 15th day of July 2022.



ANDREW M. REEVES
Hearing Examiner
Sound Law Center

HEARING EXAMINER POST-DECISION PROCEDURES

The following sections of the Tumwater Municipal Code outline procedures for requesting reconsideration of a decision by the Tumwater Hearing Examiner and appealing a decision made by the Tumwater Hearing Examiner.

TMC 2.58.135 Reconsideration.

Upon the written request of a party of record filed with the city clerk within five working days of the hearing examiner's written decision, such decision may be reconsidered at the discretion of the hearing examiner. The request for reconsideration must state the grounds upon which the request is made. In the event reconsideration is granted, the hearing examiner shall have an additional 10 working days to render a written final decision.

TMC 2.58.150 Appeal from examiner's decision.

- A. In cases where the examiner's jurisdictional authority is to render a decision, the decision of the examiner shall be final and conclusive unless appealed to superior court within the applicable appeal period as set forth in TMC 2.58.180.
- B. In cases where the hearing examiner decision is appealable to the city council, the decision of the examiner shall be final and conclusive unless appealed within the applicable appeal period as set forth in this section.
- C. Appeals to the city council must be filed with the city clerk by the applicant or other party of record, a department of the city, county or other agency within 14 calendar days following rendering of such decision. Persons not in attendance at the hearing but who submit written information prior to the hearing which becomes a part of the record of the hearing shall also have appeal rights. Such appeal shall be in writing, shall contain all grounds on which error is assigned to the examiner's decision and shall be accompanied by a fee as established by resolution of the city council; provided, that such appeal fee shall not be charged to a department of the city or to other than the first appellant.
- D. In the event an apparent prevailing party files an appeal to preserve appeal rights and no opposing appeals are filed, said party may, by giving written notice thereof to the city clerk, abandon their appeal and in such event shall be refunded their filing fee.
- E. The timely filing of an appeal shall stay the effective date of the examiner's decision until such time as the appeal is adjudicated by the city council or is withdrawn.
- F. Within five days after the final day upon which an appeal may be filed, notice thereof and of the date, time and place for city council consideration shall be mailed to the applicant, all other parties of record and anyone who submitted written information prior to the hearing. Such notice shall additionally indicate the deadline for submittal of written arguments as prescribed in TMC 2.58.160.

TMC 2.58.180 Judicial appeals.

Final decisions (after exhausting administrative remedies) may be appealed by a party of record with standing to file a land use petition in the Thurston County superior court, except shoreline permit actions which may be appealed to the shoreline hearings board. Such petition must be filed within 21 days of issuance of the decision as provided in Chapter 36.70C RCW.

Updated: June 10, 2013