

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

In the Matter of the Application of)	Nos. TUM-21-1887 and TUM-21-1889
)	
)	
Jeff Pantier, Hatton Godat Pantier,)	Kirsop Crossing Division 3 Preliminary
on behalf of Evergreen Heights, LLC)	Plat and Planned Unit Development
)	
)	
For Approval of a Preliminary Plat and)	FINDINGS, CONCLUSIONS,
<u>Planned Unit Development</u>)	AND DECISION

SUMMARY OF DECISION

The request for a preliminary plat and planned unit development, to subdivide a 10.43-acre parcel into 41 lots for single-family residential development, with associated appurtenances and improvements, at 6139 Kirsop Road SW, is **APPROVED**. Conditions are necessary to address specific impacts of the proposal.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held an open record hearing on the request on June 8, 2022, using remote access technology.

Testimony:

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

Tami Merriman, City Permit Manager
Chris Carlson, Applicant Representative
Jeff Pantier

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, dated June 1, 2022
2. Plat Map, dated November 29, 2021
3. Vicinity Map
4. Mitigated Determination of Nonsignificance, dated February 18, 2022; Plat Map, dated November 29, 2021; SEPA Environmental Checklist, dated December 6, 2021
5. Notice of Public Hearing, dated May 27, 2022
6. Preliminary Plat Application, received December 9, 2021, with Project Narrative
7. Notice of Application, dated January 3, 2022

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8. Zoning Map
9. Certification of Public Notice, dated May 31, 2022
10. Notice of Application Comments:
 - a. Comment from Squaxin Island Tribe, dated January 6, 2022
 - b. Comment from Bonnie Blessing, dated January 4, 2022
 - c. Comment from Brian McCarroll, dated January 17, 2022
 - d. Comment from Joseph Darbro, dated January 18, 2022
 - e. Comment from Katie Worthington, dated January 18, 2022
 - f. Comments from Rick Guthrie, dated January 15, 16, and 21, 2022
11. Transportation Concurrency Ruling, dated January 8, 2022
12. SEPA Comments:
 - a. Comment from Washington State Department of Ecology, dated March 4, 2022
 - b. Comment from Olympic Region Clean Air Agency, dated February 2022
 - c. Comments from Washington State Department of Archaeology and Historic Preservation, dated May 5, 2022
 - d. Comments from Cheryl Threatt, dated February 22 and March 7, 2022
13. Tree Plan, Professional Forestry Services, Inc., dated December 1, 2021
14. Critical Areas Report, EnviroVector, dated August 11, 2020
15. Mazama Pocket Gopher Screening Report, EnviroVector, dated October 30, 2020
16. Preliminary Civil Plans (9 Sheets), dated November 2021
17. Water and Sewer Availability Letter, dated December 10, 2021
18. Preliminary Drainage Report, Jared Crews, EIT, dated November 15, 2021
19. Winter Groundwater Monitoring Report, Insight Geologic, Inc., dated April 5, 2021
20. Supplemental Soil Evaluation Report, Insight Geologic, Inc., dated October 7, 2020
21. Thurston County Hearing Examiner Decision (No. PLAT/PUD 2003103430), dated April 13, 2005
22. Kirsop Crossing Final Plat Map (4 Sheets), recorded July 27, 2018
23. Correction to Staff Report Memorandum, dated June 10, 2022

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

FINDINGS

Application and Notice

1. Jeff Pantier, of Hatton Godat Pantier, on behalf of Evergreen Heights, LLC (Applicant), requests approval of a preliminary plat and planned unit development to subdivide a 10.43-acre property into 41 lots for single-family residential development, with associated infrastructure and amenities. Associated improvements would include the construction of public road extensions through the plat; street frontage improvements along Kirsop Road SW, Kirsop Extension Road SW, and the intersection of Kirsop Road SW and Kirsop Extension Road SW; utility extensions; stormwater management features; landscaping; and active and passive open space areas. The property is located at 6139

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Kirsop Road SW.¹ *Exhibit 1, Staff Report, pages 1 and 2, Exhibit 2; Exhibit 6; Exhibit 11; Exhibit 13; Exhibit 18.*

2. The City of Tumwater (City) determined that the application was complete on December 30, 2021. On January 3, 2022, the City provided notice of the application by mailing or emailing notice to property owners within 300 feet of the subject property and to reviewing departments and agencies, posting notice on-site, and publishing notice in the *Olympian*, with a comment deadline of January 18, 2022. On May 27, 2022, the City provided notice of the open record hearing associated with the application in the same manner and noted that written comments on the proposal could be submitted up until the hearing commencing on June 8, 2022. *Exhibit 1, Staff Report, page 5; Exhibit 5; Exhibit 7; Exhibit 9.*
3. The City received comments on the proposal from one agency and five members of the public in response to its notice materials:
 - The Squaxin Island Tribe noted that the project area has a high potential for the location of cultural resources and recommended that a cultural resources survey and report be completed for the project. As discussed below, the Applicant later submitted a cultural resource assessment that was reviewed by the Washington State Department of Archaeology and Historic Preservation (DAHP).
 - Bonnie Blessing noted the current need for housing in the region and raised concerns about traffic impacts of the proposal in light of existing road conditions. She also raised concerns about impacts to wetlands from construction vehicle traffic.
 - Brian McCarroll expressed concerns about the proposal's traffic and pedestrian safety impacts, noting existing issues with the conditions of Kirsop Road SW. He also raised concerns about the proposed project's stormwater impacts and impacts to area wildlife.
 - Joseph Darbro raised concerns that the proposed development would result in the loss of forested areas and wildlife habitat and about the proposal's traffic, pedestrian safety, and pollution impacts.
 - Katie Worthington requested that the Applicant retain healthy trees on the property to the extent feasible and plant replacement trees to mitigate for trees that would be removed for the proposed development, in accordance with the City's tree protection ordinance.
 - Rick Guthrie noted that he is in support of the proposed development but requested that the Applicant retain existing tall trees on the site, which he stated would help preserve the existing rural character of the area. He also requested that the Applicant address flooding issues associated with wetland areas to the

¹ The property is identified by Thurston County Tax Parcel No. 79900002400. *Exhibit 1, Staff Report, page 1.*

north and that the proposal include active recreation facilities for the enjoyment of children residing in the subdivision.

Exhibit 1, Staff Report, pages 5 through 7; Exhibit 10; Exhibit 12.c.

State Environmental Policy Act

4. The City Community Development Department (CDD) acted as lead agency and analyzed the environmental impacts of the proposal under the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington RCW (RCW). CDD reviewed the Applicant's environmental checklist and other information on file and determined that, with mitigation measures, the proposal would not have a probable significant adverse impact on the environment. Accordingly, CDD issued a Mitigated Determination of Nonsignificance (MDNS) on February 18, 2022, with a comment deadline of March 4, 2022, and an appeal deadline of March 10, 2022. *Exhibit 1, Staff Report, pages 1, 7, and 8; Exhibit 4; Exhibit 12.*
5. CDD received the following comments on the MDNS:
 - The Washington State Department of Ecology (DOE) provided general comments, noting that all potentially dangerous or hazardous materials associated with existing structures proposed for demolition must be removed and appropriately managed prior to demolition; all grading and filling activity must utilize only clean fill; all removed debris must be disposed of at an approved site; testing must be conducted when any contamination is suspected or discovered; and erosion control measures must be in place prior to any clearing, grading, or construction activity. DOE also provided guidance on construction activities that would require coverage under a Construction Stormwater General Permit.
 - The Olympic Region Clean Air Agency (ORCAA) noted that an asbestos survey must be conducted prior to demolition of the existing structures on-site.
 - DAHP stated that it reviewed the cultural resource assessment for the site and that it agreed with the assessment's results and recommendations. It noted that no cultural resources were found during the survey, and, therefore, DAHP does not recommend further direct archaeological supervision of the project, but that a standard Inadvertent Discovery Plan should be followed during all ground disturbing activities.
 - Cheryl Threatt requested a copy of the Applicant's environmental checklist and other information on file with CDD, which the City later provided to her. She also requested additional information about how the proposed development would connect to the City's public sewage system. In response to this request, the City provided Ms. Threatt with the Applicant's preliminary civil drawings and explained that all proposed lots would be connected to public sanitary sewer through an extension of sewer lines from existing development to the south. Finally, Ms. Threatt raised concerns about the conditions of existing roads that

could potentially be impacted by dump trucks and heavy machinery accessing the project site.

The MDNS was not appealed. The MDNS would require the Applicant to construct a new intersection at Kirsop Road SW and Kirsop Extension Road SW and to either construct a roundabout at the intersection of northbound Interstate 5 On/Off Ramp and Tumwater Boulevard or pay a mitigation fee to help fund the City's planned transportation improvements to the intersection. *Exhibit 1, Staff Report, pages 1, 7, and 8; Exhibit 4; Exhibit 12.*

Comprehensive Plan and Zoning

6. The property is within the Littlerock Neighborhood and is designated "Single-Family Low Density Residential" under the City Comprehensive Plan, which provides for a density of four to seven dwelling units per acre. *Comprehensive Plan, Land Use Element, page 34.* The proposed development would provide a density of six dwelling units per acre, consistent with the Comprehensive Plan designation for the property. The Comprehensive Plan provides that the density of new development within the Single-Family Low Density Residential land use designation "should be averaged over the entire site in order to reach the maximum densities required to accommodate future population" and that it "is not the intent of the City to require that lots be a specific size but that densities are met as an average of the overall site." *Comprehensive Plan, Land Use Element, page 35.* City staff determined that the proposal would be consistent with the Comprehensive Plan. *Exhibit 1, Staff Report, page 3; Exhibit 2.*
7. The property is located in the "Single-Family Low Density Residential" (SFL) zoning district, which requires a minimum net density of four units per acre and a maximum net density of six units per acre, with a maximum net density of seven dwelling units per acre allowed through the purchase of transfer of development rights. *Tumwater Municipal Code (TMC) 18.10.050.* As noted above, the proposed development would provide a density of six dwelling units per acre, in accord with the density requirements of the SFL zoning district. The intent of the SFL zoning district is to preserve and establish peaceful, low-density neighborhoods in which owner-occupied, single-family structures are the dominant form of dwelling unit; to guide residential development in a manner that encourages and plans for the availability of public services and community facilities; and to encourage the development of attractive residential areas that provide a sense of community, establish a pedestrian-friendly atmosphere, and contain a variety of housing types. *TMC 18.10.010.* Single-family detached dwellings are a permitted use in the SFL zone. *TMC 18.10.020.A. Exhibit 1, Staff Report, page 10; Exhibit 2.*
8. TMC 18.10.050 provides development standards applicable to the SFL zoning district, which include required minimum lot sizes of 3,200 square feet and minimum lot widths of 50 feet, with a minimum lot width of 40 feet for lots with an alley located adjacent to a

side property line. *TMC 18.10.050.D*. The Applicant's site plan shows that the smallest lot within the subdivision would measure 4,000 square feet, satisfying the minimum lot size requirement, but that several of the proposed lots would not meet the minimum lot width requirement. The Applicant, however, proposes to develop the property as a Planned Unit Development (PUD), which would provide relief from the minimum lot width requirement, as discussed in more detail later in this decision. The SFL zone requires minimum front yard setbacks of 10 feet, side yard setbacks of 5 feet, and rear yard setbacks of 20 feet. Because the Applicant proposes to develop the property under the City's PUD provisions, the setback requirements for the SFL zone apply only to the perimeter boundary lines of the site. *TMC 18.36.080.C*. The Applicant's project plans demonstrate that the proposed development would comply with applicable setback requirements. Development standards for the SFL zoning district also require new development projects to designate a minimum of 10 percent of the gross site area as open space with both passive and active recreation facilities for the enjoyment of residents. *TMC 18.10.050.K; TMC 17.12.210.A and .G*. The Applicant proposes to exceed this requirement by providing 3.3 acres of open space within three tracts that would contain active and passive recreation elements, which amounts to approximately 32 percent of the percent of the 10.43-acre site. As conditioned, the proposal would comply with all other development standards applicable to the SFL zoning district. *Exhibit 1, Staff Report, pages 2, and 10 through 12; Exhibit 2; Exhibit 6; Exhibit 16*.

9. The property is located in the Aquifer Protection (AQP) overlay zoning district. The AQP overlay district is intended to "protect vulnerable and/or critical aquifer recharge areas within the city and urban growth area" by "preventing future pollution from new or different land uses or activities." *TMC 18.39.010*. The proposed residential subdivision is not a restricted use within the AQP overlay district. *TMC 18.39.040. Exhibit 1, Staff Report, page 10 and 11*.

Existing Site, Critical Areas, and Surrounding Development

10. The 10.43-acre subject property is relatively flat, with a gradual slope from the southeast corner of the property toward a wetland extending onto the northwest corner of the property. The eastern portion of the property is currently developed with a single-family residence, several sheds, horse stalls, and two shop buildings, all of which would be removed to facilitate the proposed development. Vegetation on the site mostly consists of grassy areas with scattered trees across the site, with vegetation at the northwest corner of the property associated with the wetland consisting of a dense area of trees and wetland plants. The geographic area of the property is known to be occupied by the Mazama pocket gopher, which is listed as a protected species under the Washington State and federal threatened and endangered species lists. EnviroVector prepared a Mazama Pocket Gopher Screening Report for the Applicant, dated October 30, 2020, which determined that the site does not contain any mounds characteristic of those created by Mazama pocket gophers and that the subject property and vicinity contains only a marginal potential for Mazama pocket gopher habitat.

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EnviroVector also prepared a Critical Areas Report (CAR) for the Applicant, dated August 11, 2020. The CAR identified an approximately 86-acre Category III wetland (Wetland A) that extends onto 2,737 square feet of the property at the northwest corner, with a required standard 150-foot protective buffer. All proposed development would occur outside of the wetland and associated 150-foot buffer, and the on-site portion of the wetland and associated buffer would be permanently protected within a 1.58-acre wetland/open space tract (Tract A). The CAR also identified an offsite Category IV wetland (Wetland B) to the east of the property, with a required standard 50-foot protective buffer that does not extend onto the subject property, as well as an offsite Type N stream to the northwest, with a 50-foot riparian habitat area that does not extend onto the property. No other regulated critical areas or associated buffers were identified on the property. Surrounding land uses are residential in nature, with properties to the north and northeast zoned Residential/Sensitive Resource, properties to the east zoned SFL, and properties to the south zoned Multifamily Medium Density Residential. *Exhibit 1, Staff Report, pages 2 and 9; Exhibit 2; Exhibit 4; Exhibit 8; Exhibits 14 through 16; Exhibit 18.*

Trees

11. Chapter 16.08 TMC regulates the removal and preservation of existing trees on a development site. Professional Forestry Services, Inc., prepared a tree plan for the proposal, dated December 1, 2021. TMC 16.08.070.R requires that, when land clearing is performed in conjunction with a specific development proposal, not less than 20 percent of the trees, or not less than 12 trees per acre (whichever is greater), must be retained. The property contains 157 trees. Based on the size of the property and the number of existing trees, TMC 16.08.070.R would require that a minimum of 125 trees be retained on the project site. According to the Applicant's tree plan, a total of 35 trees would be retained on-site. When the required number of trees cannot be retained on-site, the City's tree code allows mitigation in the form of planting three replacement trees for each tree removed in excess of the retention standard. *TMC 16.08.070.R.3.* The Applicant proposes to plant 270 replacement trees on-site to mitigate for the 90 trees that would be removed in excess of the 125 trees required to be retained, in accord with this requirement. City staff reviewed the Applicant's tree plan and determined that it would comply with the City's tree protection and replacement ordinance. *Exhibit 1, Staff Report, pages 8 and 9; Exhibit 13.*

Stormwater

12. Jared Crews, EIT, prepared a preliminary drainage report for the Applicant, dated November 15, 2021. Stormwater runoff from pollution-generating impervious surfaces would be collected and conveyed to a pre-settling cell for water quality treatment and routed to an infiltration trench designed for 100 percent infiltration. The Applicant's final stormwater drainage design would be required to comply with the 2018 City of Tumwater Drainage Design and Erosion Control Manual. *Exhibit 4; Exhibits 18*

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Utilities and Services

13. Water and sewer service to the subdivision would be provided by the City. The City issued a Certificate of Water and Sewer Availability for the proposed development, dated December 10, 2021. Utility extensions necessary for public water and sewer service to the property would be installed in accordance with the requirements of the Tumwater Development Guide. Puget Sound Energy would provide electricity and natural gas services, Comcast and CenturyLink would provide telecommunication services, and garbage collection would be provided by Pacific Disposal. All utilities on-site would be underground pursuant to TMC 17.12.200. *Exhibit 1, Staff Report, pages 3 and 14; Exhibit 16; Exhibit 17.*

Access, Parking, and Traffic

14. Access to the property and to lots within the subdivision would be provided by an extension of a public road, Lanai Street SW, from the southwest corner of the property and extending through the subdivision before connecting to Kirsop Road SW to the east, as well as by an extension of another public road, Patio Drive, from the south to connect to the Lanai Street SW extension within the subdivision. In addition, two private roads within proposed Tracts E and F would be constructed to provide access to lots at the northeast and southeast corners of the subdivision. The public street extensions through the subdivision would include sidewalks that would connect to existing sidewalks within the subdivision to the south, which would ensure safe walking conditions for students walking to an existing school bus waiting area within the subdivision to the south. The Applicant would be required to reconstruct the intersection at Kirsop Road SW and Kirsop Extension Road SW as a four-way stop and to construct street frontage improvements to Kirsop Road SW and Kirsop Extension Road SW that would include the installation of curbs, gutters, sidewalks, landscape strips, bicycle lanes, street lighting, and storm drainage facilities.

The City Transportation Manager reviewed the Applicant's Transportation Concurrency Application and determined that, with conditions, the proposal would meet City concurrency requirements. These conditions include requirements that the Applicant pay required transportation impact fees, construct the transportation improvements described above, and either construct a roundabout at the intersection of northbound Interstate 5 On/Off Ramp and Tumwater Boulevard or pay a mitigation fee, which would be used to help fund the City's planned transportation improvements to the intersection. The Applicant would be required to provide two paved off-street parking spaces for each lot within the subdivision. City staff reviewed the proposal and determined that it would be consistent with the City's Transportation Plan. *Exhibit 1, Staff Report, pages 2, 4 through 7, 13, and 14; Exhibit 2; Exhibit 7; Exhibit 11; Exhibit 16; Exhibits 21 through 23.*

15. The City has adopted a Sustainable Development Plan for the Thurston Region to reduce vehicle miles traveled and to preserve sensitive areas, farmland, forestland, prairies, and rural lands. The project site is located more than a half-mile from an urban center but within an area designated for residential growth. City staff determined that the proposed development would be consistent with the Sustainable Development Plan for the Thurston Region by providing compact development in an urban area while protecting environmentally sensitive lands by developing residential uses at a low density. *Exhibit 1, Staff Report, pages 4 and 5.*

Schools and Parks

16. Children residing within the proposed subdivision would be served by the Tumwater School District. As noted above, an existing school bus waiting area is located within the subdivision to the south, and safe walking conditions to the bus waiting area would be provided by the sidewalks that would be included with the proposed public road extensions. School impact fees would be assessed for each dwelling unit in the subdivision at the building permit stage. *Exhibit 1, Staff Report, pages 2, 12, and 17; Exhibit 16; Exhibit 21; Exhibit 22.*
17. The Parks and Recreation element of the Comprehensive Plan does not identify any neighborhood or community parks in the vicinity of the project site. As noted above, the Applicant proposes to set aside 3.3 acres of open space within three tracts that would contain active and passive recreation elements, which would exceed the open space requirements for the proposed plat. Park impact fees would be assessed for each dwelling unit in the subdivision at the building permit stage, which could be used to fund park improvements. City staff determined that the proposal would be consistent with the Parks and Recreation element by paying the required park impact fees and by providing active and passive open space areas within the subdivision that would exceed the minimum requirements of the municipal code. *Exhibit 1, Staff Report, pages 3 and 4; Exhibit 2.*
18. The City participates in the Thurston Regional Planning Council, which adopted a Thurston Regional Trail Plan in December 2007. City staff determined that the proposed project would not affect implementation of this plan. *Exhibit 1, Staff Report, page 4.*

Planned Unit Development

19. The Applicant requests approval to develop the property as a planned unit development (PUD) in order to provide relief from the minimum lot width standards generally applicable to the SFL zoning district and to allow for the two proposed private streets that would provide access to lots at the northeast and southeast corners of the subdivision. The intent of PUDs is to encourage new development not limited by strict application of the City's zoning code. *TMC 18.36.010.A.* More specifically, the purpose of PUDs is to (1) encourage flexibility in design and development that will result in a more efficient and desirable use of land; (2) permit flexibility of design, placement of buildings, use of

required open spaces, circulation facilities, and off-street parking areas, and otherwise better utilize the potential of sites characterized by special features, such as geography, topography, size or shape; (3) provide for maximum efficiency in the layout of streets, utility networks, and other public improvements; (4) produce an integrated or balanced development of mutually supportive uses that might otherwise be inharmonious or incongruous; and (5) provide a guide for developers and City officials who review and approve developments meeting the standards and purposes of this chapter. *TMC 18.36.010.B.*

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

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

TMC 18.36.080.

Under TMC 18.36.050, all PUDs must (1) substantially conform to the Comprehensive Plan, (2) harmonize with the surrounding area or its potential future use, and (3) ensure the size of the proposed overlay can accommodate the proposed development. City staff reviewed the proposal and determined that it would meet all requirements related to approval of a PUD. *Exhibit 1, Staff Report, pages 24 through 26; Exhibit 4.*

Testimony

20. City Permit Manager Tami Merriman testified generally about the application review process, explaining that the City reviewed the application for consistency with the Comprehensive Plan, zoning requirements, and critical areas ordinances. Ms. Merriman described how the City provided notice of the application, associated public hearing, and MDNS, consistent with state and local requirements. She noted that the Squaxin Island Tribe requested a cultural resource survey, which was later completed by the Applicant. Ms. Merriman also explained that several public comments focused on the poor condition of Kirsop Road; concerns over speeding and traffic in the area; and concerns over tree

removal associated with the proposal. In response, she noted that the Applicant provided a forestry plan addressing mitigation for tree removal and that the proposal would comply with the City's tree protection ordinances; that the City's Transportation Manager reviewed the proposal and determined that it would meet concurrency requirements; and that, because Kirsop Road is a public right-of-way, the City has maintenance responsibility requirements for it (not the Applicant), but the Applicant would pay transportation impact fees that would help pay for road maintenance and improvements in the vicinity. Ms. Merriman also discussed environmental review under SEPA and noted that the MDNS issued by the City was not appealed. Ms. Merriman clarified several details about the proposal and explained how the Applicant's use of the planned unit development overlay (PUD) ordinance would allow for flexibility and relief from minimum lot width requirements, such that increased open space areas could be preserved on-site. Finally, Ms. Merriman provided additional information and clarification about several of the conditions the City has recommended in relation to the project. *Testimony of Ms. Merriman.*

21. Applicant Representative Chris Carlson testified about several technical aspects of the proposal and requested that several additional exhibits be admitted into the record, including exhibits addressing stormwater and groundwater on-site, and an earlier decision of the Thurston County Hearing Examiner related to the development to the south. Mr. Carlson explained that, in that decision, the Thurston County Hearing Examiner required the Applicant to construct a designated bus stop/waiting area and that the current proposal would provide sidewalks connecting to the development to the south such that a safe walking route would be in place for school age children to walk to the bus stop area. Mr. Carlson also requested clarity about some of the City's recommended conditions of approval and, in conversation with Ms. Merriman, ultimately determined that the Applicant would have no issue complying with the recommended approval conditions (following slight modifications agreed to by the parties). *Testimony of Mr. Carlson; Testimony of Ms. Merriman.*
22. Jeff Pantier, Mr. Carlson's colleague, testified that this has been an iterative review process with City staff and that this review process resulted in the specific PUD design ultimately submitted by the Applicant. He noted that the same developer, Rob Rice, constructed an almost identical development to the south and, accordingly, the current proposal would be in character with the community. Mr. Pantier also provided detail about the boundary line adjustment (BLA) the Applicant would be seeking in the near future. He explained that survey information has shown that there is a longstanding fence (owned by the neighboring property owner) along the northern portion of the property that encroaches onto the subject property. Mr. Pantier explained that Tract D of the current project includes this fence and that, in order to resolve any potential conflicts about the fence, the Applicant seeks the BLA to ultimately transfer Tract D to the northern adjacent property owner. *Testimony of Mr. Pantier.*

Staff Recommendation

23. Ms. Merriman testified that City staff recommends approval of the preliminary plat and preliminary planned unit development, with conditions. As noted above, Mr. Carlson testified that the Applicant would adhere to the recommended conditions. *Exhibit 1, Staff Report, pages 12 through 15; Exhibit 23; Testimony of Ms. Merriman; Testimony of Mr. Carlson.*

CONCLUSIONS

Jurisdiction

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

Criteria for Review

Preliminary Plat

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

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

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

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

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

A proposed subdivision and dedication shall not be approved unless the city, town, or county legislative body makes written findings that: (a) Appropriate provisions are made for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and (b) the public use and interest will be served by the platting of such subdivision and dedication. If it finds that the proposed subdivision and dedication make such appropriate provisions and that the public use and interest will be served, then the legislative body shall approve the proposed subdivision and dedication.

Planned Unit Development

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

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

- A. Substantial conformance to the Tumwater comprehensive plan;
- B. The proposal's harmony with the surrounding area or its potential future use; and
- C. The adequacy of the size of the proposed overlay to accommodate the contemplated developments.

The criteria for review adopted by the Tumwater City Council are designed to implement the requirement of Chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW

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36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with City development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

Conclusions Based on Findings

Preliminary Plat

- 1. With conditions, the preliminary subdivision would make appropriate provisions for the public health, safety, and general welfare and for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, and schools and school grounds.** The property is designated Single-Family Low Density Residential under the City Comprehensive Plan and is located in the Single-Family Low Density Residential (SFL) zoning district, which requires a minimum net density of four units per acre and a maximum net density of six units per acre, with a maximum net density of seven dwelling units per acre allowed through the purchase of transfer of development rights. The proposal is for a subdivision with a net density of six dwelling units per acre. The Applicant would set aside approximately 32 percent of the gross site area for open space that would contain both passive and active recreation elements to meet the recreational needs of future residents of the subdivision, exceeding the 10 percent of open space required under the municipal code. The Applicant's project plans demonstrate that the proposed development would comply with all applicable development standards for the SFL zone through application of the City's Planned Unit Development (PUD) provisions. The project's compliance with the requirements of the PUD provisions is addressed in Conclusion 3 below. The property is located in the Aquifer Protection overlay zoning district (AQP) and would meet all requirements of the overlay district. Single-family residential development is not a restricted use within the AQP overlay zone district. The proposed development would be compatible with surrounding residential development.

A Critical Areas Report (CAR) prepared for the proposed development identified a Category III wetland extending onto the northwest corner of the property, which requires a standard 150-foot protective buffer. All proposed development activities would occur outside of the wetland and associated buffer, and the on-site portion of the wetland and associated buffer would be permanently protected within a dedicated wetland/open space tract. The CAR also identified an offsite Category IV wetland to the east of the property and a Type N stream to the northwest, which both have protective buffers located entirely outside of the subject property and therefore would not be adversely impacted by the proposed development. No other regulated critical areas or associated buffers were identified on or near the property. The Applicant would retain 35 of the 157 trees currently on the property and would plant 270 replacement trees on-site to satisfy the City's tree retention and replacement ordinance. The Applicant proposes to manage stormwater on-site by collecting and conveying stormwater runoff from pollution-generating surfaces to a pre-settling cell for water quality treatment before being routed

to an infiltration trench designed for 100 percent infiltration. The City would review the Applicant's final engineered stormwater drainage design for compliance with the 2018 City of Tumwater Drainage Design and Erosion Control Manual.

Access to the property and to lots within the subdivision would be provided by an extension of public roads through the subdivision and connecting to Kirsop Road SW to the east. The public road extensions would include sidewalks on both sides that would connect to the existing sidewalks within the subdivision to the south. The sidewalk connections would ensure safe walking conditions for students walking to an existing school bus stop waiting area located in the subdivision to the south. Two new internal private roads would provide vehicular access to proposed lots at the northeast and southeast corners of the subdivision. The Applicant would reconstruct the intersection at Kirsop Road SW and Kirsop Extension Road SW as a four-way stop and would construct street frontage improvements along Kirsop Road SW and Kirsop Extension Road SW that would include the installation of curbs, gutters, sidewalks, landscape strips, bicycle lanes, street lighting, and storm drainage facilities. The City Transportation Manager reviewed the proposal and determined that, with conditions, the proposal would meet City concurrency requirements. These conditions include requirements that the Applicant pay required transportation impact fees, construct the transportation improvements described above, and either construct a roundabout at the intersection of northbound Interstate 5 On/Off Ramp and Tumwater Boulevard or pay a mitigation, which would be used to help fund the City's planned transportation improvements to the intersection. Two paved off-street parking spaces would be provided for each lot within the subdivision. There are adequate utilities to serve the proposed development. The City would provide water and sanitary sewer service to the development.

Conditions, as detailed below, are necessary to ensure that the project satisfies all local and state requirements for preliminary plat approval. *Findings 1, 6 – 23.*

2. **With conditions, the proposed subdivision would be consistent with development regulations, considering land use type, development level, infrastructure, and development characteristics, such as development standards, as required by Chapter 58.17 RCW and Title 17 TMC.** The City provided reasonable notice and opportunity to comment on the proposal. The City received several comments on the proposal from members of the public in response to its notice materials, who generally raised concerns about tree removal; the existing conditions of Kirsop Road SW; and the proposal's traffic impacts, stormwater impacts, wetland impacts, and impacts to wildlife habitat. As discussed above in Conclusion 1, the proposal would comply with the City's tree protection and replacement ordinance by the planting of 270 replacement trees on-site to mitigate for the 90 trees that would be removed in excess of the 125 trees required to be retained. The proposal also includes required street frontage improvements that would improve the existing condition of Kirsop Road SW and, as conditioned, the

proposed development would meet City concurrency requirements. The project would comply with the City's critical areas ordinance by permanently protecting on-site portions of a Category III wetland and its associated 150-foot protective buffer within a wetland/open space tract. The geographic area of the property is known to be occupied by Mazama pocket gopher, but a Mazama Pocket Gopher Screening Report conducted for the proposal determined that the site does not contain any mounds characteristic of those created by the Mazama pocket gopher and that the subject property and vicinity contains only a marginal potential for Mazama pocket gopher habitat. The City also received an agency comment from the Squaxin Island Tribe, which requested that a cultural resources survey be completed for the project. A cultural resources survey was later completed for the project, which did not identify evidence of cultural or archaeological resources being located on the property. As a condition of preliminary plat approval, the Applicant would be required to immediately halt construction activity and notify appropriate agencies if archeological artifacts are encountered during construction.

Environmental impacts of the proposed development were considered, as required by SEPA, and the City issued an MDNS on February 18, 2022, which was not appealed. With approval of the requested planned unit development addressed in Conclusion 3 below, the preliminary plat would provide residential development consistent with all applicable development regulations. City staff determined that, with conditions, the proposal would be consistent with all applicable local and state requirements, including the applicable Comprehensive Plan, municipal code, and development standards, and that the public interest would be served by the platting of the subdivision. The Hearing Examiner concurs with this assessment. Conditions, as detailed below, are necessary to ensure that the proposal meets all criteria required for plat approval. *Findings 1 – 23.*

Planned Unit Development

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

Approval of the PUD would provide relief from the minimum lot width requirements of the SFL zone and would allow the development to include two private streets that would provide vehicular access to lots at the northeast and southeast corners of the subdivision.

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In addition, approval of the PUD would allow the development to waive setback requirements applicable to the SFL zone, apart from required setbacks from the perimeter boundary lines of the site. Allowing the subdivision to utilize private streets for access to some of the proposed lots would not impede access to any adjacent properties, and providing relief from the minimum lot width requirement would allow for a sensible lot layout while protecting on-site critical areas and providing passive and active open space areas in excess of code requirements. The PUD overlay would be adequate in size to accommodate the contemplated development and, as discussed above in Conclusions 1 and 2, the proposal, with conditions, would be consistent with all applicable local and state requirements, including the applicable Comprehensive Plan, municipal code, and development standards, and would be harmonious with surrounding development. The public interest would be served by the platting of the subdivision and planned unit development. As discussed in the above conclusions, and as detailed below, conditions are necessary to ensure that the proposal meets all criteria required for plat approval and approval of a planned unit development. *Findings 1, 6 – 9, 19 – 23.*

DECISION

Based on the preceding findings and conclusions, the request for a preliminary plat and planned unit development, to subdivide a 10.43-acre parcel into 41 single-family lots, a storm drainage/open space tract, a tree/open space tract, a wetland/open space tract, two private road tracts, and a tract for a future boundary line adjustment, with associated improvements, at 6139 Kirsop Road SW, is **APPROVED**, with the following conditions:²

1. Stormwater from impervious surfaces associated with the project shall be managed in accordance with the City of Tumwater 2018 Storm Drainage Manual.
2. Erosion and sediment control measures that comply with the City of Tumwater 2018 Storm Drainage Manual shall be implemented during construction of the project to prevent sediment-laden runoff from entering surface waters.
3. A Site Development/Grading Permit shall be obtained from the City for grading, street, sidewalk and utility construction, tree removal, and construction of storm drainage facilities.
4. Should contaminated soils be encountered during construction, all of the following shall apply:
 - A. Construction activity shall be immediately suspended;
 - B. The contractor shall immediately notify the Washington State Department of Ecology;

² Conditions include legal requirements applicable to all developments as well as requirements designed to mitigate specific impacts of the proposal.

- C. Contaminated materials shall be properly handled, characterized, and disposed of consistent with applicable regulations.
5. Should archeological artifacts be encountered during construction, all of the following shall apply:
- A. Constriction activity shall be immediately suspended;
 - B. The contractor shall immediately notify the City of Tumwater Community Development Department; and
 - C. The contractor shall immediately notify the Washington State Department of Archeology and Historic Preservation; and
 - D. The contractor shall immediately notify potentially affected tribal nations including, but not limited to, the Squaxin Island Tribe, Chehalis Tribe, and Nisqually Tribe.
6. Fill for the project shall be clean material, void of solid waste or organic debris.
7. Disposal of construction debris and overburden associated with construction and grading activity that is not suitable for fill is required to be disposed of at an approved location.
8. The Applicant shall secure a National Pollutant Discharge Elimination System (NPDES) Construction Storm Water General Permit from the Washington State Department of Ecology.
9. Construction vehicles shall use 70th Ave. SW for main access during construction.
10. Road A as shown on the Preliminary Plat/PUD map shall be constructed to the same design standard as Lanai Street, and dedicated for public right-of-way on the face of the final plat.
11. Street frontage improvements including curb and gutter, sidewalk, landscape strip, bike lane, street illumination, and storm drainage facilities complying with the design requirements of the Tumwater Development Guide shall be constructed along the property frontage on Kirsop Road and Kirsop Extension Road. Adequate right-of-way shall be dedicated to contain the improvements.
12. Kirsop Road/Kirsop Extension Road intersection shall be designed as a 4-way stop, with the entire intersection reconstructed.
13. Full lane overlays are required after patching. Additional improvements might be required on the opposing frontage, such as widening, realigning the crown to centerline of right-of-way or feathering to meet City of Tumwater standards. All accesses will meet city standards.

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14. The City's water and sewer utilities shall be extended to serve the needs of the subdivision. The utility extensions shall be in accordance with the Tumwater Development Guide requirements in place at the time the preliminary plat application was vested. All necessary right-of-way and/or easement will need to be dedicated.
15. A 12-inch water main is required in Kirsop Road. The system shall be designed for a maximum velocity of 8 feet per second.
16. The project must meet minimum fire flow requirements. If the required fire flow cannot be achieved, residential fire sprinklers shall be required in the dwelling units.
17. A separate permit and engineered design is required for any retaining walls on-site if the height of the wall is over 4 feet measured from the bottom of the footing or if the wall is supporting a surcharge.
18. A final geotechnical engineering report shall be submitted for the grading and site work. The report shall include conclusions and recommendations for grading procedures, soil design criteria for structures or embankments required to accomplish the proposed grading and recommendations and conclusions regarding the site geology.
 - A. All grading and filling work shall be conducted in accordance with the approved geotechnical report. Compaction testing of the soils under the building foundations and utility trenches shall be verified by the geotechnical engineer of record and the Washington Association of Building Officials (WABO) registered special inspection agency and inspectors.
19. Fire hydrants shall be provided at all intersections and at approximately 600-foot spacing along the internal streets.
20. Demolition permits are required to be issued by the City prior to removal of existing structures on the property. A separate permit is required for each structure.
21. A demolition permit is required to be issued by the Olympic Region Clean Air Agency for each structure proposed to be removed from the property. Olympic Region Clean Air Agency (ORCAA) regulations require an asbestos survey for all demolition projects. Prior to any demolition project, the following must be completed:
 - A. A good faith asbestos survey must be conducted on the structure by a certified Asbestos Hazardous Emergency Response Act (AHERA) building inspector;
 - B. If asbestos is found during the survey, an Asbestos Removal Notification must be completed and all asbestos-containing material must be properly removed prior to the demolition; and

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- C. If the structure is larger than 120 square feet, a Demolition Notification must be submitted regardless of the results of the asbestos survey.
22. All water wells on the site shall be abandoned in accordance with Washington State Department of Ecology requirements. A permit from the Department of Ecology shall be obtained for each well to be abandoned.
 23. All septic systems on the property shall be abandoned in accordance with Thurston County Environmental Health requirements. A permit shall be obtained from Thurston County Environmental Health for each separate system that will be abandoned.
 24. The project proponent shall be responsible for providing the City with all costs associated with the installation of water, sewer, street, and storm drainage systems that are dedicated to the City of Tumwater
 25. All engineering designs and construction will need to be in accordance with the City of Tumwater's Development Guide and WSDOT standards
 26. All street construction, utility installation, and storm drainage work requires engineered plans certified by a professional engineer licensed to practice in the State of Washington. The plans shall be submitted for review and approval by the City.
 27. Any public or private utility relocation necessary to construct the project is the sole responsibility of the project proponent.
 28. The Applicant is required to submit a performance surety and surety agreement prior to release of the Site Development/Grading Permit to ensure successful completion of the required public improvements. The amount of the surety shall be 150 percent of the proponent engineer's estimate of completing the required public improvements.
 29. The Applicant shall be responsible for the maintenance and timely repair of all public improvements for a period of 30 months following final certification by the City and shall submit a surety and surety agreement for maintenance equal in value to fifteen (15) percent of the total value of the required public improvements certified by the Public Works Director.
 30. Maintenance of the on-site storm water system will be the responsibility of the project proponent, their successors, or assigns. A stormwater maintenance agreement will be recorded against the property prior to or concurrent with final plat approval.
 31. Back flow prevention is required on all irrigation services in accordance with the AWWA Cross Connection Control Manual.

32. A landscape and irrigation plan must be submitted with Site Development and Grading Permit application for the proposed street planter strips, proposed open space tracts, and the storm water facilities showing proposed plantings, tree types and heights, and other vegetation. Street trees are required to be installed along Kirsop Road and the proposed interior public streets in accordance with the Tumwater Development Guide and Comprehensive Street Tree Plan.
33. Lot size requirements, lot coverage, and setbacks: Each residential lot shall have a building site no less than 3,200 square feet in area within which a suitable building can be built and served by utilities and vehicular access unless dedicated or restricted by covenant for open space, park, recreation, or other public use.
34. The maximum lot-coverage for impervious surface shall be 75 percent of the total area of the lot, consistent with the increased maximum lot coverage allowed with a PUD under the municipal code.
35. Two off-street parking spaces are required for each lot. Driveways shall be a minimum of 18 feet in length.
36. Residences must provide pathway from building entry to sidewalk separate from the driveway, provide weather protection at entries, and at least 8 percent of front facade shall include transparent windows or doors.
37. Where lots abut an alley, the garage must take access from the alley.
38. Garages must be set back from the public street at least 5 feet further than the enclosed portion of the house, and garage doors shall occupy no more than 50 percent of the ground-level façade facing the street. Tumwater Citywide Design Guidelines allows the garage to occupy up to 65 percent of the façade.
39. Impact fees for traffic, community parks, and schools will be assessed to each dwelling unit in the subdivision as building permits are issued. The impact fees will be in accordance with the most current fee resolution adopted by the City at the time of vesting of the building permit applications. Credit shall be given for the existing residential uses on the site.
40. An integrated pest management plan approved by the Thurston County Environmental Health must be submitted prior to final plat approval.
41. All legal descriptions on documents submitted to the City must be accompanied with an appropriate drawing that the City can use to verify the legal description.

42. The Professional Land Surveyor responsible for the surveying of the project must obtain a permit from Department of Natural Resources before any existing survey monuments are disturbed.
43. The Applicant must provide and maintain a current Plat Name Reservation Certificate approved by the Thurston County Auditor.
44. Property taxes must be paid in full for the current year, including any advance and delinquent taxes, before a Final Plat can be recorded.
45. In order to comply with the City's Tree Protection and Replacement Standards, a minimum of 270 replacement trees must be planted on the site. Replacement trees must be planted in proposed tree protection open spaces, prior to other placement on site. The size of the tree protection open space area(s) associated with the project is required to be a minimum of 5 percent of the buildable area of the site.
46. The following condition will be required to be noted on the Final Plat:
 - A. All landscaped areas in public rights-of-way shall be maintained by the owner and his/her successor(s) and may be reduced or eliminated if deemed necessary for or detrimental to City road purposes.
47. A Homeowners Association is required. Prior to final plat approval, the project proponent shall supply the City with copies of the grantee organization's articles of incorporation and bylaws, and with evidence of a binding commitment to convey. The articles of incorporation shall provide that membership in the organization shall be appurtenant to ownership of land in the land division; that the corporation is empowered to assess such land for costs of construction and maintenance of the improvements and property owned by the corporation, and that such assessments shall be in lien upon the land.

DECIDED this 24th day of June 2022.



ANDREW M. REEVES
Hearing Examiner
Sound Law Center

HEARING EXAMINER POST-DECISION PROCEDURES

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

TMC 2.58.135 Reconsideration.

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

TMC 2.58.150 Appeal from examiner's decision.

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

TMC 2.58.180 Judicial appeals.

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

Updated: June 10, 2013