



City of Tacoma  
Hearing Examiner

**CERTIFICATION**

On this day, I forwarded a true and accurate copy of the documents to which this certificate is affixed via United States Postal Service postage prepaid or via delivery through City of Tacoma Mail Services to the parties or attorneys of record herein.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED August 29, 2017, at Tacoma, WA.

Louisa Legg

August 29, 2017

FIRST CLASS AND ELECTRONIC MAIL DELIVERY

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City of Tacoma, PDS  
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Paul J. Casey, Architect  
Casey+DeChant Architects, LLC  
5521 100th Street SW Suite A  
Lakewood, WA 98499-2768

**Re: HEX 2017-012 (LU17-0074)**

**Applicant: Orchard Street Acquisition, LLC**

Dear Parties,

In regard to the above-referenced matter please find enclosed a copy of the Hearing Examiner's Findings of Fact, Conclusions of Law, and Recommendation entered on August 29, 2017.

Sincerely,

Louisa Legg  
Office Administrator

Enclosure (1): Findings of Fact, Conclusions of Law, and Recommendation

Cc: Mark Carpenter, 2715T 62<sup>nd</sup> Ave. E., Fife, WA 98424-3559

State of Washington, Department of Ecology, Southwest Regional Office, Attn: Eva Barber,  
Toxics Cleanup Program; Chris Montague-Breakwell, Water Quality, P.O. Box 47775,  
Olympia, WA 98504-7775

Tacoma-Pierce County Health Department, Attn: Sharon Bell, 3629 South D Street, Tacoma, WA 98418-6813

Laura Himes 1658 S Mullen Street, Tacoma, WA 98405-1122

Marian Swanson, 1609 Huson Drive, Tacoma, WA 98405-1155

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Transmitted via Electronic Mail Delivery

Yannick Rendu; Crystal Dwyer; Emily Bosh; Laura Himes; Jody Johnson & Scott Calkins; City of Tacoma, Trevor Perkins, PDS Site Development Group; City of Tacoma, Jennifer Kammerzell, City of Tacoma Traffic Engineering; Nicole Emery, Tacoma City Clerk's Office; Steve Victor, Office of Tacoma City Attorney; Daniel Reed, Tacoma Power; Sue Simpson, City of Tacoma Public Works; Lisa Spadoni, Jana Magoon, Lihuang Wung

**OFFICE OF THE HEARING EXAMINER**

**CITY OF TACOMA**

**REPORT AND RECOMMENDATION**

**TO THE CITY COUNCIL**

**APPLICANT:** Orchard Street Acquisition, LLC through its agent Casey + Dechant Architects as to the Rezone Parcels (defined below); Orchard Street Investors, LLC is the owner of record, and therefore the *de facto* applicant for the Modification Parcels (defined below).

**FILE NO:** HEX2017-012 (LU17-0074)

**SUMMARY OF REQUEST:**

1. Rezone three parcels (4475000140, 4475000150, and 4475000370, collectively the “Rezone Parcels”) that front along South Orchard Street from their current designation of R-2 to R-4-L. The stormwater pond for the resulting development would be relocated to the northern end of the Rezone Parcels, and the remaining area would be developed with another 36 apartment units and associated parking and landscaping.
2. Modify a previous rezone (REZ2014-40000223041, Ord 28248, 2/1/2015<sup>1</sup> – the “Prior Rezone”) of three adjacent/nearby parcels (4475000390, 4475000380, and 4475000733, collectively the “Modification Parcels”). The Prior Rezone was required to facilitate multifamily development and site work, including a stormwater detention pond. The revised proposal relocates the detention pond to an area within the Rezone Parcels and adds 12 additional apartment units to the overall development.

**LOCATION:**

The primary address of the site is 1410 South Orchard Street, parcels 4475000370, 4475000140, 4475000150, 4475000380, 4475000390, and 4475000733.

**RECOMMENDATION OF THE HEARING EXAMINER:**

The proposed rezone and modification request is hereby recommended for approval, subject to conditions as set forth herein.

**PUBLIC HEARING:**

After reviewing the report of the City of Tacoma’s Planning and Development Services Department (“PDSD”) and examining available information on file with the applications, the Hearing Examiner conducted a public hearing on the matter on August 3, 2017. Shirley Schultz, Principal Planner testified for the City. Attorney William T. Lynn, and Paul Casey testified for the applicant(s). At the

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<sup>1</sup> The recorded Concomitant Zoning Agreement for the previous rezone (REZ2014-40000223041) is included as Exhibit 7. The full record for REZ2014-40000223041 is available in the files of Planning and Development Services. Relevant findings, conditions, and other information are reiterated herein as appropriate. The full decision and conditions, except where expressly modified by this current proposal, remain in place.

**ORIGINAL**

close of the hearing, the written record was left open until August 11, 2017, in order (1) for the applicants to submit clarifying documents relative to the ownership of the Rezone Parcels, and (2) for City staff to submit a corrected version of its Preliminary Report. The applicants' clarification materials were submitted on August 4, 2017 and were made part of the record as Exhibit 26. The City's corrected Preliminary Report was submitted on August 7, 2017, effectively closing the record on that date. The City's submission was initially made a part of the record separately as Exhibit 27, however, given that the City submitted the entirety of its Preliminary Report with a handful of tracked corrections, for purposes of this Report and Recommendation, that submission is considered to be a replacement for Exhibit 1 and the corrected Preliminary Report is referred to herein as Exhibit 1.

## **FINDINGS, CONCLUSIONS AND RECOMMENDATION:**

### **FINDINGS:**

1. Casey + Dechant Architects, as agent for applicant Orchard Street Acquisition, LLC,<sup>2</sup> submitted an application to rezone approximately 2.05 acres from R-2 Single-Family Dwelling District to R-4-L Low-Density Multiple Family Dwelling District to match the adjacent Phase I R-4-L zoning designation of the Modification Parcels. Thirty six multifamily units and related parking stalls for 54 cars are proposed on the Rezone Parcels. Additionally, presumed joint applicant Orchard Street Investors, LLC requests modification of the Prior Rezone (REZ2014-40000223041) to allow an additional 12 multifamily dwelling units and related parking on the Modification Parcels.<sup>3</sup> Further, the storm water detention pond for the proposed development would be relocated from the Modification Parcels to the Rezone Parcels. The Modification Parcels are currently approved for 121 apartments and 234 parking stalls. The aggregate site area is 7.49 acres intended to be developed with 169 dwelling units and 321 parking stalls. Both phases (Rezone Parcels + Modification Parcels) are proposed to share a common vehicular and pedestrian access to South Orchard Street, storm detention pond, and recreation amenities, and will have a common architectural style and appearance. The location of the access and off-site improvements i.e., utilities and street improvements, have already been approved in the Prior Rezone and are not proposed to change. *Ex. 1.*

2. The site's current zoning map shows that the Rezone Parcels are designated R-2 Single-Family Dwelling District with a "Parks and Open Space" overlay designation. *Ex. 4; Schultz Testimony.* Adjacent properties are a mix of vacant properties, right-of-way areas, and institutional uses (a church). *Ex. 4; Schultz Testimony.* Single-family residential is located east of the site, directly across South Orchard Street at a higher elevation. *Ex. 4; Schultz Testimony.* At this location, South Orchard Street is classified as a Principal Arterial, and is considered an important facility in the pedestrian, bicycle, transit, and automobile transportation networks. *Ex. 1.* The site is relatively flat other than a steep grade down from South Orchard Street, which puts the site approximately 20 feet below grade. *Ex. 1; Casey*

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<sup>2</sup> The Exhibit 1 Preliminary Report lists the property owners for the rezone parcels as "Phase II Orchard LLC" and "Ridge at Silverdale LLC." *Exhibit 1.* All three Rezone Parcels have now been conveyed to Orchard Street Acquisition, LLC, making it the applicant with standing for the rezone. *Exhibit 26.* No testimony was presented at the hearing regarding the relationship between Orchard Street Investors, LLC, the owner of the Modification Parcels, and Orchard Street Acquisition, LLC, the entity that now owns the Rezone Parcels.

<sup>3</sup> It was unclear at the hearing whether Orchard Street Investors, LLC had a representative present. The two entities' registration listings with the Washington Secretary of State show no commonality in "Governing Persons" (*See RCW 23.95.105[12]*).



*Testimony.* The majority of the Modification Parcels has been cleared and graded in preparation for development. A site development permit (SDEV16-0047) and a Work Order (WO16-0103) were issued May 4, 2017, for work to begin on the Modification Parcels. The SDEV allows for onsite grading and in-ground utilities; the Work Order allows work in the right-of-way, including curb, gutter, and sidewalk. These permits incorporate work that meets some of the conditions for development from the Prior Rezone. *Ex. 1; Schultz Testimony.*

3. The Rezone Parcels, as well as the majority of the surrounding area, were classified within the R-2 One-Family Dwelling District in 1953, when the City zoning code was first enacted. *Ex. 1; Schultz Testimony.* In 2005, a Determination of Non-Significance was issued for the site for a project involving 30,000 cubic yards of grade and fill in order to level out the site (SEP2005-40000052207). *Ex. 6.* The proposal at that time was for redevelopment as a religious institution; the site was later sold. *Ex. 1; Schultz Testimony.*

4. The Modification Parcels were rezoned from R-2 to R-4-L in February of 2015, following a public hearing and approval by the Tacoma City Council (the Prior Rezone). As part of the Prior Rezone, a Concomitant Zoning Agreement was recorded January 16, 2015, under Pierce County Auditor's File No. 201501160945 (Exhibit 7). Orchard Street Investors, LLC requested and was granted a minor modification to that approval in April of 2016, in order to provide garage and carport parking on the site (Exhibit 8). The applicants propose to comply with all conditions of the Prior Rezone as modified, except as expressly further modified herein. *Ex. 1.* The Prior Rezone was completed in advance of the December 1, 2015, adoption of *One Tacoma*, a significant update of the City's *Comprehensive Plan* (also referred to herein as the "*Comp Plan*"). The *Comp Plan* designation for the site has evolved over time as follows:

- December 9, 2008: Amended Ordinance 27769  
This action replaced the Recreation and Open Space Facilities Element with a new Open Space Habitat and Recreation Element, which included the Habitat Corridors as part of the planned parks, recreation and open space system. The subject property was designated as a Habitat Corridor.
- June 6, 2013: Ordinance 28158  
This action established a new land use designation framework to guide subsequent phases of the proposed revisions to the *Comp Plan's* land use designation system. The framework was intended to replace the land use intensities with a more descriptive set of land use categories. This ordinance introduced a "Parks and Open Space" land use designation that included both private and public lands as identified in the Open Space Habitat and Recreation Element. For the most part, Habitat Corridors, including the subject site, were adopted as the Parks and Open Space designation.
- December 1, 2015: Ordinance No. 28335  
The City completed its periodic update of the *Comp Plan*, re-organizing the *Comp Plan* elements. This action fully applied the new land use designation framework, with some modifications. Rather than using Land Use Intensities, *One Tacoma* set forth "future land use designations." These designations establish the intended future land use pattern –



providing a basis for applying zoning districts and for making land use decisions. The adoption of *One Tacoma* did not change the underlying zoning district in any part of the city; implementation of zoning changes is to occur over coming years, with review by the Planning Commission and City Council.

While this action did *not* amend zoning, Table 26 in the *Comp Plan* identified corresponding implementation priorities, which included zoning and development regulation updates to implement the Future Land Use Map and site development standards for Open Space Corridors. *Ex. 1.*

Subsequently, the City initiated two follow up rounds of zoning review and implementation. Neither of these processes addressed, or changed zoning at the subject site from the existing R-2 designation. There is no specific zoning class within the City that is necessarily associated with the “Parks and Open Space” designation overlaid on the Rezone Parcels. *Ex. 1; Schultz Testimony.* Ms. Schultz testified that the “Parks and Open Space” designation has more to do with a desired development style and not zoning *per se*. Ms. Schultz also testified that, although the “Parks and Open Space” designation can cause confusion regarding the underlying zoning and allowed uses (as it appeared to for the applicant at hearing [*Lynn Testimony, Casey Testimony*]), the designation does not necessarily need to be changed or removed in order to accommodate, or conform with the requested rezone designation of R-4-L. PDSO has determined that the proposed project layout and the trees proposed for preservation and planting therein will still be in harmony with the “Parks and Open Space” designation. *Schultz Testimony.*

5. As part of the project review process, PDSO provided notification of the intended project to various City departments, and outside governmental, and non-governmental agencies. *Ex. 1.* Departmental comments and requirements regarding this proposal are included as attachments to the City’s Staff Report. *Exs. 11-13 to Ex. 1.*

6. Public comment letters were received that address concerns relative to the proposed project regarding increased traffic and impacts from increased density in the area, mass transit coordination, view obstruction to the west (Olympic Mountains), tree removal – expressing concerns over both habitat loss, and the potential for decreased noise buffering from State Route 16 (SR 16), smells from placement of trash enclosure, the condition of property based on property management, air quality, light and noise pollution, relocation of vehicular access location, and apartment security issues. *Ex. 9; Schultz Testimony.* The Applicant submitted written responses addressing these concerns. *Ex. 10; Schultz Testimony.*

7. No members of the public appeared at the hearing expressing opposition to the rezone or modification requests.

8. Pursuant to the State’s State Environmental Policy Act (“SEPA”), applicable Rules (WAC 197-11), and the City of Tacoma’s Environmental Code (*Tacoma Municipal Code* [“TMC”] 13.12), the PDSO Director issued a Final Mitigated Determination of Nonsignificance (“MDNS”) on July 11, 2017.<sup>4</sup> The MDNS adopts and addends the prior SEPA determination for the overall site

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<sup>4</sup> City Staff’s Preliminary Report (Exhibit 1) mistakenly lists the date as July 10, 2017.

(SEP2014-40000223043). The determination was based upon a review of the applicant's Environmental Checklist and other supporting information on file with PDSO. The SEPA record is included as Exhibit 6. No appeals of the environmental determination have been filed with PDSO. *Ex. 1, Ex. 6; Schultz Testimony.*

9. In accordance with the requirements of *TMC* 13.05.020 regarding notices of rezone applications, written notice of the application was mailed to all owners of real property within 400 feet of the site, the appropriate neighborhood council and qualified neighborhood groups on June 1, 2017. In addition, a public notice sign was posted on the property. *Ex. 1; Schultz Testimony.*

10. William T. Lynn, legal counsel to the applicant, and Paul Casey of Casey + Dechant Architects, both testified at some length regarding City staff's recommended imposition of the requirements found in *TMC* 1.39 (as referenced in *TMC* 13.06.650 H.) as a condition of the requested rezone. *Lynn Testimony, Casey Testimony; see also Ex. 15, Ex. 1.* Ms. Schultz testified regarding City staff's position. The applicant essentially argued that (a) the "Parks and Open Space" designation was misplaced on the Rezone Parcels, (b) the surrounding area had changed so significantly as to make the R-2 designation at the Rezone Parcels an anachronism, and therefore (c) imposition of the *TMC* 1.39 requirements as a condition of the rezone is unfair and becomes a windfall to the City. *Lynn Testimony; Ex. 15.* Mr. Lynn also posited, for purposes of the hearing and resulting Recommendation, that the Hearing Examiner may not have the authority to waive imposition of the *TMC* 1.39 requirements in any event. Mr. Lynn is probably correct given that the Hearing Examiner has no final decision making authority in a rezone proceeding. Nonetheless, the Hearing Examiner's role in rezone proceedings is to make findings, conclusions, and a recommendation to the City Council. *TMC* 1.23.050 A.1. The "Parks and Open Space" designation, as testified to by Ms. Schultz, has no bearing on the actual zoning designation, nor does it have any material effect on the developability of the property, regardless of whether the designation may be considered misplaced at this location. Given the large area of single-family residential property in and around the subject property (e.g., immediately across South Orchard Street to the east), the Examiner does not find the present R-2 designation to be so out of character with the surrounding neighborhood as to constitute an anomaly that the City should have somehow corrected prior to this rezone request. As a result, the Examiner does not recommend a waiver of the *TMC* 1.39 requirements even if the City Council determines that it has the ability to waive their imposition.

11. No *area-wide* zoning involving or affecting the rezone site has been taken by the Tacoma City Council, acting in its legislative capacity, in the past two years preceding the filing of the present rezone/modification application. *Ex. 1; Schultz Testimony.*

12. PDSO's Preliminary Report, as entered into the record here as Exhibit 1, accurately describes the proposal, general and specific facts about the site, applicable sections of the *TMC*, and applicable regulatory codes. The report is incorporated herein by reference as though fully set forth, together with its attached exhibits.

13. Any conclusion hereinafter stated which may be deemed to be a finding herein is hereby adopted as such.

## CONCLUSIONS:

1. The Hearing Examiner has jurisdiction over the parties and subject matter in this proceeding. *See TMC 1.23.050; 1.23.120; and TMC 13.05.*
2. The applicant bears the burden of establishing, by a preponderance of the evidence that a requested rezone, rezone modification, and/or variances conform to all of the applicable criteria. *TMC 1.23.070 A.*
3. Case law and the TMC require that the applicant for a rezone show that conditions have changed since the original zoning or latest amendment, and that the rezone bears a substantial relationship to the public health, safety, morals or general welfare. *See Phoenix Dev., Inc. v. City of Woodinville*, 171 Wn.2d 820, 256 P.3d 1150 (2011); *Bassani v. County Commissioners*, 70 Wn. App. 389, 394, 853 P.2d 945 (1993) citing *Parkridge v. Seattle*, 89 Wn.2d 454, 153, P.2d 359 (1978); *Woodcrest Invs. Corp. v. Skagit Cy.*, 39 Wn. App. 622, 694, P.2d 705 (1985); *see also TMC 13.06.650 B.2.* No showing of “compelling circumstances” is required. Under Washington law, a “strong showing” of change is not required and the rule is intended to be flexible and allow consideration of each case on its own facts. *See Phoenix Dev.*, 171 Wn.2d at 834; *Bassani*, 70 Wn. App at 394. The rezone applicant made an acceptable showing regarding changed conditions. *Casey Testimony; Ex. 14.*
4. Applications for rezones are reviewed for consistency with all of the following criteria:
  - A. That the change of zoning classification is generally consistent with the applicable land use intensity designation of the property, policies, and other pertinent provisions of the Comprehensive Plan;
  - B. That substantial changes in conditions have occurred affecting the use and development of the property that would indicate the requested change of zoning is appropriate. If it is established that a rezone is required to directly implement an express provision or recommendation set forth in the Comprehensive Plan, it is unnecessary to demonstrate changed conditions supporting the requested rezone;
  - C. That the change of the zoning classification is consistent with the district establishment statement for the zoning classification being requested, as set forth in this chapter;
  - D. That the change of the zoning classification will not result in a substantial change to an area-wide rezone action taken by the City Council in the two years preceding the filing of the rezone application. Any application for rezone that was pending, and for which the Hearing Examiner’s hearing was held prior to the adoption date of an area-wide rezone, is vested as of the date the application was filed and is exempt from meeting this criteria; and



- E. That the change of zoning classification bears a substantial relationship to the public health, safety, morals, or general welfare.

*TMC 13.06.650 B.1-5.*

Consistency with the *Comprehensive Plan*

5. As referenced above, the applicable land use designation in the *Comp Plan* is “Parks and Open Space,” which carries no specific, intended development density or specified use. Multifamily development is not inappropriate in areas within the “Parks and Open Space” designation. The proposed development of the subject property would increase residential density from a potential of about 19 homes (based on an average lot size of 4,500 square feet) to 36 homes on about 2.05 acres (the Rezone Parcels).

The development proposed under the requested rezone is generally within the goals and policies of both the Urban Form and Design and Development chapters of the *Comp Plan* as set forth in subsections H.2-5 of Exhibit 1. The development is proposed to be constructed consistently with the already approved apartment complex on the Modification Parcels, and compatibly with the apartment complex to the north. The proposed development will act as a buffer between a single-family neighborhood and the SR16 corridor in an area where other, mixed multifamily development is present. The buildings will meet the site and building design standards for the district as set forth in subsection H.4. of Exhibit 1.

Consistency with residential design goals and policies of the *Comp Plan* will be fully assessed during the permit plan review, ensuring compliance with all applicable regulations for design, pedestrian access to the public way, and open space availability. *Ex. 1; Schultz Testimony.*

Changed Conditions

6. Because the requested rezone does not implement any provision or recommendation set forth in the *Comp Plan*, the applicant needs to demonstrate changed conditions.<sup>5</sup> At present, the Rezone Parcels still maintain their original 1953 zoning. Since 1953, the surrounding area has changed in a number of ways – SR 16 has been built, the neighboring church and apartments have been built, and traffic has increased substantially. The development proposed under the rezone request aligns sufficiently with *Comp Plan* goals to place higher-density housing near transportation and commercial infrastructure.

Consistency with District Establishment Statement

7. The District Establishment Statement for R-4-L districts allows for low-intensity multifamily uses and development, making the project proposed under the requested rezone compliant with this criterion.

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<sup>5</sup> The applicant’s justification for the rezone is included as Exhibit 14.

## Recent Area-Wide Rezone

8. No *area-wide* zoning involving or affecting the rezone site has been taken by the Tacoma City Council, acting in its legislative capacity, in the two years preceding the filing of this rezone request.

## Relationship to the Public Welfare

9. The TMC and the *Comp Plan* set forth policies and requirements aimed at regulating growth to ensure consistency with the public health, safety, morals and general welfare. The TMC also contains various development regulations applicable to development in R-4-L districts, including landscaping, design, and parking standards which are intended to ensure that projects in R-4-L districts are compatible with the intended character of the district and do not have significant negative impacts on surrounding uses.

Here, rezone applicant Orchard Street Acquisition, LLC has provided information and plans showing that all applicable development regulations can be met. Modification applicant Orchard Street Investors, LLC is in good standing because all prior requirements and conditions (of the Prior Rezone and its accompanying Concomitant Agreement) have either been met or are on the way to being met. *Schultz Testimony, Casey Testimony*. If the rezone and modification are approved, the applicants have committed to meet all development standards as their project is further refined and as development permits are obtained. *Casey Testimony; Ex. 1*. The proposed development and the conditions recommended by City staff in its report (Exhibit 1) include provisions that address required improvements, adequate parking, and normal utility services.

Modification applicant Orchard Street Investors, LLC has complied with conditions of development from the Prior Rezone (on the Modification Parcels) regarding soil cleanup and traffic improvements, and will comply with the conditions for aesthetics/design of the apartments. *Schultz Testimony, Casey Testimony; Ex. 1*. The rezone applicant has responded to neighborhood concerns about noise, tree cover, refuse management, and views in a manner that assuaged City staff's concerns. *Schultz Testimony; Ex. 9*.

Finally, the City's Public Works Engineering Division has reviewed the development proposed under this rezone request for impacts to the surrounding transportation infrastructure. This review resulted in traffic mitigation requirements being recommended under SEPA that should be complied with as a condition to approval of this rezone/modification request. The purpose of these mitigating conditions is to support the Transportation Master Plan policies to "prioritize the movement of people and goods via modes that have the least environmental impact and greatest contribution to livability in order to build a balanced transportation network that provides mobility options, accessibility, and economic vitality for all across all neighborhoods."

10. The requirements of SEPA have been, or will be met, by the City's having issued the Final MDNS, which was not appealed, and the applicant's ultimate compliance with the mitigation measures

required therein and in this Report and Recommendation.

11. As referenced above, prior to the hearing, in the form of Exhibit 15, and in testimony and argument at the hearing, the rezone applicant challenged the applicability of TMC 1.39 and 13.06.650 H. to the present rezone request. The Examiner does not find the applicant's argument in this regard compelling and recommends that the requirements of TMC 1.39 and 13.06.650 H. be applied here.

12. Based on the foregoing, and assuming compliance with TMC 1.39 and 13.06.650 H., the requested rezone and modification appear to meet the governing criteria for approval in TMC 13.06.650.

## SUMMARY

13. Findings entered herein, based on substantial and essentially unchallenged evidence in the hearing record, support a conclusion that the proposed rezone and rezone modification are consistent with applicable criteria and standards for rezones, provided the conditions set forth herein are imposed and complied with by the applicants.

14. Accordingly, the proposed rezone and rezone modification requested should be approved subject to the following conditions:

### A. RECOMMENDED CONDITIONS OF APPROVAL

#### 1. TRAFFIC:

- a. The development of the subject property—both the Rezone Parcels and the Modification Parcels—must incorporate all transportation improvements as agreed to with the Prior Rezone (Phase I development). This includes the right-of-way improvements on South Orchard Street as approved through the currently-active work orders.
  - b. In addition to the foregoing, with 65% of vehicles assigned to access the site from northbound South Orchard Street, access onsite at the driveway shall be managed to eliminate delay and queuing on-street. The main gate access shall remain open Monday thru Friday between 7:00 am–6:00 pm, which includes the AM peak and PM peak hour traffic, to prevent northbound vehicles from blocking the signal at SR 16. An alternative to keeping the gate open would be to provide a secondary ingress access to disperse site traffic and/or provide additional information regarding adequate queue lengths.
2. Prior to approval of the required building permits for the proposed development, the applicant shall provide documentation to Planning and Development Services that the requirements of Tacoma Municipal Code 1.39 - Affordable Housing Incentives and Bonuses Administrative Code – have been met through one of the two following methods:



- a. Incorporation of 25% of the units resulting from increased density (with a base density of 19) into the City's affordable housing inventory per the requirements of TMC 1.39; or
  - b. Payment of a fee-in-lieu at the rate of \$5,000 per unit resulting from increased density (with a base density of 19) into the City of Tacoma Housing Trust Fund. This is predicated on payment prior to Certificate of Occupancy, and prior to price adjustment in July of 2017. Payment at a later date or at a later stage of development will result in a different amount.
3. Development of the subject property must comply with all permit conditions set forth in Exhibits 11-13 to the City Staff Report (Exhibit 1).

**B. USUAL CONDITIONS:**

1. The recommendation set forth herein is based upon representations made and exhibits, including development plans and proposals, submitted at the hearing conducted by the Hearing Examiner. Any substantial change(s) or deviations(s) in such development plans, proposals, or conditions of approval imposed shall be subject to the review and approval of the Hearing Examiner (and City Council) and may require further and/or additional hearings.
2. The authorization recommended herein is subject to all applicable federal, state, and local laws, regulations, and ordinances. Compliance with such laws, regulations, and ordinances are conditions precedent to the approval recommended and are a continuing requirement of such approvals. By accepting this approval, the applicant(s) represent(s) that the development and activities allowed will comply with such laws, regulations, and ordinances. If, during the term of any approval granted, the development and activities permitted do not comply with such laws, regulations, and ordinances, the applicant(s) agree(s) to promptly bring such development or activities into compliance.

15. Any finding hereinbefore stated which may be deemed to be a conclusion herein is hereby adopted as such.

**RECOMMENDATION OF THE HEARING EXAMINER:**

The proposed rezone and modification request is hereby recommended for approval, subject to the conditions outlined herein.

**DATED** this 29<sup>th</sup> day of August, 2017.

  
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**JEFF H. CAPELL, Hearing Examiner**

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
RECOMMENDATION**

## NOTICE

### RECONSIDERATION/APPEAL OF EXAMINER'S RECOMMENDATION ON REZONE AND REZONE MODIFICATION

#### RECONSIDERATION:

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

#### APPEALS TO CITY COUNCIL OF EXAMINER'S RECOMMENDATION:

Within 14 days of the issuance of the Hearing Examiner's final recommendation, any aggrieved person or entity having standing under the ordinance governing such application and feeling that the recommendation of the Examiner is based on errors of procedure, fact or law shall have the right to appeal the recommendation of the Examiner by filing written notice of appeal with the City Clerk, stating the reasons the Examiner's recommendation was in error.

#### **APPEALS SHALL BE REVIEWED AND ACTED UPON BY THE CITY COUNCIL IN ACCORDANCE WITH TMC 1.70.**

**GENERAL PROCEDURES FOR APPEAL:** The Official Code of the City of Tacoma contains certain procedures for appeal, and while not listing all of these procedures here, you should be aware of the following items which are essential to your appeal. Any answers to questions on the proper procedure for appeal may be found in the City Code sections heretofore cited:

1. The written request for review shall also state where the Examiner's findings or conclusions were in error.
2. Any person who desires a copy of the electronic recording must pay the cost of reproducing the tapes. If a person desires a written transcript, he or she shall arrange for transcription and pay the cost thereof.