

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

In the Matter of the Application of)	No. TUM-20-0220
)	
Jeff Pantier, Hatton Godot Pantier,)	I-5 Commerce Place Preliminary Plat
on behalf of John Kaufman,)	
Kaufman Real Estate, LLC)	
)	FINDINGS, CONCLUSIONS,
<u>For Approval of a Preliminary Plat</u>)	AND DECISION

SUMMARY OF DECISION

The request for a preliminary plat to subdivide four parcels totaling 40.26 acres into 12 commercial/industrial lots, two stormwater tracts, and one tree tract within the 2700 block of 93rd Avenue 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 September 30, 2020, using remote technology in light of the COVID-19 pandemic.

Testimony:

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

Chris Carlson, City Permit Manager
Steve Hatton, Project Engineer
John Kaufman, Applicant

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, dated September 21, 2020
2. Preliminary Plat Application, received February 6, 2020
3. Site Aerial Photo Map, dated September 21, 2020
4. Comprehensive Plan Map, dated September 18, 2020
5. Zoning Map, dated September 18, 2020
6. Preliminary Plat Map, dated March 16, 2020
7. Plan Set:
 - a. Preliminary Site Plan (Sheet 1 of 6), revised March 13, 2020
 - b. Preliminary Erosion Control Plan (Sheet 2 of 6), revised March 13, 2020
 - c. Preliminary Grading and Drainage Plan (Sheet 3 of 6), revised March 13, 2020

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- d. Preliminary Pond Sections (Sheet 4 of 6), revised March 13, 2020
- e. Preliminary Water-Sewer-Street Lights (Sheet 5 of 6), revised March 13, 2020
- f. Preliminary Landscape (Sheet 6 of 6), dated January 2020
- 8. Certification of Public Notice, dated September 21, 2020
- 9. SEPA Environmental Checklist, dated March 13, 2020
- 10. Mitigated Determination of Nonsignificance (MDNS), dated August 6, 2020
- 11. Notice of Application, posted June 22, 2020
- 12. Habitat Conservation Plan, Krippner Consulting, LLC, dated January 2016
- 13. Offsite Wetland Rating and Buffer Update, Krippner Consulting, LLC, dated January 31, 2020
- 14. Tree Plan, Professional Forestry Services, Inc., dated March 18, 2020
- 15. Drainage Report, Helena Gubbels, dated June 1, 2020
- 16. Transportation Concurrency Application, received February 6, 2020, with Traffic Impact Analysis, Heath & Associates, Inc., dated January 2020
- 17. Transportation Concurrency Memorandum, dated July 17, 2020
- 18. Water and Sewer Availability Letter, dated September 15, 2020
- 19. Thurston County High Groundwater Hazard Designation Map, dated September 16, 2020
- 20. Comment Letter from Washington State Department of Ecology, dated July 7, 2020
- 21. Email comments from Shaun Dinubilo, Squaxin Island Tribe, dated June 22, 2020

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

FINDINGS

Application and Notice

1. Jeff Pantier, Hatton Godat Pantier, on behalf of John Kaufman, Kaufman Real Estate, LLC (Applicant), requests approval of a preliminary plat to subdivide four parcels totaling 40.26 acres into 12 commercial/industrial lots, two stormwater tracts, and one tree tract. Associated improvements would include mass grading for a new public roadway, frontage improvements along 93rd Avenue SW, utility extensions, stormwater management systems, and street lighting. The property is located within the 2700 block of 93rd Avenue SW.¹ *Exhibit 1, Staff Report, page 1; Exhibit 2; Exhibit 3; Exhibit 6; Exhibit 7.*
2. The City of Tumwater (City) determined that the application was complete on March 27, 2020. On June 22, 2020, the City posted notice of the application on the property and mailed notice to property owners within 300 feet of the subject property and to reviewing government departments and agencies. The next day, the City published notice of the application in *The Olympian*. On September 18, 2020, the City mailed notice of the open

¹ The property is identified by Tax Assessor Parcel Nos. 12716420000, 12716340100, 12716340102, and 12716340101. *Exhibit 1, Staff Report, page 1.* A legal description of the property is included with the preliminary plat materials. *Exhibit 6.*

record hearing associated with the application to property owners within 300 feet of the subject property, posted notice on-site, and published notice in *The Olympian*. *Exhibit 1, Staff Report, pages 1, 2, and 7; Exhibit 8; Exhibit 11.*

3. The City received two comments from reviewing agencies in response to its notice materials. The Washington State Department of Ecology (DOE) noted that all grading and filling of land must utilize only clean fill and that any unused wells must be properly abandoned. DOE also provided general comments about the required testing and notification procedures for any potential toxic contamination suspected, discovered, or occurring on-site and about the potential need for a Construction Stormwater General Permit. The Squaxin Island Tribe commented that the project area has a high potential for containing cultural resources and requested that a cultural resources survey and report be completed for the project. In response to the Squaxin Island Tribe's comment, the City recommends a condition outlining steps that would be required if cultural resources are discovered during construction. *Exhibit 1, Staff Report, page 12; Exhibit 20; Exhibit 21.*

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). CDD reviewed the Applicant's environmental checklist, and other information on file, and determined that, with a condition requiring the construction of a roundabout at the intersection of 93rd Avenue SW and Lathrop Industrial Drive, the proposal would not have a probable significant adverse impact on the environment. Accordingly, CDD issued a Mitigated Determination of Nonsignificance (MDNS) on August 6, 2020, with a comment deadline of August 20, 2020, and an appeal deadline of August 26, 2020. The same day, August 6, 2020, the City posted notice of the MDNS on-site and mailed notice to property owners within 300 feet of the subject property and to affected agencies. The City then published notice of the MDNS the next day. The City did not receive any comments on the MDNS, and the MDNS was not appealed. *Exhibit 1, Staff Report, page 7; Exhibits 8 through 10.*

Comprehensive Plan and Zoning

5. The property is within the Southwest Tumwater Neighborhood and is designated "Light Industrial" under the City Comprehensive Plan. The purpose of the Light Industrial designation is to "provide lands for industrial development that will allow for attraction of new industries and expansion of existing ones while maintaining high quality environment." *City Comprehensive Plan, Land Use Element, page 44.* The Light Industrial designation provides for the location of a broad array of activities that include manufacturing, wholesale trade, and distribution. The designation encourages grouping of industrial uses to provide coordinated development and sharing of facilities and

services. In addition, Light Industrial areas should have controls to establish compatibility with surrounding non-industrial development; should protect from nuisances such as noise, dust, odor, vibration, and air and water pollution; and should be located in a manner providing access to transportation routes and where public services are presently available or could be easily provided during development. *City Comprehensive Plan, Land Use Element, page 44.* City staff reviewed the proposal and determined that it would be consistent with the land use element of the City Comprehensive Plan and with the goals and policies of the City Economic Development Plan. Additionally, City staff determined that the proposal would not conflict with the City Strategic Plan, the City Parks and Recreation Plan, the Thurston Regional Trail Plan, or the Sustainable Development Plan for the Thurston Region. *Exhibit 1, Staff Report, pages 2 through 7; Exhibit 4.*

6. The property is located in the Light Industrial (LI) zoning district. The LI zone is intended to:

establish and preserve areas for industrial and other uses of such a nature that they do not create serious problems of compatibility with other kinds of land uses; to make provisions for certain kinds of commercial uses which are most appropriately located as neighbors of industrial uses, or which are necessary to service immediate needs of people in these areas; to ensure that retail commercial areas are encouraged within one quarter mile of the 93rd Avenue/Interstate 5 intersection; to provide pedestrian and transit orientation in these commercial areas to provide an alternative to driving a private automobile; and to encourage the preservation and provision of open space in industrial areas to ensure a desirable quality of life.

Development of the individual lots would be limited to uses permitted outright in the LI zone under Tumwater Municipal Code (TMC) 18.24.020 or uses allowed in the LI zone with a conditional use permit under TMC 18.24.040, subject to the restrictions for property within the aquifer protection overlay, as discussed below. Development of the lots would be required to comply with density regulations for the LI zone under TMC 18.24.050. *Exhibit 1, Staff Report, page 8; Exhibit 5.*

7. The property is located within an aquifer protection (AQP) overlay zone. The intent of the AQP overlay “is to identify, classify, and protect vulnerable and/or critical aquifer recharge areas within the city and urban growth area. Protection is to be accomplished by controlling the use and handling of hazardous substances and uses of land that pose a threat to groundwater.” *TMC 18.39.010.* The AQP overlay imposes additional development restrictions to protect public health and safety, which are designed to preserve the existing and future groundwater supply. *TMC 18.39.010.* Future development of the lots would be subject to the AQP overlay restricted-use provisions of TMC 18.39.040. *Exhibit 1, Staff Report, page 8.*

8. The property is bordered to the east by the Interstate 5 (I-5) interchange at 93rd Avenue SW. Surrounding properties to the south and west are zoned LI and are developed with privately-owned soccer fields and various commercial and industrial facilities. Property to the north consists of undeveloped forested areas. *Exhibit 1, Staff Report, pages 1, 2, and 9; Exhibit 3; Exhibit 5; Testimony of Chris Carlson.*

Critical Areas

9. An off-site Category III wetland with a six-point habitat score is located to the northeast of the property, requiring a 150-foot buffer from high-intensity land uses under TMC 16.28.170. The Applicant's site plans show that the required 150-foot buffer would be contained within a proposed tree tract (Tract C) at the northeast corner of the site. The property is within the habitat range of the Mazama pocket gopher, which is listed as a protected species on both Washington State and Federal threatened and endangered species lists. Krippner Consulting, LLC, submitted a Habitat Conservation Plan (HCP) on behalf of the Applicant, dated January 2016, which determined that no Mazama pocket gophers are known to occupy the site and that preexisting site conditions limit the potential for Mazama pocket gopher habitat. The HCP noted, however, that Mazama pocket gophers are known to occupy adjacent properties and that there is some potential for Mazama pocket gophers to occupy the site in the future. The United States Fish and Wildlife Service approved the Applicant's HCP, allowing for the incidental take of Mazama pocket gophers on the property. An existing critical areas notice was recorded against a portion of the property that was identified as a High Ground Water Hazard Area under the Thurston County critical areas ordinance, prior to annexation of the property by the City. The City does not regulate high ground water hazard areas through its critical areas ordinance, and it supports relinquishing the critical areas notice from the property title. City staff determined that the project is consistent with the applicable environmental protection ordinances. *Exhibit 1, Staff Report, pages 9 and 10; Exhibit 6; Exhibit 7; Exhibit 12; Exhibit 13; Exhibit 19.*

Trees

10. 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. *TMC 16.08.070.R.* Professional Forestry Services, Inc., prepared a tree report and plan on behalf of the Applicant, dated March 18, 2020. The report determined that the Applicant would be required to retain 484 trees in conjunction with development of the 40.26-acre site. The report noted that the Applicant would retain 101 trees on-site in the proposed tree preserve Tract C. Under TMC 16 .08.070.R.3, the Applicant would be required to plant at least three trees for each of the remaining 383 trees not retained, for a total of 1,149 replacement trees. The Applicant proposes to plant the 1,149 replacement trees on-site. *Exhibit 1, Staff Report, pages 8 and 9; Exhibit 6; Exhibit 14.*

Stormwater

11. Helena Gubbels submitted a drainage report on behalf the Applicant, dated June 1, 2020. The report determined that future development of the lots within the plat would result in 337,700 square feet of parking and loading area, 144,700 square feet of roof area, 77,000 square feet of new public road, and 17,850 square feet of sidewalks. The report designated two basins within the plat, with the South Basin consisting of proposed Lots 1 through 8, the proposed new public right-of-way, and proposed stormwater Tracts A and B, and the North Basin consisting of proposed Lots 9 through 12 and the proposed tree preserve Tract C. Stormwater runoff in the South Basin would be collected via catch basins and conveyed to pre-settling basins and then to the infiltration pond in proposed Tract A. The infiltration pond in proposed Tract A would connect to the pond in Tract B via a culvert beneath the proposed road to provide additional storage. Runoff in the North Basin would sheet flow shallowly over pasture and infiltrate through an amended soil layer. Runoff generated by future development in the North Basin would be addressed individually on a per-lot basis. The Applicant would design stormwater facilities to fully infiltrate all stormwater runoff on-site and be in conformance with the City's 2018 Drainage Design and Erosion Control Manual. *Exhibit 1, Staff Report, page 11; Exhibit 7; Exhibit 15.*

Utilities and Services

12. The Applicant would extend City water and sewer utilities and private utilities (i.e., power, gas, cable, and telephone) to serve the project site. The City issued a Certificate of Water and Sewer Availability for the site on September 15, 2020. *Exhibit 1, Staff Report, page 2; Exhibit 18.*

Access, Parking, and Traffic

13. Access to the proposed lots would be provided by a new public roadway connecting to 93rd Avenue SW. As noted above, a condition of the MDNS requires the Applicant to construct a roundabout at the intersection of 93rd Avenue SW and Lathrop Industrial Drive. Heath and Associates, Inc., submitted a Traffic Impact Analysis (TIA) on behalf of the Applicant, dated January 2020, which determined that affected intersections would continue to operate at acceptable levels of service (LOS) with the proposed development, provided that certain intersection improvements are made, including construction of the subject roundabout and construction of a traffic signal at the intersection of 93rd Avenue SW and the I-5 northbound ramp. The City Transportation Manager reviewed the TIA and determined that, with conditions requiring construction of the identified intersection improvements and the payment of traffic impact fees, the project would meet City traffic concurrency requirements. Parking areas would be provided with the development of individual lots. City staff reviewed the proposal and determined that, with conditions, it would be consistent with the goals and policies of the City Transportation Plan. Specifically, City staff identified the following goals and policies of the City Transportation Plan as relevant to the proposal:

- Establish a street and road network that provides for the safe and efficient movement of people and goods while supporting adopted land use goals. [Goal 9]
- Design and construct multimodal, context-sensitive, complete streets and roads. [Policy 9.a]
- Develop an interconnected grid of local streets and roads to increase individual travel options and neighborhood connectivity, while improving efficient use of the overall transportation system. [Policy 9.d]
- Ensure that street, road, and bridge projects are integrated with pedestrian amenities in districts and neighborhoods and add lasting value to the community. [Policy 9.g]
- Meet PM peak Level of Service standards. [Policy 9.j.]

Exhibit 1, Staff Report, pages 5 and 6; Exhibit 6; Exhibit 7; Exhibit 9; Exhibit 16; Exhibit 17.

Public Health and Safety

14. City staff reviewed the proposal and determined that adequate provisions would be made for public health, safety, and general welfare, noting:
- The Applicant proposes 9.99 acres of open space for the commercial/industrial subdivision, which is approximately two and a half times the minimum required by code. The open space areas would contain both passive and active recreation elements as required by TMC 17.12.210.
 - The Applicant proposes to construct and dedicate to the City new public streets that would comply with the City's current development guidelines. The Applicant also proposes public right-of-way and street improvements, including street widening, sidewalks, bike lanes, and street illumination on 93rd Avenue SW along the entire abutting frontage of the property.
 - A storm drainage system complying with the City's 2018 Drainage Design and Erosion Control Manual would be constructed for the site. The Applicant submitted a preliminary storm drainage report that included a geotechnical investigation to support the preliminary design.
 - Sanitary sewer and water would be extended into the property to serve the proposed subdivision. The City Public Works Department issued a water availability ruling indicating that the City has the ability to serve the subdivision with potable water.
 - Intercity Transit does not currently have a route that serves the site.
 - The site is not currently being considered by the Tumwater School District for their future needs.
 - Current Tumwater Fire Department facilities are adequate to service the proposed project.
 - The safe walking conditions required in RCW 58.17.110 are not applicable to the proposed commercial/industrial subdivision. The Tumwater School District, however, has a policy for children walking to school. The District currently

offers bus services to children attending the schools for children residing in the immediate vicinity of the project site.
Exhibit 1, Staff Report, pages 11 and 12.

Testimony

15. City Permit Manager Chris Carlson testified that City staff reviewed the proposal for consistency with the City Comprehensive Plan, City Strategic Plan, City Economic Development Plan, City Parks and Recreation Plan, City Transportation Plan, Thurston Regional Trail Plan, and the Thurston County Region Sustainable Development Plan for the Thurston Region, as well as for compliance with zoning requirements, critical areas ordinances, and the criteria for a preliminary plat. He described the project site and surrounding development. Mr. Carlson noted that the City Transportation Manager reviewed the Applicant's TIA and determined that, with two conditions, the proposal would meet transportation concurrency requirements. He stated that the proposed access point to the property from 93rd Avenue SW would be located close to the signalized I-5 interchange, causing difficulty with turning left into or out of the project site. Mr. Carlson explained that this difficulty would be addressed by the MDNS requirement that the Applicant construct a roundabout at the intersection of 93rd Avenue SW and Lathrop Industrial Drive. He described how the City provided notice of the application and associated public hearing consistent with code requirements. Mr. Carlson noted that there are currently no specific development plans for the individual lots and that future uses would be subject to the restrictions for property within the aquifer protection overlay. Mr. Carlson stated that the Applicant submitted a habitat conservation plan that was approved by the United States Fish and Wildlife Service for the incidental take of protected wildlife on the property, including the Mazama pocket gopher. He noted that the City annexed the property from Thurston County in June 2015 and explained that the County's high groundwater hazard designations were no longer applicable to the property under City code. Mr. Carlson stated that the area of the city in which the project site is located has high groundwater issues and that the Applicant's storm drainage systems would be required to comply with the 2018 drainage design and erosion control manual, as well as with the Salmon Creek Drainage Basin standards. He explained that the buffer for the off-site wetland would be within the proposed tree tract at the northeast of the property. Mr. Carlson stated that the Applicant would plant all required replacement trees on-site. *Testimony of Mr. Carlson*
16. Project Engineer Steve Hatton testified about the proposed system for managing stormwater on-site, noting that all stormwater would be infiltrated on-site. Mr. Hatton stated that the Applicant is aware of aquifer protection overlay restrictions as well as the specific requirements associated with the Salmon Creek Drainage Basin. *Testimony of Mr. Hatton.*

17. Applicant John Kaufman testified about the Habitat Management Plan allowing for the incidental take of the Mazama pocket gopher. He explained that the proposed tree tract and buffer for the off-site wetland would be protected with signage. Mr. Kaufman agreed that further review by the City of protection measures for the wetland buffer area could occur at the site development permit stage for the development of lots 10 and 12.
Testimony of Mr. Kaufman.

Staff Recommendation

18. Mr. Carlson testified that City staff recommends approval of the preliminary plat with several conditions. Mr. Hatton testified that the Applicant concurs with the City's recommendations. *Exhibit 1, Staff Report, pages 12 through 17; Testimony of Mr. Carlson; Testimony of Mr. Hatton.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner has authority to hear and decide applications for preliminary plats. 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.*

Criteria for Review

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:

if 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.*

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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 shall 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, .040.C, and .040.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.

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 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

- 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 Light Industrial under the City Comprehensive Plan, which provides for the location of a broad array of manufacturing, wholesale trade, and distribution activities. City staff reviewed the Applicant's proposal and determined that it would be consistent with the City Comprehensive Plan. The Hearing Examiner concurs with City staff's determination. The property is zoned Light Industrial (LI),

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which provides for a broad range of permitted commercial and industrial uses. The property is located within the aquifer protection (AQP) overlay, which imposes certain development restrictions designed to protect the groundwater supply. There are currently no specific plans for development of the individual lots within the proposed plat. Future development of the lots would be limited to uses permitted outright in the LI zone or uses allowed in the LI zone with a conditional use permit, subject to AQP overlay restrictions.

The Applicant's site plans show that the required 150-foot buffer from the Category III wetland located off-site to the northeast of the property would be contained within the proposed tree preserve Tract C. The Applicant would provide signage to protect the buffer, and the City would review whether additional protection measures, such as fencing, would be appropriate with the development of lots 10 and 12, which are located adjacent to the tree preserve Tract C. The Applicant submitted a Habitat Conservation Plan that was approved by the United States Fish and Wildlife Service, allowing for the incidental take of the protected Mazama pocket gopher on the property. The Applicant's tree report and plan demonstrates that the proposal would comply with tree retention and replacement requirements. The Applicant would design stormwater facilities to fully infiltrate all stormwater runoff on-site and to be in conformance with the City 2018 Drainage Design and Erosion Control Manual. The City issued a Certificate of Water and Sewer Availability for the site, and the Applicant would extend City and private utilities necessary to serve the property. Access to the property would be provided by a new public roadway connecting 93rd Avenue SW. The City Transportation Manager reviewed the Applicant's Traffic Impact Analysis and determined that, with conditions requiring construction of a roundabout at the intersection of 93rd Avenue SW and Lathrop Industrial Drive; construction of a traffic signal at the intersection of 93rd Avenue SW and the Interstate 5 northbound ramp; and the payment of traffic impact fees, the project would meet City concurrency requirements. City staff determined that the fire department facilities are adequate to service the property. City staff also determined that the safe walking conditions of RCW 58.17.110 are not applicable to the commercial/industrial project but noted that the Tumwater School District currently offers bus services for children residing in the immediate vicinity of the property. Conditions, as detailed below, are necessary to ensure that the proposal would comply with all local, state, and federal requirements related to development of a preliminary plat and to ensure that the proposal meets all criteria for plat approval. *Findings 1, 3, 5 – 18.*

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 proposed preliminary plat. The City received two agency comments on the proposal. The Washington State Department of Ecology (DOE) provided general comments regarding the use of clean fill, abandonment of unused wells,

testing and notification procedures related to the discovery of toxic contamination, and the requirement for a Construction Stormwater General Permit. The Squaxin Island Tribe commented that the property has a high potential for containing cultural resources and requested a cultural resources survey and report for the project. Conditions are necessary to ensure that the Applicant obtains a Construction Storm Water General Permit from DOE; that the Applicant utilize only clean fill material; that the Applicant suspend construction and notify DOE if any contaminated soils are encountered during construction and that any unused water wells on the site are abandoned in accordance with DOE requirements; and that the Applicant suspend construction activity and notify the City, the Washington State Department of Archaeology, and affected tribal nations if archeological artifacts are encountered during construction. Environmental impacts of the proposal were considered, as required by SEPA, and the City Community Development Department issued an MDNS for the proposal. The MDNS requires the Applicant to construct a roundabout at the intersection of 93rd Avenue SW and Lathrop Industrial Drive. The MDNS was not appealed. The preliminary plat would provide for commercial and industrial development opportunities consistent with applicable development regulations. City staff determined that, with conditions, the proposal would be consistent with all applicable City, county, and state requirements, including the applicable Comprehensive Plan, municipal code, and development standards. The public interest would be served by the platting of the subdivision. As noted above in Conclusion 1 and as detailed below, conditions are necessary to ensure that the proposal meets all criteria required for plat approval. *Findings 1 – 18.*

DECISION

Based on the preceding findings and conclusions, the request for a preliminary plat to subdivide four parcels totaling 40.26 acres into 12 commercial/industrial lots, three storm water tracts, and one tree tract within the 2700 block of 93rd Avenue SW is **APPROVED**, with the following conditions:²

1. Storm water from impervious surfaces associated with the project shall be managed in accordance with the City of Tumwater 2018 Storm Drainage Manual and the Salmon Creek Drainage Basin Standards.
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.

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

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;
 - 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. Construction activity shall be immediately suspended;
 - B. The contractor shall immediately notify the City of Tumwater Community Development Department;
 - C. The contractor shall immediately notify the Washington State Department of Archaeology 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. The proposed public streets within the subdivision shall comply with the Tumwater Development Guide design requirements in place at the time the preliminary plat application was vested. The public streets shall be dedicated to the City of Tumwater.
10. The north/south access road into the project shall be aligned in the manner shown on the preliminary plat map for future extension to abutting properties to the west.
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 93rd Avenue SW. Additional right-of-way shall be dedicated to contain the improvements.

12. 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 easements will need to be dedicated.
13. The minimum fire flow requirement for the project shall be in accordance with the International Fire Code Appendix B, Section B105. The system shall also be designed for a maximum velocity of 8 feet per second.
14. A separate permit and engineered design is required for all 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.
15. A final geotechnical engineering report shall be submitted for the grading and site work. The report shall include conclusions and recommendations for grading procedures, soil design criteria for structures or embankments required to accomplish the proposed grading and recommendations and conclusions regarding the site geology.

All grading and filling work shall be conducted in accordance with the approved soils report. Compaction testing of the soils under the building foundations and utility trenches shall be verified by the geotechnical engineer of record and the WABO Registered special inspector.

16. Fire hydrants shall be provided at all intersections and in accordance with the International Fire Code Appendix C for spacing along the internal street.
17. All water wells on the site shall be abandoned in accordance with Washington State Department of Ecology requirements. Abandonment reports shall be submitted to the Department of Ecology Water Resource Program.
18. If contamination of the site is suspected or discovered, testing of the contaminated media must be conducted. If contamination is apparent or revealed by testing, the Department of Ecology Toxic Cleanup program shall be notified.
19. If applicable, all septic systems on the property shall be abandoned in accordance with Thurston County Environmental Health requirements. A permit shall be obtained for each separate system that will be abandoned.

20. 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.
21. All engineering designs and construction will need to be in accordance with the City of Tumwater's Development Guide and WSDOT standards.
22. All street construction, utility installation, and storm drainage work require engineered plans certified by a professional engineer licensed to practice in the State of Washington. The plans shall be submitted for review and approved by the City.
23. Any public or private utility relocation necessary to construct the project is the sole responsibility of the project proponent.
24. 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 Applicant's engineer's estimate of completing the required public improvements.
25. 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 Department.
26. Maintenance of the on-site storm water system will be the responsibility of the project proponent, their successors or assigns. A storm water maintenance agreement will be recorded against the property prior to or concurrent with final plat approval.
27. Sanitary sewer is required to be extended to serve the project.
28. A water main is required to be extended to serve the project.
29. Backflow prevention is required on all irrigation services in accordance with the AWWA Cross Connection Control Manual.
30. A landscape and irrigation plan must be submitted 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 93rd Avenue SW and the proposed interior public street in accordance with the Tumwater Development Guide and Comprehensive Street Tree Plan. This plan must be submitted and approved prior to final plat approval.

31. The maximum coverage for impervious surface for each lot created shall be 85 percent of the total area of the lot.
32. Impact fees for transportation impacts for businesses locating in the subdivision will be collected 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.
33. An integrated pest management plan approved by Thurston County Environmental Health must be submitted to the City of Tumwater prior to final plat approval.
34. 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.
35. The Professional Land Surveyor responsible for the surveying of the project must obtain a permit from Department of Natural Resources before any existing monuments are disturbed.
36. The Applicant must maintain a current Plat Name Reservation Certificate approved by the Thurston County Auditor.
37. Property taxes must be paid in full for the current year, including any advance and delinquent taxes, before a Final Plat can be recorded.
38. In order to comply with the City's Tree Protection and Replacement Standards, a minimum of 1,149 replacement trees must be planted on the site. The replacement trees must be planted in the proposed tree protection open spaces on the project site, tract D, shown on the Preliminary Plat Map. 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.
39. A Property Owner Association is required to be formed for the project. 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.

40. To comply with the City's Mitigated Determination of Nonsignificance and the Transportation Concurrency Ruling issued by the City's Transportation Manager, the Applicant shall be required to construct a modern roundabout able to accommodate semi-truck traffic at the intersection of 93rd Avenue SW and Lathrop Industrial Drive.
41. The Applicant shall be required to get the Critical Areas Buffer Notice Recorded under Thurston County Auditor's File Numbers 3796189 and 3795844 relinquished prior to recording the final plat document. The Auditor's file number for the relinquishment document shall be noted on the final plat document.
42. The City may, in its discretion, determine whether additional protective measures, such as fencing, for the wetland buffer within tree preserve Tract C would be appropriate with its review of site development permit applications associated with lots 10 and 12.

DECIDED this 14th day of October 2020.



ANDREW M. REEVES
Hearing Examiner
Sound Law Center