

OFFICE OF THE HEARING EXAMINER

CITY OF TACOMA

DECISION ON PRELIMINARY PLAT REQUEST

AND CRITICAL AREAS MINOR DEVELOPMENT PERMIT

HEARING EXAMINER FILE NO.: HEX2024-017

APPLICANT: Copper Ridge, LLC (hereinafter the “Applicant” or “Copper Ridge.”), a Washington limited liability company, is the applicant for the present Preliminary Plat and Critical Areas Minor Development Permit. The Applicant was represented at the hearing by Craig Deaver, Principal, C.E.S. NW Inc. and Evan Mann, Entitlement Manager, Copper Ridge, LLC/SoundBuilt Homes. For purposes of these decisions, references to “Applicant” and/or “Copper Ridge” also include any employees, agents, and/or contractors of the Applicant in regard to conditions and compliance issues set forth below, and in regard to the development of the Subject Property (defined below).

HEARING EXAMINER FILE NO: HEX2024-017

SUMMARY OF REQUEST:

This Decision addresses a request to subdivide approximately 28.21 acres of real property into 119 single-family residential lots.¹ The Project (as defined herein below) includes open space, open space recreational areas, public roads, sidewalks, and utilities. The preliminary full plat request (hereafter the “Plat”) was accompanied by an application for a Critical Areas Minor Development Permit (“CAMDP”) for impacts to wetlands and Biodiversity Areas/Corridors. The 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 September 24, 2024. Review under SEPA is required because more than 20 new single-family residential units are being proposed and anticipated site grading will be more than 500 cubic yards (10,000 cubic yards). The deadline for appealing the MDNS (LU22-0044) was on October 8, 2024, two days prior to the scheduled Plat hearing. The Applicant timely appealed the MDNS on the October 8, 2024 deadline. At the Plat hearing, over the objection of the Applicant, the appeal of the MDNS was continued one week to October 17, 2024, due to the unavailability of City

¹ At the October 10, 2024 hearing, Larry Harala, Principal Planner, Tacoma Planning and Development Services, testified during his PowerPoint presentation that the number of proposed lots was reduced from 127 to 119. Mr. Harala further testified in response to the Hearing Examiner’s questioning that the proposed lot reduction had not changed the City’s analysis of the proposed project. *Harala Testimony; Ex. C-1.*

legal counsel. This continuance allowed the Applicant to also retain legal representation for the MDNS Appeal.² The MDNS Appeal hearing was then held on October 17, 2024.

LOCATION:

The Site is located within the South End neighborhood of Tacoma and is addressed on one side as 7432 East D Street, and on the south side as 113 East 80th Street. It is within Section 28, Township 20, Range 03, Quarters 42 and 43, Tacoma, Washington. The Site is currently classified as “R2-PRD” Single-Family Dwelling Planned Residential Development District in the City’s zoning regime. The Site currently consists of eight, individual tax parcels as follows: 0320284097, 0320284064, 0320284096, 0320284098, 0320284228, 0320284227, 0320284226, 0320284225.

The real property just described is referred to herein synonymously and interchangeably as the “Subject Property” or the “Site.”

PUBLIC HEARING:³

After reviewing the Preliminary Report submitted by the City’s Planning and Development Services Department⁴ (herein the “PDS Report”—*Ex. C-1*) and all attendant information on file, the Hearing Examiner convened a public hearing on the Plat and CAMDP.⁵

Sworn testimony at the hearing was taken from all of the following:

City of Tacoma

- Larry Harala, Principal Planner, PDS, City of Tacoma
- Christopher Johnson, P.E., Engineering Manager, City of Tacoma (at the reconvened hearing)

Copper Ridge

- Craig Deaver, C.E., Land Planning and Survey Consultant, C.E.S. NW Inc.
- Evan Mann, Entitlement Manager, Copper Ridge, LLC
- Jeff Mallahan, Senior Ecologist, Wetland Resources, Inc.
- Aaron Van Aken, P.E., PTOE, MBA, Traffic Consultant, Heath & Associates, Inc.

² At the Plat hearing held on October 10, 2024, the Hearing Examiner heard arguments concerning the City’s motion to continue the MDNS Appeal portion of the overall hearing. Although the City created the tight timing of having only two days between the SEPA appeal deadline and the scheduled public Plat hearing, the Hearing Examiner granted the City’s motion. Immediately thereafter, the MDNS appeal hearing date was scheduled for October 17, 2024.

³ The public hearing in this matter was scheduled to be conducted in City Council Chambers in the Tacoma Municipal Building. Prior to the commencement of the proceedings, the microphone system in Council Chambers went down. As a result, the hearing was moved to the Hearing Examiner office’s conference room also located in the Tacoma Municipal Building with remote access using Zoom teleconferencing with both internet visual and audio access. Separate telephonic access via call in number on Zoom was also available at no cost to any participant. Witnesses and members of the public participated in-person and over Zoom.

⁴ Abbreviated herein as “PDS.”

⁵ Pursuant to Hearing Examiner Rule of Procedure 1.14(c), the Hearing Examiner reopened the hearing on November 13, 2024, through Zoom in order to clarify the City’s position on the provision of stormwater management in the Plat.

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

Members of the public who offered testimony/comment at the hearing, either in person or remotely, included all of the following:

- Steven Jeffries, 103 East 82nd Street, Tacoma
- Jonathan Strivens, Strivens@outlook.com
- Karla Strivens, karla.strivens@gmail.com
- April Smith, LarchmontCares@gmail.com
- Andrea Haug, Senco253@gmail.com
- Suzanne (Last Name and contact not given)

DECISION:

The Hearing Examiner approves both the Plat, and the CAMDP subject to the conditions set forth herein below.⁶ 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 CAMDP. The Examiner’s approvals are based on the hearing and the hearing record.

Written comments were submitted pre-hearing and were submitted as part of the City’s proposed exhibits. These are included in the record as Exhibit C-2.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION:

FINDINGS OF FACT:

The Application

1. Copper Ridge submitted an application for a 119-lot⁷ Full Plat Subdivision (again the “Plat”) and Planned Residential Development (“PRD”) Major Modification (collectively “PRDMM”) on the approximately 28.21-acre Site, together with a Critical Areas Minor Development Permit (again “CAMDP”). The Project (defined below) includes open space, open space recreational areas, public roads,⁸ sidewalks, and utilities. Review under the State Environmental Policy Act (SEPA) is required because more than 20 new single family residential units are proposed, and anticipated Site grading is anticipated to exceed 500 cubic yards. PDS determined Copper Ridge’s permit application technically complete on February 21, 2023, but additional revisions were made, and additional information submitted through July 2024. *Harala Testimony, Deaver Testimony, Mann Testimony; Ex. C-1, Ex. C-5.*

⁶ As will be explained further below, the majority of the “conditions” recommended herein are not conditions precedent to approving the Plat or the CAMDP. Rather, they are conditions with which the Applicant must comply during the development of the Subject Property in the approved Plat.

⁷ Previous iterations of the Plat had 127 lots proposed. The parties clarified at the hearing that the Plat under consideration for approval, and that formed the “Site Plan” basis for review of the PRDMM is the version with 119 proposed lots/residential dwelling units.

⁸ The City’s Exhibit C-1 makes reference to “private roads” at Page 1 of 39. This appears to be an incorrect leftover from the Prior PRD Plan. The Applicant testified at the hearing that the roads proposed in the Plat are intended to be public. *Deaver Testimony.*

The Site

2. Copper Ridge purchased the Subject Property from Green Harbor Communities, Inc. (“GHC”).⁹ During GHC’s ownership of the Subject Property, it completed a 73-unit PRD development plan in 2020 with a different layout and somewhat different concept (the “Prior PRD Plan” *see Ex. C-11*).¹⁰ The Hearing Examiner held a hearing on the Prior PRD Plan on September 10, 2020, and the City Council approved the PRD Overlay on November 10, 2020, in Ordinance No. 28697. GHC had purchased the Subject Property as surplus from Tacoma Public Schools in 2018. *Ex. C-1, Ex. C-11*.

3. Development of the Subject Property is significantly impacted by Critical Areas (wetlands and biodiversity areas/corridors) present on the Site. The Subject Property has experienced negative conditions over the years such as the frequent establishment of homeless camps and other illegal activities being conducted on the Site. *Harala Testimony; Ex. C-1*.

4. The area of the Subject Property starting from the southeast corner near the intersection of East D Street and East 80th Street is the most suitable for development in that there are no regulated Critical Areas or other similar barriers to construction there. The Applicant has proposed preserving and enhancing most of the Critical Areas located on the Subject Property and developing only about 10 acres of the Site for “missing middle” housing.¹¹ GHC’s Prior PRD Plan also intended to provide missing middle housing, but of a different type in a different layout. *Harala Testimony, Deaver Testimony, Mann Testimony; Ex. C-1, Ex. C-3, Ex. C-9, Ex. C-11*.

5. The Site is adjacent to Charlotte’s Blueberry Park and within reasonable walking distance of high frequency public transit lines. The closest transit stops are along Pacific Avenue to the west and 72nd Street to the north. *Harala Testimony; Ex. C-1*.

6. Charlotte’s Blueberry Park lies immediately to the north of the Subject Property. This Metropolitan Parks District property is about 20 acres in size (about 10 of which are wetlands) and includes a playground, community garden, and blueberry farm. The park also includes trails and picnic areas. *Id.*

7. The Subject Property is large for undeveloped tracts in Tacoma. It is somewhat irregular in shape and is presently comprised of the eight tax parcels listed in the “Location” section above. The Subject Property measures about 935 feet from east to west, and as much as 1,650 feet from north to south. As referenced above, the Site is approximately 28.21 acres in total area. The Subject Property is bounded by East D Street on the east, unimproved East 80th Street on the south, Charlotte’s Blueberry Park on the north, and private property to the west. PDS staff indicates that the existing parcels comprising the Site have never been platted, but that all are described with metes and bounds legal

⁹ GHC was a Washington corporation, but it is now administratively dissolved.

¹⁰ The current PRD Overlay approved for GHC under the Prior PRD Plan is referred to herein as the “Current PRD.”

¹¹ Missing middle housing is not defined in the TMC, although it is a term used in the Comprehensive Plan and prevalently in affordable housing discussions in general. The National League of Cities describes it as follows: “Missing middle housing refers to housing that provides diverse housing options along the spectrum of affordability, which includes duplexes, triplexes, fourplexes and bungalows... Typical middle housing types include multiunit structures such as townhomes, duplexes, triplexes and fourplexes. Other examples can include cluster homes and cottage courts.” <https://www.nlc.org/article/2024/01/23/what-is-missing-middle-housing/>.

descriptions. The Prior PRD Plan included a Boundary Line adjustment that combined several of the previous lots. *Harala Testimony, Deaver Testimony; Ex. C-1, Ex. C-3, Ex. C-11.*

8. The zoning of the Site and surrounding area is “R-2” Single-Family Dwelling District and has been so since 1953 when the City first implemented its modern zoning regime. As referenced above, the Site went through the rezone process to have the Current PRD overlay added to the existing R-2 designation in 2020 under city of Tacoma Planning and Development Service application #LU19-0100. *Ex. C-11.*

9. The City’s *One Tacoma Comprehensive Plan* (the “Comp Plan”) designates the Site as Parks and Open Space per the Comprehensive Plan Land Use Map. This designation arises primarily from the fact that the Subject Property is presently open space, as well as from the prior ownership of the School District. In other words, the designation is more descriptive of present conditions than it is completely aspirational or concretely regulatory. The Comp Plan designation does not prevent the Subject Property from being developed, but it does represent a City Council policy preference for preserving parks and open spaces where possible.¹² The existing R-2 Single-Family Dwelling District designation with approved PRD overlay already allows for residential development on the Subject Property. *Harala Testimony; Ex. C-1, Ex. C-10.*

10. The Site terrain is generally flat. Access to utilities necessary for the Applicant’s intended development can be had through extensions from existing lines in the adjacent right-of-way areas of East D Street and East 80th Street. In addition to the utilities present in surrounding right-of-way, there is a storm line that runs diagonally through the Subject Property in a 50-foot-wide easement. The Applicant has submitted a “Preliminary Stormwater Drainage Design Memo from C.E.S. NW Inc. dated June 4, 2024, that outlines the Applicant’s preliminary design for stormwater management in the Project. More detailed plans will likely be needed before development permits can be issued and the Plat finalized. *Harala Testimony, Deaver Testimony; Ex. C-1, Ex. C-3.*

11. There are four wetlands on the Site (Wetlands A-B and D-E). There is also one drainage feature (Drainage Feature 1). As already set forth herein, the Site is mainly undeveloped at present, and is predominated by the identified wetlands and open space / forested area. *Harala Testimony, Mallahan Testimony; Ex. C-1, Ex. C-3, Ex. C-4.*

12. The Site is located within an area of lower density single-family housing with most houses in the surrounding area being of mid- to late-twentieth century vintage, built on a mix of both platted and unplatted underlying properties. The developed areas to the west tend to be larger lots with significant yards/open space, with the areas to the east and south being more typical sizes for city blocks in incorporated Tacoma. Surrounding streets are residential collector streets and range in size and condition, with varying levels of fully developed improvements, e.g., several do not have curb, gutter, or

¹² In this regard, the Comp Plan states:

This designation is intended to conserve and enhance open, natural, and improved areas valuable for their environmental, recreational, green infrastructure and scenic character and the benefits they provide. The designation encompasses public and private parks and open space lands, with lands set aside for these purposes by the City of Tacoma and the Metropolitan Parks District forming the core of the designation. As more land is placed in conservation status by these agencies as well as other public and private entities, the extent of the designation will be expanded to include them.

sidewalk. *Harala Testimony; Ex. C-1.*

13. The Upper Pacific Crossroads Mixed Use District is located to the west/northwest of the Site fronting along Pacific Avenue. As alluded to above, Pacific Avenue is served by Pierce Transit Route 1, and East 72nd Street is Served by Route 202 with several stops within approximately a half mile of the Subject Property. *Id.*

The Project

14. As stated above, the Plat proposes 119 lots for development with attached townhome/townhouse-type¹³ dwellings (the “Project”). The townhouse style dwellings will be three story units with ground floor garages. The floorplans range from approximately 1,700 to 2,100 square foot units. The homes are proposed to be 3- or 4-bedroom layouts with a variety of floor plans. Current home designs utilize abundant windows to give an open, roomy floor plan. Again, development of the townhomes will be clustered on the southeastern corner of the Site to minimize impacts to Critical Areas and maximize the retention of native vegetation. The proposed home lots will be approximately 1,573 square feet to 4,225 square feet in area, which is smaller than required minimums in an R-2 zone, but approval of the PRDMM allows for flexibility in that regard. Homeowners will have at least some access to trail(s)—as at least one is proposed to run through the Subject Property more or less in line with the existing storm line easement—common areas, and open space. The Project proposes that many outdoor recreational opportunities will be adequately provided for by the Subject Property’s adjacency to Charlotte’s Blueberry Park. *Harala Testimony, Deaver Testimony, Mann Testimony; Ex. C-1, Ex. C-3, Ex. C-9, Ex. C-11.*

15. The Applicant proposes to conduct significant clearing and grading of the southeast portion of the Site slated for development. Such clearing and grading will be subject to its own permitting process and review when the time comes. Resulting/remaining tree canopy for the whole of the Subject Property should still be greater than 30% given that approximately 17 acres of the Site will remain undeveloped due to biodiversity and wetland Critical Area status and protections. The city of Tacoma has a 30% tree canopy coverage goal set forth in the One Tacoma Plan¹⁴ Environment + Watershed Element, Urban Forest Policy EN-4.29. The developed area of the Site, in and of itself, will likely not achieve 30% coverage in spite of street tree requirements and other landscape plantings. City staff has proposed a condition of approval (*see Ex. C-1 at §I.5.*) to address concerns from the community (and for future denizens of the Project) at the initial loss of all existing mature tree canopy on the developed portion of the Site that will also help serve as screening and as a transition from the surrounding roadways and developed areas to the Critical Areas on the Subject Property. The Applicant has objected to this condition as overreaching. *Harala Testimony, Deaver Testimony, Mann Testimony; Ex. C-1, Both parties’ post-hearing submissions on conditions, collectively the “Conditions Submissions.”*

The CAMDP

16. Sometime prior to the formal consideration and approval of the Prior PRD Plan, a Critical Area Verification Permit (LU18-0223, the “CAVP”) was issued verifying the presence and boundary of

¹³ The terms “townhome” and “townhouse” are used interchangeably herein.

¹⁴ Again, referred to herein sometimes as the “Comprehensive Plan” or “Comp Plan.”

Critical Areas on the Site under TMC 13.11 the City's Critical Areas Preservation Code. Specifically, the CAVP included wetland delineation and rating, establishing the jurisdictional status of one wetland and a drainage ditch, and finding concurrence with areas that will be regulated as Biodiversity Areas. The CAVP remains valid as updated and corrected with new information provided as part of the current permitting process for the Project. As follow-on to the CAVP, and companion to the Prior PRD Plan approval, the Examiner approved a Critical Areas Minor Development Permit for GHC as the applicant. *Ex. C-1, Ex. C-4, Ex. C-11.*

17. As part of the present battery of permits, Copper Ridge submitted additional supplementary materials which were utilized by City staff in evaluating the Project. City staff determined that the Project now needs a new Critical Area Minor Development Permit. A Technical Critical Area report (the "CA Report") was developed by the City's Senior Regulator Compliance Analyst, Karla Kluge, and it provides a thorough review of, and conclusions regarding, the Project and the Applicant's reports and studies relating to the Project and the new CAMDP. *Ex. C-4.*

18. The Project intends to create Critical Areas tracts for the on-site wetlands, with their associated buffers, and for the Biodiversity Areas/Corridor.¹⁵ The west side of the Project Site is intended to be preserved largely in its current, natural state, within the aforementioned tracts designated for Open Space and Critical Areas. The final plat will have to note the tracts containing the Critical Areas. The Critical Areas will be protected in perpetuity through a conservation easement(s) recorded against the affected areas. Existing trees within the protected Critical Areas will remain in place. The Homeowners Association's Covenants, Conditions and Restrictions will be required to include long-term protection measures and maintenance for the Critical Area tracts. As already stated, the Project has been designed to minimize any disturbance of the existing Critical Areas. A few of the proposed measures to minimize disturbance include directing lights away from the Critical Areas, and constructing fencing along the lots which abut the Critical Area tracts. *Ex. C-4.*

19. As alluded to above, the development of the lots and roadways in the Project is concentrated in approximately 10.5 acres of the overall approximately 28-acre Site. Developing only this area reduces impacts to BDCs by leaving the most valuable and intact habitat for migration corridors for urban wildlife. BDAs 2, 5, and 6 contain the most valuable and impactful areas on the Site. Through avoidance and minimization, the Applicant will avoid or reduce impacts to these BDAs. The majority square footage of the Subject Property will remain undisturbed, more or less in its current natural state. The Project is intended to provide a unique development that will preserve wetlands and their buffers as well as the heavily forested Biodiversity Areas for Project's future residents' enjoyment and quality of life. Pedestrian path/trails are proposed to be located within wetland buffers. The main trail through the Site will provide connectivity to Charlotte's Blueberry Park and through the Site down to East 80th Street. *Ex. C-3, Ex. C-4.*

20. The CAMDP is necessary because, despite the Project's concentrated development in the southeast corner of the Subject Property, there will be some impact both to remaining wetland buffers and to the Biodiversity Areas/Corridor. *Ex. C-1, Ex. C-4.*

¹⁵ In Exhibit C-4, as well as at times herein, "Biodiversity Area" is abbreviated as "BDA." "BDC" is a common abbreviation for Biodiversity Corridor.

21. As referenced above,¹⁶ there are four wetlands (Wetlands A-B and D-E), and one drainage feature identified within the Subject Property boundaries. A previously identified potential wetland area, Wetland C, did not exhibit all of the wetland criteria and thus is not characterized as a regulated wetland. An additional wetland identified as Wetland F is located offsite within 300 feet to the north of the Subject Property. Wetland A is a 49,954 square foot depressional, Palustrine Forested and Palustrine Scrub-Shrub, Category IV wetland with a 50-foot buffer. Wetland B is a 228 square foot, depressional, Palustrine Scrub-Shrub, Category IV seasonally flooded wetland with a 50-foot buffer. Wetland D is a 49,954 square foot, depressional, Palustrine Forested, Scrub-Shrub, Category III wetland with a 75-foot buffer. Wetland E is a 21,739 square foot, depressional, Palustrine Forested Category III wetland with a 75-foot buffer. *Ex. C-4.*

22. Environmental review of the Site identified a total of fourteen (14) Management Unit Areas (“MUA”) on the Site that were further analyzed to determine whether any of them met the definition of a Biodiversity Area/Corridor. Of the 14 MUAs that were identified, four are wetland MUAs, four are deciduous MUAs, four are coniferous/deciduous mixed, one is conifer, and one is an open, non-forested area. Of the 14 MUAs, four areas were identified as meeting the criteria for Biodiversity Areas. MUAs 2, 5, 6, and 11 all meet the criteria for Biodiversity Areas/Corridors.

23. The four MUAs considered Biodiversity Areas (MUA2, MUA5, MUA6, and MUA11) are primarily comprised of a diverse native vegetation assemblage in which the vegetation cover is vertically and/or horizontally diverse and contains less than 50% invasive species cover. Most of the areas that do not meet the definition of a Biodiversity Area or Corridor do not meet it primarily due to extensive non-native invasive vegetation cover. *Id.*

24. The Project will result in minor Wetland buffer and Biodiversity Area/Corridor modification to allow for the development of the Project. The work proposed requires/qualifies for a CAMDP under TMC 13.11.220. A Minor Development Permit may be issued when an applicant cannot meet the minimum buffer requirements or the PDS Director (or the Hearing Examiner here) determines that the proposal will result in temporary, minor, or de-minimum impacts to the buffer or Critical Area. The PDS Director (or Hearing Examiner) must consider the size of the area affected, the sensitivity of the Critical Area and/or the presence of priority species and habitat when determining whether the impact is temporary, minor, or *de minimis*.¹⁷

25. As referenced above, the Applicant’s CAMDP materials were reviewed by Karla Kluge, Senior Environmental Specialist, and the City’s subject matter expert for Critical Areas. Ms. Kluge reviewed all applicable sections of TMC 13.11, as well as a “Technical Addendum” dated June 2, 2020, prepared by Leon Environmental, LLC, the Plat itself, and a “Critical Area Report & Mitigation Plan for The Preserve (LU22-0244),” dated May 2023, prepared by Wetland Resources, Inc. (Scott Brainard and John Laufenberg). *Ex. C-4.*

26. Kluge concluded that, in order for the Project to be developed as proposed, some impacts to wetland buffers will be unavoidable. The Applicant has proposed addressing those impacts primarily through mitigation and buffer averaging as provided for in TMC 13.11.320~.330. *Harala Testimony,*

¹⁶ At Finding of Fact 11 above.

¹⁷ TMC 13.11.220.B.2.

Mallahan Testimony; Ex. C-1, Ex. C-4.

27. At the conclusion of her review, Kluge determined at the staff subject matter expert level, that the Project qualified for issuance of the CAMDP, if proposed conditions are imposed, chiefly because the Project (a) demonstrates adequate avoidance of regulated wetlands and higher functioning BDAs/BDCs, and (b) provides mitigation sequencing and appropriate avoidance of BDA/BDC impacts.

Environmental Review

28. Pursuant to the State's SEPA Rules (WAC 197-11) and the City of Tacoma's Environmental Code (TMC 13.12), the PDS Director issued a Mitigated Determination of Environmental Non-significance for the Plat/Project on September 24, 2024 (the "MDNS" under Exhibit C-4). This determination was based on a review of the applicant's Environmental Checklist, a site survey, Critical Area analysis, traffic impact analysis, as well as other supporting information on file with Planning and Development Services. The appeal deadline for the MDNS was October 8, 2024. The Applicant appealed certain mitigation conditions imposed in the MDNS. The hearing for the MDNS appeal was held on October 17, 2024. The decision on the MDNS appeal is issued together with this Plat/CAMDP Decision.

Public Notice/Comment/Agency Review

29. Public Notice of the Project application and public hearing was mailed on August 21, 2024, to property owners and residents within 1,000 feet of the boundaries of the Site. Notice of application was also sent to interested neighborhood groups, the neighborhood council, Tacoma School District, Metropolitan Parks District, and reviewing agencies. Public Notice signs were posted on the Site and notice was posted on the PDS website. City staff received numerous telephone calls from area residents during the public comment period. Ten written public comments were received expressing concerns generally about retaining trees on the Site, Critical Area impacts, loss of privacy to abutting properties and possible traffic impacts. *Ex. C-2, Ex. C-4, Ex. C-6.*

30. As part of the Project review process, PDS provided notification of the Plat/Project to various City departments/divisions, and outside governmental and non-governmental agencies. Departmental comments and requirements regarding the Plat and the overall Project are included in the PDS Report and in the Hearing Record as Exhibit C-8. These agencies/departments/divisions recommended conditions they believed would be properly attached to the Plat and CAMDP were they to be approved. Most of the recommended conditions have more to do with regulating the actual development of the Subject Property than they do the approval of the Plat or the CAMDP up front. At the hearing, the Applicant objected to, or requested revisions to recommended Conditions 5, 10, 12, 16, 31, and 35.f.¹⁸ The Examiner allowed the parties to provide further authority and argument for their positions on these contested conditions post hearing in the Conditions Submissions. The Examiner's conclusions thereon are set forth in Section A. of Conclusion of Law 18 below. *Harala Testimony; Ex. C-1, Ex. C-8.*

¹⁸ This objected-to condition was formerly 35.g and is referred to as such in the Conditions Submissions and in the hearing recording. It is now 35.f because the City's original 35.b was designated as such by mistake and 35.b was really a continuation of 35.a. With prior 35.b joined up with 35.a, 35.g became 35.f.

31. Comment/review letters on the Project were received from both the Washington State Department of Ecology (“Ecology”) and the Washington Department of Fish and Wildlife (“DFW”). Both letters provided advisory comments related to development of the Site. Neither letter expressed opposition to the subdivision action applied for in the Plat or the zoning modification represented in the PRDMM. *Ex. C-2.*

The Hearing

32. During the hearing, the six people listed in the intro above offered comment/testimony largely reiterating essentially the same concerns expressed in the prehearing written comments.

33. 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. At the reconvening of the hearing on November 13, 2024, the City clarified that language included in the City’s proposed Condition 37 did not mean that the City considers the Plat so infirm as to preclude any possibility of approving the Plat.¹⁹ *Harala Testimony, Johnson Testimony.*

34. The Applicant indicated its intent to develop the Project in compliance with all applicable laws and regulations. The Applicant was in agreement with and accepting of all recommended City conditions of approval for the Plat except Conditions 5, 10, 12, 16, 31, and 35.f. 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, or if not, to submit additional information/argument on their respective positions. Some common ground was found; other Conditions are still contested. These are addressed below at Conclusion of Law 18, Section A. *Deaver Testimony, Mann Testimony.*

35. 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.

36. Any conclusion of law²⁰ herein which may be more properly deemed a finding of fact²¹ is hereby adopted as such.

¹⁹ See *Topping v. Pierce Cty. Bd. of Comm’rs*, 29 Wn. App. 781, 630 P.2d 1385 (1981). *Topping* holds that aspects or preliminary plat approval that are governed by regulation or ordinance need not be overly scrutinized by the preliminary plat decision maker since the regulatory scheme will require the appropriate provision necessary. Only when a factor, such as stormwater management in this instance, is determined to be so infirm that any possibility of approving the plat is impossible, does rejecting the preliminary plat come into play.

²⁰ Conclusions of Law may be abbreviated as “CoL” hereafter.

²¹ Finding of Fact may be abbreviated hereafter as “FoF.”

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 CAMDP 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 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 CAMDP are consistent with the criteria for the approval of preliminary plats found in Section 13.04.100 of the TMC, and for the CAMDP, 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.”²² 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.²³

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.²⁴ 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-2-PRD, Single-Family Dwelling District at present. The R-2 zoning classification is not necessarily inconsistent with the Comp Plan’s designation of Parks and Open Space for the reasons found at Finding of Fact 9 above. The Plat proposes to subdivide the Subject Property into single family residential lots suitable for a PRD. This intention complies with the applicable zoning, particularly with existing PRD Overlay as modified by the approval of the PRDMM. Residential development of the Subject Property is a permitted use.

Plat Criteria

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

²² *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).

²³ *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).

²⁴ See TMC 13.12.440.

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 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.²⁵
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.²⁶

“A preliminary plat application is meant to give local governments and the public an approximate picture of how the final subdivision will look. It is to be expected that modifications will be made during the give and take of the approval process.” The Applicant must make a threshold showing that the completed development is able to comply with applicable zoning ordinances and health regulations.²⁷

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.1.²⁸ The required provisions/items are examined in turn now as follows:

(a) Public health, safety, and general welfare. The Applicant’s and the City’s evidence and testimony and the overall hearing record indicate that the Plat can be developed safely, in compliance with applicable laws, and in such a way as will preserve the Critical Areas and the majority of the Open Space on Site. Development of the Project in the Plat must comply with all conditions set forth below at Conclusion of Law 18, Section A. If developed in that manner, the Project presents no public health or safety concerns. The City’s environmental review further addressed public health, safety and general welfare issues and determined that the Plat and the Project will not impact these areas in any

²⁵ Numbering of these subsections is maintained the same as in the TMC text.

²⁶ For example, within this otherwise conjunctive list, adequate provision may be made for “streets or roads” as a subcategory and not both.

²⁷ *Knight v. City of Yelm*, 173 Wn.2d 325, 343-344; 267 P.3d 973 (2011), citing *Friends of the Law v. King County*, 123 Wn.2d 518, 528, 869 P.2d 1056 (1994) and *Topping v. Pierce County Bd. of Comm’rs*, 29 Wn. App. 781, 783, 630 P.2d 1385 (1981).

²⁸ It is not unusual for some of the TMC 13.04.100.E. criteria to be met by existing facilities.

materially negative way, and what impacts do present, can be sufficiently mitigated. *FoF 14~28, 33.*

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. The housing intended to be provided by the Plat should fall within a more affordable range in the Tacoma housing market providing opportunities for home ownership that are currently limited or lacking in Tacoma. As such, the Examiner concludes that this trio of criteria is met. *FoF 4, 14.*

(b) Stormwater management. Stormwater management for the Project in the Plat must be implemented in compliance with the TMC (e.g., TMC 12.08D) and the City’s Stormwater Management Manual (the “SWMM”). The Applicant submitted a “Preliminary Stormwater Drainage Design Memo from C.E.S. NW Inc. dated June 4, 2024, that outlines the Applicant’s preliminary design for stormwater management in the Project. City staff expressed concerns over the level of completeness of the Applicant’s preliminary design, but City staff ultimately acknowledged²⁹ that there is nothing about the Site or the Project that makes fully compliant stormwater management for the Project impossible. *FoF 10.*

The Applicant acknowledged that the Plat/Project’s stormwater management will have to fully comply with the TMC and the SWMM. As the Project progresses, the Applicant will be required to submit site development permits for review, revision, and inspection and these will need to be compliant with the TMC and the SWMM. *FoF 34.*

The City cautioned, as it usually does in preliminary plat proceedings, that stormwater compliance may require certain modifications to the Plat that could even include a reduction in buildable lots. *Harala Testimony, Johnson Testimony; see also Condition 37 below.*

(c) Open space. Provisions for adequate open space are met by the Plat preserving approximately 16 to 17 acres of the overall 28 acres of the Site as Open Space. Concentrated open space is available in the preserved Critical Areas and BDAs/BDCs. Other smaller Open Space Areas are dispersed throughout the Plat. Additional open space will likely be provided in the developed townhouses’ yards.

The open spaces provided by the Plat will need to be adequately preserved and maintained by Copper Ridge during development and until all properties are sold, and then by the collective property owners through their future Homeowners Association. *FoF 1, 4, 14, 18, 19; Ex. C-3.*

²⁹ For the Examiner, complete clarity on the City’s position on the Project’s ability to achieve full compliance with the TMC and the SWMM for stormwater management only came after the hearing was reconvened, as referenced above.

(d) Streets or roads; alleys; or other public ways; bicycle circulation. The internal streets, courts and alleyways are sufficient for internal circulation within the Plat and they will adequately connect the Plat with the City’s right-of-way system. The Plat provides for trails for pedestrian travel within the Plat, connecting to East 80th Street and to Charlotte’s Blueberry Park. Sidewalks are also to be provided along the streets in the Plat as well as connecting to Charlotte’s Blueberry Park along East D Street. These provisions will be adequate for this provision to be met.³⁰

(e) Transit stops. The Plat is within a reasonable distance of public transit availability at East 72nd Street and along the Pacific Avenue corridor, which also provides commercial mixed-use businesses and establishments. As set forth above, transit stops are available along Pacific Avenue to the west (Pierce Transit Route 1) and 72nd Street to the north (Route 202). This availability is comparable to most areas in Tacoma and better than some. This criterion is satisfied. *FoF 5, 13.*

(f) Potable water supplies; sanitary wastes. All utilities necessary to serve the Plat are present in areas adjacent to the Plat, primarily East D Street or East 80th Street. The Plat will need to connect through extensions to and through the Plat to serve the homes developed. This criterion is met through availability and will be further met as the Plat is developed and existing lines are extended. *FoF 10.*

(g) Parks and recreation, playgrounds. While the Applicant has provided large amounts of open space within the Project, on-site park and recreational opportunities—actually within the boundaries of the Plat—are limited. The Applicant’s “provision” of parks, recreation and playgrounds for the Plat and its future denizens relies almost entirely on existing, off-site facilities, and that reliance falls very heavily on the adjacent Charlotte’s Blueberry Park, a Metro Parks property that does present both active and passive recreational opportunities. Not having to provide park and/or playground areas within the Plat presumably saves the Applicant the cost of developing these amenities and enables more housing units to be built and sold.

Given the heavy reliance on the adjacency of Charlotte’s Blueberry Park, the Examiner concludes that this criterion is met, so long as adequate connections are made between the Plat and Charlotte’s Blueberry Park for all of the Plat’s potential occupants. Adequate connections are accounted for in the Conditions herein below and are further addressed in the MDNS Appeal Decision of even date herewith.

(h) Schools and schoolgrounds. Adequate schools are located within the surrounding area, in walking distance, or through a reasonable school bus ride. This criteria is satisfied.

³⁰ See also CoL 8(g) below for how this provision is tied to the provision of adequate Parks and recreation, playgrounds.

(i) Sidewalks; other safe walking features. The Applicant has provided for an “internal pedestrian system” within the Plat consisting of trails and sidewalks. The Plat layout provides uninterrupted access to sidewalks without excessive driveway cuts. The D Street right-of-way sidewalk improvements per the conditions of approval below will ensure safe walking features that connect with the required recreational opportunities and park access sufficient for plat approval. *FoF 1, Ex. C-1 at Page 12 of 39.*

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-2-PRD District in which the Subject Property is located. The Plat and the Project 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 and in Exhibit C-10.³¹ 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 and in more detail in Exhibit C-10. The Examiner agrees with the City’s assessment that those Comp Plan goals and policies are furthered by the Plat and the Project, and these 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 type of housing to be developed by the Project is needed even more so than just housing in general because entry level housing of the type proposed is severely lacking in Tacoma.

Imposition of the conditions herein, 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 as the Subject Property is improved and developed.

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

³¹ 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).

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 substantial 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.

Many of the “requirements” set forth in sections .120~.230 are not absolute, being conditioned with language like “In general,”³² “Whenever feasible,”³³ and “In cases where...is impractical...”³⁴ 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 already reference above, the Plat/Project intends the development of the Subject Property as missing-middle housing which is consistent with the Comp Plan’s allowance for Parks and Open Space properties to still be developed in accordance with the more specific (than the Comp Plan itself) zoning in place. Here, that zoning is R-2-PRD which allows for the type of residential development proposed. The Project/Plat still maintains sufficient conformity with the Parks and Open Space Comp Plan designation by preserving the majority square footage of the Site as Open Space.

The Subject Property will be developed in accordance with all applicable ordinances, manuals, design specifications, plans and guidelines. City staff has acknowledged that the Plat layout and the Project can be done in a completely compliant manner and the Applicant has committed to doing so. *FoF 33, 34.*

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

The Plat connects to the City’s street system at existing East D Street and will connect at East 80th Street upon development. This is sufficient. *Ex. C-3.*

³² TMC 13.04.180.

³³ TMC 13.04.190.

³⁴ TMC 13.04.160.

(c) TMC 13.04.140—Access.

The Plat layout itself provides for access to each home, and as just recited above, the internal street system will connect to two different City streets. Access to recreational opportunities will be satisfied by the internal path and through sidewalk improvements to East D Street leading to Charlotte’s Blueberry Park. *Id.*

(d) TMC 13.04.150—Conformity to topography.

The Site is generally flat. Flat is easy. No special considerations for the Site’s topography needed to be made.

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

See Conclusion of Law 8(d) above. Any easements that become necessary for the placement of utility lines or otherwise for the Project will be addressed as the need arises, and are also addressed in the Conditions below at Conclusion of Law 18, Section A.

(f) TMC 13.04.165—Streetlights.

Streetlights must be provided in accordance with the Tacoma Municipal Code at the time of development.

(g) TMC 13.04.170—Roadways.

The provision of roadways is shown in the Plat. Because the roadways internal to the Plat are intended to be public, they will need to meet City standards in effect at the time of permitting.

(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.

The Plat does not propose dead-end/cul-de-sac(s) or private streets or ways or permanent access easements as part of its layout at present. The roadways proposed appear sufficient for the development.

(j) TMC 13.04.200—Alleys.

Alleyway access to the townhomes is proposed for large parts of the Plat. These will need to meet City standards at the time of permitting.

(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 conditions of approval herein.

(l) TMC 13.04.220—Blocks.

Standard City blocks are not formally part of this PRD development. The approval of the PRDMM allows for certain flexibility in this regard. The PRD layout proposed is consistent with PRD developments and present no material difficulties to access.

(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 more so 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 applicable laws, regulations and 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 subject to the conditions set forth herein primarily at Conclusion of Law 18, Section A.

PRD Site Plan Criteria³⁵

12. TMC 13.06.070.C.5., Urban design, sustainability and connectivity—This section of the City’s PRD code is primarily concerned with site design of the proposed PRD development. As with much of the above Plat criteria, many of the requirements here have more to do with compliance during development than they do with being satisfied completely prior to approval of the PRD(MM). That notwithstanding, these criteria are examined in turn here.

12.1 TMC 13.06.070.C.5.a.--“ The PRD site design shall demonstrate the following:

a. Establishment of high quality and context-responsive Basic Neighborhood Patterns, including the following:

- (1) Street frontage characteristics.
- (2) Rhythm of development along the street.
- (3) Building orientation on the site and in relation to the street.
- (4) Front setback patterns.
- (5) Landscaping and trees.
- (6) Backyard patterns and topography.
- (7) Architectural features.”

The PDS Report lumped subsection (1) through (7) together and provided the following as its analysis:

The development is with the homes clustered into a denser community to preserve the Critical Areas on site. Within the development, the houses will be arranged to present variety amongst the facades while still providing a consistent front setback and driveway arrangement. The development is situated to help provide pedestrian pathways and sidewalks that are free from vehicle conflict and driveways on at least one side of each property and/or street. Landscaping and trees will provide tree canopy and aesthetically pleasing development that blends in with the surrounding lower density residential development and the adjacent open spaces. Homes are designed to support affordability, while providing quality and reasonably generous square footage that can accommodate families. The design of all the Townhouse style units will meet the Townhouse Minimum design standard, or the applicable code at the time of development. (See Exhibit C-9 for home plans.)

The helping verb “will” appears prominently in the City’s analysis because, again, compliance herewith has more to do with the actual development of the Project than it does with approving the PRDMM and the Plat at this preliminary approval stage. The City will have to maintain its vigilance in reviewing the Project to ensure compliance with TMC 13.06.070.C.5.a.(1)~(7), but in analyzing the Plat to this point, together with what is proposed for development on the Plat, the PRD Project does look like it will satisfy these criteria. The Examiner does note that for

³⁵ As referenced at Conclusion of Law 20 in the PRDMM Decision, these PRD code sections are addressed here in the Plat Decision because they relate more to the PRD Site Plan criteria, and here the Site Plan requirements are being met by the Plat. Once again, there are factors/standards/criteria that are duplicative of TMC 13.04 factors/standards/criteria for approving the preliminary Plat.

subsection (5) above, the Condition of approval requiring 10% canopy cover on the developed portion of the Site³⁶ has a direct relation to this criterion ensuring the establishment of a high quality of context responsive landscaping and trees for the developed portion of the Site, and not just the areas being left alone due to the presence of Critical Areas.

12.2 TMC 13.06.070.C.5.b.—“Pedestrian-friendly design. The proposal must provide direct and convenient pedestrian access from each dwelling to abutting sidewalks and public pathways, and must emphasize pedestrian connectivity and the high quality of the pedestrian experience within the site and in the abutting public right-of-way. Transportation infrastructure within PRD Districts shall implement complete streets principles including emphasizing the pedestrian environment and providing for safe and comfortable bicycle travel.”

The factors set forth here have been addressed in large part already as part of the TMC 13.04 Plat analysis. In addressing this subsection specifically, City staff provided the following analysis in the PDS Report:

The applicant has provided for an internal pedestrian system, while maintaining protected Critical Area on the site. Within the development, the accessways will serve multiple uses of the roadways encouraged with segregated pedestrian sidewalks and accessways. A layout where each property has access to a sidewalk that will not have driveway cuts ensures that there are many dedicated pathways from the properties to the surrounding areas that will be free from driveways and cars. The D Street right of way will be improved to standards per the conditions of approval below as well as the issued SEPA MDNS (see Exhibit C-4).

As already stated above, the Plat provides for an appropriate internal circulation system for cars, pedestrians and bicycle traffic. Sidewalks are present throughout the Plat. The Project looks to be very walkable. The proposed trails add to walkability outside of the home frontage areas, and the improvements to the Project frontage along East D Street up to and further connecting with the park to the north ensure this section’s satisfaction.

12.3 TMC 13.06.070.C.5.c.—“De-emphasize parking. The proposal must meet the parking requirements of TMC 13.06.090.C. in a manner that de-emphasizes parking in terms of its prominence on the site and its visibility from the public right-of-way.”

The Applicant’s intention for parking in the Project is to have two spaces per townhouse in ground-floor garages. *FoF 14*. The PDS Report provided the following parking analysis:

Analysis: Each dwelling unit will be provided with two parking stalls and generally has a standard to current TMC 13 requirements amount of parking for a development of this scale. The proposal has tried to incorporate alley loaded lots where possible and in cases

³⁶ See Condition 5 below at *CoL 18*, Section A.

where that is not possible to develop sidewalks along streets that are free from driveway cuts, thus de-emphasizing cars and parking.

Parking, as currently proposed appears to be able to meet this standard. The City will need to ensure the same as development permits come in for review.

12.4 TMC 13.06.070.C.5.d.—“Minimize scale contrasts and privacy impacts. The proposal must demonstrate that it will limit scale contrasts and privacy impacts on existing adjacent parcels and buildings to a reasonable extent.”

The townhomes will have to be built in conformance with height and scale limitations in place in the R-2-PRD zone as modified by the PRDMM Decision. The Applicant has expressed its intention to comply with building height limitations.³⁷ The natural preserved majority of the Site will provide privacy screening for a large area of the Site and additional plantings—in conformance with Condition 5 below—in the developed portion of the Site will ensure that privacy impacts are minimized throughout the whole of the Project and the surrounding neighborhood.

12.5 TMC 13.06.070.C.5.e.—“Create usable outdoor (or yard) spaces. The proposal must provide usable and functional outdoor or yard space that will be an amenity to its residents. These outdoor spaces shall be provided per the open space requirements of this section.”

Private yards space will be provided for all residential units. The Open Spaces throughout the Plat will also be an amenity to the future residents of the Plat.

12.6 TMC 13.06.070.C.5.f.— “Sustainable features. The proposal must provide documentation of the incorporation of both green building and site features as follows:

- (1) Built Green 4 Stars or LEED Gold Certified rating for Building Design and Construction; and,
- (2) Greenroads Bronze if full new roadway sections are constructed.”

The City provide the following as its analysis for this subsection:

Analysis: The homes will meet the Built Green through use of efficient and sustainable building features. The applicant has provided a worksheet (Exhibit C-6) demonstrating compliance with the applicable Built Green/Greenroads standards, sufficient to meet the Bronze Standard. The worksheet was reviewed by city staff and at the time of development permitting compliance will be required and reviewed.

The Applicant has provided the necessary documentation that these building standards will be met. Compliance will be finally confirmed at the permit/development stage of the Project.

³⁷ Deaver Testimony.

12.7 TMC 13.06.070.C.5.g.—“Connectivity. Proposed PRD Districts shall connect with and continue the abutting street network, to provide for a continuous connection with the neighborhood pedestrian, bicycle and vehicular pathways, to the maximum extent feasible.”

Streets, roads, and sidewalks have been addressed sufficiently at this point in this Decision to call this one good. The internal streets, courts and alleyways connect the Plat with itself and with the City’s street system. Pedestrian sidewalks, as required herein, will provide connection with the other amenities/facilities required by TMC 13.04.100, both on and off site. The Applicant has challenged what is essentially a connectivity mitigation measure in the MDNS at the second bullet of Condition 2. Whether the Applicant’s challenge is successful is addressed in more detail in the MDNS Appeal Decision of even date herewith. Applicant’s appeal of that mitigation measure/condition essentially alleges that the condition exceeds the maximum extent feasible for neighborhood connectivity, and/or is not proportional to the Project.

12.8 TMC 13.06.070.C.5.h.—“The Historic Preservation Officer shall be consulted to assess potential adverse impacts to historically designated properties or properties eligible for historic designation.”

As pointed out in the City’s analysis in the PDS Report, the Site itself is not historically designated nor are any nearby properties. The Applicant will have to comply with applicable laws/regulations for any historic/cultural resources discoveries during development.

12.9 TMC 13.06.070.C.5.i.—“Not more than one-third of the gross area of the site shall have a finished grade exceeding 20 percent, consist of bodies of water, or consist of tidelands, unless otherwise permitted by the decision.”

As found above (*FoF 10*), the Site is generally flat. There are no grade changes proposed that will run afoul of this standard.

13. TMC 13.06.070.C.6., Internal Circulation and accessways—TMC 13.06.070.C.6., titled “Internal circulation and accessways” contains eight subsections (a through h) intended to guide PRDs on the pathway to achieving high quality accessways and the best internal circulation possible. Most of these requirements or admonishments will have more application at the actual development stage than they do now in examining the Plat, as the PRD site plan, for sufficiency to approve the Plat and the PRDMM. PDS characterized this section’s requirements as intended to

[e]nsur[e] the system provides safe and convenient travel for all modes of transportation, both within and out of the development; designing the system to meet all safety standards, including signage; creating the system to connect to existing infrastructure; constructing the system to all relevant engineering standards; and providing space for all utilities (including solid waste) and public safety (including fire) access.

This is still as fair a synopsis of subsections a through f as it was when the City first stated it in the Prior PRD Plan approval process. The City then provided the following as its analysis:

Analysis: The applicant is proposing streets throughout the development. On-street parking will not be allowed in some areas due to proposed driveway configuration and road width. Stormwater management will be provided, as will sidewalks (in addition to other pedestrian trails). As noted above, the private accessways connect to existing roads per Public Works standards and will be able to accommodate the necessary utilities serving the homes. The applicant has provided a fire apparatus and solid waste vehicle turn analysis, and the homeowner association agreements will address the placement of refuse containers. Per comment from solid waste review, refinements may be needed to layout of driveways and roadways. A condition has been added requiring resolution of this to occur during the preliminary platting phase in advance of construction of roadways, curb, gutter, and sidewalks. (See Traffic Study and Turn Movement Analysis C-6).

Given the foregoing, the Examiner concludes that the Plat, as the PRD site plan, complies with TMC 13.06.070.C.6. to the extent practicable, taking into account Critical Areas constraints, other voluntary green space preservation measures, and the preliminary nature of the Plat at present. The Plat is well laid out and the streets are the well-placed string upon which the core residential improvements tie. Internal circulation looks achievable enough to approve the Plat and the PRDMM.

Critical Areas Minor Development Permit

14. TMC 13.11.220.B.2. provides that “A Minor Development permit may be issued when an applicant cannot meet the minimum buffer requirements or where the Director determines that the proposal will result in temporary, minor, or de-minimis impacts to the buffer or Critical Area.” PDS and the Applicant previously engaged in a Critical Area Verification Permit (“CAVP”) process in order to establish the presence and boundaries of Critical Areas on the Subject Property. The CAVP determined that wetlands are present on the Site along with a drainage area and Biodiversity Areas. *FoF 16*. A Critical Areas Minor Development Permit was previously approved as part of the Prior PRD Plan process. PDS determined that the Project would require a new Critical Areas Minor Development Permit (the “CAMDP”) because of differences from the Prior PRD Plan and because the Project still cannot [e.g., without buffer averaging] meet the minimum buffer requirements and/or there will otherwise be “temporary, minor, or de-minimis” impacts to wetland and BDAs/BDCs. *TMC 13.11.220.B.2., FoF 16*.

15. In determining whether to grant a CAMDP, the Examiner (standing in for the PDS Director) is to consider the size of the area affected, the sensitivity of the Critical Area and/or presence of priority species and habitat when determining whether the impact is temporary, minor, or de-minimis. The Project then must comply with the following:

- a. The project will not result in a permanent impact to the Critical Area that would require compensatory mitigation; and
- b. Mitigation is provided to restore the site to pre-development conditions, including the maintenance of pre-development hydrological conditions and vegetation conditions. *TMC 13.11.220.B.2.a.~b.*

Since the Project intends to use buffer averaging, the project must also meet the buffer averaging standards of either TMC 13.11.330 and 13.11.430, or the buffer reduction standards in TMC 13.11.330. *TMC 13.11.220.B.2.c.*

The Plat/Project affects relatively small areas of the Wetland buffers and the BDAs/BDCs. The more sensitive Critical Areas on the Subject Property are not slated for development, but rather will be enhanced by the Applicant's proposed mitigation. The Project will not result in permanent impacts to either the Wetland or the BDAs/BDCs.

16. Karla Kluge, the City's Critical Area subject matter expert, concluded that, "provided that [the City's] conditions of approval are met, the proposal meets the criteria identified in TMC 13.11.220.B.2. for [approving] a Critical Area Minor Development Permit."³⁸ Kluge's conclusions are summarized in the PDS Report as follows:

- The Applicant has demonstrated per TMC 13.11.250 the avoidance of regulated wetlands and the higher functioning Biodiversity Areas/Corridors found on the Site. The Applicant has provided mitigation sequencing and has taken appropriate action to first avoid Biodiversity Area/Corridor impacts, then minimize impacts by proposing development within the more degraded areas.
- The Applicant has provided mitigation sequencing and has taken appropriate action to also first avoid wetland impacts, and then minimized wetland buffer impacts through design and the proposed development area outside of regulated wetlands on the Site.
- The Applicant has additionally met the buffer modification criteria of TMC 13.11.330.C. for averaging buffer area. Additionally, the Applicant has proposed mitigation for wetland buffer impacts where impacts have occurred due to homeless encampments and where the wetlands are part of a larger habitat complex within Biodiversity Areas/Corridors.
- Appropriate mitigation is proposed for wetland and buffer impacts and for Biodiversity Area/Corridors impacts. Maintenance and monitoring shall be provided and for a minimum of [] [10] years³⁹ the Site and the remaining Critical Areas shall be protected in perpetuity through a Conservation Easement and Homeowners Association rules.

As the City determined, based upon the findings and conclusions above and as conditioned below at Section A., the Project will be consistent with the City's Critical Area Preservation Ordinance (TMC 13.11) through the avoidance that will be engaged and mitigation to be provided. In accordance with TMC 13.11, the Project has developed appropriate mitigation measures that should result in enhanced

³⁸ Exhibit C-4, Technical Memo at p. 12.S

³⁹ See Condition 10, below.

functions in the remaining wetland and buffer areas, as well as the retained Biodiversity Areas/Corridors.

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

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

A. **RECOMMENDED CONDITIONS OF APPROVAL:** “Conditions” set forth herein are derived primarily from the PDS Report, other submissions in the record, and testimony from the hearing. Nearly all of the conditions below have more to do with compliance issues related to the Applicant’s intended development of the Subject Property (the Project) after approval of the requested Plat and the CAMDP than they do with the permit requests themselves, i.e., they are not recommended herein as conditions precedent to approving the Plat and the CAMDP.

As set forth at FoF 35 above, the PDS Report is incorporated herein by reference. Some of the more general language from section I. 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 guidance admonishments *will not* apply to later development of the Subject Property.

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 Decision does not necessarily constitute a conflict.

This approval of the Plat and the CAMDP 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. *See Usual Condition 2 below.*

As referenced in Findings of Fact 30 and 34 above, the Applicant objected to the City’s recommended conditions 5, 10, 12, 16, 31, and 35.f., and the parties submitted the Conditions Submissions post hearing in support of their respective positions for imposing (City) and either deleting or revising (Applicant) the challenged conditions. The Examiner addresses each of the challenged conditions below as they present.

The Plat and CADMP are approved, subject to the following conditions derived from reviewing City and Tacoma Public Utility staff recommended conditions of approval as applicable to the Project. The Examiner has not attempted to separate out Plat/CAMDP Conditions from PRDMM Conditions given that most Conditions relate more to the development of the Project as a whole, than to any one specific permit as a condition precedent to approval.

LAND USE AND BUILDING CONDITIONS⁴⁰

1. Formation of a Homeowners Association will be required at the time of development; however, conservation easements, covenants and restrictions are also required for Critical Area, stormwater and public utility requirements. It is the developer's responsibility to ensure that all applicable requirements are satisfactorily linked to the referenced Homeowners Association. —Advisory— If this is not completed in a manner that satisfies all conditions and requirements the developer risks future delays and legal expense.
2. Any structures on site will require demolition via an approved demolition permit prior to submission for the Final Plat.
3. The townhouse setback standards for the development will be: interior lot 20-foot front, 5-foot side, 20-foot rear yard and for corner lots a 10-foot side yard setback. If the front and rear yard setbacks are reduced in future land use code, then the current setbacks may be applied.
4. An unanticipated discovery plan, compliant with the City of Tacoma Historic Preservation Office guidelines, shall be in place prior to any excavation or major ground disturbance on the site. For questions or concerns please contact Reuben McKnight, Historic Preservation Officer or Susan Johnson, Historic Preservation Coordinator.
5. A 10% tree canopy coverage requirement for the developed portion of the site, calculated based on the developed portion of the site only (the approximately 10 acres to be developed portion of the site) shall be required. The method of calculation shall be the standard in city of Tacoma Land Use code at the time of development. While this condition will not need to be met until the time of development, it is being placed as a condition of approval for the PRD to ensure tree canopy remains on the site in perpetuity. It is anticipated that perimeter street tree placement, non-Critical Area open space trees can meet this requirement. Trees within utility tracts, and along trails within the developed portion of the site can also contribute to this requirement. The calculation will be required on the landscape plan at the time of permitting.

In spite of the Applicant's request to remove this condition, the Examiner retains it. Despite the plentiful tree coverage on the undeveloped majority of the Site, responsible development of the developed portion of the Site must still include a certain amount of tree cover to account for such things as aesthetics and heat dissipation in a dense development.

The Applicant's argument fails to meet its burden to show that this condition is unwarranted. The Comp Plan encourages tree retention on properties designated parks and open space. Tree retention helps to alleviate air quality issues and heat concerns. The Applicant's argument that there is no 10% coverage requirement in the TMC when the overall Subject Property exceeds 30% coverage is unpersuasive. The TMC does not need to expressly set forth such a requirement. TMC 13.06.070.C.4.f., as well as TMC 1.23.130 allow the Examiner to impose reasonable conditions on development. Ten percent is a minimal requirement. In the Conditions Submissions, the Applicant argued that the City must look at the Project

⁴⁰ The Examiner has left some of the City's original language used in proposing these conditions alone in the process of adopting and incorporating these conditions. To that end, any uncorrected references to "site" or "property" mean the Subject Property or the Site as defined herein, "project" in most instances means the Project, and references to the "developer" or "owner" mean the Applicant, but also would include any successors in interest. Non-capitalized terms in this Section generally refer to their capitalized defined counterparts from above in the Findings and Conclusions Some language herein has the lead-in "—Advisory—" because it is just that, advisory and not an express condition. Advisory language is flagged, but retained in order to preserve context.

as a whole. This contention cuts both ways. Approving the removal of this condition ignores the immense benefit that trees provide, not only from a nearby adjacency (in the undeveloped portion of the Site), but also in the portion of the Site where the people who purchase Copper Ridge's townhomes will spend the majority of their time living.

As stated above, the 10% coverage requirement will likely be met through street tree placement and non-Critical Area open space trees. As development progresses, if the foregoing turns out to be incorrect, or the Applicant believes that achieving 10% tree coverage on the developed portion of the Site will make the Project financially infeasible, the Applicant may contact the Office of the Hearing Examiner to request a hearing to show cause for why this condition cannot be feasibly met, and the Examiner will reconsider this condition at that time.

CRITICAL AREA CONDITIONS

6. A Notice on title shall be recorded per the requirements of TMC 13.11.280.A.1. prior to recording the Final Plat.
7. The Applicant shall provide mitigation and vegetation management according to the approved "Critical Areas Report and Mitigation Plan for The Preserve" (LU22-0244), revised May 23, 2024, prepared by Wetland Resources Inc. with the corrections regarding MUA 12 not being a Biodiversity Area, the interrupted buffer of Wetland D near East 80th Street., and the area reduced by the dispersal trenches.
8. The proposed dispersal trenches are located within the proposed mitigation areas. While mitigation is not required for the dispersal trench placement, the area taken for the dispersal trenches cannot be considered mitigation area. The mitigation (ratios and total area) will need to be revised to show the true mitigation amounts, or please verify that the total ratios proposed for mitigation do not include the dispersal trenches. There is more mitigation proposed than required and there is also the small area near East 80th Street (1,086 square feet) that can offset the dispersal trench areas in the demonstration of compliance.
9. The Applicant shall notify the City's Senior Regulatory Compliance Analyst when the vegetation is installed and provide an As-Built (Year 0) for the installation. The As-Built shall be approved prior to entering the monitoring period.
10. The Applicant shall monitor the mitigation areas for 10 years and provide a Monitoring Report to the City in Years 1, 2, 3, 5, 7, and 10 by October 1st of each year. Should the performance standards fail to be met during any monitoring period, contingency actions and additional monitoring will be required.

The Applicant requested that this condition be limited to 5 years for both monitoring and reporting citing to TMC 13.11.230.B.4. and TMC 13.11.290(2), arguing that the 10-year period is not mandated by the TMC. The Applicant should refer to the authority already stated above for the Examiner's ability to condition land use approvals. The City correctly pointed out that both these code sections list a 5-year period as a minimum, not a maximum. The City further supported its position with support from Ecology in its latest publications regarding best available science. Best available science is not arbitrary when it comes from publicly available publications of the state agency tasked with environmental protection. The City is certainly free to terminate monitoring and reporting at a prior point if there are grounds to do so, but otherwise this condition will remain. The reporting and monitoring obligation can certainly be transferred to the HOA put in place at the development if such is

FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION

appropriate during the 10-year period.

11. The Applicant shall provide a split rail fence or similar approved fence along the preserved wetland buffer and/or Biodiversity Area Boundaries and install signage along the fence. The signs shall be the approved City of Tacoma Critical Area Boundary signs and shall be spaced in a manner that allows visibility between signs. The final placement shall be approved as part of the Site Development Permit.
12. The Homeowners Association rules shall include the following statement: The mitigation provided will be maintained in perpetuity even though formal reporting to the City is complete. Continued maintenance is required to keep the mitigation areas compliant with the mitigation proposed and approved. *[Revised condition per the parties' agreement in the Conditions Submissions]*
13. The Applicant shall provide sureties for the installation and monitoring of the mitigation plan. Three contract bids or the City's Bond Quantity Worksheet shall be used to determine the appropriate bond quantities. The Applicant shall provide a Performance Bond and a Maintenance and Monitoring Bond prior to approval of development permits.
14. The Applicant shall record a Conservation Easement for the retained wetland, wetland buffer and remaining Biodiversity Area/Corridors prior to the recording of Final Plat.
15. The Homeowners Association's Covenants, Conditions and Restrictions will include long-term protection measures and maintenance for the Critical Area tracts and shall be recorded with the Final Plat.
16. The Applicant shall comply with the requirements of the City of Tacoma Stormwater Management Manual with the intent of maintaining the pre-project wetland's hydroperiods for Wetland D to preserve existing amphibian populations within Wetland D. If the pre-project wetland's hydroperiods cannot be maintained and adjustments, as may be allowed by the City's Stormwater Management Manual, are requested, additional permitting may be required. The Applicant shall use Best Available Science (published by either local, state or federal regulatory authorities/agencies at the time of a vesting action) to ensure any changes in the wetland hydrology created by the Project are mitigated through appropriate permitting. *[Revised condition per the parties' agreement in the Conditions Submissions with some addition from the Examiner]*
17. The Applicant shall demonstrate that the required 25-flow paths required for the proposed dispersal trenches are completely located outside of the wetland boundary of Wetland D, and Wetland A, including the winter months when higher water levels may be anticipated.

SITE DEVELOPMENT CONDITIONS

18. Documentation to demonstrate the Project's compliance with the Greenroads requirement has not been provided by the Applicant. Applicant's Response to Comments, dated 06/04/2024 referenced a "GreenRoads prescore" document, however the document included Built Green scoring information. Per TMC 13.C.5.f., the proposal must provide documentation of the incorporation of both green building and site features, including Built Green AND Greenroads.

The Applicant shall prepare and submit a typical checklist for residential plan review showing compliance with the standards for Greenroads (like the documentation provided for Built Green). Regarding Site Review offsite improvement concerns, the Applicant must provide documentation that the Project incorporates design features to meet the Bronze Level certification standards for

Greenroads. While submission to Greenroads for formal certification is not required as part of the PRD process, sufficient documentation to demonstrate minimum scoring for Bronze Certification is required. Sufficient documentation shall include a memorandum document for each of the twelve (12) Greenroads Project Requirements as well as how (at minimum) twenty-eight (28) points would be earned from the possible 49 Voluntary Core Credits and Voluntary Extra Credits. 06/04/2024 referenced a “GreenRoads prescore” document, however the document included Built Green scoring information. Per TMC 13.C.5.f., the proposal must provide documentation of the incorporation of both green building and site features, including Built Green AND Greenroads.

19. East D Street fronting the property shall be improved to a minimum width of 28 feet from face of existing east curb to face of new west curb, with a minimum 16 feet of pavement west of roadway centerline and shall include necessary drainage. Cement concrete curb and gutter, 5-foot planter strip and 5-foot sidewalk shall be constructed, abutting the site(s), along the west edge of East D Street at an alignment to be determined by and to the approval of the City Engineer. This will require half street improvements meeting the minimum roadway section Design Standards at time of submittal.
20. East 80th Street fronting the property shall be improved to a minimum width of 24 feet from back of new asphalt wedge curb on the south side to face of new north curb and shall include necessary drainage. Cement concrete curb and gutter, 5-foot planter strip and 5-foot sidewalk shall be constructed abutting the site(s) along the northern edge of East 80th Street at an alignment to be determined by and to the approval of the City Engineer. This will require half street improvements meeting the minimum roadway section Design Standards at time of submittal.
21. Improvements to East 80th Street shall require connection to existing streets to the south, including paving of the intersections with East C Street and East B Street, meeting the minimum design standard at time of submittal.
22. Proposed new street East 79th Street within the Project Site shall be improved to Public Works Standards including a minimum width of 28 feet with cement concrete curb & gutter on both sides and 5-foot sidewalk on the west/north side. 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 36 feet.
23. Proposed new street East C Street within the Project Site shall be improved to Public Works Standards including a minimum width of 28 feet with cement concrete curb & gutter and 6.5-foot sidewalk 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 42 feet.
24. Proposed new street Court B within the Project Site, where no on-street parking is located due to driveways, shall be improved to Public Works Standards including a minimum/maximum width of 20/24 feet with cement concrete curb & gutter on both sides and 5-foot sidewalk with 6-foot planter strip on the west side. 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 36 feet.

25. Proposed new street Court B within the Project Site, where on-street parking is located, shall be improved to Public Works Standards including a minimum width of 28 feet with cement concrete curb & gutter on both sides and 5-foot sidewalk on the west/north side. 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 36 feet.
26. Directional cement concrete curb ramps shall be constructed at the intersection of East 80th Street and East C Street. Ramps shall be installed on the NW and NE corner(s) of the intersection and align with current Tacoma and ADA standards.
27. Directional cement concrete curb ramps shall be constructed at the intersection of East D Street with East 80th Street. Ramps shall be installed on the NW and SW corners with receiving ramps on the east side of East D Street, according to the City of Tacoma Curb Ramp Matrix, and align with current Tacoma and ADA standards.
28. Directional cement concrete curb ramps shall be constructed at the intersection of East D Street and East 78th Street, Ramps shall be installed on the NW and SW corners with directional ramps on the NE and SE corner of the intersection, according to the City of Tacoma Curb Ramp Matrix, and align with current Tacoma and ADA standards.
29. Directional cement concrete curb ramps shall be constructed at the intersection of East D Street and East 77th Street. Ramps shall be installed on the NW and SW corners with directional ramps on the NE and SE corner of the intersection, according to the City of Tacoma Curb Ramp Matrix, and align with current Tacoma and ADA standards.
30. Directional cement concrete curb ramps shall be constructed at the intersection of East D Street and East C Street (new connection to PRD). Ramps shall be installed on NW and SW corners of each intersection, with receiving ramps on the east side of East D Street, according to the City of Tacoma Curb Ramp Matrix, and align with current Tacoma and ADA standards.
31. Directional cement concrete curb ramps shall be constructed at the intersection of E 'D' Street and E 75th Street *as part of the sidewalk extension to Blueberry Park*. Directional curb ramps shall be installed on the NW and SW corners of the intersection, with receiving ramps on the east side of E 'D' Street, according to the City of Tacoma Curb Ramp Matrix, and align with current Tacoma and ADA standards.

After discussion with the Applicant, the City revised its original recommended condition here. The Applicant asked for this condition's removal in conjunction with its MDNS Appeal. Given that the Applicant's MDNS Appeal has been denied, this condition is retained its it revised form.

32. The type, width, and location of all driveway approaches serving the site(s) shall be approved by the City Engineer.
33. East D Street fronting the property shall be restored from any utility cuts, patches, or damage in accordance with the Right-of-Way Restoration Policy. The City's records indicate that the 7400-7800 Blocks of East D Street is Asphalt Concrete Pavement. Restoration shall be in accordance with Tacoma standard plan SU-15A.

34. 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.

PUBLIC WORKS – TRAFFIC ENGINEERING CONDITIONS

35. The Project is expected to add new vehicle, bicycle, and pedestrian trips to existing public streets while also building out a grid of new streets. This results in potential for new conflicts between all modes of traffic that can be minimized through thoughtful design. It also presents an opportunity to design the street system to facilitate and encourage active transportation by providing direct routes to the existing transportation grid. To minimize vehicular traffic conflict, promote safety, and to promote active transportation, the following conditions must be met.
- a. Condition: Proposed streets shall align with the existing public street grid to the extent practicable. The central north-south public street through the development shall be a Condition: East 80th Street shall be constructed along the southern Site frontage per City of Tacoma Right-of-Way Design Manual standards for a "Half Street" section. East 80th Street shall connect to the existing East B Street at its western end including a sidewalk connection from the north side of East 80th Street to the west side of East B Street aligned with East C Street at a new intersection of East C Street and East 80th Street.
 - b. Condition: A central shared-use path shall extend in an east-west orientation through the Site aligned with East 78th Street. This path shall be constructed in lieu of any requirement to build a full access public East 78th Street. The shared-use path must be in a public right-of-way or a permanent public easement. Raised crosswalks shall be constructed where the shared-use path crosses any street, court, or alley within the Site.
 - c. Condition: Proposed lots shall have vehicular access from an alley or court in the rear of the lot where practicable. Only driveways connecting to alleys and courts may be spaced more closely than 50' on center. Driveways connecting to the new East C Street or to the existing public East D Street shall be spaced 50' apart measured from centerline to centerline. Adjacent parcels may share a single driveway entrance to meet this standard. Garage doors shall be setback from alleys or streets 2'- 5' or $\geq 20'$ to prevent alley or street encroachments.
 - d. Condition: Street and alley sections shall be constructed according to the following standards specific to this Planned Residential Development community
 - i. East C Street – 42' right-of-way, 6.5' sidewalk both sides, curb & gutter both sides, 28' traveled way measured from face of curb to face of curb.
 - ii. Court B (segments with no on-street parking due to driveways) – 36' right-of-way, 5' sidewalk on the west side, 6' planter strip/driveway approach on the west side, curb & gutter both sides, 20'min.-24'max. traveled way measured from face of curb to face of curb.
 - iii. Court B (northern segment where on-street parking fits between proposed driveways) – 36' right-of-way, 5' sidewalk on the west side, curb & gutter both sides, 28' traveled way measured from face of curb to face of curb.
 - iv. East 79th Street - 36' right-of-way, 5' sidewalk on the north side/ west side, curb & gutter both sides, 28' traveled way measured from face of curb to face of curb.
 - v. Alley –20' right-

of-way, 2' gravel shoulders both sides, asphalt wedge curb one side, 16' traveled way inclusive of wedge curb.

- v. Shared-use path – 14' right-of-way, 10' wide paved pathway in the center with 2' level landscaped area on each side.
 - e. Condition: Curb bulbs shall be constructed at the intersections of all streets and courts proposed within the development, and at all new intersections with existing public streets, with the exception of the intersection of East 80th Street and East D Street, where the half street section width does not permit on-street parking and does not provide sufficient width to bulb the curb into a parking lane. Additional curb bulbs shall be constructed on the west side of East D Street where the central shared-use path meets East D Street at its intersection with East 78th Street and where the shared-use path crosses East C Street in a raised crosswalk. Curb bulbs shall bulb into the street or court wherever the road section is 28' wide or greater, which allows for on-street parking. The City Engineer shall approve all curb bulb designs.
 - f. Condition: Traffic calming, such as speed humps or similar device, shall be constructed each on the 8000 Block of East C Street and 8000 Block of East D Street to address cut through and increased traffic. The City Engineer shall approve the design and locations. Notification shall be provided to the residents on each block regarding the placement of traffic calming prior to construction. *[Revised condition per the parties' agreement in the Conditions Submissions]*
 - g. Condition: An assessment of streetlighting levels shall be calculated for streets, specifically East C Street within the development, and East 80th Street and East D Street abutting the development. Identified infrastructure needs, including streetlights poles, junction boxes, conduits, service cabinet, etc., shall be constructed. Infrastructure shall be located in the right-of-way or utility easements with appropriate inclusion in easement description.
36. All city of Tacoma Street Lighting requirements shall be met at the time of development. –**Advisory**—It is advisable to incorporate installation during the site development phase of development. The Applicant is advised to work with the Street Lighting and Signals Public Works Staff: Viki Marsten, vmarsten@cityoftacoma.org, 253-591-5556.

STORMWATER/WASTEWATER

- 37. Final design of the stormwater facilities must be in compliance with the Stormwater Management Manual in effect at that time and compliance may require modification to the lot layout and a reduction in the number of available building lots.
- 38. The information provided does not vest the Project to stormwater or wastewater requirements. The proposed development shall comply with all applicable requirements contained in the City of Tacoma Stormwater Management Manual, Side Sewer and Sanitary Sewer Availability Manual, City of Tacoma Right-of-Way Design Manual and Tacoma Municipal Code in effect at time of vesting land use actions, building, or construction permits.
- 39. Any utility construction, relocation, or adjustment costs shall be at the Applicant's expense.

40. The hydrology report and associated plans are considered preliminary and intended to determine the feasibility of compliance with the Stormwater Management Manual. The drawings and associated reports are not approved for construction and do not show compliance with the Stormwater Management Manual.
41. 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.
42. The Site is not presently served by the City stormwater drainage system. The City stormwater drainage system shall be extended to serve the onsite and offsite 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.
43. This Site is not presently served by the City's wastewater system. The City wastewater system shall be extended to serve the Project Site through the City's Work Order process.
44. Each new parcel shall have an individual side sewer connection to the public sanitary sewer. This may require re-routing 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.
45. 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.
46. A Work Order and a Site Development Permit covering the entire Project shall be approved prior to recording of the final plat. The construction of the improvements are required prior to final plat.
47. The proposal includes utilizing separate stormwater facilities to mitigate stormwater. The facility sizing and amount of allowed surfaces to be routed to the facility shall be shown on the construction plans. 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, pervious surfaces allowed in square feet and dimensions of each stormwater facility. Facility sections and details may be shown on construction permit plans.
48. A Covenant and Easement Agreement shall be required where private stormwater facilities are proposed.
49. 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.
50. All required site development map statements shall be inked on the Final Plat Map at the time of Submittal. (*See Exhibit C-12.*)
51. Any utility construction, relocation, or adjustment costs shall be at the Applicant's expense.

TACOMA POWER

52. All Tacoma Power Easement requirements must be provided for during the Preliminary Plat process and properly inked on the map prior to submission for final plat. Tacoma Power's easement requirements state no structures in the 10-foot frontage easement. Before submitting for final plat, confirm with Tacoma Power that all necessary easements have been added or modified, as necessary, on the plat map. (See comment memo Exhibit C-12.)
53. All city of Tacoma Street Lighting requirements shall be met at the time of development.
--**Advisory**--It is advisable to incorporate installation during the site development phase of development. The Applicant is advised to work with the Street Lighting and Signals Public Works Staff: Viki Marsten, vmarsten@cityoftacoma.org, 253-591-5556.

TACOMA WATER

54. Tacoma Water requires that the water main be installed on Site, sampled, and put into service prior to the submission for final plat. Please coordinate directly with Tacoma Water on questions or concerns.

B. ADVISORY COMMENTS FOR FUTURE PERMITTING (site development, building permit and the Final Plat submission).

In the PDS Report, the City included approximately seven pages of content under the immediately above heading as advisory comments. These are incorporated in this Decision in the same sense recounted in Finding of Fact 35 that the PDS Report is generally incorporated herein except to the extent that the PDS Report and this Decision differ, in which case this Decision controls. Advisory comments are not conditions and are more specifically not conditions that must be satisfied for the approval of the Plat or CAMDP to be granted, and therefore, they are not given space here in this Decision. Some advisory comments may become conditions in the development of the Project as that progresses. Omitting them here has no effect on that.

C. 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 **substantial** 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 hearings.
2. The approvals hereby granted are still subject to all applicable federal, state, and local laws, regulations, and ordinances. Compliance with such law, regulations, and ordinances are conditions precedent to the approvals granted and are a continuing requirement of the 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.

19. 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 CAMDP, subject to the conditions set forth herein above.

DATED this 26th day of November, 2024.



JEFF H. CAPELL, Hearing Examiner

NOTICE

RECONSIDERATION/APPEAL OF EXAMINER'S DECISION

RECONSIDERATION:

Any aggrieved person or entity having standing under the ordinance governing the matter, or as otherwise provided by law, may file a motion with the office of the Hearing Examiner requesting reconsideration of a decision or recommendation entered by the Examiner. A motion for reconsideration must be in writing and must set forth the alleged errors of procedure, fact, or law and must be filed in the Office of the Hearing Examiner within 14 calendar days of the issuance of the Examiner's decision/ recommendation, not counting the day of issuance of the decision/recommendation. If the last day for filing the motion for reconsideration falls on a weekend day or a holiday, the last day for filing shall be the next working day. The requirements set forth herein regarding the time limits for filing of motions for reconsideration and contents of such motions are jurisdictional. Accordingly, motions for reconsideration that are not timely filed with the Office of the Hearing Examiner or do not set forth the alleged errors shall be dismissed by the Examiner. It shall be within the sole discretion of the Examiner to determine whether an opportunity shall be given to other parties for response to a motion for reconsideration. The Examiner, after a review of the matter, shall take such further action as he/she deems appropriate, which may include the issuance of a revised decision/recommendation. (*TMC 1.23.140*).

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.