

**BEFORE THE LAND USE HEARING EXAMINER  
FOR THE CITY OF CAMAS, WASHINGTON**

Regarding an application by Lennar Northwest,	)	<b><u>FINAL ORDER</u></b>
Inc. for approval of a preliminary plat to divide	)	
37.27-acres into 122 lots in the R-10 zone at	)	<b>FILE# SUB21-01</b>
22630 NE 28 <sup>th</sup> Street, in the City of Camas	)	<b>(Camas Heights)</b>

**A. SUMMARY**

1. The applicant, Lennar Northwest, Inc., requests approval to divide the 37.27-acre site into 122 lots and stormwater, park, and open space tracts. The site is located at 22630 NE 28<sup>th</sup> Street; also known as tax parcel 173157-000, Section 21, Township 2 North, Range 3 East, Willamette Meridian (WM), Camas Washington (the "site").

a. The site and abutting properties to the north and northwest are zoned R-10 (Single Family Residential, 10,000 square foot average lot size). Properties to the west are zoned R-6 (Single Family Residential, 6,000 square foot average lot size). Properties to the east are in unincorporated Clark County and zoned AG-20 (Agriculture, 20-acre minimum lot size). Properties to the south, across NE 28<sup>th</sup> Street, are in unincorporated Clark County and zoned R-5 (Rural, five-acre minimum lot size).

b. The site is currently developed with a single-family residence, barn, and accessory structures. The applicant proposed to remove all the existing structures on the site and construct a new single-family detached dwelling on each of the proposed lots. All proposed lots comply with the minimum dimensional standards for the R-10 zone, as modified by the density transfer ordinance.

c. The site contains two wetlands; Wetland A in the southwest corner of the site and Wetland B in the southeast corner. The site also contains ten Oregon white oak trees, nine of which are over 20-inches in diameter and therefore, considered habitat of local importance pursuant to CMC 16.61.010.A.3.a. The applicant proposed to retain the majority of Wetland A and its buffer within proposed Tract A. Construction of required frontage improvements on NE 28<sup>th</sup> Street will impact the southern portion of Wetland A. The applicant proposed to fill Wetland B and mitigate for the wetland impacts by purchasing credits at a wetland mitigation bank. The applicant proposed to remove all but two of the regulated oak trees, which will be preserved in proposed Tract M and mitigate the impact of the tree removal by planting additional oak trees within proposed open space tracts on the site. The applicant proposed to remove all but two of the remaining mature, non-oak trees on the site.

d. Domestic water and sanitary sewer service will be supplied by the City of Camas. The applicant will collect stormwater from impervious areas on the site and convey it to a stormwater facility in proposed Tract B near the southwest corner of the site for treatment, detention, and discharge into the onsite wetlands in proposed Tract A.

e. The applicant will dedicate right-of-way and construct frontage improvements along the site's NE 28<sup>th</sup> Street frontage. The applicant will extend NE 87<sup>th</sup>

Street into the site from its existing terminus at the west boundary of the site. The applicant will extend a new public street into the site from NE 28<sup>th</sup> Street, proposed N. Farrell Street, which will intersect N 87<sup>th</sup> Avenue. The applicant will construct additional roads within the site, creating a system of looped roadways to provide access to the proposed lots. Steep topography on the site and existing development abutting the site preclude the extension of stub streets to abutting properties.

2. The City issued a Mitigated Determination of Nonsignificance ("MDNS") for the subdivision pursuant to the State Environmental Policy Act ("SEPA") on March 3, 2022. The SEPA determination was not appealed and is now final.

3. City of Camas Hearing Examiner Joe Turner (the "examiner") conducted a public hearing to receive testimony and evidence about the application. City staff recommended the examiner approve the preliminary plat subject to conditions. See the City of Camas Staff Report to the Hearing Examiner dated April 28, 2022 (the "Staff Report"), as modified by Exhibit 46. The applicant accepted those findings and conditions, as amended at the hearing and during the open record period, with certain exceptions. Seven persons testified orally in opposition to the application. Other persons testified in writing. Contested issues in the case include:

- a. Whether, and to what extent, the applicant is required to preserve the existing Oregon white oak trees larger than 20-inches dbh on the site;
- b. Whether, and to what extent, the applicant is required to preserve additional trees on the site to comply with the tree density requirement of CMC 18.13.051.A;
- c. Whether the applicant is required to preserve Wetland B;
- d. Whether the proposed development will cause or exacerbate flooding, high groundwater, and other stormwater issues on adjacent properties;
- e. Whether the proposed stormwater facilities are adequate to accommodate the volumes of runoff generated by the proposed development;
- f. Whether the applicant can collect and treat stormwater runoff from required improvements on the site's NE 28<sup>th</sup> Street frontage;
- g. Whether development on this site will cause or exacerbate erosion issues on and near the site;
- h. Whether construction activities on this site will cause prohibited impacts to surrounding properties;
- i. Whether traffic generated by the proposed development will exceed the capacity of area streets or create a hazard;

j. Whether adequate sight distance can be provided at the proposed N. Farrell Street/NE 28<sup>th</sup> Street intersection;

k. Whether the applicant can be required to provide crosswalks at the intersection of the NE 232<sup>nd</sup> Avenue and NE 16<sup>th</sup> Street;

l. Whether, and to what extent, the applicant is required to dedicate additional right-of-way along the site's NE 28<sup>th</sup> Street frontage;

m. Whether the proposed development density is consistent with the R-10 zoning that applies to the site;

n. Whether the applicant is required to install a fence or landscape buffer around the perimeter of the site;

o. Whether the proposed development complies with the "beveling" standards of CMC 18.09.080.B;

p. Whether the applicant can utilize the negotiated flexibility permitted by CMC 18.09.060.D;

q. Whether the applicant can be required to provide more open space on the site, consistent with the existing developments to the west;

r. Whether the proposed development is consistent with the state Growth Management Act ("GMA") and the comprehensive plan; and

s. Whether the applicant can be required to extend a utility easement to the east boundary of the site to serve future development on properties in the Country View Circle development;

4. Based on the findings and conclusions contained herein and the testimony and evidence in the public record, the examiner concludes that FILE# SUB21-01 (Camas Heights Subdivision), should be denied without prejudice, because the applicant failed to demonstrate that removal of seven of the nine existing mature Oregon white oak trees on the site and planting of two-inch caliper mitigation trees will substantially maintain the existing level of habitat functions and values on the site and ensure no net loss in critical area functions and values. CMC 16.61.030.A.

## **B. HEARING AND RECORD HIGHLIGHTS**

1. The examiner received testimony at a public hearing about this application on May 4, 2022. All exhibits and records of testimony are filed at the City of Camas. At the beginning of the hearing, the examiner described how the hearing would be conducted and how interested persons could participate. The examiner disclaimed any *ex parte* contacts, bias or conflicts of interest. The following is a summary by the examiner of selected testimony and evidence offered at the public hearing.

2. City planner Madeline Sutherland summarized the Staff Report and her PowerPoint presentation. She noted that the city received additional exhibits including: public comments, the applicant's response to the Staff Report, the applicant's response to the public comments, and the city's response to the applicant.

a. She noted that the site and abutting properties to the north and west of the site are in the city of Camas and zoned for urban residential development. Properties to the east and south of the site are in unincorporated Clark County and subject to rural zoning.

b. The site is currently developed with a single-family residence and accessory structures. There are trees along the north boundary of the site, surrounding the existing residence, and in the eastern portion of the site, including Oregon white oak trees. There are steep slopes in the northern portion of the site and wetlands in the southwest (Wetland A) and southeast (Wetland B) corners of the site.

c. The applicant submitted a revised plat, Exhibit 16. The applicant proposed to divide the site into 122 lots and tracts for open space and stormwater, subject to the density transfer provisions of the Code. The proposed lots range in size from approximately 7,200 square feet to 12,000 square feet. Proposed Lots 23 through 34 abut properties zoned R-6 and therefore, are subject to the beveling standards of CMC 18.09.080.B and must contain 8,000 square feet of lot area, the minimum lot size allowed in the R-10 zone.

d. The applicant proposed to fill Wetland B, which is a low functioning isolated wetland, and retain the majority of Wetland A and its associated buffer within proposed Tract A. Construction of required frontage improvements on NE 28<sup>th</sup> Street will cause minor impacts to Wetland A. The applicant will mitigate the impacts to Wetland A by enhancing the remainder of Wetland A and its buffer. The applicant will mitigate the impacts to Wetland B by purchasing credits at an off-site wetland mitigation bank.

e. CMC 18.13.051 requires that developments provide a minimum tree density of 20 "tree units" per net developable acre. Applicants may comply with this requirement by retaining existing trees, planting new trees, or a combination of both. The site contains 31.9 developable acres. Therefore, the applicant is required to preserve or plant a minimum 638 tree units on the site. Retention of existing mature trees in locations with healthy soils and native understory vegetation have priority. CMC 18.13.051.A. However, preservation is only required where it is feasible to do so. In this case the applicant proposed to remove most of the existing trees on the site, including all but two of the oak trees, which will be retained in proposed Tract M to accommodate required grading on this steeply sloped site. The applicant will plant additional trees on the site, including oak trees as mitigation for the removed oaks and to meet minimum tree density requirements. The applicant will be required to monitor the planted trees to ensure their survival and replace any trees that die.

i. The state Department of Fish and Wildlife (WDFW) recommended that the applicant exploring alternate designs to avoid impacts to the oak trees on the site. The applicant submitted an alternative plat, Exhibit 17, that preserves

Wetland B and additional oak trees. The alternative plan includes two cul-de-sac streets over 300 feet in length, which does not comply with the city's cross-circulation requirements. The alternative layout does protect some of the oaks, locating the trees on proposed lots. However, this would result in isolated areas of oak habitat surrounded by development. In addition, grading for the proposed streets and homes would impact the root systems of retained trees. The city determined that the alternative plan is not feasible.

f. The applicant proposed to retain 5.37-acres of the site as open space, including an improved park in proposed Tract J. The applicant requests negotiated flexibility regarding the lot dimensional requirements (reduced setbacks and increased lot coverage) in exchange for the protected open space as allowed by CMC 18.090.060.D.

g. She noted a typographical error on page 3 of the Staff Report. The finding regarding Wetland B should note 0.15 acres of impact and the purchase of 0.15 credits as mitigation for filling this wetland.

h. The city does not regulate or require affordable housing.

i. The proposed development will not contribute to sprawl. The city's goal of reducing sprawl is achieved by concentrating development within the urban growth area. The site is located within the city's urban growth area and zoned for urban development. The R-10 zoning requires larger lots and does not allow for multi-family development.

3. City engineering project manager Anita Ashton noted a typographical error on page 15 of the Staff Report. The applicant should be required to provide a maximum six-foot high fence around the proposed stormwater facility, not a minimum six foot fence as stated in the third paragraph on page 15.

a. In addition, the applicant's revised plat, Exhibit 16, changed the lot numbers of the double frontage lots abutting NE 28<sup>th</sup> Street and N Farrell Street. The finding addressing the double frontage lot requirements of CMC 17.19.030.D.6 should be modified to refer to Lots 111 through 115 and 117 through 120.

b. According to GIS records, the existing right-of-way on NE 28<sup>th</sup> Street is 60 feet wide. Therefore, the applicant must dedicate additional right-of-way to provide the minimum 37-foot half-width right-of-way required by the Code as well as to align with the rights-of-way provided by the Green Mountain Estates and Green Mountain PRD2 developments.

4. Planner Michael Andreotti, civil engineer John Meier, transportation engineer Jennifer Danziger, and attorney LeAnne Bremer testified on behalf of the applicant, Lennar Northwest, Inc.

a. Mr. Andreotti testified that the applicant will determine the location of required oak mitigation plantings during the final design of the project.

i. He argued that NE 28<sup>th</sup> Street has an existing 40-foot half-width right-of-way, which is wider than the code requires and wider than the right-of-way abutting the Green Mountain Estates development. Therefore, condition of approval 48 should be deleted.

ii. The applicant responded to concerns raised by neighbors in Exhibits 41 and 44. The proposed development considers all the goals and requirements of the Code, the comprehensive plan, and relevant agencies.

A. The applicant considered several alternative designs for the proposed development, including the cul-de-sac design noted by opponents, in an attempt to minimize impacts to the wetlands and trees, including oak trees, on the site. The cul-de-sac design will still impact Wetland B and most of its buffer.

B. Any existing oak trees that could be preserved with the cul-de-sac plan would be isolated single trees surrounded by development, which would not provide good habitat. The applicant will plant groups of oak trees within protected open space tracts on the site, which will provide more useful habitat in the long term. The proposed site design and mitigation comply with the Code and WDFW requirements.

iii. The applicant must remove most of the existing trees on the site in order to meet the density requirements of the code. Given the steep slopes on the site, extensive grading is required to construct roadways meeting the city's maximum road grade requirements. This grading will require the removal of most of the existing trees on the site, as grading will impact the roots of the trees, impacting their long-term health and survival. The applicant proposed to plant 600 trees of various species distributed throughout the site, which will provide greater benefit for residents compared to the existing trees, which are clumped in the northeast and southeast portions of the site.

iv. The proposed development will not increase the volume of stormwater runoff and flooding occurring on adjacent properties. The applicant will collect stormwater runoff from all impervious surface areas on the site and convey it to a detention facility in proposed Tract B. The applicant will treat runoff from roads, driveways, sidewalks, and other pollution generating surfaces. Runoff from roofs and other non-pollution generating surfaces will be routed directly to the detention facility. The applicant will release stormwater from the detention facility into wetland within Tract A at less than predevelopment rates, replicating existing conditions on the site.

b. Mr. Meier argued that the proposed stormwater plan meets the requirements of the Code.

i. The heavy clay soils on the site preclude infiltration of stormwater runoff. Therefore, the majority of stormwater falling on this site surface flows towards Wetland A, following the existing topography. Stormwater falling on the westernmost portion of the site surface flows west onto adjacent properties.

ii. The proposed development will not increase, and may reduce, the volume of surface runoff flowing onto adjacent properties. The applicant will collect

and detain stormwater runoff from all impervious areas on the site and convey it to a detention facility in proposed Tract B. In addition, the recommended conditions of approval require the applicant to install additional drainage improvements to collect runoff from roof and foundation drains and yards. Therefore, the proposed development will divert runoff that currently flows onto adjacent properties into the detention facility. The applicant will release detained stormwater into Wetland A at less than predevelopment rates, replicating the existing conditions on the site and maintaining the hydrology of Wetland A. By capturing and detaining surface runoff that currently flows to the west, the proposed development may reduce runoff and flooding problems on adjacent properties.

iii. Wetland A extends onto Mr. Conn's property west of the site, resulting in a high water table in this area of the site and on Mr. Conn's property.

iv. The applicant will install additional drains as necessary to capture water from springs and other subsurface flows, route it around the homes and into the ditch on NE 28<sup>th</sup> Street. The applicant's geotechnical engineer will review the final stormwater plans to ensure the system functions as intended.

v. The site is a former pasture and there are old drain tiles throughout the site, which may be causing some of the existing drainage issues noted by neighbors. The applicant will decommission those drain tiles during development on the site.

c. Ms. Danziger testified that adequate sight distance can be provided at the proposed intersection of N. Farrell Street and NE 28<sup>th</sup> Street, based on the applicant's sight distance survey. The topographic "hump" noted by neighbors does not impact sight distance at this intersection. The applicant will widen the section of NE 28<sup>th</sup> Street abutting the site, which increases the amount of sight distance required.

i. Speeding is an existing problem which the applicant has no ability to directly address. NE 28<sup>th</sup> Street is currently a rural roadway with limited development, which may encourage speeding. The city may reduce the posted speed limit on this street as additional development occurs in the area.

ii. The roads in this area have sufficient capacity to accommodate traffic generated by this development. The Green Mountain development is required to install additional transportation improvements in the area as traffic volumes increase, which will increase the capacity of existing roads and intersections.

5. Christina Manetti, president of the Garry Oak Coalition argued that the proposed development conflicts with the goals of the comprehensive plan and the Growth Management Act ("GMA").

a. The proposed development contributes to sprawl. The development is not located near transit, which conflicts with transportation goals. The development will not provide affordable housing.

b. There is a spring within Wetland B, which will continue to discharge groundwater after the wetland is filled, creating maintenance issues on homes constructed in that area of the site. Filling the wetland will not protect water and natural resources.

c. The proposed stormwater detention pond is not adequate to accommodate increased rainfall and runoff that will occur due to global warming.

d. The applicant should have been required to implement the cul-de-sac plan, which preserves more of the existing oak trees on the site. The city is valuing transportation and connectivity over oak habitat. The Lakewood examiner determined that all oak trees constitute protected habitat. Planting oak saplings will not compensate for the loss of the existing mature trees on the site. There is no guarantee that the planted trees will survive, especially given the impacts of climate change. The proposed tracts are too small to accommodate the number of oak tree plantings proposed. Mature oak trees have very large canopies. Oregon white oaks, also known as Garry Oaks, are critically imperiled habitat. Only three-percent of trees remain. "Professor Ptolemy" testified that every oak tree should be preserved, as they are a slow growing species and the habitat provided by existing mature trees is irreplaceable. Large trees draw up water, reducing the volume of stormwater runoff leaving the site

6. Joe Conn testified that he owns the 3.5-acre parcel abutting the southwest corner of the site. The proposed development will direct all stormwater runoff from the site onto Tracts A and B abutting his property and his residence. The site is at a higher elevation than his property. Therefore, excess runoff from the stormwater pond will overflow onto his property. He has problems with excess water on his property under existing conditions, including a high water table and surface runoff from the site. This development will make things worse. The applicant's revised plan, Exhibit 16, reduces the size of the detention pond, and locates it closer to his property. Increased runoff from the site is likely to increase the size of Wetland A, which extends onto his property.

a. Under existing conditions, flooding occurs on areas of the site where homes are proposed. The applicant should be required to accommodate that existing runoff. The subdivision to the west of the site had to install French drains to divert runoff away from homes.

b. There is a "hump" on the section of NE 28<sup>th</sup> Street east of his driveway that restricts sight distance. He cannot see oncoming vehicles traveling westbound on NE 28<sup>th</sup> Street. Similar problems will occur at the proposed site access, the intersection of N. Farrell and NE 29<sup>th</sup> Streets.

c. The applicant should be required to increase the size of the lots abutting his property consistent with the city's beveling requirements. The applicant proposed four small, 7,600 square foot, lots, abutting the north boundary of his 3.5-acre parcel.

d. He requested the examiner hold the record open for two weeks to allow an opportunity review and comment on the new information submitted by the applicant.



e. He supported approval of the alternative site design with cul-de-sac streets.

7. James Dunlop, a resident of Lakewood, argued that the city must consider the environment in addition to affordable housing. The applicant should be required to implement the cul-de-sac design in order to preserve more of the existing mature oak trees on the site. Planting of oak saplings is inadequate to compensate for the loss of the existing mature oak trees on the site. In addition, there is no guarantee that the planted oak trees will survive.

8. Bryan Bollman testified that residents of the Holt Homes development abutting the site have experienced severe drainage and flooding problems. The developer had to replace all of the existing drainage within that development and install French drains to accommodate surface and groundwater runoff. However, the development still floods. There is a class action lawsuit pending against that developer due to the flooding issues. Development on this site is likely to cause similar problems.

9. Tony Velasco testified that he lives within the Holt Homes development west of the site, abutting proposed Tract C. Holt Homes had to build a wetland on the parcel south of his property to detain excess stormwater runoff. Many of the residents in his development have sump pumps beneath their homes. The heavy clay soils in this area limit infiltration, resulting in increased surface runoff. This site is at a higher elevation than the Holt Homes development. Under existing conditions runoff from the site flows into his yard during heavy rain events. Development on this site is likely to exacerbate this problem, directing additional stormwater runoff onto his and his neighbor's properties, increasing the existing flooding problems. The existing drainage systems cannot accommodate existing water volumes and this development will make things worse.

a. There are springs throughout this area, including on the site. Wetland B is fed by springs and there are additional springs further uphill. Under existing conditions, all runoff from this site flows into Wetland A.

b. The existing hump on NE 28<sup>th</sup> Street limits sight distance to the east. Drivers cannot see westbound vehicles traveling at 40 to 50 mph until they are roughly 100 feet away. There have been accidents on this street due to this sight distance restriction. The applicant should be required to regrade NE 28<sup>th</sup> Street to eliminate this hump and improve sight distance.

10. Shannon Crouse argued that the proposed stormwater system is inadequate to accommodate the volume of runoff generated by the proposed development. She and her neighbors on N. Indigo Circle west of the site experience flooding issues under existing conditions and this development will make things worse. The applicant should be required to implement the alternative cul-de-sac plan in order to preserve Wetland B and the existing mature oak trees on the site. These features provide critical habitat.

a. The city has no plan for affordable housing.

b. The roads in this area cannot accommodate the additional traffic generated by this development. Many drivers exceed the posted speed limits and police enforcement is inadequate. She saw an accident on NE 28<sup>th</sup> Street caused by the limited sight distance on this street.

c. She questioned the negotiated flexibility regarding the setbacks and dimensions of the proposed lots.

11. Lynn Lyn argued that the applicant should be required to develop the cul-de-sac design in order to preserve Wetland B and the mature oak trees. The stormwater and flooding issues noted by residents of the adjacent development are a result of developers fighting against nature.

12. At the end of the hearing the examiner held open the public record for one week, until May 11, 2022, to allow all parties an opportunity to submit additional written testimony and evidence. The examiner held the record open for a second week, until May 18, 2022, to allow the applicant to submit a closing argument.

### **C. DISCUSSION**

1. City staff recommended approval of the preliminary subdivision plat, based on the affirmative findings and subject to conditions of approval in the Staff Report, as modified by Exhibit 46. The applicant accepted those findings and conditions, as modified, with certain exceptions.

2. The examiner concludes that the affirmative findings in the Staff Report, as modified, show that the proposed preliminary plat does or can comply with the majority of the applicable standards of the Camas Municipal Code (the “CMC”) and Revised Code of Washington. The examiner adopts the affirmative findings in the Staff Report, as modified, as his own, except to the extent they are inconsistent with the following findings.

3. There was considerable testimony regarding the existing Oregon white oak trees on the site. The site contains nine oak trees over 20-inches in diameter. The applicant proposed to remove all but two oak trees on the site.<sup>1</sup> The applicant proposed to retain trees 12317 (a 30-inch dbh oak tree) and 12318 (a 34-inch dbh oak tree) within proposed Tract M.

a. There is no dispute that these oak trees provide habitat and should be preserved where possible. The city identifies Oregon white oak trees with a diameter at breast height (“dbh”) greater than 20-inches as “habitats of local importance.” CMC 16.61.010. As WDFW noted:

Oregon white oaks are considered a priority species  
because they provide invaluable food and habitat for many

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<sup>1</sup> The applicant is also preserving two trees within proposed Tract G: Tree #12050, a 31-inch dbh Douglas fir and Tree #12050, a 38-inch dbh Douglas fir.

native Washington animals, including migratory birds (rufous hummingbirds, band-tailed pigeons, chipping sparrows, and more), nuthatches, woodpeckers, raptors, squirrels, and a wide array of invertebrates, including oak-obligates. Moreover, Oregon white oaks take decades to reach maturity and can live hundreds of years. This means that the ecological functions that old, mature oaks provide will be lost when these individuals are removed and will not be replaced for decades when saplings are planted for mitigation.

(Exhibit 34).

According to WDFW, single oak trees in an urban setting may be considered priority if they are particularly valuable to fish and wildlife, i.e., trees with many cavities (>5), have a large diameter at breast height [dbh], are used by priority species, or have a large canopy DBH). (Exhibit 10). WDFW notes that trees in “poor health” can provide “[c]ritical habitat features for wildlife, such as cavities for nesting birds, perches, and feeding platforms,” noting that CMC 16.61.010.A.3.a.iii designates “All Oregon White Oak snags unless determined by an arborist to be a hazard” as habitats of local importance. CMC 16.61.010.A.3.a.iii identifies oak snags as habitats of local importance unless they pose a hazard. Only three of the oaks on the site show evidence of poor health and the arborist’s report does not identify the trees as hazardous. (Exhibits 8 and 34).

b. The applicant submitted an alternative site plan that could preserve some of the large oak trees on the site. (Exhibit 17, the “cul-de-sac plan”). This plan shows five oak trees within the boundaries of proposed lots or tracts:

i. Tree 12171, a 22-inch dbh oak tree within Tract J east of Lot 86, tree 12347, a 27-inch dbh oak tree near the center of Lot 88, tree 12302, a 38-inch dbh oak tree on the boundary between lots 93 and 96, tree 12303, a 33-inch dbh oak tree near the northwest corner of Lot 96, and tree 12300, a 43-inch dbh oak tree in the western portion of Lot 98. In addition, tree 50011, a 30-inch dbh Grand Fir tree, and tree 50012, a 40-inch dbh Grand Fir tree, are located on proposed Lot 88 in close proximity to oak tree 12347. (Exhibits 8 and 17). According WDFW, oak trees in combination with fir trees can provide habitat.

ii. In addition, tree 12317, a 30-inch dbh oak tree and tree 12318, a 34-inch dbh oak tree are shown in proposed Tract L (Tract M of the “Updated Plat,” Exhibit 16) are proposed to be preserved with both the cul-de-sac plan (Exhibit 17) and the applicant’s updated plat (Exhibit 16).

iii. Tree 12301, a 34-inch dbh oak tree is within the proposed right-of-way for NE 68<sup>th</sup> Avenue and trees 12146, a 15-inch dbh oak tree, and tree 1220, a 26-inch dbh oak tree in proposed Tract F on the north boundary of the site.

c. Mr. Andreotti argued that the cul-de-sac plan would “[r]educe impacts to the existing wetland and its buffers but would still have significant impact to oaks”

(Exhibit 17), presumably due to grading for homes on the proposed lots. The applicant notes that some of the oak trees could be preserved by eliminating one or more of the proposed lots, but states “While this option would protect the trees, it would not provide quality oak habitat. If lots are removed, there would be single oaks, except for one pair, surrounded by roads and developed lots.” (*Id.*). The applicant argues that removing these oak trees and providing mitigation consisting of planting two-inch dbh oak trees within protected tracts on the site would provide “[m]ore valuable habitat by mitigating for removed oaks, rather than surrounding individual oaks by development and reducing their habitat value.” (*Id.*). The applicant further argued that:

The habitat provided by the oak mitigation will be significantly more beneficial than protecting individual oaks in the long term...The development will provide new, more beneficial oak habitat...[p]rotecting the existing oaks would create many individual oak trees separated by housing and roads. This is not valuable Oregon white oak habitat. By removing a majority of the Oregon white oak and providing on-site mitigation at a ratio between 3:1 and 5:1 of the existing oak canopy, much more valuable Oak habitat will be created.” (Exhibit 41)

Mr. Andreotti further argued that the option of removing individual lots to protect trees in the southeast corner of the site “[w]as not as viable as removing the trees and providing for habitat mitigation.” (Exhibit 58).

d. WDFW habitat biologist Amaia Smith argued that the applicant’s original preliminary plat “[d]oes not adequately try to avoid and minimize the impacts to these vital species. Moreover, the preliminary mitigation plan proposal does not account for all spatial and temporal loss derived from Oregon white oak habitat and will lead to a loss in the wildlife habitat functionality.” (Exhibit 34). She recommended the applicant “[e]xplore alternative designs to preserve the 43-inch DBH Oregon white oak tree since a tree of that size could be 200 years old. After reviewing the proposed mitigation for the Camas Heights Subdivision, I do not agree that avoidance and minimization efforts were fully explored prior to creating a development and mitigation plan.” (*Id.*).

e. The examiner finds that Ms. Smith’s testimony regarding the habitat value of the existing mature oak trees on the site versus the habitat value of the proposed mitigation plantings is more persuasive than Mr. Andreotti’s testimony. Ms. Smith is a professional habitat biologist with expertise in habitat assessment. There is no evidence in the record that Mr. Andreotti, a professional planner, has similar expertise. Therefore, the examiner must give more weight to Ms. Smith’s expert testimony and finds that the applicant failed to demonstrate by a preponderance of the evidence that the proposed development complies with CMC 16.61. Although the cul-de-sac plan may result in individual oak trees surrounded by homes, WDFW and the CMC both provide that individual trees with large diameters can provide habitat in the urban area. Based on Ms. Smith’s expert testimony, existing mature oak trees provide more habitat value than planted two-inch caliper saplings which will take many decades to mature and replace the habitat value provided by the existing trees on the site. Therefore, the examiner finds that

the applicant failed to demonstrate that the proposed development complies with the requirements of the city's critical areas code; specifically, that removal of seven of the nine existing mature Oregon white oak trees on the site and planting of two-inch caliper mitigation trees will substantially maintain the existing level of habitat functions and values on the site and ensure no net loss in critical area functions and values. CMC 16.61.030.A.

f. The examiner finds that it may be feasible to modify the cul-de-sac plan to preserve trees 12171, 12347, 12302, 12303, and 12300. Several of these trees are located near the boundaries of the proposed lots, which could allow them to be retained within required setback areas. In the alternative, the applicant could revise the lot layout, enlarging or eliminating some of the proposed lots to preserve additional mature oak trees on the site.

i. The examiner finds that it is not feasible to preserve tree 1220 in proposed Tract F due to the grading issues discussed below.

ii. It may be feasible to modify the alignment of NE 85<sup>th</sup> Avenue and "D" Street to preserve Tree 12301. However, the topography and required grading in this area may preclude retention of this tree.

iii. Tree 12146, an individual oak tree measuring 15-inches dbh, is exempt from regulation. CMC 16.63.010.A.3.a.i only regulates individual Oregon White Oak trees measuring twenty-inches dbh or more.

g. The Code prohibits cul-de-sac streets longer than 300 feet in length, except where "[t]opographic or other physical constraints prohibit achieving this standard, in which case "[a] direct pedestrian or bicycle connection shall be provided to the nearest available street or pedestrian oriented use." CMC 17.19.040.B.10.b.ii. However, CMC 17.19.040.B.10.b.iii authorizes the approval of a deviation to exceed from these requirements where "[t]he application of the standard if impracticable due to topography, environmental sensitive lands, or existing adjacent development patterns."

i. The applicant argues that cul-de-sacs, are less than ideal for emergency vehicle circulation and access and could potentially impact overall public safety. (Exhibit 10). However, the city has approved longer cul-de-sac streets in many other developments where topography, sensitive lands, and other constraints preclude construction of street connections. There is no evidence in the record that the cul-de-sac streets shown in Exhibit 17 pose an unusual hazard.

ii. In addition, it may be feasible to revise the cul-de-sac plan to connect NE 85<sup>th</sup> Avenue to 'D' Street or NE 86<sup>th</sup> Avenue, reducing the length of NE 86<sup>th</sup> Avenue and eliminating the issue with an over length cul-de-sac street. Such a street connection would follow the existing topographic lines, potentially reducing the amount of grading required. This street connection would require filling of Wetland B, which the applicant proposed with the original site plan. However, filling of the wetland would allow the applicant to develop additional lots in the southeast portion of the site,

mitigating lots removed to protect the oak trees discussed above. As discussed below, filling Wetland B is consistent with the Code.

iii. The applicant further notes that CMC 17.19.040.B.10.c provides “While it is important to minimize the impact to the topography from creating an integrated road system, improved site development and circulation solutions shall not be sacrificed to minimize the amount of cut and fill requirements of the proposal.” However, the examiner finds that the cul-de-sac plan is sacrificing circulation for more than just minimizing cut and fill. This plan is necessary to protect the locally important habitat provided by the large mature oak trees on this site.

h. The examiner finds that it is feasible to modify the preliminary plat to retain some, if not all, of the mature oak trees in the southeast corner of the site and thereby comply with CMC 16.61.030.A. However, the examiner cannot adopt conditions of approval to ensure compliance with this provision without imposing a specific design for the development, which would exceed the scope of the examiner’s authority. Therefore the examiner denies the application without prejudice so the applicant can re-apply with an alternative design that preserves more of the large mature oak trees on the site.

4. CMC 18.13.051.A requires the applicant to provide a minimum 20 “tree units”<sup>2</sup> per acre consisting of existing trees, replacement trees or a combination of existing and replacement trees. CMC 18.13.052.A provides that, where feasible, the retention of existing mature trees should be prioritized over replacement trees. CMC 18.130.052.C requires planting of new trees where, among other things, the existing trees “[a]re inappropriate for preservation...”

a. In this case the examiner finds that, apart from the trees discussed above, it is not feasible to retain the majority of the existing mature trees on the site, due to the extent of grading required to overcome the steep slopes in the northern portion of this site. Most of the existing trees on the site are located in the steepest portions of the site, along the north and east boundaries of the site. (See plan sheet 2.0 in Exhibit 14). Therefore, except for the oak trees preserved in Tract M, the two Douglas fir trees preserved in Tract G, and the additional oak trees discussed above, the existing trees on the site are not appropriate for preservation and planting of new trees is appropriate. CMC 18.130.052.C.

i. Construction of roads on this site will require relatively deep cuts in the steeper slopes in the northern portion of the site. Additional grading beyond the road right-of-way is needed to avoid unstable steep slopes while transitioning slopes to meet existing grades adjacent to the site. (See plan sheets P4.0 and P4.1 in Exhibit 14). The proposed road layout is necessary to provide access to the proposed lots and meet the

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<sup>2</sup> CMC provides:

“Tree Unit” is a unit of measurement based upon the size of the diameter of the tree measured at the breast height (“dbh”). New trees are given a value of one (1) Tree Unit, as they must be a minimum of 2” dbh when planted. Tree Unit values are summarized in [Table 2 of CMC 18.130.015].”

city's connectivity requirements. Additional grading will be needed to construct homes on the proposed lots. This grading will require the removal of most of the existing mature trees on the site. Although it may be feasible to adjust the grading to avoid some trees, grading will still impact the roots those trees and expose the trees to greater wind impacts, reducing the long-term viability and stability of trees retained on the site. (Exhibit 8).

(A) Mr. Miles suggested that the applicant build steeper roads on the site as allowed by CMC 17.19.040.12.b to reduce the extent of grading required in the north portion of the site and allow the preservation of the existing trees in proposed Tract F. (Exhibit 39). However, it is not feasible to do that. CMC 17.19.040.12.b requires the applicant to construct roads on this site with a maximum 12-percent grade. CMC 17.19.040.12.b.ii authorizes grades up to 15-percent under certain circumstances. However, this section prohibits steeper grades on road sections where driveway access is provided. In this case, lots with driveway access are proposed on both sides of N. Hollingsworth, N. Garver, and N. Farrell Streets. Therefore, CMC 17.19.040.12.b.ii prohibits road grades more than 12-percent on these roads.

(B) In addition, the applicant considered the feasibility of increasing the grades of these roads above 12 percent, despite CMC 17.19.040.12.b.ii. However, the applicant determined that this would not reduce the required grading sufficiently to allow the applicant to preserve the existing trees within Tract F. (Exhibit 50). There is no evidence in the record to the contrary.

ii. CMC 14.02.050 and SWMMWW, cited in Exhibit 56, relate to stormwater and erosion control, not tree preservation or oak habitat.

b. The applicant will be required to plant additional trees on the site to mitigate for those removed and ensure compliance with the minimum tree density requirements of CMC 18.13.051.A. The applicant is required to monitor the planted trees and replace any that do not survive. CMC 18.13.050.H and 16.51.180.

5. The examiner finds that the proposed filling of Wetland B is allowed by the Code.

a. As discussed in Exhibit 10, the Critical Areas Report, this wetland is a small (0.15 acres in size) isolated Category IV wetland, not associated with a fish-bearing stream or shoreline wetland, and it does not contain habitat of local importance. The wetland is dominated by non-native vegetation, lacks woody vegetation, and provides low overall function.

b. CMC 16.53.050.D.1 require applicants to consider alternatives that avoid or minimize impacts to wetlands. For Category III and IV wetlands, avoidance is required unless it will result in a project that is inconsistent with the city of Camas comprehensive plan. CMC 16.53.050.D.1.a.ii.

i. In this case, filling the wetland is necessary to comply with the city's street connectivity and density goals. The applicant cannot provide access to

developable lands in the southeast portion of the site without constructing streets across Wetland B. Grading necessary for these roads will further impact the wetland. The applicant could reduce, but not eliminate, impacts to the wetland itself by extending cul-de-sac streets as shown in Exhibit 17. However, this design would eliminate most of the wetland buffer and would not comply with connectivity and cross-circulation requirements. Grading for the cul-de-sac roadways, which is not shown in Exhibit 17, would likely result in further impacts to this wetland. In addition, as discussed above, the applicant should be required to extend proposed NE 85<sup>th</sup> Avenue across the wetland to intersection proposed NE 86<sup>th</sup> or 'D' Streets.

ii. Even if a reduced wetland could be preserved, the examiner finds that unavoidable impacts to the wetland and buffer would largely eliminate the wetlands functions. Roads and residential development surrounding the wetland would cut off stormwater flow to the remainder of the wetland, causing the remaining wetland to disappear. Filling the wetland and mitigating with the purchase of mitigation credits at an off-site wetland mitigation bank as allowed by CMC 16.53.050.D.5.a is the only way to ensure that this development results in no net loss of wetland acreage and functions.

6. The examiner finds that development on this site will not cause or exacerbate flooding, high groundwater, and other stormwater issues on adjacent properties. The proposed development will increase the amount of impervious surface area on the site and therefore the rate of stormwater runoff. However, the applicant is required to collect storm water from all areas of the site and convey it to a stormwater facility in proposed Tract B for treatment and detention. The applicant will discharge treated stormwater to Wetland A at less than pre-development rates. The proposed detention facility will ensure that the development does not increase the rate of stormwater runoff leaving the site.

a. The applicant is not required to remedy existing high groundwater and runoff issues on adjacent properties. The applicant is only prohibited from making things worse, increasing or concentrating stormwater runoff onto adjacent properties, or from blocking surface runoff that currently flow onto the site. The applicant will be required to grade the site direct runoff towards stormwater inlets and or install pipes or other systems to collect runoff from all areas of the site and convey it to the stormwater detention facility. City engineering will review the applicant's final design to confirm compliance with applicable requirements.

b. The proposed stormwater facility will replicate existing conditions. As discussed in Exhibit 5, the clay soils on the site limit infiltration. Based on the existing topography, all stormwater falling on the site currently flows from northeast to southwest, into Wetland A, which then overflows into the ditch on the north side of NE 28<sup>th</sup> Street. (See Figure 1 of Exhibit 5). The applicant will replicate this existing condition, collecting, and detaining stormwater runoff in the proposed on-site stormwater facility prior to release into Wetland A at less than predevelopment rates. The applicant is required to design the stormwater system to follow the existing drainage patterns in the area. Therefore, the applicant cannot direct stormwater to the west as suggested by Mr. Conn.



c. Mr. Conn expressed concern that the proposed stormwater facility will increase the volume of water flowing onto his property west of the stormwater pond, increasing existing groundwater and surface ponding issues on his property. As discussed in Exhibit 10, Wetland A extends onto Mr. Conn's property. Based on the wetland boundaries shown in Figure 8A of Exhibit 10, the wetland appears to impact most Mr. Conn's property south of his residence. Therefore, high groundwater and ponding can be expected in that area. Water discharged from the stormwater pond into Wetland A will flow onto Mr. Conn's property within the portion of Wetland A that extends onto his property as it does now. However, as discussed above, the applicant will discharge runoff into the wetland at less than predevelopment rates, replicating existing conditions. The proposed development will not increase the amount of rainfall on the site and therefore, the amount of runoff entering Wetland A. However, the proposed development will cut off surface water that currently flows into Mr. Conn's property from the north. (See Figure 1 of Exhibit 5). The applicant will collect that runoff and divert it around the Conn property, into the stormwater facility and then to Wetland A.

d. Mr. Conn expressed concerns that water will infiltrate through the bottom of the stormwater pond, increasing groundwater elevations on his property. However, as noted in Exhibits 5 and 41, infiltration rates on this site are negligible due to the clay soils and high groundwater on the site.

e. As noted in Exhibit 10, hillside seeps were observed within Wetland B, but there is no evidence of springs on the site. The applicant can install drains to collect this water and convey it around the proposed homes. In addition, the applicant will design drainage systems for the homes on the site to direct water away from foundations and crawlspaces. As the applicant notes, the geotechnical engineer will continue to be involved through final design and construction to help ensure that groundwater does not become an issue. (Exhibit 58).

7. Opponents argued that the proposed stormwater facilities are not adequate to accommodate the volumes of runoff generated by the proposed development. However, there is no substantial evidence in the record to support this assertion. The applicant's engineers designed the stormwater facility to comply with the requirements of the Stormwater Management Manual for Western Washington (the "SWMMWW") and the city engineer reviewed and concurred with the proposed design. Unsupported public testimony is insufficient to overcome the expert testimony of the engineers for the applicant and the city. The applicant will refine the design of the on-site stormwater facilities through the final engineering review process, based on the final design of the development. The city engineer will review the final stormwater design to ensure compliance with all applicable regulations.

a. The applicant is required to design the stormwater facility to accommodate runoff from 50-year storm events. Runoff from larger storm events will overflow the facility, following the natural drainage path. The examiner cannot require the applicant to provide additional storage beyond what the Code requires. The applicant should be required to design an overflow system to direct stormwater into the natural drainage path and limit erosion.

8. The applicant will be required to accommodate stormwater runoff from newly created impervious areas on NE 28<sup>th</sup> Street. The applicant will replace the existing ditch on the north side of this street with gutters, drains, and pipes to collect and convey stormwater flows, including existing upstream runoff that currently flows through the existing ditch. The applicant cannot direct runoff from NE 28<sup>th</sup> Street to the stormwater facility within Tract B, as this facility is at a higher elevation than the street. As noted in Exhibit 41, the applicant will convey stormwater runoff from NE 28<sup>th</sup> Street to the existing stormwater system in the section of NE 28<sup>th</sup> Street west of the site for treatment and detention. The applicant will be required to demonstrate that the existing off-site stormwater system has sufficient capacity to accommodate increased runoff from this development. That is required by proposed condition 41.a in the Staff Report.

9. The applicant must prepare and the city approve an erosion control plan for the site. See proposed condition 44 in the Staff Report and CMC 14.06. The plan must address erosion during wet weather and dust control during dry weather. The applicant will be required to install erosion control measures on the site consistent with the approved plan prior to undertaking any land disturbing activity on the site and maintain those measures until construction is completed.

a. The applicant will be required to design and install a construction entrance to the site as part of the approved erosion control measures. The applicant proposed to locate the construction entrance on NE 28<sup>th</sup> Street in the location of proposed N. Farrell Street. (Exhibit 41). Most of the construction traffic will utilize this access. However, some construction vehicles and equipment may need to utilize the existing shared driveway on Mr. Conn's property, assuming such use is allowed by the current road use easement. The examiner has no authority to review or interpret the road use easement, which is a private agreement between the parties to the easement agreement. Mr. Conn should consult with his legal representative to advise him of his rights under the terms of the easement.

b. Construction on this site will temporarily cause increased noise, dust, traffic, and other impacts on adjacent roads and properties. The City Code and state law regulate construction activities, including requirements for dust and erosion control, construction vehicle access, road closures etc., which will limit impacts on surrounding residents. The city will inspect the site during construction to ensure ongoing compliance with applicable requirements. Compliance with these regulations will not eliminate all potential impacts. However, the examiner finds that, while such impacts may occur, they are not significant enough to require specific limitations on construction other than those imposed by State law and the Code. The examiner encourages residents to contact the city if excessive impacts occur.

c. CMC 9.32.050 regulates noise in the city of Camas. CMC 9.32.050.A.5 prohibits construction noise between 7:00 p.m. and 7:00 a.m. Monday through Friday, 5:00 p.m. and 7:00 a.m. on Saturdays, and anytime on Sundays or the following holidays: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, or Christmas Day.

10. Traffic generated by this development will increase the volume of traffic on streets in the area. That increased traffic will be perceptible to area residents. However, engineering staff for the city and county (Exhibit 31) reviewed the applicant's traffic analysis and determined that it will not exceed the capacity of streets nor create a hazard. There is no substantial evidence to the contrary. Neighbor's unsupported concerns about increased traffic are not substantial evidence sufficient to overcome the expert testimony of the traffic engineers for the city, county, and applicant.

a. As Ms. Danziger noted, the Green Mountain developer is required to install additional transportation improvements in the area as traffic volumes increase, which will increase the capacity of existing roads and intersections.

b. Mr. Miles argued that the crash rate at the NE 28<sup>th</sup> Street/NE 232<sup>nd</sup> Avenue intersection is 0.93 collisions per million entering vehicles ("mev") based on crash data from the last three years. (Exhibit 10). County engineering staff were unable to replicate the crash data cited by Mr. Miles. (Exhibit 45). However, assuming Mr. Miles analysis is correct, the crash rate does not meet the accepted action level of 1.0 crashes/mev. In addition, a crash rate of 1.0 crashes/mev is only an indicator that a potential geometric or operational issue may exist and that additional review of the intersection is warranted. As Mr. Jardin noted, the one reported crash he noted during the past three years was due to an inattentive driver that did not obey the traffic control. These types of crashes cannot typically be mitigated. (Exhibit 45). The city should continue to monitor this intersection to determine if the crash rate continues to rise and whether additional improvements are warranted. However, this applicant cannot be required to fund those improvements, as this development will not create the need for such improvements. If improvements are needed, it is due to existing conditions and traffic generated by all existing and proposed development in the area, not just the additional traffic generated by this subdivision. The examiner has no authority to impose a development moratorium as Mr. Miles suggested. (Exhibit 56). Applicants for future developments will be required to review traffic conditions in the area and additional mitigation necessary to alleviate impacts from traffic generated by their development.

i. Neighbor's noted numerous "near misses" where accidents could have occurred but were avoided. However, the action rate of 1 crash per million entering vehicles is based on reported crashes. There is no substantial evidence that this location experiences an unusually high number of unreported crashes. The examiner finds that the reported crash history is the best evidence available regarding the crash history for this area.

c. The additional traffic generated by this subdivision may pose an increased risk for drivers, cyclists, and pedestrians in the area. Higher vehicular traffic volumes create a marginally higher risk for pedestrians and bicyclists. It may well warrant a heightened degree of attentiveness to traffic when driving, cycling, or walking in the neighborhood. However, those risks are consistent with the location of the site in the urban area where city plans call for the sort of development being proposed. Reasonably prudent drivers will observe the posted speed limit and other applicable traffic regulations. Unfortunately, not all drivers are prudent. However, there is no evidence that the development proposed in this application will contribute a

disproportionate share of imprudent drivers. If necessary, the city can address issues of speeding by providing increased enforcement of traffic laws on all streets in the area, reducing posted speed limits, or installing traffic controls on area roads, if warranted based on actual traffic conditions. Area residents can petition the city to review the need for such mitigation measures. However, speeding is an existing problem, which the applicant cannot be required to remedy. The applicant has no authority to reduce the posted speed limit.

11. The applicant's engineer surveyed the site and determined that adequate sight distance will be available at the proposed N. Farrell Street/NE 28<sup>th</sup> Street intersection. This determination is based on an on-site survey in accordance with the requirements of the American Association of State Highway and Transportation Officials ("AASHTO") manual. Based on the posted speed limit and the design of the proposed roadway, with a center turn lane, 590 feet of intersection sight distance and 440 feet of stopping sight distance is required at this intersection.<sup>3</sup> The applicant's engineer determined that more than 600 feet of sight distance is available in both directions at this intersection, in excess of minimum requirements. There is no substantial evidence to the contrary.

i. Neighbors argued that a "hump" in NE 28<sup>th</sup> Street limits sight distance at existing intersections on NE 28<sup>th</sup> Street when looking to the east. Based on the applicant's sight distance survey, this "hump" has no impact on sight distance at the proposed site entrance. To the extent it affects other properties in the area, it is an existing condition which this development did not create or exacerbate. Therefore, the applicant cannot be required to remedy this problem.

12. Mr. Conn argued that crosswalks are needed at the intersection of the NE 232<sup>nd</sup> Avenue and NE 16<sup>th</sup> Street, because residents must cross the street to access their mailboxes. However, the need for crosswalks and other improvements is one that exists generally along streets in the area and is a need to which all adjoining properties contribute, not just the development proposed in this case. The city cannot require this applicant to bear the cost of such additional improvements, because the costs would exceed the roughly proportional impact of the proposed development and it is a need to which all the properties in the area contribute.

13. There is a dispute regarding the width of the existing NE 28<sup>th</sup> Street right-of-way abutting the south boundary of the site.

a. As discussed in the Staff Report, NE 28<sup>th</sup> Street is a three-lane arterial which requires a total right-of-way width of 74-feet.

b. Staff argue that the existing right-of-way is only 60 feet wide. Therefore, the applicant should be required to dedicate an additional seven feet of right-of-way to provide a minimum 67 feet of half-width right-of-way along the site frontage to accommodate required half-width street improvements. In addition, staff argued that the

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<sup>3</sup> As discussed in Exhibit 7, intersection sight distance is intended to provide sufficient line of sight to allow a driver to turn onto the intersecting roadway without impeding traffic flow. Stopping sight distance is the minimum distance needed to allow an oncoming driver to see a hazard in the roadway and come to a complete stop to avoid a collision.

northern right-of-way line on this site must align with the north right-of-way line along the frontage of the existing Green Mountain Estates and the Green Mountain PRD developments west of the site. (Staff Report and Exhibits 43 and 44).

c. The applicant argues that the existing right-of-way half-width is 40 feet, which exceeds the required 37-foot half-width for the roadway section. Therefore, no dedication is necessary to construct the required half-width improvements.

d. The examiner finds that these issues can be resolved through the final engineering review process. The applicant should be required to demonstrate to the satisfaction of the city that the existing half-width right-of-way is at least 37 feet wide or dedicate additional right-of-way as necessary to meet city requirements for a three-lane arterial roadway. In addition, the applicant should be required to dedicate additional right-of-way as necessary to accommodate a reasonable transition between the existing right-of-way and road improvements west of the site and those on the site's frontage. If this application is approved, proposed condition 48 in the Staff Report should be modified to that effect.

14. The applicant is required to construct half-width improvements consisting of 23-feet of new full-depth road section, curb, and gutter, a 7.5-foot planter strip, and a six-foot wide detached sidewalk on the north side of NE 28<sup>th</sup> Street abutting the site prior to final plat approval and the construction and occupancy of homes on the site. A condition is warranted to that effect if this application is approved.

15. The examiner understands residents' displeasure with the proposed development, but this development was foreseeable and is in the broader public's interest. The site and abutting properties to the north and west are located within the city's Urban Growth Area ("UGA") boundary and zoned for urban development. As large lots are sold, presumably they will be developed to the maximum extent allowed. Although the proposed lots are smaller than some adjacent lots, the uses are not incompatible. The applicant is proposing to provide single-family detached and attached residences adjacent to existing single-family development.

a. Even if the subdivision will have an adverse impact on property values -- and there is no substantial evidence to that effect in the record --- protection of property values and consistency with adjoining development are not relevant to the applicable State or City standards. The examiner must base the decision on the laws of the City of Camas and Washington State.

b. There is no dispute that the proposed development will impact existing views from and the privacy of adjacent residences. What is now largely an open field will be developed with 122 new homes. But the Code does not prohibit development from having an impact on views and privacy, other than a 35-foot height limit and applicable setback requirements. The intensity of the proposed development is consistent with the current zoning of the site.

c. The applicant is not required to install fencing, landscaping, or other buffering to screen the development from adjacent properties. CMC 18.35.055

establishes standards for landscaping and screening. Based on Table 1 of that section, screening and buffering are not required for single-family residential development. The applicant or future residents may choose to construct fences to screen the site or individual lots from abutting properties, but the Code does not require that the applicant provide such screening in this case.

d. There is no basis for concluding that residents of the proposed subdivision will pose a hazard to the use of abutting properties or will be reasonably likely to trespass on abutting properties. The proposed development will attract additional people to the immediate area, which may increase the amount of trespass, litter, vandalism, and other illegal activities. However, the examiner finds that there is no substantial evidence in the record that the future residents of this development are any more or less likely to engage in nuisance or illegal activities than other people. The owners of abutting properties have adequate legal (civil) recourse to address any trespass problems that may arise. The owners of surrounding properties are free to install a fence along on their properties to reduce the potential for trespass and enhance privacy.

16. The proposed development complies with the “beveling” standards of CMC 18.09.080.B, which require lots abutting a higher density residential zone designation be developed at the minimum size allowed by the site zoning and lots abutting a lower density zone be developed at the maximum size allowed.

a. In this case, the site and abutting properties to the north and southwest (Mr. Conn’s property), are all zoned R-10. This includes proposed Lots 32 through 34 abutting the west boundary of the site and Lots 5 through 8 abutting the north boundary of Mr. Conn’s property. The beveling standards do not apply to abutting properties in the same zone, regardless of current difference in lot sizes. The Code assumes that larger lots will eventually redevelop consistent with current zoning. Lots 34 through 38 do not abut properties to the north; they are separated by proposed Tract F. However, even if these lots were abutting the north boundary, they are not subject to beveling requirements, because the abutting lands are also zoned R-10.

b. Proposed lots 23 through 31 abut properties zoned R-6, a higher density zone. Therefore, the applicant is required to develop these lots with 8,000 square feet of area, the minimum lot size allowed by the R-10 zone.

i. The west boundary of Lot 8 does not abut the R-6 zoned properties west of the site. Proposed Tract C is located between this lot and the west boundary of the site. Therefore, the beveling requirements do not apply to this lot.

c. Lots on the east boundary of the site abut lands in unincorporated Clark County that are zoned AG-20 (Agriculture, 20-acre minimum lot size). The AG-20 zone is not a “residential zone designation.” Therefore, lots on the east boundary of the site are not subject to beveling requirements.

17. The applicant proposed to set aside one-half acre or more of contiguous land for the protection of a critical area, proposed 2.77-acre Tract A. Therefore, pursuant to CMC 18.09.060.D, the applicant is entitled to negotiated flexibility regarding the lot size,

lot width, lot depth, building setback, or lot coverage standards of CMC 18.090.040 Tables 1 and 2. The applicant proposed the following changes to the dimensional standards:

- Increase the lot coverage to 50-percent,
- Decrease the front and rear yard setbacks to 15 feet,
- Change the garage front yard setback to 20 feet,
- Reduce the side yard setback for lots 12,000 square feet or larger from ten feet to five feet.

The Code does not provide any standards for review and approval of such negotiated flexibility, beyond a prohibition on such changes, beyond a prohibition on exceeding the maximum density of the overall site. The city approved the proposed modifications. To the extent the examiner has the authority to reconsider the city's approval,<sup>4</sup> the examiner finds that the proposed changes are reasonable, based on the findings in the Staff Report. The applicant is not seeking a variance. Therefore, the standards of CMC 18.45 are inapplicable.

a. Contrary to the statement in the Staff Report, Footnote 2 of CMC 18.09.040 Table 2 requires that the garage be located five feet behind the front of the dwelling. The Staff Report mistakenly reverse this requirement, providing "CMC 18.09.040 Table 2, Footnote 2, requires the front of the dwelling to be located 5 feet behind the garage." (page 17 of the Staff Report). The 15-foot front yard setback and 20-foot garage setback proposed by the applicant are consistent with this requirement.

18. Neighbors argued that the applicant should be required to provide more open space on the site, consistent with the existing developments to the west. However, as the applicant notes in Exhibit 41, those development sites contained more critical areas than this site. Therefore, those developers chose to develop their parcels using the Planned Residential Development (PUD<sup>7</sup>) process provided by CMC 18.23, which requires the preservation of more open space in exchange for flexibility of development standards. In this case, the applicant proposed to provide 5.37-acres of open space on the site, including the majority of Wetland A and its buffer within Tract A, open space in Tracts C, D, F, G, H, and M, and a park and playground within Tract J. Tracts A, F, G, and H will also provide opportunities for preservation of existing trees and planting of mitigation trees. In addition, this and other residential developments in the city will pay Park Impact Fees ("PIFs") which the city can use to purchase and develop additional park, trail, and open space areas in the city, consistent with the city's Park, Recreation and Open Space ("PROS") plan. The PROS plan does not identify any planned trails on this site.

19. The examiner finds that the proposed development is consistent with the state Growth Management Plan ("GMA") and the comprehensive plan.

<sup>4</sup> CMC 18.090.060.D provides "The city may provide additional or negotiated flexibility...The city may also provide the landowner with:

1. A credit against park and open space impact fees per Chapter 3.88; or
  2. Cash from the parks and open space impact fee fund or other public fund."
- (Emphasis added).

a. The site is located within the Camas Urban Growth Area (“UGA”) and the Camas city limits, where urban development is planned and expected. GMA Goal 1.

b. The proposed development will not contribute to urban sprawl. GMA Goal 2. The goal of reducing sprawl is achieved by concentrating development within UGA. The site is located within the city’s UGA and zoned for urban development. The city’s zoning map and code provide a variety of residential zones which allow for a variety of housing sizes, styles, and prices to meet all levels of housing demand.

i. The city’s lowest density zoning designation is R-15, which “[i]s intended for single-family dwellings with a minimum density of two to three dwellings per acre. This zone will permit the rural character of a number of existing neighborhoods to be maintained.” CMC 18.05.040.A.

ii. The city’s highest density zoning designation is the MF-C overlay zone, which allows up to 24 dwellings per acre. CMC 18.09.050. The MFC zone “[i]s an overlay zone, which is intended to increase the housing supply and style choices for smaller, single-level dwellings.” CMC 18.050.040.H.

iii. The city generally applies lower density zones that allow larger lot sizes in areas with steep slopes and other natural features to allow flexibility in site design. Higher density zones are generally located adjacent to parks and multi-modal transportation systems. CMC 18.050.040.G.

c. GMA Goal 3, which encourages efficient multi-modal transportation systems cannot be implemented by individual developments. Implementation of this goal is up to the city. However, this application will construct additional transportation improvements, including streets within and abutting the site, as well as paying Transportation Impact Fees (“TIFs”) which the city can use, in combination with TIFs from other developments, to fund additional transportation improvements in the city.

d. This development is consistent with GMA Goal 4 by providing additional housing opportunities and styles consistent with the current R-10 zoning of the site.

i. The Code does not regulate or define “affordable housing” beyond CMC 18.09.080.c, which allows a density bonus for residential development on lands owned or controlled by a religious organization, CMC 3.86, which allows a tax exemption for multifamily housing meeting specified criteria for affordable housing, and CMC 18.29, which identifies mobile home parks as a source of affordable housing.

e. This development is consistent with GMA Goal 5. This development has and will generate jobs in planning, consulting, and construction. Residents of this development will also generate additional demand for goods and services in the area, supporting the continuation and expansion of existing businesses as well as development of additional businesses on underdeveloped lands zoned for that commercial uses.



f. Based on the findings included or incorporated into this Final Order, this development complies with nearly all applicable provisions of the code, the comprehensive plan, and state law. Denial of this application despite full compliance would result in a taking of the applicant's property rights under the fifth amendment of the U.S. Constitution. Approval of this application is consistent with GMA Goal 6.

g. Future development on this site will require approval of additional permits by the city and state, consistent with GMA Goal 7.

h. This site is not identified as resource lands. It is planned and zoned for urban residential development. Therefore, GMA Goal 8 is inapplicable.

i. The proposed development is consistent with GMA Goal 9. As discussed above, the applicant will be required to retain most of the mature Oregon white oak trees on the site as well as the majority of Wetland A. As discussed above, it is not feasible to preserve additional trees or Wetland B. The applicant will plant additional trees on the site and purchase wetland credits to mitigate for these unavoidable impacts. In addition, the applicant will provide areas of open space and a park for passive and active recreation as well as paying PIFs which the city can use to develop additional parks.

j. The proposed development will protect the environment and the state's high quality of life. GMA Goal 10. No significant pollution generating activities are proposed on the site, beyond emissions from vehicle traffic. The applicant will protect water quality and quantity by collecting, treating as necessary, and detaining all stormwater runoff from the site consistent with the requirements of the Code.

k. The city provided extensive opportunities for citizen participation during the process of adopting the comprehensive plan, the zoning map, and zoning regulations. In addition, the city provided additional opportunities for citizen participation in the review of this development application. The public was well represented at the hearing and in the written record. Witnesses testified clearly and succinctly regarding issues of concern to them. In addition, the city coordinated with Clark County and the city of Vancouver in reviewing the traffic impacts of this development. (See Exhibits 31, 32, and 45). These procedures comply with GMA Goal 11.

l. The examiner finds that adequate public services are or will be available to serve the proposed development, based on the expert testimony of city engineering staff. There is no substantial evidence in the record to the contrary. Unsupported concerns are not substantial evidence. Therefore, the application complies with GMA Goal 12.

m. The applicant's archaeologist reviewed the site and did not find evidence of any historic or archaeological lands, sites, or structures on this site. The applicant's archaeological report was sent to the state Department of Archaeology and Historic Preservation and the tribes and no further archaeological work was recommended. Recommended condition of approval 19 and Plate Note 13 require notice to the state if any archaeological items are uncovered during construction on the site. Therefore, the application complies with GMA Goal 13.

20. The city has no authority to require the applicant to extend a utility easement to the east boundary of the site to serve future development on properties abutting Country View Circle. Those parcels are currently located outside of the city limits and the city's UGA and urban services are not required. In addition, as noted in Exhibit 50, such an easement would extend through the proposed on-site oak mitigation area in Tract H. Future development within such an easement would disturb the mitigation plantings within that Tract. Furthermore, properties in the Country View Circle development are above the 370 elevation, where adequate water pressure is not available, as discussed in the staff report. The applicant will extend a 24-inch water main to the east boundary of the site, within the NE 28th Street right-of-way of. This line can be extended in the future to provide service to the parcels to the east if and when those parcels are brought into the UGA and zoned for higher intensity development.

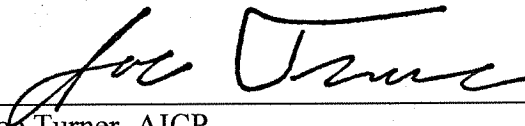
#### **D. CONCLUSION**

Based on the findings and conclusions contained herein and the testimony and evidence in the public record, the examiner concludes that FILE# SUB21-01 (Camas Heights Subdivision), should be denied without prejudice, because the applicant failed to demonstrate that removal of seven of the nine existing mature Oregon white oak trees on the site and planting of two-inch caliper mitigation trees will substantially maintain the existing level of habitat functions and values on the site and ensure no net loss in critical area functions and values. CMC 16.61.030.A.

#### **E. DECISION**

The examiner hereby denies FILE# SUB21-01 (Camas Heights Subdivision) without prejudice for the reasons provided herein.

DATED this 9<sup>th</sup> day of June 2022.



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Joe Turner, AICP  
City of Camas Land Use Hearing Examiner