

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

In the Matter of the Application of	)	Nos. TUM-22-1544 & TUM-23-0243
	)	
<b>The Tumwater School District</b>	)	<b>LINCS Modular Building Proposal</b>
	)	
	)	
For a Conditional Use Permit	)	FINDINGS, CONCLUSIONS,
<u>and Site Plan Review</u>	)	AND DECISION

**SUMMARY OF DECISION**

The request for a conditional use permit and site plan review to construct an approximately 1,900 square foot modular building to serve as classroom space, with associated improvements, at 621 Linwood Ave SW, is **APPROVED**. Conditions are necessary to address specific impacts of the proposed project.

**SUMMARY OF RECORD**

Hearing Date:

The Hearing Examiner held an open record hearing on the request on May 31, 2023.

Testimony:

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

Alex Baruch, City Associate Planner  
Mel Murray, Tumwater School District Director of Facilities  
Ross Jarvis, Applicant Representative

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, dated May 19, 2023
2. Preliminary Project Plans (9 Sheets), dated February 10, 2023
3. Vicinity Map, published May 17, 2023
4. Notice of Application and Optional DNS Process, dated March 29, 2023
5. SEPA Materials:
  - a. Determination of Nonsignificance, issued May 4, 2023
  - b. SEPA Environmental Checklist, dated December 27, 2022, with City Staff Annotations
6. Notice of Public Hearing, published May 19, 2023
7. Conditional Use Permit Application, received December 27, 2022
8. Zoning Map, published May 17, 2023

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9. Certification of Public Notice, dated May 18, 2023
10. Comments on Proposal:
  - a. Comment from the Squaxin Island Tribe, dated April 6, 2023
  - b. Comment from the Nisqually Indian Tribe, dated March 29, 2023
  - c. Email from James Geluso, dated March 31, 2023, with email string
  - d. Comment from the Nisqually Indian Tribe, dated May 18, 2023
11. Transportation Concurrency Memorandum, dated March 22, 2023
12. Drainage Report, LDC, Inc., dated February 2023
13. Geotechnical Letter, Landau Associates, Inc., dated December 19, 2022
14. Traffic Impact Assessment, Heath & Associates, Inc., dated February 7, 2023
15. Water & Sewer Availability Letter, dated December 20, 2022
16. Mazama Pocket Gopher Screening Determination, dated July 25, 2018
17. Site plan Review Analysis, dated March 10, 2023

The Hearing Examiner enters the following findings and conclusions based upon the testimony and exhibits admitted at the open record hearing:

## FINDINGS

### Application and Notice

1. Mel Murray, on behalf of the Tumwater School District (Applicant), requests a conditional use permit (CUP) and site plan review approval to allow for the construction of an approximately 1,900 square foot modular building, with associated improvements, on School District property currently being used as a playfield. The subject property is approximately 19.15 acres and has several existing uses, including: the Tumwater School District Administrative Offices; Michael T. Simmons Elementary School; parking and other related infrastructure; and an area of green belt that includes/abuts a portion of Barnes Lake. The modular building would serve as classroom space, primarily for 18- to 21-year-old life skills students, and will house a traditional classroom, a living and learning classroom, and restrooms that would be connected to existing sewer and water infrastructure on-site. The property is located at 621 Linwood Ave SW.<sup>1</sup> *Exhibit 1, Staff Report, page 1; Exhibit 3; Exhibit 4.*
2. The City of Tumwater (City) determined the application was complete on March 23, 2023. On or around March 29, 2023, the City provided notice of the application by posting notice on the property; by mailing or emailing notice to property owners within 300 feet of the subject property and to reviewing agencies; and by publishing notice of the application in *The Olympian*. On or around May 19, 2023, the City provided notice of the open record hearing associated with the application by posting notice on the property, mailing or emailing notice to property owners within 300 feet of the subject

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<sup>1</sup> The subject property is identified by Tax Assessor Parcel No. 09080004000. *Exhibit 1, Staff Report, page 1; Exhibit 2.* A legal description of the property is included with the site plans. *Exhibit 2.*

property and to reviewing agencies, and by publishing notice in *The Olympian*. *Exhibit 1, Staff Report, pages 1 and 8; Exhibit 4; Exhibit 6; Exhibit 9; Exhibit 10.*

3. The City received comments from two reviewing agencies/entities in response to its notice materials. Specifically, the Squaxin Island Tribe Cultural Resources Department commented (in two different communications) that it had no specific concerns about the proposal but would concur with any recommendations made by the Washington State Department of Archaeology and Historic Preservation, including any recommendation for a cultural resource survey, and requested to be contacted if any archaeological or cultural resources are discovered on the property. The Nisqually Indian Tribe provided a comment expressing the same sentiments as the Squaxin Island Tribe. *Exhibit 1, Staff Report, pages 5 and 6; Exhibit 10.*

#### State Environmental Policy Act

4. The City acted as lead agency and analyzed the environmental impacts of the proposal, as required by the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW). The City consolidated notice of the application and SEPA review comment periods under the optional process provided for by Washington Administrative Code (WAC) 197-11-355, with a SEPA comment deadline of April 13, 2023. The City's notice materials stated that the City expected to issue a Determination of Nonsignificance (DNS) for the proposal. The City did not receive any comments specific to the environmental review of the proposal, apart from the agency comments noted above. In addition, area resident James Geluso requested a copy of the environmental checklist and to be informed of the City's SEPA determination but did not express any specific concerns about the proposal.

Following the comment period, the City reviewed the Applicant's environmental checklist and other information on file and determined that the proposal would not have a probable significant adverse impact on the environment. Accordingly, the City issued a DNS on May 4, 2023. The same day, the City published the DNS on the City's website, emailed the DNS to reviewing departments, agencies, and parties of record, and posted the DNS to the Washington State Department of Ecology's SEPA Register. The DNS was not appealed. *Exhibit 1, Staff Report, pages 4, 5, and 8; Exhibit 4; Exhibit 5; Exhibit 9; Exhibit 10.*

#### Comprehensive Plan and Zoning

5. The approximately 19.15-acre property is located in the Trosper Neighborhood and is highly irregular in shape and includes/abuts a portion of Barnes Lake to the southwest. The actual project, however, would occur on an area of the property that is already developed—in the northeast corner of the site, adjacent to other School District buildings/facilities—just south of Linwood Avenue SW and directly west of 2nd Ave SW. This area of the property is designated "Public Institutional" under the City's

Comprehensive Plan. City staff determined that the school expansion would be consistent with the Comprehensive Plan designation and notes that it “is anticipated that the school use will remain on this site for at least the next 20 years” and that the portion of the property “within Barnes Lake is under the Parks/Open Space [Comprehensive Plan designation] which will remain unaffected by this project.” *Exhibit 1, Staff Report, page 6.*

6. A majority of the property, including the area where the modular building would be constructed, is zoned Single-Family Medium Density Residential (SFM). Of note, one of the specific intents of the SFM zone is to “guide residential development in such a manner as to encourage and plan for the availability of public services and community facilities... such as schools, parks and recreation.” *Tumwater Municipal Code (TMC) 18.12.010.C.* School facilities are allowed in the SFM zone with a conditional use permit. *TMC 18.12.040.E. Exhibit 1, Staff Report, page 10; Exhibit 8.*
7. The property is also within an Aquifer Protection Overlay zoning district (AQP). The intent of the AQP zoning district is to:

identify, classify, and protect vulnerable and/or critical aquifer recharge areas within the city and urban growth area. Protection is to be accomplished by controlling the use and handling of hazardous substances and uses of land that pose a threat to groundwater. This district imposes additional restrictions on development in order to protect public health and safety by preserving the existing and future groundwater supply for the city and urban growth area.

*TMC 18.39.010.*

City staff reviewed the proposal and determined that the proposed use would not be restricted in the AQP zone and that the use would not have detrimental impacts on the City’s critical aquifer areas. *Exhibit 1, Staff Report, page 10.*

#### Existing Property and Proposed Development

8. The property is surrounded by residentially-zoned property with the exception of Barnes Lake, to the west, which is zoned “Green Belt.” As noted above, the subject property is approximately 19.15 acres and has several existing uses developed in the northeast portion of it, including the Tumwater School District Administrative Offices, Michael T. Simmons Elementary School, and parking and other related infrastructure. The modular building would serve as classroom space, primarily for 18- to 21-year-old life skills students, and will house a traditional classroom, a living and learning classroom, and restrooms that would be connected to existing sewer and water infrastructure on-site. Parking facilities would also be reconfigured to accommodate the use, as well as to add bicycle parking and sidewalks (as necessary). The building would be located on an area

of the property that, most recently, has been used as a fenced play area. *Exhibit 1, Staff Report, pages 1 and 2; Exhibit 2.*

9. Heath & Associates Inc. prepared a Trip Generation Assessment (“Traffic Assessment”) for the proposal, dated February 7, 2023. The Traffic Assessment determined that the proposal would generate approximately 4 new trips during the AM peak-hour and no new trips during the PM peak-hour. Further, the Traffic Assessment determined that the proposal is not expected to generate any new trips through the Tumwater Boulevard/I-5 Interchange. Accordingly, the City determined that the proposal would meet transportation concurrency requirements and not have detrimental impacts on area traffic. The City issued a Transportation Concurrency Memorandum on March 22, 2023. Of note, the Applicant would pay applicable transportation impact fees current at the time of building permit application, if required. *Exhibit 11; Exhibit 14.*
  
10. LDC, Inc. prepared a Drainage Report on behalf of the Applicant, dated February 2023. The Drainage Report notes that approximately 0.22 acres of the 19.15-acre property would be impacted through site development, but less than 5,000 square feet of new impervious surface would be added to the property, satisfying impervious surface coverage requirements of the municipal code. The project has been designed to comply with requirements of the City’s 2022 Drainage Design and Erosion Control Manual. Specifically, stormwater runoff from the rooftop of the modular building would be tightlined to a downspout dispersion system where it will be infiltrated on-site; stormwater from sidewalk and parking areas would be treated and conveyed by existing catch basins.  
  
The Drainage Report included an earlier Geotechnical Letter, from Landau Associates, Inc., noting that soil on-site would be suitable to support the proposed building and that on-site infiltration of stormwater from the rooftop would be feasible. In addition, City staff determined that the adequate water and sewer facilities are available to serve the project (and a letter to this extent was provided as an exhibit) and that the project would not involve the removal of any trees. *Exhibit 1, Staff Report, pages 6 through 8; Exhibit 12; Exhibit 13; Exhibit 15.*
  
11. The area of the property impacted by the proposal does not contain critical areas (apart from the AQP zone discussed above). Moreover, the site was assessed previously for the presence of Mazama Pocket Gophers and the City determined no further review would be necessary given that development would occur on a previously disturbed/developed area of the property. *Exhibit 1, Staff Report, page 9; Exhibit 16.*

#### Conditional Use Permit

12. The City zoning code sets forth specific minimum conditions for permitting school facilities as a conditional use. *TMC 18.56.280.* These minimum conditions require a

twenty-five-foot setback on front, side, and rear yards, and no off-street parking or loading areas in any required yard area. City staff reviewed the proposal and determined that these requirements/conditions would be met with development. *Exhibit 1, Staff Report, page 7.*

13. City staff also reviewed the proposal against the general conditional use permit criteria of TMC 18.56.035 and determined that the proposed development would meet the CUP criteria, noting:
- City staff reviewed all applicable elements of the City Comprehensive Plan and finds no inconsistency between the proposed project and the goals and polices outlined in the Plan.
  - There are no apparent adverse impacts that would be caused as a result of the project related to noise, odors, light, glare, traffic, electrical interference, critical areas, sensitive species, ground and surface water, or historic and cultural resources.
  - Adequate water and sewer facilities are available to serve the project.
  - Landscaping and screening would meet the requirements of Chapter 18.47 TMC.
  - The project is consistent with all applicable performance standards outlined in the SFM zoning district.

*Exhibit 1, Staff Report, pages 7 through 11.*

#### Site Plan Review

14. Development projects within the SFM zone are required to comply with the general development standards of TMC 18.12.050. The City Development Review Committee (DRC) provides preliminary and formal site plan review at the preapplication stage to evaluate whether a site plan demonstrates compliance with applicable development regulations. *Chapter 14.02 BMC; BMC 14.08.010.B. Exhibit 1, Staff Report, pages 2, and 8 through 14.*
15. The DRC reviewed the Applicant's conceptual site plans as part of the administrative site plan review process and determined that, with conditions and approval of the requested CUP, the site plans demonstrate compliance with the applicable zoning standards, as well as all other applicable development regulations of the municipal code. Specifically, the DRC determined that, with conditions, the proposal would meet all requirements related to: allowed use(s); required setbacks; parking; outdoor lighting; landscaping; critical areas; transportation, engineering, building, and fire code requirements; utility requirements; stormwater requirements; and all design-related requirements. *Exhibit 17.*

#### Testimony

16. City Associate Planner Alex Baruch testified generally about the proposal and how, with conditions, it would comply with the City Comprehensive Plan, zoning ordinances, and the specific criteria for approval of a CUP to construct a school facility under TMC

18.56.035.A and TMC 18.56.280, and all requirements for Site Plan Review approval. Mr. Baruch explained, more specifically, the unique nature of the property—given its split zoning and Comprehensive Plan designations—but stressed that the proposal would occur on a portion of the property that has been previously disturbed and is a significant distance away from any critical areas or critical area buffers associated with Barnes Lake. Mr. Baruch noted that a CUP for use of this portion of the property for school use was previously approved in 2008 and that, essentially, the Applicant is simply seeking to augment that use with an additional classroom facility. *Testimony of Mr. Baruch.*

17. Mel Murray, Tumwater School District Director of Facilities, testified on behalf of the Applicant and explained that the acronym “LINCS” stands for “Learning Independence by Networking Community and Schools” and that this facility will provide classroom space to serve 18–21-year-old life skills students in their transition from high school to independent living and working. *Testimony of Mr. Murray.*
18. Applicant Representative Ross Jarvis testified that the Applicant reviewed the City’s recommended conditions and had no concerns with them and that the provided materials adequately explain the impacts from the project, which would be relatively minor. *Testimony of Mr. Jarvis.*

#### Staff Recommendation

19. City staff determined that, with conditions, the proposal would be consistent with the City’s criteria for approval of a CUP and for Site Plan Review approval. *Exhibit 1, Staff Report, pages 9 through 11.*

### CONCLUSIONS

#### Jurisdiction

The Hearing Examiner has authority to hear and decide conditional use permit requests and, through the City’s consolidated permit process, to grant Site Plan Review approval. *TMC 2.58.090; TMC Table 14.08.030.*

#### Criteria for Review

##### *Conditional Use Permit*

Certain uses, because of their special requirements, infrequent occurrence, possible safety hazards, or detrimental effects on surrounding properties, are permitted only upon the approval of the Hearing Examiner, after due notice and public hearing, and after a finding that the use is consistent with the intent of the Comprehensive Plan and the requirements of Title 18 TMC. *TMC 18.56.010.*

The Hearing Examiner shall be guided by the following criteria in granting a conditional use permit:

1. The proposed use shall be in keeping with the goals and policies of the Tumwater comprehensive plan, including subarea plans, and applicable ordinances;
2. The proposed use shall not be materially detrimental to the public health or welfare, the environment, or injurious to the property or improvements near the proposed use or in the zone district in which the subject property is situated. The following shall be considered in making a decision on a conditional use permit:
  - a. The generation of noise, noxious or offensive odors or emissions, light, glare, traffic, surface water or groundwater pollution, electronic interference, impacts to environmentally sensitive areas or protected species, impacts to historic or cultural resources, or other impacts or nuisances that may be injurious to the public health or welfare or to property or improvements in the vicinity of the proposed use or in the district in which the subject property is situated;
  - b. Availability of public services, which may be necessary or desirable for the support of the proposed use. These may include, but shall not be limited to, availability of utilities, transportation systems, education, police and fire facilities, and social and health services; and
  - c. The adequacy of landscaping and screening consistent with TMC Chapter 18.47, yard setbacks, open spaces, or other development characteristics necessary to mitigate the impact of the proposed use upon neighboring properties;
3. The proposed use shall meet or exceed the performance standards that are required in the zone district it will occupy; and
4. Any additional minimum conditions identified for a particular type of proposed use in TMC 18.56.100 through TMC 18.56.350.

*TMC 18.56.035.A.*

#### *Site Plan Review*

Formal site plan review consists of an evaluation of a development proposal to determine suitability for submittal of the project permit application. *TMC 14.02.020.J; Chapter 14.02 TMC.* Accordingly, this process entails review an applicant's site plan to determine whether it demonstrates conformance with applicable development regulations of the municipal code.

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The criteria for review adopted by the 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

#### *Conditional Use Permit*

- 1. With conditions, the proposed use would be consistent with the intent of the City Comprehensive Plan, the requirements of the Single-Family Medium Density Residential zoning district, and Title 18 TMC requirements.** The City provided reasonable notice and opportunity to comment on the proposal. The City received one public comment that did not express opposition to the proposal. The City also received comments from two reviewing agencies/entities that did not express concern or opposition to the proposal. The proposed use would take place within a portion of the approximately 19.15-acre property that is designated “Public Institutional” under the City’s Comprehensive Plan. City staff determined that the school expansion would be consistent with the Comprehensive Plan designation and would further several goals and policies of the Comprehensive Plan by augmenting school services in the area. The Hearing Examiner concurs with this assessment.

The proposed use would take place in the Single-Family Medium Density Residential (SFM) zone, which allows for school facilities with a conditional use permit. Environmental impacts of the proposal were considered, as required by SEPA, and the City issued DNS that was not appealed. No critical areas on-site were identified in the area of the property where development would occur. City staff did not identify any adverse impacts of the proposal relating to noise, odors, light, glare, or electrical interference. The City Transportation Manager reviewed the Applicant’s transportation memorandum and determined that, with the payment of impact fees, the proposed use would meet City concurrency requirements. City water and sewer services are available to serve the proposed use. Stormwater from existing and proposed pollution generating surfaces on the property would be collected, treated, and infiltrated in accordance with the City’s 2022 Drainage Design and Erosion Control Manual. No trees would be removed as part of the proposal, and the Applicant would install any necessary landscaping and other frontage improvements in accord with code requirements.

Conditions, as detailed below, are necessary to ensure that the project would comply with all local, state, and federal requirements related to the proposed development and to ensure that the proposal meets all criteria for CUP approval. *Findings 1 – 19.*

2. **The proposed use would meet the minimum conditions required under TMC 18.56.280 for approving a school facility as a conditional use.** The City zoning code sets forth specific minimum conditions for permitting school facilities as a conditional use. *TMC 18.56.280*. These minimum conditions require a twenty-five-foot setback on front, side, and rear yards, and no off-street parking or loading areas in any required yard area. City staff reviewed the proposal and determined that these requirements/conditions would be met with development. The Hearing Examiner concurs with this assessment. *Findings 1, 12 – 19.*

#### *Site Plan Review*

3. **With conditions, the proposal would meet the requirements for site plan review approval.** The City’s Development Review Committee (DRC) reviewed the Applicant’s conceptual site plans as part of the administrative site plan review process (during the preapplication stage) and determined that, with conditions and approval of the CUP, the site plans demonstrate compliance with the applicable zoning standards, as well as all other applicable development regulations of the municipal code. Specifically, the DRC determined that, with conditions, the proposal would meet all requirements related to: allowed use(s); required setbacks; parking; outdoor lighting; landscaping; critical areas; transportation, engineering, building, and fire code requirements; utility requirements; stormwater requirements; and all design-related requirements. The Hearing Examiner concurs with this assessment. Conditions, as detailed below, are necessary to ensure that the project would comply with all local, state, and federal requirements related to the proposed development and to ensure that the proposal meets all criteria for CUP approval and Site Plan Review approval. *Findings 1 – 19.*

#### **DECISION**

Based on the preceding findings and conclusions, the request for a conditional use permit and site plan review to construct an approximately 1,900 square foot modular building to serve as classroom space, with associated improvements, at 621 Linwood Ave SW, is **APPROVED**, with the following conditions:

1. The project is bound by the conditions of approval of the formal site plan review letter dated March 10, 2023 (Exhibit 17).
2. A Site Development Grading and Building Permit are required for the proposed school expansion.
3. Stormwater from impervious surfaces associated with the project shall be managed in accordance with the City of Tumwater 2022 Storm Drainage Manual.

4. Erosion and sediment control measures that comply with the City of Tumwater 2022 Storm Drainage Manual shall be implemented during construction of the project to prevent sediment laden runoff from entering surface waters.
5. 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.
6. If any archaeological or cultural resources are uncovered during construction, the project proponent shall stop work in the area of discovery; follow the procedures in TMC 18.40.065 Inadvertent Discovery of Archaeological and Cultural Resources; and contact the City of Tumwater, the Washington State Department of Archaeology and Historic Preservation, Nisqually Indian Tribe, beach.brad@nisqually-nsn.gov and the Squaxin Island Tribe's Archaeologist, Shaun Dinubilo via email at sdinubilo@squaxin.us.
7. Fill for the project shall be clean material, void of solid waste or organic debris.
8. 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.
9. 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.

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.
10. All engineering designs and construction will need to be in accordance with the City of Tumwater's Development Guide and WSDOT standards (where applicable).
11. 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.

12. Any public or private utility relocation necessary to construct the project is the sole responsibility of the project proponent.
13. Back flow prevention is required on all irrigation services in accordance with the AWWA Cross Connection Control Manual.
14. 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, if needed.

Decided this 3<sup>rd</sup> day of July 2023.



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ANDREW M. REEVES  
Hearing Examiner  
City of Tumwater