

OFFICE OF THE HEARING EXAMINER

CITY OF TACOMA

DECISION ON PRELIMINARY PLAT REQUEST

AND CRITICAL AREAS DEVELOPMENT PERMIT

HEARING EXAMINER FILE NO: HEX2024-008

APPLICANT: Toll Bros., Inc. (hereinafter the “Applicant” or “Toll Bros.”), a Pennsylvania corporation licensed to do business in the state of Washington, is the applicant for the present Preliminary Plat and Critical Areas Development Permit as an equitable owner (under contract purchaser) of that certain real property further described herein.¹ Toll Bros. was represented at the hearing by Attorney Clara Park of Van Ness Feldman LLC. For purposes of this Decision, references to “Toll Bros.” and/or the “Applicant” also include any employees, agents, affiliates, and/or contractors of the Applicant regarding conditions and compliance issues set forth herein, and in regard to the intended development of the Subject Property (defined below).

SUMMARY OF REQUEST:

This Decision addresses a request to subdivide approximately 18.2 acres of real property into 47 single-family residential lots, with a new private roadway, utilities, site drainage, and three open tracts for private drainage maintenance, open space, and critical area preservation. The preliminary plat request (hereafter the “Plat”) was accompanied by an application for a Critical Area Development Permit (“CADP”) for impacts to a wetland. The preliminary plat application required review under the State Environmental Policy Act (“SEPA”), Revised Code of Washington (“RCW”) 43.21C, and Washington Administrative Code (“WAC”) 197-11. At the conclusion of the City’s SEPA review, the Planning and Development Services (“PDS”) Director issued a final mitigated determination of nonsignificance (“MDNS”) on August 8, 2024. The MDNS (LU22-0055) was appealed.² The appeal of the MDNS was heard as a discrete part of the overall hearing conducted on August 29, 2024.³

LOCATION:

The site is addressed as 5920 Browns Point Boulevard and is situated within Section 16, Township 21, Range 03, Quarter 14 in Northeast Tacoma (hereafter the “Site” or the “Subject Property”). The Site is

¹ Toll Bros., Inc. is registered with the Washington Secretary of State. Allito Properties LLC is currently shown in the Pierce County records as the taxpayer/owner for the Subject Property as defined below.

² On August 21, 2024, Michael Ollivant filed a Notice of Appeal of the MDNS. Subsequently, the Applicant also filed an appeal of the MDNS on August 22, 2024. Mr. Ollivant and the Applicant participated in a prehearing conference held on August 26, 2024. Thereafter, Mr. Ollivant withdrew his appeal on August 27, 2024. *See Finding of Fact 32.* As a result, the Applicant became the sole appealing party. The decision of the accompanying MDNS appeal is issued as a separate decision.

³ Pursuant to TMC 1.23.120: [A]n environmental appeal brought pursuant to Section 13.12.820 shall be consolidated for purposes of review with the underlying permit matter(s), unless the environmental appeal involves the issuance of Determination of Significance pursuant to WAC 197-11-360.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
& DECISION**

located within the City’s R-1 Single-Family Dwelling District and the “VSD-25” View Sensitive Overlay Zone.

DECISION:

The Hearing Examiner approves both the preliminary plat and CADP, subject to the conditions set forth herein below. Under the authority set forth in Tacoma Municipal Code (“TMC”) sections 1.23.050.B.1, 1.23.120, and TMC chapters 13.04, 13.11 and 13.12, the Examiner heard testimony and reviewed the presented record regarding the Plat and CADP. The Examiner’s approvals are based on the hearing and the hearing record.

PUBLIC HEARING:

After reviewing the Preliminary Report submitted by PDS (herein the “PDS Report”—*Ex. C-1*) and all attendant information on file, the Hearing Examiner convened a public hearing on the Plat on August 29, 2024.⁴

Testimony at the hearing was taken from all of the following:

City of Tacoma

Larry Harala, Principal Planner, Planning and Development Services, City of Tacoma
Ryan Erickson, P.E. Head of Technical Services, Chief Fire Code Official, City of Tacoma.

Toll Bros.

Craig Deaver, Principal, CES NW, Inc.
John Harkness, Sr. Entitlement Manager, Toll Bros., Inc.
Katy Crandall, Ecologist / ISA Certified Arborist, Facet (formerly DCG/Watershed)
Aaron Van Aiken, P.E. PTOE, Heath and Associates
Scott Riegel, L.G. L.E.G., Associate Principal Geologist, Earth Solutions NW.

Public Comment/Testimony

Members of the public who offered testimony/comment at the hearing, both in-person and remotely, included all of the following:

Judith Kent, 6214 Watchtower Rd.⁵
Mignonne and William Peterson, 1807 58th St. NE
Lyz Kurnitz-Thurlow, 5559 Beverly Ave. NE
Mike Kolar, 1717 61st St. NE
Mike Ollivant, 5945 Scenic Dr. NE
Dave Broughton, 5923 Broadview Ave. NE
James Morrow, 6219 View Street NE

⁴ The public hearing in this matter was conducted in City Council Chambers in the Tacoma Municipal Building. Remote access using Zoom teleconferencing with both internet visual and audio access, as well as separate telephonic access via call in number on Zoom, was also available at no cost to any participant. Both witnesses and members of the public participated over Zoom.

⁵ All addresses are local to the area around the Site. As such, this Decision does not list “Tacoma, WA 98422” repeatedly.

Alina Nikitchenka, 5909 Scenic Dr. NE.

Written comments were submitted pre-hearing as part of the City's exhibit submittals as well, and these are included in the record as Exhibit C-2.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION:

FINDINGS OF FACT:

The Application

1. Toll Bros. submitted an application, through its duly designated representative,⁶ requesting the subdivision of approximately 18.2 acres of real property into 47 single-family residential lots. The subdivision proposes a new private roadway ("Road A"), utilities, site drainage, and three open tracts for private drainage maintenance, open space, and critical area preservation (again, the "Plat"). The Plat application was accompanied by a Critical Area Development Permit (again, the "CADP") necessary to account for impacts to a wetland present on the Site. An environmental review was required for the Plat in accordance with the State Environmental Policy Act (SEPA), Revised Code of Washington (RCW) 43.21C, Washington Administrative Code (WAC) 197-11, and the environmental provisions of the Tacoma Municipal Code (TMC) found in TMC chapter 13.12. *Deaver Testimony, Harala Testimony, Crandall Testimony; Ex. C-1.*

The Site

2. The Site is slightly irregularly shaped (i.e., not completely square or rectangular) and is comprised of two parcels, one approximately 16.2 acres in size fronting Browns Point Boulevard to the east, and the other an approximately 2-acre parcel fronting Beverly Avenue Northeast to the west. The Site then totals approximately 18.2 acres in area and slopes to both the east and west from a higher center. Slopes of greater than 40% are located within the far westerly portion of the Site. Slopes that range from 25% to 40% are scattered throughout the westerly, southerly, and easterly portions of the Site. The Site is presently undeveloped and predominately forested with fir and cedar trees and a mix of other vegetation. *Deaver Testimony, Harala Testimony; Ex. C-1.*

3. Watchtower Road Northeast is a private roadway that bisects the Site from the southeast to the north. Watchtower Road Northeast is paved with a 16-foot-wide asphalt surface. It is approximately 2,000 feet in length and serves approximately 18 existing homes to the north of the Site as their primary ingress and egress. A few of these homes have a secondary access point, but the majority have no other point of ingress/egress. *Id.*

4. Browns Point Boulevard is the nearest arterial roadway to the Site. It is classified as a Collector Arterial. It is 65-feet in overall width with a paved surface width of 29 feet within. It has a posted speed limit of 30 miles per hour. Beverly Avenue Northeast is a 60-foot-wide City residential class street with a 20 mile per hour posted speed limit. The Plat's proposed private roadway (again, "Road A") will have a single entry point into the Site and will end at a 52-foot-wide cul-de-sac.

⁶ CES NW Inc., Civil Engineering & Surveying.

Watchtower Road Northeast will feed into Road A approximately 120 feet west of Browns Point Boulevard. Along the front of the Subject Property, there is currently no curb or gutter, but only a gravel shoulder. A five-foot concrete sidewalk exists behind a five-foot grass strip along the eastern side of the roadway. *Id.*

5. Other real property in and around the Subject Property is classified low-density single-family residential use for zoning purposes. The Subject Property and surrounding area are subject to the additional zoning overlay of R-1-VSD-25 Single-Family Dwelling & View Sensitive Overlay District to the south, east and west of the Subject Property. The properties abutting the Site to the north are within unincorporated Pierce County, they are zoned Single-Family, and they are improved with single-family residences in accordance with their county designation. Properties in and around the Site have estimated values ranging from nearly \$700,000 to over \$2,000,000.00, and lot sizes range in area from 8,400 square feet to 24,000 square feet, with an approximate average of around 10,000 square feet. *Id.*

6. Sanitary sewer, storm sewer, water, and power lines are present near the intersection of Road A and Browns Point Boulevard. The Beverly Avenue fronting lots have power lines, sanitary and storm sewer lines along Beverly Avenue Northeast. Utilities will need to be extended into the Plat at the expense of the Applicant/owner/developer. *Id.*

7. There is no regular public transit service from Pierce Transit available at the Subject Property or anywhere in Northeast Tacoma at present.⁷ The nearest regularly running bus service (King County Metro) is in and along the border areas between Northeast Tacoma and Federal Way. Approximately 5.5 miles to the east of the Site at 21st Avenue South and South 316th Street in Federal Way there is a public bus transit center. *Ex. C-1.*

8. Road A and its culminating cul-de-sac will have sidewalks fronting all the lots providing pedestrian and bicycle circulation and access throughout the Site. Streetlights and street trees will be provided as well. ADA compliant curb ramps are to be constructed at the intersection with Watchtower Road Northeast and the intersection of Browns Point Boulevard Northeast. The City has recommended requiring half-street improvements along the west side of Browns Point Boulevard Northeast, outside of the boundaries of the Plat, but which improvements are linked to the increased traffic from the proposed development of the Plat. The required half-street improvements along Browns Point Boulevard Northeast will impact 2,403 square feet of the buffer of Wetland A (*See FoF*⁸ 20 below). *Deaver Testimony, Van Aken Testimony, Crandall Testimony, Harala Testimony; Ex. C-1.*

9. Schools that serve the area (with distance and direction from the Site) are: Browns Point Elementary (within walking distance at 2,500 feet - south), Meeker Middle School (1.25 miles - east) and Stadium High School (12 miles – southwest). The Tacoma School District submitted no comments regarding the Plat or its proposed development. There is a bus stop at Parkview Dr. and Browns Point Boulevard. The Applicant will install a flashing beacon and crosswalk for the stop. *Deaver Testimony; Ex. C-1.*

10. Dash Point State Park is approximately 2,200 feet northeast of the Subject Property. Browns Point Elementary has significant open space and recreation areas that are open to the public as

⁷ Pierce Transit on-call shuttle service is available under certain circumstances.

⁸ FoF is the abbreviation for “Finding of Fact” and it is used throughout this Decision.

well. Browns Point Lighthouse Park is approximately 2 miles from the Site and it presents various recreational opportunities to the area also. *Ex. C-1.*

11. The Subject Property, along with the surrounding area, was annexed into the city of Tacoma in 1948. Watchtower Road Northeast derives its name from a World War II era civilian defense observation post in the area of the Site. As with most of Northeast Tacoma, the Subject Property has been logged in the distant past, but otherwise has been undeveloped. Aerial photographs indicate that the property was deforested pastureland as late as the 1950s. *Id.*

12. The larger parcel of the two making up the Site has remained undeveloped. The smaller parcel fronting Beverly Avenue Northeast was created as part of a 5-lot short plat in 1975. In 2008, the City approved a Preliminary Plat for a 65-lot subdivision on the Site, but it was never finalized, and the preliminary approval expired in 2016. *Id.*

13. The entire area surrounding the Subject Property is made up of platted developments. There are four platted subdivisions surrounding the Subject Property. These are (a) Beverly Heights, directly to the west, which was platted in 1947, (b) Sea View Terrace II which was platted in 1959, (c) Wrights First Subdivision to the south of the Subject Property which was completed in 1964, and to the east across Browns Point Boulevard, Indian Ridge, which was platted in 1981. *Harala Testimony; Ex. C-1.*

14. The Site and surrounding area have been zoned R-1 Single-Family Dwelling District since 1953, when the City's first modern zoning code was enacted. As referenced above, the site is located within the City's "VSD-25" View Sensitive Overlay District, which was established in 1989. There have been no zoning changes or other overlays put in place since 1989. *Id.*

15. The proposed lot sizes, residential density and single-family dwelling land use are permitted within the R1-VSD-25 zoning, with lots smaller than 7,500 square feet being developed to the small-lot single-family site development and building design regulations. *Deaver Testimony, Harala Testimony; Ex. C-1.*

16. The land use designation for the Site under the One Tacoma Comprehensive Land Use Plan (the "Comp Plan") is Low-Scale Residential to which the Plat and its proposed development generally conform. The Plat's proposed lot sizes, residential density and single-family dwelling land use are supported within the Low-Scale Residential designation that has a density range of 10-25 dwelling units per net acre. *Id.*

The Project

17. The Applicant has applied for approval of the Preliminary Plat of "Watchtower Heights" which would subdivide the Subject Property into forty-seven (47) single-family residential lots ranging in size from approximately 5,682 square feet to 16,900 square feet. The new residential lots will average 9,496 square feet in size and have a net density of approximately 4.59 dwelling units per acre. As stated above, the Comp Plan's target development density for Low-Scale Residential is 10-25 units, which leaves the Plat on the low side of the target. This lower density is due largely to topographic challenges

and the presence of critical areas. Road A and storm water and wetland/buffer tracts (Tracts A, B and C) are not figured into net density. *Deaver Testimony, Harala Testimony; Ex. C-1.*

18. The proposed new home sites will have access off the new 52-foot-wide, paved private cul-de-sac roadway, Road A. Road A will intersect Watchtower Road Northeast at its southern end and then connect to Browns Point Boulevard at the entrance to the Plat. Road A extends south a length of 500 feet from the cul-de-sac at its end. Road A will be improved with a 28-foot-wide paved road surface, concrete curb and gutter, a five-foot landscaping strip, and five-foot sidewalks. *Id.*

19. Approximately five acres, or just over 25% of the overall Site area, will remain undeveloped open green space to preserve a wetland and biodiversity corridor (Tract C). Added to that approximate 25%, additional tree plantings and landscaping requirements for the development of the Plat will result in at least 30% canopy cover for the Site. Yards will include required amounts of open space at the time of development as well. *Deaver Testimony, Harala Testimony; Ex. C-1.*

20. Parking in the Plat will consist of two parking spaces in each lot's garage, and two more in driveways, with some on street parking being possible as well at the proposed street width. Maximum building height for the Plat will be 25 feet per the existing View Sensitive Overlay. The development of the Plat proposes a fair amount of grading that will be addressed in a separate fill and grade permit. Retaining walls and drainage systems are intended to be part of the development. *Id.*

21. Based on the intended regrading of the entry to Road A and Watchtower Road Northeast and the configuration of Road A traversing the Plat, emergency vehicle and solid waste service access will be sufficient. *Deaver Testimony, Erickson Testimony.*

22. The Applicant prepared a traffic impact analysis (the "TIA") analyzing the potential traffic impacts of developing the Plat which is Exhibit C-6 in the hearing record. The City reviewed the TIA and concluded that the street improvement referenced herein (*See FoF 8 and 18*) will be sufficient to address/mitigate added traffic impacts from the Plat. *Van Aken Testimony; Ex. C-1. Ex. C-6.*

23. The Applicant prepared and submitted a Geotechnical Engineering Study that assessed Site stability and suitability for development. It concluded that the Site, if developed as proposed and conditioned, would result in greater stability due in large part to the landscaping plan, retention walls and intentional handling of stormwater on the Site in compliance with the TMC. The Applicant's preliminary stormwater design indicates that the development of the Plat will result in less stormwater leaving the Site and entering neighboring properties than does at present. *Deaver Testimony, Riegel Testimony; Ex. C-1, Ex. C-5, Ex. C-7.*

The CADP

24. The Plat application was accompanied by an application for a CADP to verify critical areas on the Site and determine appropriate actions for any development of the Plat in compliance with TMC 13.11, the City's Critical Areas Preservation Code. The Applicant submitted all of the following for the City's review in relation to the CADP and the environmental condition of the Subject Property:

A. A Joint Aquatic Resource Permit Application (JARPA);

- B. *Watchtower Heights Habitat Report*, dated April 20, 2023, by The Watershed Company (now Facet);
- C. *Tacoma Watchtower Site, Updated Wetland Delineation Report*, dated June 15, 2023, by DCG Watershed (now Facet);
- D. *Tacoma Watchtower Comment Response letter*, dated July 6, 2023, by DCG Watershed; and
- E. *Tacoma Watchtower Site, Updated Critical Area Report*, Revised November 21, 2023; and March 30, 2024, by DCG Watershed (*Exhibit R-7*).⁹ *Crandall Testimony; Ex. C-1, Ex. C-4 Technical Memorandum*.

25. The CADP application and the Environmental Submittals were reviewed and evaluated by Karla Kluge, Regulatory Compliance Analyst, Senior, PDS’s subject matter expert on critical areas and the requirements of TMC 13.11. Site visits were conducted by both Kluge and the Applicant’s consultant Katy Crandall. Kluge’s analysis and conclusions were memorialized in a Technical Memorandum dated June 14, 2024 (the “Tech Memo”). The City’s review indicated critical areas on the Site, specifically a Biodiversity Area within the northeast area of the Site, one wetland and its buffer (Wetland A), and a buffer extending from a different offsite wetland, designated Wetland C.¹⁰ Wetland A is classified as a Category IV wetland and requires a 50-foot buffer. *Crandall Testimony; Ex. C-1, Ex. C-4 Tech Memo, Environmental Submittals*.

26. The 50-foot required buffer for Wetland A will have a 2,403 square-foot area impacted by the City’s required road improvements (*See FoF 8*). Kluge determined that this area of impact “[e]xceed[s] the parameters allowed under a Critical Area Minor Development permit,” thus necessitating the CADP. The Applicant has proposed providing mitigation for the impacts through the restoration and enhancement of the wetland buffer area on Site at a 1:1 ratio. The Plat will not affect the Biodiversity Area. *Id.*

27. Very little, if any real property in the area of the Site is suitable for the type of development proposed by the Plat. Undeveloped properties in Tacoma in general are rare, even more so in NE Tacoma. Those that do exist in NE Tacoma are more encumbered by critical areas and geotechnical challenges than the Subject Property. *Id.*

28. But for the City’s requested road frontage improvements, the CADP would not be necessary as there would be no impacts to Wetland A and its required buffer. No residential development is proposed within Wetland A or its buffer. Wetland A, the upslope buffer of Wetland A, and the adjacent Biodiversity Area and Corridor will all be preserved. Impacts to the buffer will be minimized to the extent feasible if the Applicant’s proposed mitigation measures are completed and the City’s proposed conditions met. *Crandall Testimony; Ex. C-1, Ex. C-4 Tech Memo, Environmental Submittals*.

29. Given that the impacts to the buffer of Wetland A are the result of City requested road improvements, there appears to be no practical alternatives that would impact the buffer less while

⁹ The foregoing documents are collectively referred to herein as the “Environmental Submittals.”

¹⁰ A Biodiversity Corridor is also present on the Subject Property between the boundaries of the Biodiversity Area in the northeast portion of the Subject Property near Wetland A. *Ex. C-4 Tech Memo, p. 4*.

complying with the City's requested condition for street frontage improvements. The City did make some allowances for revisions to its usual frontage improvement standards, such as eliminating the planter strip usually required between the curb and sidewalk, thereby reducing greater impacts to the wetland buffer. *Id.*

Environmental Review

30. Review under SEPA was required prior to the hearing and the issuance of this Decision pursuant to the State's SEPA Rules (WAC 197-11) and the City of Tacoma's Environmental Code (TMC 13.12). SEPA review is required for sites that propose over 20 new single family residential lots such as the Plat here. The project notice postcard indicated that a MDNS for the project (the Plat)¹¹ was likely. The City then issued a Mitigated Determination of Nonsignificance (MDNS) threshold determination for the Plat on August 7, 2022. The SEPA record is included in the hearing record as Exhibit C-4.

31. The MDNS determined that mitigation under the City's SEPA substantive authority (WAC 197-11-050) was required, but that mitigation measures addressed potential impacts sufficiently for an MDNS to be issued. Potential impacts to air, water, and earth were determined to require mitigation. Mitigation measures pertained to soil toxicity and required dust and erosion controls, the screening of potentially large retaining walls, cultural and archeological evaluation and preservation,¹² and traffic mitigation. Some of these mitigation measures are included in the City's recommended conditions for the Plat, as well as being part of the MDNS itself. *Ex. C-1, Ex. C-4.*

32. During the 14-day appeal period for the MDNS (and prior to the hearing), two appeals were filed with the Office of the Hearing Examiner—one from the Applicant challenging certain conditions the MDNS imposed on the Plat and its subsequent development, and one from a third party. The third-party appeal was withdrawn prior to hearing. The Applicant's MDNS appeal was addressed the same day as the public hearing on the Plat, but as a discrete part of the day's festivities.¹³

The Hearing

33. Public notice of the Plat application and its public hearing was mailed to owners of record and/or taxpayers of record for properties within 1,000 feet of the Site on July 11, 2022. Public notice signs were posted on the Site referencing the subdivision and CAPD Permit. *Ex. C-1.*

34. Thirty written public comments about the Plat and its intended development were received by the City prior to the hearing. In them concerns were expressed regarding traffic impacts, loss of undeveloped green space/environmental concerns, concerns specifically about slopes along the western side of the Site and the difference between the pad height of the homes to the west and the new homes along the western edge of the Subject Property. Comments also expressed the desire to see the Site

¹¹ The City's environmental review took more into account (i.e., the subsequent development) than simply subdividing the Subject Property, hence the City's use of "the project" in referencing the scope of the MDNS.

¹² This condition/mitigation measure has now been deleted by the agreement of the parties.

¹³ The Plat hearing was completed shortly after 12:30 pm. The MDNS appeal hearing was convened after a customary lunch break and was concluded still on August 29, 2024. The second scheduled day for the hearing (August 30, 2024) was unnecessary.

remain undeveloped entirely. Many questioned the impact that additional residential development might have on area schools, parks, and emergency services. *Ex. C-2*.

35. Comments also addressed the Site and surrounding area being within the City's View Sensitive Overlay District (VSD) and concerns regarding the potential impact of development on their existing views. The City pointed out that in the case of a new full plat, such as here, the City considers existing grade to be the ground surface at the time of final plat approval. This would be the surface grade from which the 25-foot height limit would be measured. Given that the Site is higher in elevation than most of the surrounding area, there are no anticipated view related impacts. *Harala Testimony, Deaver Testimony, Riegel Testimony; Ex. C-1, Ex. C-2*.

36. During the hearing, nine people offered comment/testimony largely reiterating the same concerns expressed in the prehearing written comments.¹⁴

37. The City's primary representative at the hearing, Larry Harala, indicated that the City had determined that the Plat, as presently proposed, complies with TMC 13.04 (Platting and Subdivisions) TMC 13.06 (Zoning) and the Comp Plan, and will otherwise be able to comply with all applicable regulations and requirements of the TMC and applicable laws. *Harala Testimony*.

38. The Applicant was in agreement with and accepting of all recommended City conditions of approval for the Plat except conditions 2.e., 2.f., 3.f. and 5.b. of Exhibit C-1. At the close of the hearing, the Examiner gave the parties leave to discuss these conditions to see if modifications to the language could be made to address the Applicant's concerns. The parties submitted the results of their discussion on September 13, 2024, and given the agreement between the parties regarding conditions, their modifications have been made part of this Decision. *See Ex. C-12*.

39. The PDS Report, entered into the record as Exhibit C-1, is generally accurate in its description of the Plat, general and specific facts about the Site, applicable sections of the Comp Plan, and applicable regulatory codes. The PDS Report is incorporated herein by reference as though fully set forth. However, to the extent that anything in the PDS Report conflicts with the contents of this Decision, this Decision shall control. Specifically, conditions 2.e., 2.f., 3.f and 5.b. of the Section K of the PDS Report are superseded by the parties' post-hearing agreed modifications as those are incorporated here.

40. Any conclusion of law¹⁵ herein which may be more properly deemed a finding of fact ("FoF") is hereby adopted as such.

CONCLUSIONS OF LAW:

1. The Hearing Examiner has jurisdiction over the subject matter of this proceeding to conduct a hearing and issue a decision on the approval or denial (rejection) of the Plat pursuant to TMC 1.23.050.B.1 and TMC 13.04.100.E. The Hearing Examiner has authority over deciding whether to approve the CADP accompanying the Plat pursuant to TMC 13.05.090.E, TMC 13.05.110.C and TMC 1.23.120, which allow the Hearing Examiner to consider consolidated applications where a separate

¹⁴ A tenth person, Kenneth Lindh, was signed up to speak, but he left the hearing prior to his opportunity and did not return.

¹⁵ Conclusions of Law may be abbreviated as "CoL" hereafter.

permit is an integral part of an open-record hearing matter, effectively taking on the authority of the PDS Director to make permit decisions of first instance.

2. The Applicant bears the burden of proof to demonstrate that the Plat and the CADP are consistent with the criteria for the approval of preliminary plats found in Section 13.04.100 of the TMC, and for the CADP, with the criteria set forth at TMC 13.11.220 *et seq.* TMC 1.23.070.

3. The preponderance of the evidence standard requires “that the evidence establish the proposition at issue is more probably true than not true.”¹⁶ The preponderance of the evidence standard is at the low end of the spectrum for burden-of-proof evidentiary standards in the U.S. legal system, and is not particularly difficult to meet.¹⁷

4. An applicant is entitled to rely on and benefit from all evidence presented at the hearing, and admitted into the hearing record, regardless of the source

5. The requirements of SEPA have been met by the City’s issuance of the MDNS.¹⁸ On-going SEPA compliance will be achieved through the final plat review process and by any development of the Plat complying with the mitigation requirements of the MDNS, as well as those set forth herein, and as generally required by the TMC.

Zoning

6. The Subject Property is zoned R-1 Single-Family Dwelling District. The R-1 zoning is consistent with the Comp Plan’s designation of Low-Scale Residential. The Plat proposes to subdivide the Subject Property into single family residential lots. This intention complies with the applicable zoning and is a permitted use. The View Sensitive District (VSD) in place at the Subject Property imposes building height restriction of 25 feet, which will have to be met.

Plat Criteria

7. TMC 13.04.100.E states that “[A] preliminary plat shall not be approved unless it is found that:

1. Appropriate provisions are made for the public health, safety, and general welfare, and for open spaces; stormwater management; streets or roads; alleys; other public ways; bicycle circulation; transit stops; potable water supplies; sanitary wastes; parks and recreation; playgrounds; schools and school grounds; and all other relevant facilities, including sidewalks and other planning features

¹⁶ *Mohr v. Grant*, 153 Wn.2d 812, 822, 108 P.3d 768 (2005) (plurality opinion); *In re Pers. Restraint of Schley*, 191 Wn.2d 278, 286-287, 421 P.3d 951, 957 (2018).

¹⁷ *In re Custody of C.C.M.*, 149 Wn. App. 184, 202-203, 202 P.3d 971, 980 (2009); *Mansour v. King County*, 131 Wn. App. 255, 266, 128 P.3d 1241, 1246-1247 (2006).

¹⁸ See TMC 13.12.430.

which assure safe walking conditions for students who walk to and from school and for transit patrons who walk to bus stops or commuter rail stations.¹⁹

2. The public use and interest will be served by the platting of such subdivision and dedication as set forth by the Comprehensive Plan and other Adopted City Ordinances, manuals, design specifications, plans, goals, policies, and guidelines.” *TMC 13.04.100.E.1-2.*

The approval criteria set forth at TMC 13.04.100.E.1 are conjunctive, not disjunctive. In other words, “appropriate provisions” must be made for all items in the list except where otherwise expressly noted.²⁰

8. Compliance with TMC 13.04.100.E.1; “Appropriate Provisions are made for...”: -

The Findings of Fact set forth above, as supplemented by the whole of the official hearing record, show that the criteria from TMC 13.04.100.E.1 have been generally or will be met, either through the intended (and required as conditions to the approval herein) provision of new facilities as the Subject Property is developed, or through existing facilities being sufficient to satisfy the requirements of TMC 13.04.100.E.1.²¹ The required provisions/items are examined in turn now as follows:

(a) Public health, safety, and general welfare. The Applicant and the City’s evidence and testimony indicated that the Plat can be developed safely and in compliance with applicable laws. The Plat itself presents no intractable safety issues given that slope and stormwater issues can be appropriately dealt with on the Subject Property as development occurs. If the Plat complies with all City recommended conditions (*Ex. C-1, Section K as adopted and tailored somewhat based on the parties’ agreement and otherwise here at Conclusion 17 below*), it can be safely developed in compliance with the TMC and all applicable safety regulations. The City’s environmental review addressed additional public health, safety and general welfare issues and determined that the Plat and its later intended development will not impact these areas in any materially negative way, and what impacts do present, can be sufficiently mitigated. *FoF 22, 23.*

From the standpoint of providing for the general welfare, the development of the Subject Property, after its subdivision, will add housing to a perennially short supply and expensive market in Tacoma, where more affordable housing is in great need. While the housing ultimately provided by the Plat may not fall within the more affordable range of the Tacoma housing market, any additional supply theoretically eases upward market pressures. As such, the Examiner concludes that this trio of criteria is met.

(b) Stormwater management. The Applicant submitted a preliminary design for handling stormwater on the Site (*Exhibit C-7*). The City determined that its storm

¹⁹ Numbering of these subsections is maintained the same as in the TMC text.

²⁰ For example, within this otherwise conjunctive list, adequate provision may be made for “streets or roads” as a subcategory and not both.

²¹ It is not unusual for some of the TMC 13.04.100.E criteria to be met by existing facilities.

water requirements will be able to be met, but with caveats that stormwater facilities may need revision or addition that could result in a loss of lots or reconfiguration. Compliance with City and state storm water requirements is essential. Applicable Washington case law allows for this criterion to be met at this stage so long as the Applicant presents a workable preliminary plan, is committed to compliance with applicable laws, and regulatory compliance is later achieved.²² This criterion is met.

(c) Open space. Yard open space will be required in the individual lots in the Plat in keeping with Comp Plan Policy DD-4.8. Roughly 25% of the Subject Property will remain in its natural state (Tract C), and parks and open spaces are within a reasonable distance from the Subject Property to consider this criterion met. *FoF 1, 10, 19.*

(d) Streets or roads; alleys; or other public ways; bicycle circulation. Road A will provide sufficient access to the proposed homes in the Plat. Built to City standards, the right-of-way related criterion are met. Road A and the required sidewalks will also provide for adequate bicycle circulation. *FoF 4, 8, 18.*

(e) Transit stops. Pierce Transit does not currently serve NE Tacoma. This is through no fault of the Applicant. The Applicant is providing improvements for the nearest school bus stop, however. This criterion is met as best it can be at present. *FoF 7, 9.*

(f) Potable water supplies; sanitary wastes. All utilities necessary to service the Plat are present in areas adjacent to the Plat, either in Browns Point Boulevard or Beverly Avenue presently, and can (and will need to) be extended through the Plat to serve the homes developed. This criterion is met through availability and will be further met as the Plat is developed. *FoF 6.*

(g) Parks and recreation, playgrounds. Adequate park, recreation and playground facilities are available within a reasonable distance from the Subject Property. This criterion is met. *FoF 10.*

(h) Schools and schoolgrounds. Existing public educational facilities are available and adequate to serve the development proposed by the Plat. As set forth above, these include the recently rebuilt Browns Point Elementary, Meeker Middle School, and Stadium High School. *See FoF 9.*

(i) Sidewalks; other safe walking features. Sidewalks will be provided along Road A and the Applicant will be providing other street improvements that will improve pedestrian safety in and around the Subject Property. These criteria are met by the Plat as proposed and conditioned. *FoF 4, 8, 18.*

²² *Topping v. Pierce Cty. Bd. of Comm'rs*, 29 Wn. App. 781, 630 P.2d 1385 (1981) (“Matters which are specified by regulation or ordinance need not be considered unless conditions or infirmities appear or exist which would preclude any possibility of approval of the plat.”). There is no indication that the Plat will have absolutely no path to storm water compliance. The same is true for most other provisions as well.

9. Compliance with TMC 13.04.100.E.2; Public Use and Interest Served, Consistency with the Comp Plan and other Adopted City Ordinances, Manuals, Design Specifications, Plans, Goals, Policies, and Guidelines:

The proposed Plat and the intended residential development of the Subject Property are consistent with the existing R-1 Single-Family Dwelling District in which the Subject Property currently sits. In almost all other ways, the proposed preliminary Plat and development are consistent with the public use and interest, as that is embodied in the goals and policies of the Comp Plan and the City's development regulations, as set forth in the PDS Report, Exhibit C-1.²³ The City cited to a number of Comp Plan goals and policies that are advanced by the Plat and its later development in Section G of the PDS Report. The Examiner agrees with the City's assessment and those Comp Plan goals and policies are incorporated herein by this reference.

If ultimately granted final approval, the Plat will add to the current supply of housing in the City, a supply which is overtaxed at present resulting in significantly high market prices, as already alluded to above. The City's recommended conditions (many of which will be included in the final approval process for the Plat), together with on-going monitoring by PDS and other City staff will combine to ensure that the Plat meets the part of this requirement dealing with City Ordinances, manuals, design specifications, and plans. Therefore, the Examiner concludes that the requirements of TMC 13.04.100.E.2 are, or will be met in the further unfolding of the final approval process, and in the Applicant's compliance with conditions of development.

10. Compliance with TMC 13.04.120 through .230:

In addition to the TMC 13.04.100.E.1 criteria just analyzed, TMC 13.04.110 provides that:

The general requirements and minimum standards of design and development set forth in Sections 13.04.120 to 13.04.230, inclusive, of these regulations, and the City's Comprehensive Plan, Subarea Plans, and applicable ordinances, manuals, design specifications, plans and guidelines in Section 13.04.120, are hereby adopted as the minimum requirements and standards to which a subdivision plat, including short subdivision, must conform for approval. However, the minimum standards found in Sections 13.04.120 to 13.04.230 may be waived as part of a subdivision/short subdivision decision upon a finding by the Hearing Examiner or Director that unique circumstances exist that make the strict application of the standards unreasonable.

There is a good deal of subject matter overlap in the listed items that a preliminary plat must make appropriate provisions for in TMC 13.04.100.E.1 and the requirements set forth in TMC 13.04.120 through .230. Often, many of the "requirements" of these sections find the majority of their compliance in the actual development of a plat complying with the conditions of approval.

²³ Often in hearings such as this, neighbors who attend and testify misunderstand the public use and interest criteria to mean that if they can mount enough opposition, it will demonstrate that the public interest is not served by the plat. This is incorrect. The public interest is gauged against the City's stated public policies as contained in the Comp Plan and the TMC. Community displeasure is not the basis for permit decisions. *Anderson v. Pierce Cty.*, 86 Wn. App. 290, 305, 936 P.2d 432, 441 (1997), *See also, Maranatha Mining, Inc. v. Pierce County*, 59 Wn. App. 795, 804, 801 P.2d 985 (1990).

Many of the “requirements” set forth in sections .120~.230 are not absolute, being conditioned with language like “In general,”²⁴ “Whenever feasible,”²⁵ and “In cases where...is impractical...”²⁶ The Examiner concludes that, where absolute, the requirements of TMC 13.04.120 through .230 are met, or will be met, through the development of the Plat proceeding as set forth in the application, as addressed in the PDS Report and at the hearing, and as the City’s recommended conditions are imposed in any final plat approval and in the development of the Subject Property. In cases where there is flexibility in these sections arising from the language of any given section, the Plat and its intended development, as conditioned herein, meets the intent of the TMC sufficiently. Specifically, these TMC sections and their requirements are complied with, or will be complied with (or waived) as follows:

(a) TMC 13.04.120—Conformity to the Comprehensive Plan and the Major Street Plan and applicable ordinances, manuals, design specifications, plans and guidelines.

As stated at Conclusions of Law 6 and 9, the Plat and its intended residential development are consistent with the existing R-1 Single-Family Dwelling District in which the Subject Property currently sits. The Plat is also consistent with the Low-Scale Residential designation for the Site in the Comp Plan. Ultimately, development of the Subject Property in compliance with the conditions set forth herein will ensure that the remainder of this requirement (TMC 13.04.120) is complied with sufficiently.

(b) TMC 13.04.130—Relation to adjoining street system.

Road A will serve as the ingress and egress for the majority of the Plat and connect to the City’s street system at Browns Point Boulevard. Beverly Avenue serves the remainder of the lots proposed and is part of the City’s street system. This requirement is adequately met.

(c) TMC 13.04.140—Access.

Road A and Beverly Avenue provide adequate access for the Subject Property and the lots to be created. The required sidewalks further ensure pedestrian access to, and in and around the Plat.

(d) TMC 13.04.150—Conformity to topography.

The proposed Plat conforms adequately enough to the topography present at the Subject Property to be approved. Ultimate compliance (e.g., taking into account the slopes prevalent in the Plat) will be necessarily addressed as more detailed engineering plans for the development are submitted for review and fill and grade permits are applied for.

²⁴ TMC 13.04.180.

²⁵ TMC 13.04.190.

²⁶ TMC 13.04.160.

(e) TMC 13.04.160—Public or private streets or ways, or permanent access easement widths.

The Examiner concludes that the proposed width of Road A and its accompanying improvements to and through the Plat will be sufficient for the proposed development, as well as emergency vehicle access. Prior to final plat approval, the City may require additional City street/road standards to be expressly met.

(f) TMC 13.04.165—Streetlights.

Streetlights must be provided in accordance with this section at an appropriate time as the development progresses. The Applicant has indicated that streetlights will be provided along Road A.

(g) TMC 13.04.170—Roadways.

Road A, although private as proposed and conditioned, will meet this City standard. It appears to be adequate in width for the intended purpose of access. City road width requirements and other standards must be complied with, however, as development proceeds.

(h) TMC 13.04.180—Public or private streets or ways, or permanent access easement design.

Ultimate compliance with this condition will be determined at the permitting/work order stage of development. Present submittals and Plat design indicate compliance with this provision can be achieved. The Applicant has expressed its intention to fully comply with applicable laws.

(i) TMC 13.04.190—Dead-end/cul-de-sac public or private streets or ways, or permanent access easements.

Strict application of this provision is waived. The cul-de-sac shown in the Plat marking the end of Road A and the adjoining lots are essentially on the border of the City's limits with Pierce County. Any function achieved by further extension beyond the Plat is already present through Watchtower Road Northeast

(j) TMC 13.04.200—Alleys.

No alleys are proposed in the Plat. It does not appear that alleyways would be feasible or serve much purpose in any event.

(k) TMC 13.04.210—Easements.

City easement requirements (presumably primarily for utilities) will be addressed as the development process unfolds, as well as in the application of the City's recommended conditions to any ultimate approval.

(l) TMC 13.04.220—Blocks.

A strict block layout is neither present in the Plat nor would it be necessarily desirable or serve a particular function given the location of the Subject Property.

(m) TMC 13.04.230—Lots.

As currently proposed, the lots in the Plat appear to comply with this section’s requirement for “All side lot lines [] [to] be at right angles to public or private street or way,... or radial to curved lines,…”

11. “Approval of the preliminary plat is a *tentative approval* and does not constitute final acceptance of the plat.” *TMC 13.04.100.E.2.* [Emphasis added.] As already stated, much of the actual compliance with conditions required in a preliminary plat approval comes later through the plat finalization process, and even in the actual process of developing the Subject Property in accordance with all required conditions and in conformance with applicable laws. At the preliminary approval phase, it is mostly a matter of agreeing to be bound by compliance conditions, which the Applicant has done. TMC 13.04.100.E.2 continues with the following:

Approval of the preliminary plat, however, shall be assurance to the subdivider that the final plat will be approved; provided, that:

- a. The final plat substantially conforms to the approved preliminary plat.
- b. All requirements specified for the final plat are fully complied with.

Given all the foregoing, the Plat is hereby preliminarily approved.

Critical Areas Development Permit

12. The Critical Area Development Permit is regulated by the following sections of the TMC:

A. TMC 13.11.140, Regulated Uses/Activities.

Pursuant to the requirements of this chapter, a site review or permit shall be obtained prior to undertaking any of the following activities in or adjacent to Critical Areas and their associated buffer, geo-setback, or management area, unless otherwise covered under Sections 13.11.200 and 13.11.210.

Subsection G regulates any act or use which would destroy natural vegetation; result in significant change in water level, water temperature, physical, or chemical characteristics of the wetland or stream; substantially alter the existing pattern of tidal flow, obstruct the flow of sediment, or alter the natural contours of a site. The street improvements required of the Applicant will alter the buffer of Wetland A. *FoF 8.*

B. TMC 13.11.220 B.3 Critical Area Development Permit.

3. Critical Area Development Permit.

A decision will be issued where the Director determines that avoidance and minimization have not eliminated all impacts and compensatory mitigation will be required as a result of the proposal.

- a. The applicant must meet the requirements of one of three legal tests; No Practicable Alternatives, Public Interest or Reasonable Use, and
- b. Demonstrate Mitigation Sequencing, and
- c. Provide mitigation as required in accordance with this Chapter.

Here, the Examiner stands in the shoes of the Director to issue a decision on the CADP. *CoL 1*. The City's subject matter expert determined that the criteria for issuing the CADP were met. The Examiner now looks at the applicable criteria.

13. **TMC 13.11.220 B.3** – City staff correctly determined that avoidance and minimization have not eliminated all impacts and that compensatory mitigation should be required as a result of the encroachment into the buffer of Wetland A. The twist here is that the only reason the wetland buffer will be encroached is because the City is requiring street improvements that are the encroachment. This twist factors into whether the criteria are met as Kluge properly identified in the Tech Memo, and as addressed below.

14. **TMC 13.11.220 B.3.a.** – Although only required to meet one of the tests set forth in TMC 13.11.220 B.3.a., the Examiner concludes that the present circumstances here add up to the Applicant meeting all three.

First, as pointed out in the Tech Memo, alternative development sites in the area do not readily exist. In most instances, where the critical areas impacts are as minimal as they are here—small encroachment to a degraded area of wetland buffer—forcing a property owner to abandon development of one piece of property and procure an alternative site is not terribly practicable anyway.²⁷ The City being the regulatory authority that is creating the impact by requiring street improvements adds to the mix of impracticable avoidance here.

Secondly, the City's required street improvements are in the public interest in that they add more safely walkable area to the neighborhood. The development itself is in the public interest given the dire need in the Tacoma market for more housing.

Lastly, the use of the Subject Property for housing is *per se* a reasonable use given the current zoning and Comp Plan designations applicable to the Site.

²⁷ Conversely, with greater impacts, abandoning development of a particular parcel of real property may be both practicable and even required by critical areas protection laws.

15. **TMC 13.11.220 B.3.b. and .c.** – The Applicant, in conjunction with City staff guidance has demonstrated mitigation sequencing and proposed mitigation that will comply with TMC 13.11 by enhancing the Wetland A buffer in area equal to that impacted elsewhere.²⁸

16. Given the foregoing, the CADP is hereby approved as conditioned herein, and as set forth in the hearing record.

17. The approvals granted herein are conditioned by the following:

A. RECOMMENDED CONDITIONS OF APPROVAL:

As was referenced during the hearing and herein above, “Conditions” set forth herein are derived primarily from the PDS Report, other submissions in the record, and testimony from the hearing. Compliance with (i.e., final satisfaction of) many of the conditions below will be achieved through the Applicant’s development of the Subject Property after finalization of the Plat (assuming final approval of the Plat) rather than through this preliminary approval process. On-going compliance with these conditions as the development progresses is required, however.

As set forth at Finding of Fact 39 above, the PDS Report is incorporated herein by reference. Some of the more general language from section K. of the PDS Report (“Recommendation and Conditions of approval”) may not be repeated here even though the majority is. That does not mean that the Applicant should not still reference helpful language from the PDS Report as guidance for its development process, and it also does not mean that some of these very general “conditions” or advisory information *will not* come into play in the finalization of the Plat or the later development of the Subject Property, or that the recommendations and information there are not also good guidelines to follow, even if omitted here.

To the extent that any express language in the PDS Report conflicts with the language in this Decision, this Decision shall control. Omission of any language from the PDS Report in this Preliminary Plat Decision does not constitute a conflict necessarily. Some conditions have been revised or deleted based on the post-hearing agreement of the parties. *See FoF 38; Ex. C-12.*

As already stated at Conclusion of Law 11, this approval of the Plat is preliminary and tentative in nature. The preliminary Plat must still be finalized in accordance with controlling federal and state law, and the TMC. Approval of the preliminary Plat herein does not release the Applicant from state or other permitting requirements for subsequent development of the Subject Property, nor does anything in this Decision take precedence over application of, and compliance with, the TMC.

1. **BUILDING AND LAND USE (including geotechnical review)**

- a. Any future development of the residential lots shall be consistent with the R-1 Single-Family Dwelling District (TMC 13.06.020), the Small-lot Single Family Residential development

²⁸ “Enhancement activities include invasive weed removal and native plant installation.” *Ex. C-4 Tech Memo*, p. 8.

- requirements in TMC 13.06.020.K and TMC 13.06.100.F and all other applicable sections of the Tacoma Municipal Code at the time of development.
- b. Development of the Plat and lots will further comply with the approved lot subdivision plat design and landscape standards in TMC 13.06.090 B.
 - c. All redline comments/conditions on the plat layout design shall be addressed prior to final plat application.
 - d. Each residential lot will be required to place street trees according to the requirements of TMC 13.06.090.4.a.2(a) and 13.06.020.J.
 - e. Construction shall meet applicable building and fire codes at the time of building permit submittal acceptance.
 - f. Structures shall meet applicable construction codes at time of building permit submittal.
 - g. Geo-setbacks are not proposed. TMC 13.11.730.C references elimination of the geo-hazard and also references no less than ten-foot geo-setbacks at slopes greater than 40%. The proposed wall modifies the top of slope. A geo-setback and geo-buffer is necessary and impacts to the wall from potential forces from the building development must be addressed at time of wall design and development. Finalized buildable area could be impacted by the proposed wall and future structures' foundation designs.
 - h. The plat geotechnical report shall be submitted with development of each lot.
 - i. Specific on-site wall design and drainage is not provided with this preliminary plat. The design may impact the buildable areas proposed. Buildable pad and wall development shall occur prior to final platting and may need to change due to future support designs.
 - j. Retaining walls proposed shall address geohazards to effectively eliminate the hazard, address wall and slope drainage, and provide maintenance access that does not further impact the erosion and landslide hazards on site or to adjacent properties.
 - k. Plans developed by a licensed landscape architect shall be provided for modifications and planting along the sloped, geo-buffers, and geo-setback areas. This planting/landscape design and installation shall be in cooperation with and with the approval of the geotechnical and civil professionals of this project and shall address erosion and landslide hazards.
 - l. The following mitigation was included as the city of Tacoma issued MDNS decision:

“Landscape plantings, including trees, shall be required to screen the large retaining wall and mitigate the proposed elevation difference between the proposed pad heights of the new homes within the plat and existing homes to the west. The applicant is encouraged to preserve mature tree canopy where possible along the western side of the site, below the proposed retaining wall feature. Where the mature canopy is removed, landscape plantings, including trees, shall be replanted that will fully screen the retaining walls from adjacent

*properties within three years. Tree species selection must be made from the City of Tacoma Urban Forestry approved species list. Overall, the site must have 30 percent tree canopy coverage, and LU22-0055 – Watchtower Heights 47 lot Full Plat Page 8 of 9 this may include trees within the protected biodiversity and wetland portions of the site in addition to required street trees and screening trees.”*²⁹

- m. The required Site Development permit shall address the potential for onsite slides near the base of proposed lots 36, 37, and 38 due to past shallow slides that occurred in this area.
- n. Multiple full depth onsite investigation/borings shall be provided and used in the analysis of the proposed wall design and slope global stability at time of site development permitting. The borings shall extend to a depth that evaluates all potential global slope slip planes along the hillsides, especially along the west slope of project.

2. CRITICAL AREAS

- a. Biodiversity Corridor, the applicant shall record Notice on Title per TMC 13.11.280.1. Placement of notice on Title on the subject parcels. In addition to provisions of Chapter 13.05, the owner of any property upon which approval under Title 13, Tacoma Municipal Code, or Chapter 2.02, Building Code, of the TMC, is sought with a critical area or critical area buffer/management area/geo-setback verified on site through a Critical Area or building permit, shall record with the Pierce County Auditor a notice of presence of the critical area and buffer/management area/geo-setback with the exception of protected information. Such recording shall contain notice of the critical area and buffer/management area/geo-setback and the applicability of this chapter to said property. Such notification shall be in a form as specified by Planning and Development Services. The notice shall be notarized, and the applicant must submit proof that the notice has been legally recorded before the final approval for development is issued. The notice shall run with the land and failure to record such notice shall be in violation of this approval.
- b. A Conservation Easement shall be recorded for the Biodiversity Area, Biodiversity Corridor, wetland, and wetland buffer for the Wetland A area prior to the issuance of development permits.
- c. The Applicant shall attend a preconstruction meeting with the Regulatory Compliance Analyst, Senior prior to the issuance of any development permits for the Site.
- d. The Applicant shall erect barricade and silt fencing along the approved Biodiversity Area and wetland buffer boundary for both Wetland A and Wetland C to prevent intrusion or impacts to these areas. The applicant shall inform the City Senior Regulatory Compliance Analyst when the fences are installed. The applicant shall ensure that once erosion control is no longer needed, the silt fence is removed.

²⁹ This language is per the parties post-hearing agreement, included in the record as Exhibit C-12.

- e. Permanent fencing such as split rail fence or similar fence shall be constructed so as to protect nearby critical areas from intrusion. Feasibility of fence construction with respect to slopes, existing vegetation and functionality shall be considered as part of final design. Final design of the fencing location will be reviewed and approved by the City of Tacoma consistent with Title 13 of the Tacoma Municipal Code. Final placement of the required fence and/or boundary posts shall be approved as part of the Site Development permit.³⁰
- f. Critical area signage shall be installed on the permanent fencing required under Condition e. Where permanent fencing is not proposed, critical area signage shall be installed on posts. Critical area signs shall be located at corners and at an interval that allows signs to be seen from one to the other. Final design of the signage location will be reviewed and approved by the City of Tacoma consistent with Title 13 of the Tacoma Municipal Code. Final placement of the required signage shall be approved as part of the Site Development permit.³¹
- g. The Applicant shall conduct restoration and enhancement mitigation in accordance with the Tacoma Watchtower Site, Updated Critical Area Report, dated March 30, 2024, by DCG/ Watershed (Exhibit “C-4”). The mitigation shall be installed within the first available planting season during or following construction of the Plat.
- h. The Applicant shall inform the City Senior Regulatory Compliance Analyst when the plantings will be installed. The Applicant shall have a qualified wetland consultant on the Site during the plant installation. The Applicant shall provide a Year 0, or an “As Built” report and associated fees for this review to the City following planting.
- i. The Applicant shall provide vegetative maintenance and monitoring of the entire mitigation area for a period of 5 years and provide monitoring reports to the City of Tacoma Planning and Development Services Division by October 1 for years 1, 2, and 5 after completion along with the associated fees for this review. Monitoring will be verified by city of Tacoma Critical Areas staff.
- j. The Applicant shall provide performance, and maintenance and monitoring bonds for the mitigation plan. The City Bond Quantity Worksheet will be used to estimate the bond values. The performance and maintenance and monitoring bonds shall be placed prior to any development permits being issued for the Site. The performance bond may be released upon approval of the City’s Senior Regulatory Compliance Analyst upon review and written approval of the Year 0/As built report. The maintenance and monitoring bond shall not be released until the project has monitored for a minimum of 5 years, met the performance standards as defined in the project mitigation plan, and received written approval from the City’s Senior Regulatory Compliance Analyst that the project is released from regulatory purview.

³⁰ This language is per the parties post-hearing agreement, included in the record as Exhibit C-12.

³¹ This language is per the parties post-hearing agreement, included in the record as Exhibit C-12.

- k. Retaining walls shall address geohazards to effectively eliminate the hazard, address wall and slope drainage, and provide a maintenance plan with proposed access that does not further impact the slope or erosion and landslide hazards on Site.

3. STORM AND SANITARY SEWERS

- a. Tacoma Stormwater Management Manual (sometimes abbreviated as “SWMM”), Side Sewer and Sanitary Sewer Availability Manual, Tacoma Municipal Code 12.08, 2.19, 2.22, 10.14, 10.22 and the Right-of- Way Design Manual in effect at time of vesting land use actions, building or construction permitting.
- b. Any utility construction, relocation, or adjustment costs shall be at the Applicant's expense.
- c. The Applicant is advised that the hydrology report and associated plans are considered preliminary and intended to determine the feasibility of compliance with the SWMM. The drawings and associated reports are not approved for construction.
- d. The Applicant is advised that the engineering analysis submitted in support of the preliminary plat application is not final, and more in-depth engineering analysis will be required for the development permitting phase.
- e. The Applicant is advised that public water mains, private dry utilities, and private stormwater conveyance and/or facilities may not be located within public sanitary sewer easements.

The following conditions shall be met prior to application for Final Plat:

- f. The Site is presently served by the City stormwater drainage system located immediately adjacent to the Site in the public rights of way of Browns Point Blvd. Northeast and Beverly Avenue.³² The City stormwater drainage system shall be extended to serve the project Site and/or the required street improvements through the City’s Work Order process, or another method of stormwater management meeting all requirements of the City of Tacoma Stormwater Management Manual shall be provided. To start the work order contact Planning and Development Services – Site Development Group at (253) 591-5760 or SiteDevelopment@cityoftacoma.org. The City Stormwater drainage shall be extended to allow the system to be extended in the future to serve neighboring properties.
- g. This Site is not presently served by the City’s sanitary sewer system. The City sanitary sewer shall be extended to serve the project Site through the City’s Work Order process. To start the work order, please contact Planning and Development Services – Site Development Group at (253) 591-5760 or SiteDevelopment@cityoftacoma.org. The city sewer system shall be extended in a manner which allows the system to be extended in the future to serve neighboring properties.

³² This language is per the parties post-hearing agreement, included in the record as Exhibit C-12.

- h. Each new parcel shall have an individual side sewer connection to the public sanitary sewer. This may require re-routing any existing shared side sewers, or constructing new side sewers in order to individually connect each parcel to the public sanitary sewer. A public sanitary sewer extension may also be required in order to individually connect each parcel.
- i. Private sanitary sewer and/or storm easements shall be provided across any parcel(s) that side sewers or private storm must cross to serve parcels which do not have direct access to a public sanitary sewer or storm main, as applicable.
- j. A Work Order and a Site Development Permit covering the entire project shall be approved prior to recording of the final plat. The construction and/or bonding of the improvements are required prior to final plat.
- k. A preliminary storm and/or sanitary sewer utility plan shall be prepared to show a preliminary design for storm and sanitary sewer mitigation. This plan shall be approved by City of Tacoma Site Development Group prior to recording of the final plat. Approved construction permits (Work Order and/or Site Development Permit) covering the entire Site may be substituted for the preliminary stormwater and/or sewer utility plan.
- l. The proposal includes utilizing separate stormwater facilities to mitigate stormwater from each lot. The facility sizing and amount of allowed impervious surface to be routed to the facility shall be shown on the preliminary stormwater and/or sewer utility plan (approved construction permits covering the entire Site may be substituted for the preliminary stormwater and/or sewer utility plan). This may be in the form of a table that includes lot number, roof hard surface allowed in square feet, other hard surface allowed in square feet, and dimensions of each stormwater facility. Facility sections and details may be shown on the associated preliminary stormwater utility plan or construction permits.
- m. A Covenant and Easement Agreement shall be required for all projects with private storm drainage systems.
- n. All easements required for public storm and/or sanitary sewer extensions shall be granted to the City of Tacoma and be prepared by the City of Tacoma Public Works, Real Property Services Department. The recording numbers shall be inked on the final plat, or the easements may be shown on the plat document if approved by Environmental Services. Once the utility location(s) on the Site are/is approved by the City, the Site Development Group reviewer shall coordinate with Public Works, Real Property Services Department to prepare the easement for recording prior to final plat during the work order process.

The following conditions/statements shall be inked on the Final Plat site plan, prior to recording. The statements and conditions may be modified after submittal of a preliminary stormwater and/or sewer utility plan. Additional conditions may be required after submittal of a preliminary stormwater and/or sewer utility plan prior to final plat.

- o. A preliminary utility plan dated __/__/20__ was approved by the Site Development Group under permit number LU__ - ____. Additional permits and approvals are required for construction.
- p. A Work Order for frontage improvements and associated utilities was approved by the Site Development Group under permit number WO__ - ____. Additional permits and approvals may be required for onsite construction.
- q. A Site Development Permit for onsite grading and associated utilities was approved by the Site Development Group under permit number SDEV__ - ____. Additional permits and approvals may be required for onsite stormwater management BMPs.
- r. WARNING: This plat contains a private storm drainage system. Private storm drainage systems are the sole responsibility of the owners, successors and assignees of all lots being served by the private storm drainage system. Responsibility includes, but is not limited to, constructing, maintaining, and allowing City inspection of the private storm system in accordance with a separately recorded covenant and easement document. Covenant and Easement Recording No. _____
- s. This plat contains private storm and/or sanitary sewer easements. No permanent structure(s) shall be erected within the private easement area(s). Permanent structures shall mean any concrete foundation, concrete slab, wall, rockery, pond, stream, building, deck, overhanging structure, fill material, tree, recreational sport court, carport, shed, private utility, fence, or other site improvement that restricts or unreasonably interferes with the need to access or construct utilities in said easement(s). Permanent structures shall not mean improvements such as flowers, ground cover and shrubs less than 3-feet in height, lawn grass, asphalt paving, gravel, or other similar site improvements that do not prevent the access of men, material, and machinery across, along, and within the said easement area.

Private Easement Recording No. _____

- t. This plat contains public storm and/or wastewater easements. No permanent structure(s) shall be erected within the public easement area(s) unless specifically approved in writing by the City of Tacoma Director of Public Works. Permanent structures shall mean any concrete foundation, concrete slab, wall, rockery, pond, stream, building, deck, overhanging structure, fill material, tree, recreational sport court, unreasonably interferes with the City of Tacoma's access to install, construct, inspect, maintain, remove, repair and replace public storm and/or sanitary sewer utilities in said easement(s). Permanent structures shall not mean flowers, ground cover and shrubs less than 3-feet in height, lawn grass, asphalt paving or gravel improvements that do not prevent the access of men, material, and machinery across, along and within the said easement area. Land restoration by the City within the said easement area due to construction or maintenance, shall mean planting grass seed or grass sod, asphalt paving and gravel unless otherwise determined by the City of Tacoma.

Public Easement Recording No. _____

- u. If the actual stormwater improvements installed vary from those on the preliminary utility plan so that the recorded Covenant and Easement Agreement does not reflect actual constructed improvements, an additional Covenant and Easement Agreement shall be developed, signed by the property owner and the City and recorded by the property owner.
- v. Final design of the stormwater facilities may require modifications to the lot layout and/or a reduction in number of available building lots. Construction permits for each lot shall be approved by the Site Development Group prior to construction.
- w. Construction on any and all lots, including public roads and alleys, is limited to the hard surface as provided within the approved Stormwater Site Plan or as shown on the preliminary stormwater and/or sewer plan or permit SDEV__ - _____. If additional hard surfaces beyond that approved under the previously noted permits are created, additional stormwater mitigation may be required. If stormwater mitigation differs from that approved under the previously noted permits, additional review by the Site Development Group is required and will include evaluation of all lots created as part of this plat.

The following conditions are applicable to building/development permits associated with this proposal:

- x. All stormwater shall be managed in compliance with the City of Tacoma Stormwater Management Manual (SWMM).
- y. The Applicant shall review SWMM Minimum Requirements #1-9 and comply with all applicable requirements.
- z. For the purposes of stormwater mitigation, all future work completed on any lots creating as part of this proposed Plat action, including offsite improvements, shall be considered part of a single Project, as defined in the SWMM, and all improvements shall be considered when determining stormwater impacts, thresholds, and associated mitigation.
- aa. Per Minimum Requirement #5, projects that meet or exceed the SWMM thresholds shall employ, where feasible and appropriate, Onsite Stormwater Management BMPs to infiltrate, disperse, and retain stormwater runoff onsite to the maximum extent feasible.
- bb. Water quality shall be provided for all projects that meet or exceed the thresholds for Minimum Requirement #6 as outlined in the City of Tacoma Stormwater Management Manual. Pollution-generating hard surfaces created and/or replaced offsite as a result of this project shall count toward the pollution-generating hard surface total.
- cc. Flow control or other mitigation in accordance with the City of Tacoma Stormwater Management Manual shall be provided for all projects that meet or exceed the thresholds for Minimum Requirement #7 as outlined in the City of Tacoma Stormwater Management Manual. Hard surfaces created and/or replaced offsite as a result of this project shall count toward the hard surface total.

- dd. All projects shall comply with Additional Protective Measures – Infrastructure Protection.
- ee. Wetland and/or associated buffers exist on this site. Minimum Requirement #8: Wetlands Protection may apply.
- ff. Public and private stormwater shall be managed in separate water quality and flow control facilities.
- gg. Private stormwater facilities are required to be located in a separate tract, easement or private roadway with appropriate easements to benefit contributing parcels for private facilities per the City of Tacoma Stormwater Management Manual, Volume 4, Chapter 5. Separate tracts or easements for the location of shared stormwater facilities shall be shown on the plat, if applicable.
- hh. All public stormwater facilities shall be located in right of way, a tract dedicated to the City of Tacoma, or easement per City of Tacoma Stormwater Management Manual, Volume 4, Chapter 5 and as approved in writing by Environmental Services.
- ii. Stormwater facilities, other than conveyance, are required to be located in a separate tract dedicated to an association for private facilities or to the City of Tacoma for public facilities per the City of Tacoma Stormwater Management Manual, Volume 4, Chapter 5.
- jj. This project appears to be located in the natural drainage course of abutting properties. Adequate provisions shall be made to collect drainage that naturally flows across the project Site.
- kk. It appears this project will disturb one or more acre of land or is part of a larger common plan of development or sale that has disturbed or ultimately will disturb one or more acres of land; and discharge stormwater from the Site. Coverage under a Washington State Department of Ecology (Ecology) NPDES Stormwater Construction General Permit (CSWGP) may be required. For assistance with the CSWGP contact the Ecology Southwest Region Pierce County Permit Administrator: (360) 407-7451. For Information about the Construction Stormwater General Permit and requirements, visit Ecology’s ISWGP webpage: <https://ecology.wa.gov/Regulations-Permits/Permits-certifications/Stormwater-general-permits/Construction-stormwater-permit>. To submit a Notice of Intent (NOI) for coverage under the CSWGP apply online through Ecology’s WQWebPortal: <https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Water-quality-permits-guidance/WQWebPortal-guidance>.
- ll. Each lot/building shall be independently connected to the City sanitary sewer at the building construction stage. Permits for this work shall be obtained. Multiple units and buildings that are under single ownership and located on a single parcel may use shared private side sewers that connect to the public sanitary sewer. In the event that this development is divided into more than one parcel in the future (whether from platting, boundary line adjustments, lot segregations, or any other land use actions), each new parcel shall have an individual side sewer connection to the public sanitary sewer. This may require re-routing any existing

shared side sewers, or constructing new side sewers in order to individually connect each parcel to the public sanitary sewer. A public sanitary sewer extension may also be required in order to individually connect each parcel. Notice of this requirement will be recorded on title of this parcel.

4. PROTECTION OF ADJACENT PROPERTIES

With the development of the project, the Applicant shall be responsible for adverse impacts to other property abutting the project. The project shall be designed to mitigate impacts including, but not limited to, discontinuities in grade, abrupt meet lines, access to driveways and garages, and drainage problems. Slopes shall be constructed with cuts no steeper than 1-1/2:1, and fills no steeper than 2:1, except where more restrictive criteria is stipulated by the soils engineer. When encroaching on private property, the project engineer shall be responsible to obtain a construction permit from the property owner. The design shall be such that adverse impacts are limited as much as possible. When they do occur, the project engineer shall address them.

- a. Coverage under the NPDES Construction General Permit is required for any clearing, grading, or excavating that will disturb more than one acre of land, per the Washington State Department of Ecology (Ecology). Contact Ecology's Office of Regulatory Assistance at 1-800-917-0043 to determine if any additional requirements are necessary. Additional information is also available online at <http://www.ecy.wa.gov/programs/wq/stormwater/construction/>. City approval does not release the applicant from state or other permitting requirements.

5. STREETS, DRIVEWAYS AND SIDEWALKS

The following conditions shall be met prior to application for Final Plat:

- a. Standards including a minimum width of 28 feet with cement concrete curb and gutter and sidewalks on both sides. The minimum roadway section shall meet City Design Standards at time of submittal. It shall include necessary drainage, and any additional unsuitable foundation excavation material must be removed as directed by the City Engineer. The future right-of-way shall be a minimum of 52 feet.
- b. Beverly Avenue Northeast and Browns Point Boulevard Northeast fronting the property shall each be improved to a minimum width of 32 feet and shall include necessary drainage. Cement concrete curb and gutter shall be constructed, abutting the site(s), along the east edge of Beverly Avenue Northeast and the west edge of Browns Point Boulevard Northeast at an alignment to be determined by and to the approval of the City Engineer. This may require up to half-street improvements meeting the minimum roadway section Design Standards at the time of submittal.³³
- c. Cement concrete sidewalk shall be constructed abutting the Site along Beverly Avenue to the approval of the City Engineer. New sidewalk shall be 5 feet wide and meet Public Right-of-

³³ This language is per the parties post-hearing agreement, included in the record as Exhibit C-12.

Way Accessibility Guidelines and requirements set forth by the Americans with Disabilities Act.

- d. Cement concrete sidewalk shall be constructed abutting the Site along Browns Point Boulevard Northeast to the approval of the City Engineer. New sidewalk shall be 7 feet wide and meet Public Right-of-Way Accessibility Guidelines and requirements set forth by the Americans with Disabilities Act.
- e. Broken, damaged, or hazardous curb and gutter abutting the Site shall be removed and replaced.
- f. Damaged and/or defective sidewalk abutting the Site shall be removed and replaced to the approval of the City Engineer. New sidewalk shall meet Public Right-of-Way Accessibility Guidelines and requirements set forth by the Americans with Disabilities Act.
- g. The type, width, and location of all driveway approaches serving the Site(s) shall be approved by the City Engineer.
- h. Directional cement concrete curb ramps shall be constructed at the intersection of Parkview Drive and Browns Point Boulevard Northeast (6 ramps), Browns Point Boulevard Northeast and Norpoint Way Northeast (2 ramps), as well as Watchtower Road NW (new plat Road A) and Browns Point Boulevard Northeast (6 ramps). Ramps shall be installed on the all corner(s) of the intersection and align with current Tacoma and ADA standards.
- i. A cul-de-sac shall be constructed at the end of the new private plat Road A to service the new lots, meeting Public Works Standards and to the approval of the City Engineer.
- j. A Work Order is required. A licensed professional civil engineer must submit the street plans for review and approval following the City's work order process. To initiate a work order, contact the Site Development Group at (253) 591-5760. A performance bond is required for all work orders per TMC 10.22.070.F.

Additional Information

City documents are available online at the following locations:

- City of Tacoma Stormwater Management Manual:
www.cityoftacoma.org/stormwatermanual
- City of Tacoma Side Sewer and Sanitary Sewer Availability Manual:
www.cityoftacoma.org/sidesewer
- Right-of-Way Design Manual: www.cityoftacoma.org/designmanual
- City of Tacoma Right-of-Way Restoration Manual:
<http://www.govme.org/download/PDF/PublicWorks-Right-of-Way-RestorationPolicy.pdf>

6. TRAFFIC ENGINEERING

- a. A SEPA Mitigation has been added requiring added pedestrian crossing lights at the Browns Point Boulevard entryway to the development. Consistent with the Transportation Master Plan Goals and Policies to “prioritize the movement of people and goods via modes that have the least environmental impact and greatest contribution to livability in order to build a balanced transportation network that provides mobility options, accessibility, and economic vitality for all across all neighborhoods” and increase in trips generated, Rectangular Rapid Flashing Beacons are required at Watchtower Road Northeast crossing Browns Point Boulevard. They shall be designed and constructed to the approval of the City Engineer and ROW Design Manual.
- b. New developments on arterial streets shall be required to install new streetlights or upgrade existing streetlights to current standards. This shall occur during the Work Order and Site Development Permitting phase of development.
- c. New plats shall be required to install streetlights in accordance with TMC 13.04.165, Coordination will be necessary with Tacoma Power for service point and with Tacoma Public Works Traffic Engineering for lighting added review.
- d. Sidewalk along Browns Point Boulevard fronting the Subject Property shall meet City standards or be otherwise constructed to the approval of the City Engineer. Directional concrete curb ramps shall be constructed at the intersection of Parkview Drive with Browns Point Boulevard NE. Ramps shall be installed on the NW (1) and SW
- e. Intersection of Parkview Drive and Browns Point Boulevard Northeast (6 curb ramps): (1) corners with receiving ramps on the east side of Browns Point Boulevard NE. This will also trigger construction of directional curb ramps on the east side of Browns Point Boulevard at the NE (2) and SE (2) corners at Parkview Dr, according to the City of Tacoma Curb Ramp Matrix, and align with current Tacoma and ADA standards.
- f. Intersection of Browns Point Boulevard Northeast and Norpoint Way Northeast (2 curb ramps): Directional concrete curb ramps shall be constructed at the intersection of Browns Point Boulevard Northeast with Norpoint Way NE. Ramps shall be installed on the NW (1) and SW (1) corners crossing Browns Point Blvd, according to the City of Tacoma Curb Ramp Matrix, and align with current Tacoma and ADA standards. No curb ramps crossing Norpoint Way Northeast will be required, due to sight distance concerns. Appropriate 'no pedestrian crossing' signs will be required for the north and south legs.
- g. Intersection of Watchtower Road Northeast and Browns Point Boulevard Northeast (6 curb ramps): Directional concrete curb ramps shall be constructed at the intersection of Watchtower Road Northeast with Browns Point Boulevard Northeast. Ramps shall be installed on the NW (2) and SW (2) corners with receiving ramps on the east side of Browns Point Boulevard Northeast (2), according to the City of Tacoma Curb Ramp Matrix, and align with current Tacoma and ADA standards.

- h. Road A shall be constructed to meet City standards and to the approval of the City Engineer. Fully depict lighting system on work order plans.
- i. Driveways shall be shown on the final plat for all lots, with locations and dimensions clearly called out.

7. TACOMA POWER

Listed below are Tacoma Power's standard easements required for a plat. Many of the standard requirements are already met. Modify the plans to accommodate the easement requirements. A few of the issues with the existing site plan that do not meet these requirements are as follows:

- a. Note that all new electrical services will be installed underground unless otherwise approved by Tacoma Power Engineering.
- b. Sewer clean-outs are not to be located in the 10-foot utility easement. They should be relocated to property side of the easement to not conflict with power lines or meters.
- c. **TACOMA POWER EASEMENT REQUIREMENTS FOR PLATS**
Easements must be shown on the face of the Plat for Tacoma Power, Communications, Natural Gas and Cable Television Companies and specifically name Tacoma Power as Grantee within any easement provision and/or dedications.
 - Show a designated 10-foot utility easement on the plat parallel to all road rights of way.
 - Show a 5-foot easement parallel to all side lot lines at the front 15 feet of each lot.
 - If there are flag lots, the stem or driveway section shall be designated as a utility easement.
 - Drainage, dry wells, storm/sewer systems, bio-swales, sidewalks or permanent structures shall not be installed in the 10-foot utility easement.
 - Utility easement shall not have greater than 2 percent slopes.
 - Extend all sewer stubs to the property side beyond the 10-foot utility easement.
 - Show building setbacks from the property line.
 - No building shall be constructed within 8' of a transformer.
- d. The following Easement Provisions and Notes should be included on the plat for the benefit of Tacoma Power. Additional language can be included for cable/phone/communications/natural gas:

EASEMENT PROVISIONS

A PERPETUAL EASEMENT WITH A RIGHT OF ENTRY AND CONTINUED ACCESS IS HEREBY RESERVED FOR AND GRANTED TO THE CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, LIGHT DIVISION (D.B.A. TACOMA POWER), ITS SUCCESSORS AND ASSIGNS, THE RIGHT AND PRIVILEGE TO

CONSTRUCT, MAINTAIN, OPERATE, ALTER, REPAIR AND REPLACE UNDERGROUND/ABOVEGROUND UTILITIES INCLUDING, BUT NOT LIMITED TO, ELECTRIC AND COMMUNICATIONS WIRES, CABLE, CONDUIT, SERVICE AND DISTRIBUTION WIRES, PAD MOUNTED TRANSFORMERS, VAULTS, JUNCTION BOXES, SWITCHES AND APPURTENANT EQUIPMENT IN, OVER, UPON, UNDER, ALONG AND ACROSS THE REAL PROPERTY HEREIN DESCRIBED UPON THE RECORDING OF THIS PLAT. THE LOCATION OF THESE "TACOMA POWER" EASEMENTS ARE SHOWN ON THE FACE OF THIS PLAT AND THE EASEMENT DIMENSIONS ARE SHOWN ON SHEETS _____ OF THIS PLAT.

8. TACOMA WATER

- a. A new water main extension is required. Extension of a permanent water main shall be constructed by private contract. The developer of the privately financed project will be responsible for all costs and expenses incurred by Tacoma Water for preparation of plans and specifications, construction inspection, testing, flushing, sampling of the mains, and other related work necessary to complete the new water main construction to Tacoma Water standards and specifications. The engineering charge for the preparation of plans and specifications will be estimated by Tacoma Water. The developer will be required to pay a deposit in the amount of the estimated cost. The actual costs for the work will be billed against the developer's deposit. The new mains will be installed by and at the expense of the developer. The developer will be required to provide a 20-foot-wide easement over the entire length of the water main, fire hydrant, service laterals and meters. The developer's Professional Land Surveyor shall prepare and submit the legal description of the easement to Tacoma Water for review and processing. Prior to construction, a second deposit in the estimated amount for construction inspection, testing, and sampling will be due to Tacoma Water. Upon completion of the project, the developer will either be refunded the unused amount of the deposit or billed the cost overrun. Approximate design time is ten weeks. Contact Shelly Shaffer at (253) 502-8740. Extension of the water main is required prior to final plat approval.
- b. The private contract timeline is 36-38 weeks to begin design and an additional 10-12 weeks to complete the design.
- c. Please note that any work order permits will not be issued until the water main design has been completed and reviewed by Planning & Development Services for the alignment and grade.
- d. TMC 12.10.045 requires a separate water service and meter for each parcel. New water services and meters will be placed directly in front of each parcel where possible. Prior approval by Tacoma Water is required for other non-typical locations.
- e. If fire sprinklering, contact the Tacoma Water Permit Counter at (253) 502-8247 for policies related to combination fire/domestic water service connections. If fire service is required it will be sized by your fire consultant and installed by Tacoma Water. Approved fire plans must be submitted to Tacoma Water.

- f. New water services will be installed by Tacoma Water after payment of the Service Construction Charge and the Water Main Charge. New meters will be installed by Tacoma Water after payment of the System Development Charge.
- g. If new water services are required, they will be sized and installed by Tacoma Water after payment of the Service Construction Charge and the Water Main Charge. New meters will be installed by Tacoma Water after payment of the System Development Charge.
- h. Sanitary sewer mains and side sewers shall maintain a minimum horizontal separation of ten (10) feet from all water mains and water services. When extraordinary circumstances dictate the minimum horizontal separation is not achievable, the methods of protecting water facilities shall be in accordance with the most current State of Washington, Department of Ecology “Criteria For Sewage Works Design”. Vertical separation of eighteen (18) inches from Tacoma Water facilities.
- i. For utilities other than sanitary sewer and large diameter water mains, the proposed facilities shall have a minimum horizontal separation of five (5) feet and vertical separation of twelve (12) inches from Tacoma Water facilities.
- j. Please call 1-800-424-5555 and request underground utility locates at least 48 hours prior to commencement of digging.
- k. Tacoma Water is currently experiencing ongoing supply chain issues that could impact the timelines for new service connections. Find out more at www.mytpu.org/building-remodeling/water-construction-development-services/

9. FIRE PROTECTION

- a. Fire hydrant placement will be coordinated with Tacoma Fire in conjunction with Site development and work order permitting. Approval of hydrant placement will be through coordination with Tacoma Water. Fire hydrants will be required at average spacing not to exceed 600 feet. Proposed hydrant locations should be shown on the plans.
- b. The Applicant is advised that the homes constructed on lots 1 through 44 require automatic fire sprinkler systems due to the single access road (IFC D107.1, Exception 1). Ensure that the water meters and service lines are sized adequately to support a fire sprinkler system. Site plans will need to specify combination fire/domestic water meters, meter size, pipe size, and pipe material.

10. SOLID WASTE

- a. Garbage and recycling will be serviced at the curb in front of each parcel. Containers must have 4 feet of clearance between them when placed out for service. TMC 12.09.040.
- b. Lots 29, 30 and 31 will not have adequate room for required 4-foot spacing at the curb in the cul-de-sac for garbage and recycling. During submission of site development and work order permits the developer shall resolve this with an acceptable reconfiguration.

11. REAL PROPERTY SERVICES

- a. There is an outstanding in-lieu sewer assessment pursuant to TMC 12.08.B.230 that will need to be paid during the development permitting phase of this proposal.
- b. The City of Tacoma Building Official policy requires that new development be designed in such a way that encroachments in the right-of-way are not necessary.
- c. Real Property Services will review the Open Space/Critical Area dedication/easement language prior to submission for Final Plat. It is the responsibility of the applicant to coordinate that review and approval prior to submitting for the Final Plat.

12. WASHINGTON STATE DEPT OF ECOLOGY

- a. Water Quality/Watershed Resources Unit: Joseph McCord (360) 791-5017

Erosion control measures must be in place prior to any clearing, grading, or construction. These control measures must be effective to prevent stormwater runoff from carrying soil and other pollutants into surface water or stormdrains that lead to waters of the state. Sand, silt, clay particles, and soil will damage aquatic habitat and are considered to be pollutants.

Any discharge of sediment-laden runoff or other pollutants to waters of the state is in violation of Chapter 90.48 RCW, Water Pollution Control, and WAC 173-201A, Water Quality Standards for Surface Waters of the State of Washington and is subject to enforcement action.

Construction Stormwater General Permit:

The following construction activities require coverage under the Construction Stormwater

General Permit:

- 1. Clearing, grading and/or excavation that results in the disturbance of one or more acres and discharges stormwater to surface waters of the State; and
- 2. Clearing, grading and/or excavation on sites smaller than one acre that are part of a larger common plan of development or sale, if the common plan of development or sale will ultimately disturb one acre or more and discharge stormwater to surface waters of the State.
 - a) This includes forest practices (including, but not limited to, class IV conversions) that are part of a construction activity that will result in the disturbance of one or more acres, and discharge to surface waters of the State; and

3. Any size construction activity discharging stormwater to waters of the State that Ecology:
 - a) Determines to be a significant contributor of pollutants to waters of the State of Washington.
 - b) Reasonably expects to cause a violation of any water quality standard.

If there are known soil/ground water contaminants present on-site, additional information (including, but not limited to: temporary erosion and sediment control plans; stormwater pollution prevention plan; list of known contaminants with concentrations and depths found; a site map depicting the sample location(s); and additional studies/reports regarding contaminant(s)) will be required to be submitted. For additional information on contaminated construction sites, please contact Carol Serdar at Carol.Serdar@ecy.wa.gov, or by phone at (360) 742-9751.

Additionally, sites that discharge to segments of waterbodies listed as impaired by the State of Washington under Section 303(d) of the Clean Water Act for turbidity, fine sediment, high pH, or phosphorous, or to waterbodies covered by a TMDL may need to meet additional sampling and record keeping requirements. See condition S8 of the Construction Stormwater General Permit for a description of these requirements. To see if your site discharges to a TMDL or 303(d)-listed waterbody, use Ecology's Water Quality Atlas at: <http://fortress.wa.gov/ecy/waterqualityatlas/StartPage.aspx>.

The Applicant may apply online or obtain an application from Ecology's website at:

<http://www.ecy.wa.gov/programs/wq/stormwater/construction/> - Application. Construction site operators must apply for a permit at least 60 days prior to discharging stormwater from construction activities and must submit it on or before the date of the first public notice.

Ecology's comments are based upon information provided by the lead agency. As such, they may not constitute an exhaustive list of the various authorizations that must be obtained or legal requirements that must be fulfilled in order to carry out the proposed action.

If you have any questions or would like to respond to these comments, please contact the appropriate reviewing staff listed above.

- b. A MDNS SEPA Decision has been issued with Mitigation Measures requiring erosion control measures, demonstration of compliance with the Model Toxic Control Act (MTCA) and provision of a voluntary cleanup plan to the department of ecology. The MDNS requires the erosion control plan to be in place before any cleaning, grading or construction on the Site.

13. MISCELLANEOUS

- a. Prior to obtaining building or grading permits, the Applicant shall contact the appropriate City departments to make the necessary arrangements for all required improvements. The required departmental approvals shall be acquired from, but not necessarily limited to,

Tacoma Power (253-502-8292), Tacoma Water (253-502-8740), and PDS Site Development (253-591-1317).

- b. The basis of bearing for the final plat shall conform to the City of Tacoma grid system. Coordinates for all lot corners and angle points shall be submitted with the final plat on the NAD 83 WASHINGTON STATE PLANE South Zone Grid System. The final plat shall be drawn to a scale of 1"=100' unless, prior to submittal, written approval for a different scale is granted in writing by the Public Works Department. Mylar size shall be 18 inches by 24 inches.
- c. The final plat shall be submitted with a section breakdown from the land surveyor. The final plat shall agree with and be compatible with existing facilities and rights-of-way within the area.
- d. Per TMC 13.04, rebar shall be installed at all lot corners. Plat monuments shall be set at all perimeter boundary locations and street monuments shall be set in all necessary locations meeting the approval of the City Engineer.
- e. The final plat shall incorporate lot/block numbers and a house numbering system to the approval of the City Engineer.
- f. As part of the final plat submittal, a "100 feet to the inch" scaled final plat map shall be provided to Planning and Development Services.
- g. If improvements required prior to final plat approval are not constructed prior to final plat approval, such improvements shall be bonded for or an assignment of funds given meeting the approval of the City Attorney to guarantee that all required improvements will be designed and constructed. This is required if the applicant wishes to proceed with the final plat prior to the physical construction of those conditions. If conditions are to be bonded for, the applicant shall post the necessary bond at the time of, or prior to filing for final plat approval, and the following warning statement shall be incorporated on the plat map page, or additional page, of the final plat:

WARNING: Purchasers of the lots herein are advised that the City of Tacoma holds certain financial guarantees to insure completion of certain improvements and utilities, including but not limited to sanitary, road and storm facilities, power, water and street lights. Purchasers are advised that building permits may not be issued until these improvements are completed. Should these improvements/utilities not be completed, the City of Tacoma reserves the right to enter the property to complete these improvements and to seek reimbursement via the aforementioned financial guarantees or through other remedies at law, and the property grantor, heirs, owners, executors, successors or assigns shall save the City harmless from any damage that may be suffered by said re-entry and construction upon said premises.

- h. Building setback variances for lots created by this subdivision may not be approved by the City. Therefore, the owner/applicant should plan ahead to develop lots that have dimensions that will allow construction of homes without the need for variances. This shall include the

applicant's foresight to provide for required driveway grades, topography, future sidewalk installation, necessary cuts and fills, soil bearing and geotechnical constraints, drainage courses, etc.

- i. The property owner is encouraged to establish contact with the neighborhood council for the area.
- j. Should any evidence of archaeological material be uncovered during the course of the project, all work in the vicinity shall cease and the City of Tacoma Historic Preservation Officer, as well as the Puyallup Tribe of Indians Historic Preservation Office, shall be contacted.

Special Note: The Applicant shall understand that it is their responsibility to closely review the Zoning and Platting sections of the TMC and, specifically, the "Final Plat Procedure," Chapter 13.04.100. This is to alert the Applicant that if specific dates are not met and if specific items are not filed on time with the appropriate departments their plat will become null and void.

B. USUAL CONDITIONS:

1. The decision set forth herein is based upon representations made and exhibits, including development plans and proposals and intended use, submitted at the hearing conducted by the Hearing Examiner. Any **material** change(s) or deviations(s) in such development plans, proposals, or conditions of approval imposed shall be subject to the approval of the Hearing Examiner and may require additional review/hearings.
2. The approvals granted herein shall be subject to all applicable federal, state, and local laws, regulations, and ordinances. Compliance with such law, regulations, and ordinances is a condition precedent to the approvals granted compliance is a continuing requirement of such approvals. By accepting the approvals, the Applicant represents that the development (the project) and activities allowed will comply with such laws, regulations, and ordinances. If, during the term of the approvals granted, the development (the project) and activities permitted do not comply with such laws, regulations, and ordinances, the Applicant shall promptly bring such development or activities into compliance.

18. Any finding of fact herein which may be more properly deemed or considered a conclusion of law is hereby adopted as such.

DECISION:

The Hearing Examiner hereby approves the preliminary Plat and CADP, subject to the conditions set forth herein above.

DATED this 2nd day of October, 2024.



JEFF H. CAPELL, Hearing Examiner

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
& DECISION**

NOTICE

APPEAL TO SUPERIOR COURT OF EXAMINER'S DECISION ON PERMITS

Pursuant to the Official Code of the City of Tacoma, Section 1.23.160, the Hearing Examiner's decision on the CADP and the height variance may be appealable to the Superior Court for the State of Washington. Any court action to set aside, enjoin, review, or otherwise challenge the decision of the Hearing Examiner will likely need to be commenced within 21 days of the issuance of the decision by the Examiner, unless otherwise provided by statute.