

**OFFICE OF THE HEARING EXAMINER**

**CITY OF TACOMA**

**REPORT AND RECOMMENDATION**

**TO THE CITY COUNCIL<sup>1</sup>**

**APPLICANT:** GREEN HARBOR COMMUNITIES, INC., a Washington corporation, is the applicant for the present rezone request (hereinafter the “Applicant” or “GHC”). GHC was represented at the hearing by William Rehe and Michael Pressnall<sup>2</sup>. For purposes of this Report and Recommendation, the references to “Green Harbor/GHC” and/or “Applicant” also include any employees, agents, and/or contractors of the Applicant in regard to conditions and compliance issues set forth below, and in regard to the development of the Subject Property (defined below).

**HEARING EXAMINER FILE NO:** HEX2020-020

**SUMMARY OF REQUEST:**

This Report and Recommendation regards a request to rezone approximately 28.4 acres of real property by adding a Planned Residential Development (“PRD”) Overlay District onto the existing “R-2” Single-Family Dwelling District to enable a PRD of 73 single-family residences concentrated on the southeasterly portion of the Site (defined below). The project includes open space, open space recreational areas, private roads, sidewalks and utilities. Review under the State Environmental Policy Act (“SEPA”) is required because more than 20 new single-family residential units are proposed.

**LOCATION:**

The Subject Property is located in the South End neighborhood of Tacoma and is currently addressed as 7432 East D Street, within Section 28, Township 20, Range 03, Quarters 42 and 43, Tacoma, Washington. The Subject Property is located within the City’s R-2 Single-Family Dwelling District, and consists of the following twenty parcels to the south and west of Charlotte’s Blueberry Park:

0320284007, 0320284011, 0320284014, 0320284016, 0320284035, 0320284058,  
0320284062, 0320284063, 0320284064, 0320284065, 0320284066, 0320284067,  
0320284112, 0320284139, 0320284220, 0320284225, 0320284226, 0320284227,  
0320284228, and 0320284233.

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

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<sup>1</sup> This Report and Recommendation also includes conditional decisions from the Hearing Examiner on the permits accompanying the PRD overlay/rezone request. This comprehensive document is referred to simply as the Report and Recommendation, however.

<sup>2</sup> Both Mr. Pressnall and Mr. Rehe testified under oath that they have the express authority to represent GHC for purposes of the hearing.

## **RECOMMENDATION:**

The Hearing Examiner recommends approval of the requested PRD overlay, subject to conditions set forth herein below.<sup>3</sup> Under the authority set forth in TMC sections 1.23.120, 13.05.090.E, and 13.05.110.C, the Examiner also heard testimony and reviewed the City’s presented record for permit review and approval of (1) the accompanying PRD site plan, (2) a Critical Areas Minor Development Permit, and (3) a Boundary Line Adjustment for the Site. The Examiner has approved those permits herein, conditioned upon the City Council’s action on the requested PRD overlay. If the City Council rejects the PRD overlay, approval of the permits shall be void.

## **PUBLIC HEARING:**

After reviewing the Preliminary Report submitted by the City’s Planning and Development Services Department<sup>4</sup> (herein the “PDS Report”—*Ex. C-1*) and all attendant information on file, the Hearing Examiner convened a public hearing on the PRD overlay request on September 10, 2020.<sup>5</sup> The hearing record closed later the same day upon submission of Applicant witnesses’ additional written and video remarks.

Testimony at the hearing was given from all of the following:

### City of Tacoma

- Shirley Schultz, Principal Planner
- Karla Kluge, Senior Environmental Specialist
- Joy Rodriguez, Professional Engineer

### GHC

- Amy Chorew, real estate industry professional
- Erwin B. (Sam) Pace, real estate industry professional
- Ryan Mello, frm. Tacoma City Council member and housing policy authority
- Sam Rashkin, Chief Architect, U.S. Department of Energy Building Technologies Office
- Joe Lonergan, frm. Tacoma City Council member and area resident
- Jamie Brennes-Dawson, intended occupant of “The Preserve”
- William Rehe, Applicant representative
- James Presnall, Applicant representative

No unaffiliated members of the public appeared at the hearing to offer comment/testimony. Multiple written statements were made part of the record as was one video recording.

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<sup>3</sup> As will be explained further below, the majority of the “conditions” recommended herein are not conditions precedent to approving the rezone. Rather, they are informational, advisory conditions to the Applicant regarding requirements for its proposed development of the Subject Property and they will require compliance as the proposed development moves forward.

<sup>4</sup> Abbreviated herein as “PDS.”

<sup>5</sup> Due to National, State of Washington and City of Tacoma Proclamations of Emergency caused by the COVID-19 virus the City of Tacoma closed the Tacoma Municipal Building to the public until further notice on or around March 17, 2020. As a result, the public hearing in this matter was conducted virtually using Zoom teleconferencing with both internet visual and audio access, as well as separate telephonic (only) access via call in number on Zoom.

## **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION:**

### **FINDINGS OF FACT:**

1. The Applicant submitted an application through its duly designated representative requesting that a PRD overlay be added to the existing R-2 Single-family dwelling district zoning of approximately 28.4 acres of land, which would result in a zoning designation of R-2 with PRD Planned Residential Development overlay district to enable a PRD of 73 single-family residences on the southeasterly portion of the Site. The proposed project includes open space, open space recreational areas, private roads, sidewalks and utilities, in addition to the planned residences (the “Project” also known as “The Preserve”). Review under the State Environmental Policy Act (“SEPA”) was required because more than 20 new single-family residential units are being proposed. *Schultz Testimony; Ex. C-1~C-5.*

2. GHC purchased the approximately 28-acre Subject Property as surplus from the Tacoma Public Schools in 2018. The Subject Property is heavily impacted by critical areas (wetlands and biodiversity areas/corridors) and negative land uses (homeless camps, drug sales and use, and prostitution). *Schultz Testimony; Rehe Testimony, Presnall Testimony; Ex. C-1, Ex. C-9~C-13.*

3. The Site is a large irregular shaped area made up of 20 unplatted parcels at present. It measures approximately 935 feet from east to west, up to 1650 feet from north to south, and as mentioned above, totals approximately 28.4 acres in area. The Subject Property is bounded by East D Street on the east, East 80th Street (unimproved) on the south, private property to the west, and Charlotte’s Blueberry Park on the north. Charlotte’s Blueberry Park is a Metropolitan Parks District property of about 20 acres in size (about ten of which are wetlands) and includes a playground, community garden, and blueberry farm. The park also includes trails and picnic areas. There are presently three houses under construction on the very southeast portion of the Site, each on one of the existing parcels. *Id.*

4. The Site is mostly flat, and has viable access to necessary utilities from the adjacent right-of-way areas. The closest transit stops are along Pacific Avenue to the west and East 72nd Street to the north. PDS determined that “Adequate schools are located within the vicinity.” *Id.*

5. The majority of the Site is undeveloped wetland and open space/forested area. A storm line runs diagonally through the Site in a 50-foot-wide easement area. Four wetlands (Wetlands A-B and D-E), and one drainage feature (Drainage Feature 1) were identified within the Subject Property’s boundaries, along with designated Biodiversity Areas. The City and the Applicant engaged in a Critical Areas Verification Permit process to make the foregoing determinations. The Applicant submitted a “Technical Addendum” dated June 2, 2020, prepared by Bill Rehe-North Fork Environmental; “Critical Areas Report for the Green Harbor Communities-The Preserve Property,” Revised February 2020 prepared by Bill Rehe; and a “Critical Area Report and Mitigation Plan for the Green Harbor Communities-The Preserve PRD Rezone,” Revised February 2020, also prepared by Bill Rehe (*Exhibits C-11~C-13*). Karla Kluge has provided a technical memorandum with her analysis and conclusions regarding the Project for PDS. *Id., Ex. C-9, Ex. C-10.*

6. The southeast portion of the Subject Property, near the intersection of East D Street and East 80th Street is the least constrained in regard to critical areas and other regulatory challenges. GHC proposes to preserve and enhance the most critical parts of the Subject Property while developing approximately nine acres of the Site for what it characterizes as “work force” or “missing middle” housing. The residential development portion of the Subject Property will utilize low impact development techniques such as reduced impervious surfaces, permeable asphalt and concrete, as well as including the intended preservation of native vegetation. The preservation of native vegetation includes a 25-foot enhanced native vegetation greenbelt along East D Street and East 80th Street. GHC will also site its homes in a way that preserves native vegetation to the highest level practicable. *Id.*, *Ex. A-1, Ex. C-4.*

7. The Site is located in a general area of single-family housing. Most houses in the area are of the mid-to-late-twentieth century style, set on a mix of platted and unplatted properties. The properties to the west are larger with significant open space, whereas the properties to the east and south are more typical of city blocks in Tacoma. Surrounding streets are residential collector streets and range in size and condition (some are undeveloped; several do not have curb, gutter, or sidewalk). *Schultz Testimony; Ex. C-1.*

8. As stated above, the Project will consist of 73 single-family detached cottage homes. The homes will be either 950 or 1,250 square feet in area. Each home size will have two façades available from which to choose. The 950-square-foot home (the Cascade 950) is a 2 bedroom and 1 bath plan, while the 1,250-square-foot model (the Colton 1250) has 3 bedrooms and 2 baths. Both home designs will utilize vaulted ceilings and abundant windows to give an open, roomy floor plan. The homes will be grouped on the ground to minimize impacts to native vegetation and reduce impervious surfaces. The homes are intended to be developed initially on a leasehold area instead of traditional lots.<sup>6</sup> Homes will be staggered within the developed area of the Project to increase privacy. Even though the developed area of the Project will be relatively small compared to traditional developments, homeowners will have access to approximately 20 acres of trails, common areas and open space. *Id.*, *Ex. A-1.*

9. The height of the homes in the Project will be within the 35-foot height limit of the underlying R-2 zoning district. All development will maintain a 20-foot setback from the Subject Property lines along East 80<sup>th</sup> Street, East D Street, and the north boundary of the Site. Interior setbacks will be 5 feet from side property lines, a minimum of 10 feet from the sidewalk along the accessway, and at least 5 feet from the rear area of the given leasehold area. The Site is designed to allow for some flexibility in building footprints to allow maintenance of mature trees. The gross site area for the PRD is approximately 28 acres; the net site area slated for residential development is approximately 9 acres. *Ex. C-1.*

10. The calculated density for the overall Site is 1 dwelling unit per 0.388 acres (16,901 square feet per unit) on the full Site or 1 dwelling per 0.139 acres (6,000 square feet per unit) on the developed portion of the Site. The resulting density on the developed portion of the Site would be approximately

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<sup>6</sup> Applicant representatives testified that, once built out, the leasehold of the real property underlying the homes will likely be converted to full-on fee ownership by the home purchasers perhaps under a condominium regime where all residents of The Preserve would be tenant-in-common owners of the whole area.

7.25 dwelling units per acre. The Applicant is not seeking a density bonus. Houses will be clustered to preserve open space, critical areas, and mature vegetation, as well as to limit development costs. *Id.*

11. Both the City and the Applicant testified that the proposed homes will be built to meet Built Green standards through the use of Structural Insulated Panels (SIPs) and other sustainable building features. The Applicant proposes to meet the standards required for PRD approval, but has requested excusal from the current third-party certification standard, due to the expense of a third-party certification. The Applicant has provided a worksheet (Exhibit C-8) demonstrating compliance with the applicable Greenroads standards, sufficient to meet the Bronze Standard (again, hoping to do so without being required to obtain third-party certification). The worksheet was reviewed by Joy Rodriguez, P.E., the City's subject matter expert in low impact infrastructure. Ms. Rodriguez has provided a review memorandum, which is in the hearing record as Exhibit C-18, and testified that she has the experience and the expertise (together with other City staff) to verify that the Project improvements will meet required Built Green and Greenroads standards. Schultz offered additional testimony indicating that the City is in the process of revising the Tacoma Municipal Code ("TMC") such that third-party certification of these standards will no longer be a requirement if compliance is otherwise shown.

12. The existing parcels comprising the Subject Property have never been platted and are all described in Ex. C-2 with metes and bounds legal descriptions. The Applicant prefers not to subdivide the Subject Property through the platting process, instead choosing to request the PRD overlay substituting its site plan instead. This election was made with concurrence from PDS. PDS indicated that there is no requirement to subdivide/plat in a PRD Overlay District, stating that the PRD site plan takes the place of a plat, if sufficient detail is provided. Both the Applicant and PDS assert that a PRD site plan essentially functions as a plat because it allows PDS to review the proposed development layout, including, without limitation, the proposed residential improvements, traffic circulation, and utilities. The site plan submitted here does contain the level of information typically found in a preliminary plat submission. *Schultz Testimony; Ex. C-1, Ex. C-2.*

13. As alluded to above, the present zoning of the Site, and the surrounding area, is R-2 Single-Family Dwelling District, and has been so since 1953. There have been no subsequent zoning changes in the immediate vicinity of the Subject Property. The Upper Pacific Crossroads Mixed Use District is located to the west of the Site and is the closest zoning change up. *Ex. C-1.*

14. The Land Use Map in the City's One Tacoma-Comprehensive Plan (the "Comp Plan") designates the Site as being within a Parks and Open Space area. Regarding that designation, the Comp Plan states the following:

This designation is intended to conserve and enhance open, natural and improved areas valuable for their environmental, recreational, green infrastructure and scenic character and the benefits they provide. The designation encompasses public and private parks and open space lands, with lands set aside for these purposes by the City of Tacoma and the Metropolitan Parks District forming the core of the designation. As more land is placed in conservation status by these agencies as well as other public and private entities, the extent of the designation will be expanded to include them. *Ex. C-1, Ex. C-17.*

15. Pursuant to the State’s SEPA Rules (WAC 197-11) and the City of Tacoma’s Environmental Code (TMC 13.12), the PDS Director issued a Determination of Environmental Non-significance for the proposed Project on August 13, 2020 (Exhibit C-5, the “DNS”). The DNS was based on a review of the Applicant’s Environmental Checklist, a site survey, and other supporting information on file with PDS. The appeal deadline for the DNS was August 27, 2020. No appeals have been filed. One comment/review letter was received from the Washington State Department of Ecology, which is in the hearing record as Exhibit C-19. The letter details advisory conditions and comments related to development of the Site, including additional permitting for impacts to wetlands and the potential for contaminants at the Site. The Applicant has been advised of additional permitting requirements (if applicable). Further, the Site is not a known area of contamination, and the Applicant has had the soils characterized on the Site. *Ex. C-1, Ex. C-19.*

16. PDS determined GHC’s application to be technically complete on August 5, 2019. The application has had additional revisions and information submitted up through July 2020. The Public Hearing Notice was issued on July 21, 2020, and was mailed to approximately 300 owners of record and/or taxpayers of record for properties within 400 feet of the Site and mailed and/or emailed to the neighborhood council, Tacoma School District, Metropolitan Parks District, qualified neighborhood and business groups, City staff, and outside agencies. In addition, a property information sign was posted on the Site, and the Public Hearing Notice was posted on PDS’ City website. *Ex. C-1.*

17. Multiple written comments and one video submission about the Project have been received and are part of the hearing record. Almost uniformly, these written comment expressed their support for the Project generally, with some also expressing opposition to the City’s recommended requirement for a pedestrian trail along the East 80<sup>th</sup> Street, currently unimproved right-of-way.<sup>7</sup> This opposition centered on the belief that the Ped Path might perpetuate and facilitate the same kind of undesirable and even unlawful behavior that has occurred on the Subject Property in recent times. Studies tend to show, however, that public trails/pedestrian paths actually have the effect of reducing crime in their vicinity, and even raising property values as a useful amenity.<sup>8</sup> PDS staff also received one telephone call from a neighbor concerned about the retention of trees on the Site. *Ex. A-2, Ex. A-3, Ex. A-5, Ex. C-1, Ex. C-16.*

18. No unaffiliated members of the public appeared at the hearing to testify. The Applicant did present, as its own witnesses, all the individuals listed above.<sup>9</sup> The testimony showed that the Project is rather visionary, and needed in the Tacoma housing market.

19. As part of the Project review process, PDS provided notification of this PRD overlay-rezone request to various City departments/divisions, and outside governmental and non-governmental agencies. Departmental comments and requirements regarding this proposal are included in the PDS Report. These agencies/departments/divisions recommended important conditions they believed would

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<sup>7</sup> The Applicant testified that it is fine with the requirement to provide the East 80<sup>th</sup> Street pedestrian path (hereafter the “Ped Path”), but wants to be responsive to the neighborhood concerns. To that end, the Applicant provided Exhibit A-2 which offered potential alternatives that the Applicant was willing to undertake in exchange for deletion of the Ped Path as a development condition for the Project.

<sup>8</sup> See e.g., [https://safety.fhwa.dot.gov/ped\\_bike/docs/rt\\_safecomm.pdf](https://safety.fhwa.dot.gov/ped_bike/docs/rt_safecomm.pdf); <https://www.thewashcycle.com/2008/09/the-trails-brin.html>; <https://www.railstotrails.org/resourcehandler.ashx?id=4482>.

<sup>9</sup> Besides Rehe and Presnall.

be properly attached to the rezone were it to be approved by the City Council, but with more of an eye toward the actual development of the Subject Property. *Schultz Testimony; Ex. C-6.*

20. The PDS Report (Exhibit C-1) accurately describes the requested rezone and the Project, general and specific facts about the Site, applicable sections of the Comp Plan, and applicable regulatory codes. The PDS Report is marked as Exhibit C-1, and by this reference, is incorporated herein as though fully set forth. To the extent that anything in the PDS Report conflicts with the contents of this Report and Recommendation, this Report and Recommendation shall control.

21. Any conclusion of law herein which may be more properly deemed a finding of fact (“FoF”) is hereby adopted as such.

### **CONCLUSIONS OF LAW:**

1. The Hearing Examiner has jurisdiction over the subject matter of this proceeding to conduct a hearing and make a recommendation to the City Council in regard to the PRD overlay request. The final decision on the requested PRD overlay is made legislatively through an ordinance by the City Council. *TMC 13.06.070.C.3, TMC 1.23.050.A.1 and TMC 13.05.*<sup>10</sup> The Examiner has jurisdiction over the accompanying permits to determine approval, “[c]onditioned on City Council approval of the reclassification.” *TMC 13.06.070.C.3.*

2. The requirements of SEPA have been met by the City’s issuance of the DNS,<sup>11</sup> which has not been appealed.

### **PRD OVERLAY RECOMMENDATION ANALYSIS AND CONCLUSIONS**

3. As noted in the PDS Report, adding a PRD overlay to the Subject property’s existing R-2 District technically requires a rezone analysis of the Subject Property. The base zoning of R-2 does not change. Nonetheless, the TMC requires that the criteria for the rezone of real property, as set forth in TMC 13.05.030.C, be considered and met in addition to the more specific PRD approval requirements. Under TMC 13.05.030.C.b (formerly TMC 13.06.650.B), the applicant for a rezone is required to demonstrate consistency with all of the following criteria:<sup>12</sup>

(1) 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.

(2) That substantial changes in conditions have occurred affecting the use and development of the property that would indicate the requested change of zoning is

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<sup>10</sup> TMC 13.06.070.C.3 specifically states that “Application for reclassification to a PRD District shall be made in accordance with the provisions of Chapter 13.05, with a public hearing being conducted by the Hearing Examiner, and final action being taken legislatively by the City Council.” TMC sections 1.23.120, 13.04.240, 13.05.090.E, and 13.05.110.C are applicable here in assigning the Hearing Examiner the authority to conduct the PRD overlay hearing while taking evidence and deciding whether to approve the other attendant permits at the same time.

<sup>11</sup> See TMC 13.12.430.

<sup>12</sup> Numbering of the criteria is kept the same as in the TMC for consistency.

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.

(3) 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.

(4) 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.

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

The Applicant bears the burden of establishing by a preponderance of the evidence that the requested rezone conforms to all of the foregoing criteria, which will now be addressed each in turn. *TMC 1.23.070.A*

4. Consistency with the Comp Plan—TMC 13.05.030.C.b.(1) “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.”

As set forth above, the zoning classification for the Subject Property is not changing. Rather, the Applicant is requesting that a PRD overlay be added to that existing R-2 Single-Family Dwelling District classification. The PRD overlay will perhaps allow for more flexibility in layout and greater density, but the Project will conform to the existing zoning classification in that the Site will be developed for single-family residential use.

The land use intensity designation for the Subject Property in the Comp Plan is “Parks and Open Space.” While this designation may seem incongruous with the Project, it should be noted that a Parks and Open Space designation assigned to privately owned property does not take away that property owner's right to develop that property in conformance with the existing zoning classification. PDS provided the following analysis for this rezone criterion:

The Comprehensive Plan does not establish appropriate zoning and uses for the Parks and Open Space designation; rather, the Plan sets forth goals and policies in the Urban Form and Environment and Watershed Health elements for protection and preservation of the functions of Open Space corridors. The Plan also does not presuppose public ownership or access to these areas, and clearly references private open space as appropriate within the designation.



The plan states that multiple zoning designations are appropriate for the land use designation, ***provided that development takes actions to preserve and protect critical areas and open space.*** This PRD proposal’s main purpose is to allow for development while preserving the greatest amount of critical area and open space. [Emphasis added.]

Given that the Project to be authorized through the PRD overlay’s approval will preserve two-thirds of the Subject Property more or less as open space, the Examiner thoroughly agrees with PDS that this criterion has been met. The requested PRD overlay “[i]s generally consistent with the applicable land use intensity designation of the property...”

TMC 13.05.030.C.b.(1) further requires general consistency with the “[p]olicies, and other pertinent provisions of the Comprehensive Plan.” Both the Applicant’s submissions (*Ex. C-4*) and the PDS Report (*Ex. C-1, as well as more specifically in Ex. C-17*) set forth numerous Comp Plan policies and goals that are advanced by the Applicant’s intended use of the Subject Property for a PRD after the requested PRD overlay is put in place. It is easy to conclude that the proposed use of the Subject Property is generally consistent with the multitude of Comp Plan goals and policies listed in Exhibit C-17. Representative of these consistent goals and policies are the following, which relate very specifically to the Project:

- (1) ***Policy DD–4.2*** Encourage more housing choices to accommodate a wider diversity of family sizes, incomes, and ages.
- (2) ***Policy DD–4.3*** Encourage residential infill development that complements the general scale, character, and natural landscape features of neighborhoods.
- (3) ***Policy DD–4.4*** Support resource efficient and healthy residential design and development.
- (4) ***Policy DD–4.7*** Emphasize the natural physical qualities of the neighborhood (for example, trees, marine view, and natural features) and the site in locating and developing residential areas, provided such development can be built without adversely impacting the natural areas. Where possible, development should be configured to utilize existing natural features as an amenity to the development.
- (5) ***Policy DD–4.8*** Provide on-site open space for all types of residential uses.

Again, approving the requested rezone to allow the PRD overlay to attach to the Subject Property promotes the various Comp Plan goals and policies set forth in Exhibit C-17 of the City’s submittals, of which the five listed above are representative. As a result, the Examiner concludes that the standards set forth in TMC 13.05.030.C.b.(1) are met.

**5. Substantial Changes—** TMC 13.05.030.C.b.(2) “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.”

In regard to the rezone criteria found in subsection (2) that deals with substantial change, the City made the following analysis:

The conditions in the neighborhood have not changed; however, the school district did determine that the site wasn’t needed for school purposes and therefore sold the property. The rezone with a PRD overlay will implement multiple policies in the Comprehensive Plan related to the preservation of open space and the provision of a variety of housing types in multiple types of neighborhoods. *Ex. C-1.*

The Examiner agrees with the City that granting the requested rezone “[i]mplement[s] an express provision or recommendation set forth in the Comprehensive Plan, [making] it [ ] unnecessary to demonstrate changed conditions supporting the requested rezone.” As such, the second prong of TMC 13.05.030.C.b.(2) is met.

**6. District Establishment Statement— TMC 13.05.030.C.b.(3)** “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.”

PDS staff had the following to say regarding this criterion:

The underlying zone will not change. The applicant has met the establishment statement and intent of the PRD district, which states the goal of flexibility in development to preserve open space and provide housing choice. *Ex. C-1.*

Since no change in the present zoning classification is requested as part of the PRD overlay request, this criterion has little application. The City’s analysis is correct. The TMC 13.05.030.C.b.(3) criterion is satisfied.

**7. Recent Area-Wide Rezone—TMC 13.05.030.C.b.(4)**

No area-wide zoning action involving or affecting the Subject Property has been made by the Tacoma City Council in the two years preceding the filing of the present PRD overlay application. As a result, the criterion set forth at TMC 13.05.030.C.b.(4) is satisfied.

**8. Relationship to the Public Welfare** (TMC 13.05.030.C.b.(5) “That the change of zoning classification bears a substantial relationship to the public health, safety, morals, or general welfare.”

The TMC and Comp Plan set forth policies and requirements, including design and development standards, aimed at regulating growth and development to ensure consistency with the public health, safety, morals and general welfare.

In order to ensure further that this PRD overlay request and the intended development of the Subject Property are consistent with the public health, safety, morals and general welfare of the community, City departments and divisions, and related agencies reviewed and commented on the proposed development, supplying various conditions that will ensure compliance with applicable laws and development regulations. Requiring compliance with applicable development regulations and standards further helps safeguard the public, and ensures compatibility with the surrounding community.

In addition to the foregoing, the city of Tacoma, as well as western Washington in general, has been experiencing a shortage in housing and more particularly in affordable housing. Increasing the available housing supply in the City helps address this public health, safety and welfare concern by increasing the available supply of housing, and by increasing the supply, hopefully helping to stabilize or even reduce costs.<sup>13</sup>

The Examiner finds that the requirements of TMC 13.05.030.C.b.(5) are met or will be met through compliance with the conditions set forth below at Section A. as the development of the Subject Property unfolds, and by facilitating the increased supply of housing in the Tacoma market.

**9. TMC 13.05.030.C.b Conclusion** All criteria of TMC 13.05.030.C.b, as applicable to the requested PRD overlay are met. Given that, as will be set forth more expressly below, the Examiner recommends to the City Council that the PRD overlay be approved, thereby amending the zoning for the Subject Property to be R-2 Single-Family Dwelling District with Planned Residential Development (“PRD”) overlay.

#### **ACCOMPANYING PERMIT ANALYSIS AND CONCLUSIONS**

##### **PRD SITE PLAN**

**10.** Turning now to the permits accompanying the PRD overlay request, we first look at the Applicant’s PRD site plan. TMC 13.06.070.C.3 states that “An application for site approval shall accompany a request for reclassification to a PRD District.” GHC has submitted its PRD site plan satisfying this initial submittal requirement.

In determining the adequacy of the site plan, we look first to TMC 13.06.070.C.3, which provides this extensive, but apparently non-exhaustive list<sup>14</sup> of approval criteria as follows:

In acting upon a request for site approval, the Hearing Examiner or Director shall consider, but not be limited to, the following criteria:

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<sup>13</sup> Significant testimony was offered by Applicant’s witnesses supporting this conclusion. *See FoF 16.*

<sup>14</sup> The Examiner refers to the list of PRD site plan approval criteria as non-exhaustive because the introduction to the list uses the phrase “but not be limited to...” That opening phrase notwithstanding, the Examiner treats the criteria list as finite or exhaustive. Frankly, having an approval criteria list that is non-exhaustive seems problematic from the standpoint that a non-exhaustive list could end up including unpublished or unnoticed criteria that an applicant would have no way of knowing about. On the other hand, the TMC 13.06.070.C.3 list may be considered non-exhaustive from the standpoint that subsection C.3 is not the only list of criteria for approval of a PRD site plan as will be seen below. The site plan must also comply with the additional lists of criteria at TMC 13.06.070.C.4 through C.11.

- a. The site development plan shall be consistent with the goals and policies of the Comprehensive Plan.
- b. The plan shall be consistent with the intent and regulations of the PRD District and any other applicable statutes and ordinances.
- c. The proposed development plan for the PRD District is not inconsistent with the health, safety, convenience, or general welfare of persons residing or working in the community. The findings of the Hearing Examiner or Director shall be concerned with, but not limited to, the following:
  - (1) The generation of noise or other nuisances which may be injurious or to the detriment of a significant portion of the community.
  - (2) Availability and/or adequacy of public services which may be necessary or desirable for the support of the development. These may include, but shall not be limited to, availability of utilities; transportation systems, including vehicular, pedestrian, and public transportation systems; and education, police, and fire services, and social and health services.
  - (3) Adequacy of landscaping, recreation facilities, screening, yards, setbacks, open spaces, or other development characteristics necessary to provide a sound and healthful living environment and mitigate the impact of the development upon neighboring properties and the community.
  - (4) The compliance of the site development plan with any conditions to development stipulated by the City Council at the time of the establishment of the PRD District.
  - (5) The demonstration of urban design excellence in site and building design through establishing Basic Neighborhood Patterns, pedestrian-friendly design, de-emphasized parking, minimized scale contrasts and privacy impacts, usable outdoor spaces, sustainability features and connectivity as appropriate to the site, context and proposed development type and density.

In the PDS Report, the City’s analysis determined that all these criteria were met. The Examiner will now address each in order.

**11. TMC 13.06.070.C.3.a—**“The site development plan shall be consistent with the goals and policies of the Comprehensive Plan.”

In regard to this criterion, the City provided the following analysis:

Relevant excerpts from the Comprehensive Plan are included as Exhibit C-17. In particular, Goal UF-1 and the implementing policies emphasize positive growth for all Tacomans, including Policy UF-1.7 which directs the City and development to “integrate nature and use appropriate green infrastructure”, as well as Policy DD-1.5 to design sites to “respect the unique built, natural...characteristics”, and Goal DD-7 to support sustainable and resource-efficient development.

Throughout the Plan, goals and policies direct the City to review development that provides a range of housing types in innovative developments to preserve the natural environment, while providing a safe, attractive place for people to live. *Ex. C-1.*

The City's analysis is on point. The question posed by this criterion is similar in nature to the rezone criterion addressed at Conclusion 4 above, only now the Comp Plan consistency inquiry is directed specifically at the PRD site plan rather than the PRD conceptually. Inasmuch as the site plan is the concrete representation of the PRD concept it would be a strange case in which a PRD was found to be consistent with the Comp Plan conceptually, but not concretely unless there were found a significant discrepancy between concept and actual implementation. No such discrepancy exists here. Incorporating the analysis and conclusion from Conclusion 4 above, together with the City's analysis here, the TMC 13.06.070.C.3.a criterion is met. Significant Comp Plan goals and policies are advanced by the PRD as represented in its site plan. Affordable housing will be provided as the result of environmentally responsible development that preserves and protects a maximum of existing open space.

**12.** TMC 13.06.070.C.3.b—"The plan shall be consistent with the intent and regulations of the PRD District and any other applicable statutes and ordinances."

TMC 13.06.070.C.2 sets forth the purpose and intent of the City's PRD District and the purpose of its regulations. The City's analysis of the present site plan against that intent statement produced the following conclusion from the City:

The purpose of the development and the requested PRD is exactly within the intent of the PRD regulations. The applicant seeks flexibility in the standard regulations to allow for an affordable residential development with minimal impact to critical areas, allowing preservation of the remainder of the site. *Ex. C-1.*

The Examiner concurs in the City's conclusion. The site plan exercises greater flexibility than would be allowed under the R-2 zoning in place, but that flexibility is directly aimed at virtually all the expressly stated goals set forth in TMC 13.06.070.C.2. This criterion is met.

**13.** TMC 13.06.070.C.3.c—"The proposed development plan for the PRD District is not inconsistent with the health, safety, convenience, or general welfare of persons residing or working in the community."

Here again, a factor similar to a rezone analysis criterion gets applied specifically to the PRD site plan (*See Conclusion 8 above*). The analysis from Conclusion 8 above can be incorporated here essentially verbatim because, again, the site plan is the more concrete manifestation of the PRD concept and the two are really inseparable for purposes of a complete review. On this site plan factor, the City provided the following:

The individual items [TMC 13.06.070.C.3.c.(1)~(5)] are analyzed below, with the general requirements of the PRD District. The proposal is for a single-family development in the midst of other single-family homes. Nuisance, noise, or other

disturbances (other than normal construction noise) is not expected [sic]. The PRD will be consistent with the health, safety, convenience, and general welfare of the neighborhood. *Ex. C-1.*

The Examiner turns now to the criteria listed at TMC 13.06.070.C.3.c.(1)~(5) in turn.

**13.1** “(1) The generation of noise or other nuisances which may be injurious or to the detriment of a significant portion of the community.”

Outside of the usual construction noise associated with residential construction, The Preserve PRD should not generate noise at levels that could be deemed injurious or detrimental to a significant portion of the community. The site plan design is structured to minimize noise with its clustered improvements and retention of trees and buffers along boundaries. This condition is satisfied under the larger ambit of TMC 13.06.070.C.3.c.

**13.2** “(2) Availability and/or adequacy of public services which may be necessary or desirable for the support of the development. These may include, but shall not be limited to, availability of utilities; transportation systems, including vehicular, pedestrian, and public transportation systems; and education, police, and fire services, and social and health services.”

Utilities are available in the right-of-way surrounding the Site. Public transportation is available within a reasonable walking distance of the Project. Schools within the area should be adequate to handle the population of The Preserve. Emergency response and other social and health services are available to the future residents of The Preserve in the same manner as the surrounding residential neighborhood. *FoF 3, FoF 4.* This factor is satisfied.

**13.3** “(3) Adequacy of landscaping, recreation facilities, screening, yards, setbacks, open spaces, or other development characteristics necessary to provide a sound and healthful living environment and mitigate the impact of the development upon neighboring properties and the community.”

Given the landscaping shown on the site plan, together with the retention of two-thirds of the Subject Property as other open space, green buffers and recreation areas, it is easy to conclude that this condition is satisfied by the site plan.

**13.4** “(4) The compliance of the site development plan with any conditions to development stipulated by the City Council at the time of the establishment of the PRD District.”

Given that the City Council has not yet approved the PRD overlay, there is nothing yet to comply with under this heading. If the City Council adopts the conditions recommended herein, they will find additional enforcement authority hereunder. Were the City Council to add conditions, they could do so also looking to this provision for support.

**13.5** “(5) The demonstration of urban design excellence in site and building design through establishing Basic Neighborhood Patterns, pedestrian-friendly design, de-emphasized

parking, minimized scale contrasts and privacy impacts, usable outdoor spaces, sustainability features and connectivity as appropriate to the site, context and proposed development type and density.”

The Applicant’s commitment to following Built Green and Greenroads standards in constructing the Project, together with its preservation of existing vegetation and open space and overall design show that this condition is met.

14. As stated in the PDS Report,<sup>15</sup> the site plan approval application requirements of TMC 13.06.070.C.3.d were met previously in GHC’s application as verified by PDS staff on the way to scheduling the hearing.

15. We now turn to analysis of the “General requirements” for PRD approval set forth in TMC 13.06.070.C.4. This section of the City’s PRD overlay code contains seventeen subsections, a through q. The PDS Report analyzed these subsections as applicable beginning at Page 6 of 26. Looking to that analysis and the additional evidence and testimony from the hearing, the Examiner now list subsections a through q with conclusions as to their satisfaction as applicable. Analysis and conclusions are in italicized text immediately following each subsection.

- a. This Section was substantially updated on December 1, 2015. PRD Districts approved prior to that date are subject to the provisions of their approvals, including the amount and designation of required open space. PRD applications submitted after that date shall meet the following standards and requirements. *This subsection is merely a lead-in and has no separate compliance requirement.*
- b. PRDs are permitted as an overlay in all residential districts, with the exception that PRDs are not permitted in the HMR-SRD District or within designated Historic Districts. *The Subject Property is zoned for residential use. It is not in an HMR-SRD, nor is it in a designated Historic District.*
- c. The site approval shall be binding upon the development and substantial variations from the plan shall be subject to approval by the Director. *This is more of an admonishment than an upfront approval requirement.*
- d. No building permit shall be issued without a site approval. *Again, this is more of an admonishment than an upfront approval requirement.*
- e. The site approval shall expire as provided in Chapter 13.05. *More admonishment here.*

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<sup>15</sup> This is found in the PDS Report at Page 6 of 26 at paragraph D. which states “An application for site approval includes a plan set (Exhibit C-2) that shows all of the required elements of Subsection D. The site plan has been reviewed for comments, revision, and conditions from City Staff (Exhibit C-7 and C-18).”

- f. In granting site approval, the Hearing Examiner and/or the Director may attach conditions as authorized in Chapter 1.23, or, in the case of approval by the Director, Chapter 13.05, and unless other arrangements are agreed to by the City, the owner and/or developers shall be responsible for paying the cost of construction and/or installation of all required on- and off-site improvements. This responsibility shall be the subject of a contractual agreement between the owner and/or developer and the City. Such contract shall require that, in lieu of the actual construction of the required improvements, the owner and/or developer shall deposit a performance bond or cash deposit with Planning and Development Services, in an amount not less than the estimate of the City Engineer for the required improvements, and provide security satisfactory to the Department of Public Utilities, guaranteeing that the required improvements shall be completed in accordance with the requirements of the City of Tacoma and within the time specified in the contractual agreement. Also, such contract and recorded covenants, governing all land within the PRD District, shall provide for compliance with the regulations and provisions of the district and the site plan as approved. *This provision is handled, at least at this stage, with the inclusion of the Conditions included below in this Report and Recommendation at Section A. These Conditions are recommended for inclusion in the City Council's approval of the PRD overlay, and are made conditions of approval for the PRD site plan by the Examiner.*
- g. PRDs are subject to the provisions of the underlying zoning district and other pertinent sections of the TMC, unless specifically addressed in this section or through the conditions of the PRD decision or site approval. *In regard to this subsection g., the City stated "The uses, setbacks, and development standards for the underlying R-2 zoning district will be met, except as discussed below. All dwellings will be single-family units." Testimony at the hearing bore this out. The Project will be a PRD residential development that generally complies with the underlying R-2 standards.*
- h. The development of the property in the manner proposed will not be detrimental to the public welfare, will be in keeping with the general intent and spirit of the zoning regulations and Comprehensive Plan of the City of Tacoma, and will not impose an abnormal burden upon the public for improvements occasioned by the proposed development. *Again, we revisit public welfare and Comp Plan compliance with the added bonus of insuring that no abnormal public burden is imposed. No impacts detrimental to the public have been show in the record to this point. On the other hand, many public benefits have been testified to and multiple goals and policies of the Comp Plan have been shown to be furthered by the Project. This City's analysis concluded the following on this point:*

*The proposal is for a single-family dwelling development in a cluster dwelling arrangement, rather than a traditional plat, in order to*



*preserve neighboring critical areas. The number of units will not exceed what could be developed with a more traditional plat, and significant improvements to surrounding infrastructure are not required by the development.*

*The Comprehensive Plan, in both the Urban Form Chapter and the Design + Development Chapter, speaks to infill development that fits in with existing character, but which also recognizes unique site characteristics and natural features (see Urban Form goal UF-1 and Design + Development Goal DD-1, Exhibit C-17).*

*Again, no real detriment from the Project has been shown to weigh against multiple significant benefits.*

- i. The plan for the proposed development shall present a unified and organized arrangement of buildings and service facilities which are compatible with the properties adjacent to the proposed development. *On this subsection, the City had this to say:*

*The proposed PRD is surrounded by two distinct development types: to the north and west is undeveloped park land and wetlands, which will remain open space, conservation area, and passive and active recreation areas. The PRD is designed to protect those spaces and buffer them from the more active areas where the dwellings will be located. At the same time, the proposal creates connections to those open spaces with a network of pedestrian paths.*

*To the south and east of the site (across rights-of-way) are traditionally-developed single-family neighborhoods. The PRD will create new connections to the right-of-way both within and through the PRD, as well as creating a pedestrian connection through East 80th Street. While the houses will not all face and access East D Street, there will be a street presence from the development, buffered by a walkway and significant numbers of preserved trees.*

*The site plan does a very adequate job of blending open space into the park uses to the north and matching up the developed residential improvements with those same uses to the south and east. It appears that compatibility with adjacent properties will be achieved quite well.*

- j. The PRD District shall be located on property which has an acceptable relationship to major transportation facilities, and those facilities within the vicinity of the PRD District shall be adequate to carry the additional bicycle, pedestrian and vehicular traffic generated by the development. *This has been addressed in large part at Conclusion 13.2 above. In addition, the Project will*

*include adding sidewalks and other pedestrian amenities which will allow this factor to be satisfied.<sup>16</sup>*

- k. A PRD District shall make provisions for existing and future streets, pathways and undeveloped areas adjacent to the development to allow for the proper and logical development of such areas. *For this subsection, the Examiner adopts pertinent parts the City's analysis, which states:*

*The surrounding streets and rights-of-way have been reviewed by staff as part of this development proposal. Opportunities for east-west vehicle connections are limited by the presence of critical areas and the preservation of the open space; however, pedestrian connections will be enhanced. The right-of-way on 80th is available for improvement...*

- l. Fire hydrants and facilities shall be provided in accordance with the standards of the National Board of Fire Underwriters. *The Tacoma Fire Department has reviewed the site plan. Necessary facilities will be required in the Section A. Conditions and as development progresses.*
- m. All utilities, including storm drainage, within the PRD District shall be provided as set forth by the City of Tacoma. *The City's utilities departments/divisions have reviewed the site plan. Necessary utility facilities will be required in the Section A. Conditions.*
- n. Due consideration shall be given by the developer or subdivider to the allocation of suitable areas for schools, parks, playgrounds, and other necessary facilities to be dedicated for public use or purposes. *Suitable schools exist within reasonable and normal distances from the Subject Property. The Project itself provides for open space and recreation as does the park immediately to the north together with other area facilities.*
- o. The initial stage of development shall be of sufficient size and dimension to produce the intended environment of a PRD District, and shall provide an equitable amount of open space, off-street parking, and other amenities commensurate with the zoning and density of said initial stage. The requirements of any subsequent stage may be determined in conjunction with the approved standards of all previous stages in order to determine its conformance to the overall requirements of this district. *On this factor, the City provided the following:*

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<sup>16</sup> For its part, the City had the following to say regarding this subsection: "The applicant has provided a Traffic Impact Analysis (Exhibit C-6) and conditions on the development have been incorporated in the recommended conditions section of this report."

*The applicant proposes two phases: Phase 1 would be to complete the roadway and houses on the edge of the development (the houses closest to 80th and D) which will establish the boundaries of the development. Phase 2 is expected to be completed immediately thereafter.*

*With the two phases coming in immediate succession, this factor should be satisfied.*

- p. All nonconforming uses within a PRD District shall be removed or provisions made for their removal prior to the issuance of a building permit. *No non-conforming uses exist on the Subject Property.*
- q. There shall be adequate provisions to insure the perpetual maintenance of all non-dedicated accessways and all other areas used, or available for use, in common by the occupants of the PRD District. *On this the City stated, "The applicant has provided a draft of the homeowner covenants for the site (Exhibit C-15)." The City will have to monitor compliance with this factor as the development of the Project progresses. The Applicant appears to be aware of the issue by submitting its draft, and is on the right track toward ultimate compliance.*

**16.** TMC 13.06.070.C.5, titled "Urban design, sustainability and connectivity" requires that "The PRD site design shall demonstrate the following:"

**16.1** TMC 13.06.070.C.5.a.—Establishment of high quality and context-responsive Basic Neighborhood Patterns, including the following:

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

The City addressed this factor with the following:

The development is designed to be "inward facing" with the houses clustered into a dense community. Therefore, while houses will be visible from the edges of the property, they will be oriented inward to the other houses within the community. Orienting the houses this way allows a significant strip (25+ feet) of mature vegetation to be maintained along the streets, which the neighborhood desires. Within the development, the houses will be arranged to present variety amongst the facades while still providing a consistent setback and driveway arrangement. Landscaping and trees will primarily be preserved, native vegetation. Homes are

designed with front porches, and are small to support affordability. (See Exhibit C-3 for home plans.)

It is clear that the Applicant has invested a good amount of thought into the proposed site plan design. The site plan is, in fact, context responsive and intended to create a high quality neighborhood pattern. The front façades of the houses are attractive and placement will be staggered to provide for alteration in the street pattern. Landscaping is provided and existing trees largely retained and incorporated. This requirement is satisfied.

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

On this factor the City provided the following:

The applicant has provided for an internal pedestrian system, while maintaining vegetation and minimizing impervious surfaces. Within the development, the accessways will be one-way with multiple uses of the roadways encouraged. The D Street right of way will be improved to standards.

Given the provisions and layout of the various sidewalks and other pedestrian amenities, the Project and its site plan meet the requirement to be pedestrian friendly. Providing the East 80<sup>th</sup> Street Ped Path further cements compliance here.

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

The City’s analysis concluded:

On-street parking will not be allowed on the development’s accessways. Each dwelling unit will be provided with two parking stalls; visitors to the neighborhood will be encouraged to park along D Street and walk to the nearby homes through a system of trails and walkways.

As highlighted above, parking will be sufficiently de-emphasized.

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

The City's analysis determined that the proposed houses are of similar enough size and scale to the nearby existing houses that no material contrast would result. The Examiner does not disagree. The architectural styles chosen for the houses will help to minimize contrast as well. The proposed landscape buffers will sufficiently minimize privacy impacts to adjacent parcels.

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

PDS staff determined that "Each leasehold space will be roughly twice the size of the house, providing ample parking and open space for each home. This will be available as private yard space, connected to the community open space. Each home will have a front porch." As PDS pointed out, the site plan provides yard area that blends into the ample additional open space (two-thirds of the Site) in the rest of the Project. This requirement is satisfied.

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

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

The City provided the following on this requirement:

The homes will meet the Built Green standards through the use of Structural Insulated Panels (SIPs) and other sustainable building features...Further, the applicant has provided a worksheet (Exhibit C-8) demonstrating compliance with the applicable Greenroads standards, sufficient to meet the Bronze Standard...

Provided that the City staff with expertise follow up to insure compliance with what has been proposed to this point, this requirement will be met.

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

The City's analysis concluded as follows:

The PRD has two access points onto East D Street, determined in cooperation with Planning & Development Services Site Development staff and Public Works Traffic Engineering staff. As noted above, continuation of the street grid is impractical and/or infeasible due to the presence of critical areas; however, multiple pedestrian connections will be created.

The Examiner concurs with the City’s analysis. Connections to the abutting street system are well placed and adequate. Continuing connection are rightly foregone due to environmental (critical areas) protections and other topographical challenges.

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

The City correctly concluded that this section is inapplicable because “There are no historically designated or significant properties on or adjacent to the site.”

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

Given that the Site is “essentially flat and will remain so” with no significant grade changes proposed, this requirement is satisfied.

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

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

This is a very fair synopsis of subsections a through f. The City then provided the following as its analysis:

The applicant is proposing narrow one-way streets throughout the development. The purpose of the design is to reduce the amount of impervious surface on the site, reduce development costs, and encourage multiple uses of the roadway. On-street parking will not be allowed. Stormwater management will be provided, as will sidewalks (in addition to other pedestrian trails). As noted above, the private accessways connect to existing roads per Public Works standards, and will be able to accommodate the necessary utilities serving the homes. The applicant has provided a fire apparatus analysis, and the homeowner agreements will address the placement of refuse containers.

Given all of the foregoing, and after actually reviewing the PRD site plan, the Examiner concludes that the site plan complies with TMC 13.06.070.C.6 to the extent practicable (e.g., taking into account critical areas constraints and other voluntary green space preservation measures). The site plan is well laid out and the streets are the well placed string upon which the core residential improvements tie.

18. TMC 13.06.070.C.7 titled “District use restrictions” sets forth the allowed uses in a PRD. Subsection a. authorizes “The uses of property permitted in the regular zoning district with which the PRD District is combined.” In the case of the Subject Property, subsection a. authorizes single-family residential uses consistent with the existing R-2 zoning, and that is what the Applicant intends to build. Similarly, the height of the Applicant’s residences will be limited to what is currently allowed by the existing R-2 zoning per TMC 13.06.070.C.8.

19. TMC 13.06.070.C.9 sets forth additional PRD “District development standards” with which the Project must comply. These include perimeter setbacks, building separation and setbacks, minimum gross site area coverage, and required density. It appears from the Applicant’s site plan that these standards will be met, however the City will have to monitor compliance with TMC 13.06.070.C.9 as the development progresses and building permits are sought. *See FoF 9, FoF 10.*

20. Nearing the home stretch, TMC 13.06.070.C.10 sets forth the “Common Open Space” requirements for PRDs, establishing the minimum of 15 percent of the site area needing to be available for residents. The site plan sets aside 70 percent of the overall PRD area for open space that will be available to the residents. This requirement is met.

21. Lastly, TMC 13.06.070.C.11 sets forth the “Parking regulations” applicable to PRDs. The site plan and Applicant’s submittals indicate that each house will include two off-street parking spaces, with shared driveways between houses, which keeps the Project in compliance with TMC 13.06.090.C.3.h.

#### CRITICAL AREAS MINOR DEVELOPMENT PERMIT

22. TMC 13.11.220.B.2 provides that “A Minor Development permit may be issued when an applicant cannot meet the minimum buffer requirements or where the Director determines that the proposal will result in temporary, minor, or de-minimis impacts to the buffer or critical area.” PDS and the Applicant previously engaged in a Critical Area Verification Permit (“CAVP”) process in order to establish the presence and boundaries of critical areas on the Subject Property. The CAVP determined that wetlands are present on the Site along with a drainage area and Biodiversity Areas. *FoF 5.* PDS then determined that the Project would require a Critical Areas Minor Development Permit (“CAMDP”) because the Applicant cannot [completely] meet the minimum buffer requirements or there will otherwise be “temporary, minor, or de-minimus” impacts to the buffer or critical area. *TMC 13.11.220.B.2.* Here specifically, PDS determined that the Project “[w]ill result in Wetland buffer and Biodiversity Area/Corridor modification.” *Ex. C-1.*

In determining whether to grant a CAMDP, the Examiner (standing in for the PDS Director) is to consider the size of the area affected, the sensitivity of the critical area and/or presence of priority

species and habitat when determining whether the impact is temporary, minor, or de-minimis. The project then must comply with the following:

- a. The project will not result in a permanent impact to the critical area that would require compensatory mitigation; and
- b. Mitigation is provided to restore the site to pre-development conditions, including the maintenance of pre-development hydrological conditions and vegetation conditions.

Karla Kluge, the City's subject matter expert, concluded that, "provided that the City's conditions of approval for the Project are met, the proposal will meet the above criteria from TMC 13.11.220.B.2 for approving the CAMDP." Kluge's conclusion included the following:

- The Applicant has demonstrated per TMC 13.11.250 the avoidance of regulated wetlands and the higher functioning Biodiversity Areas/Corridors found on the Site. The Applicant has provided mitigation sequencing and has taken appropriate action to first avoid Biodiversity Area/Corridor impacts, then minimize impacts by proposing development within the more degraded areas.
- The Applicant has provided mitigation sequencing and has taken appropriate action to also first avoid wetland impacts, and then minimized wetland buffer impacts through design and the proposed development area outside of regulated wetlands on the Site.
- The Applicant has additionally met the buffer modification criteria of TMC 13.11.330.C for averaging buffer area. Additionally, the Applicant has proposed mitigation for wetland buffer impacts where impacts have occurred due to homeless encampments and where the wetlands are part of a larger habitat complex within Biodiversity Areas/Corridors.
- Appropriate mitigation is proposed for wetland and buffer impacts and for Biodiversity Area/Corridors impacts. Maintenance and monitoring shall be provided, and for a minimum of 5 years the Site and the remaining critical areas shall be protected in perpetuity through a Conservation Easement and Homeowners Association rules.

As the City determined, based upon the findings and conclusions above and as conditioned below at Section A., the Project will be consistent with the City's Critical Area Preservation Ordinance (TMC 13.11). In accordance with TMC 13.11, the Project has developed appropriate mitigation measures that should result in enhanced functions in the remaining wetland and buffer areas as well as the retained Biodiversity Areas/Corridors.



## BOUNDARY LINE ADJUSTMENT

**23.** Boundary line adjustments (“BLA”s) are an exception to state and local subdivision regulations, and are governed by the Revised Code of Washington (“RCW”) 58.17.040(6), as those provisions are incorporated into the TMC at 13.04.085.<sup>17</sup> BLA decisions are considered ministerial, which means that, if the statutory parameters are met, the BLA must be approved, and that a local jurisdiction cannot discretionarily condition such approval.<sup>18</sup> The requirements for approval in TMC 13.04.085 are as follows:<sup>19</sup>

A. A boundary line adjustment shall be a minor alteration in the location of lot boundaries of an existing lot. Such alteration shall not increase the number of lots nor diminish in size open space or other protected environments.

B. Such alteration shall not diminish the size of any lot so as to result in a lot of less square footage than prescribed in the zoning regulations for the property in question.

C. Such alteration shall not result in the reduction of setbacks or site coverage to less than prescribed by the zoning regulations.

D. A boundary line adjustment shall not result in any parcel or lot that is inconsistent with or prevents compliance with the standards of this chapter or any other applicable Code, Title or standard of the City of Tacoma.

PDS staff analysis of the BLA application concluded as follows:

Staff have reviewed the requested Boundary Line Adjustment per the criteria of TMC 13.04.085 and have concluded that, provided the survey is corrected per the redlines (Exhibit C-14) that the BLA may be approved and recorded. The BLA will result in parcels with permanent protective measures for the critical areas, as well as the developable parcel for the residences.

No new lots are being created by the BLA,<sup>20</sup> nor does it appear any other non-compliance will result from the BLA in buildable lot size, setbacks, or other TMC requirements. As referenced above, PDS staff did make redlined corrections to the Applicant’s BLA survey map. These are accounted for below at Section A.2. With those corrections made, the BLA is approved.

**24.** Findings entered herein, based on substantial evidence in the hearing record, support a conclusion that the proposed rezone is consistent with applicable criteria and standards for rezones, provided the conditions set forth herein are imposed at approval and complied with by the Applicant

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<sup>17</sup> See also *City of Seattle v. Crispin*, 149 Wn.2d 896, 71 P.3d 208 (2003).

<sup>18</sup> *Id.*, *Chelan County v. Nykreim*, 146 Wn.2d 904, 52 P.3d 1 (2002).

<sup>19</sup> Lettered subsections are kept the same as in the original TMC text.

<sup>20</sup> In fact, the number of lots is reduced from 20 to 9 which will likely require a lot combination process to be completed with Pierce County as part of BLA finalization.

when developing the Subject Property. Likewise, the requirements for the accompanying permits have been met and the permits should issue if the PRD overlay request is approved by the City Council and any other relevant conditions precedent to issuance are met (e.g., redline corrections made to the BLA map).

25. Accordingly, (a) the requested rezone (PRD overlay) is recommended for approval, and (b) the PRD site plan, CAMDP and BLA are conditionally approved, with all the foregoing subject to the following conditions:

**A. RECOMMENDED CONDITIONS OF APPROVAL:** “Conditions” set forth herein are derived primarily from the PDS Report, other submissions in the record, and testimony from the hearing. Nearly all of the conditions below have more to do with compliance issues related to the Applicant’s intended development of the Subject Property after approval of the requested rezone/PRD overlay than they do with the rezone request itself, i.e., they are not recommended herein as conditions precedent to approving the rezone. Compliance with later development conditions prior to approving the rezone is physically and temporally impossible, and also unnecessary at this point in time.

As set forth at FoF 20 above, the PDS Report is incorporated herein by reference. Some of the more general language from section I. of the PDS Report (“Recommendation and Conditions of Approval”) may not be repeated here even though the majority is. That does not mean that, if this rezone is approved, the Applicant should not still reference helpful language from the PDS Report as guidance for its development process, and it also does not mean that some of these very general “conditions” or guidance admonishments *will not* apply to later development of the Subject Property.

To the extent that any express language in the PDS Report conflicts with the language in this Report and Recommendation, this Report and Recommendation shall control if adopted as part of the City Council’s approval of the rezone. Omission of any language from the PDS Report in this Report and Recommendation does not constitute a conflict.

City Council approval of the requested rezone does not release the Applicant from state or other permitting requirements for subsequent development of the Subject Property, nor does anything in this Report and Recommendation take precedence over application of, and compliance with, the TMC. *See Usual Condition 2 below.*

Therefore, should this request be approved, the Examiner recommends making the following conditions from the reviewing City and Tacoma Public Utility staff conditions of approval for the rezone and accompanying permits as applicable to the Project.

1. CONDITIONS PRIOR TO REZONE APPROVAL

- a. The Applicant shall prepare and submit a typical checklist for residential plan review showing compliance with the standards Built Green 4 Stars or LEED Gold Certified rating for Building Design and Construction (similar to the documentation provided for Greenroads).

**Conditions future permitting (site development, building permits, and recording the BLA).**

2. BOUNDARY LINE ADJUSTMENT Prior to BLA finalization. Applicant must comply with the

following:

- a. Clearly show and label property lines in relation to public rights-of-way and adjacent parcels. Lot lines have been shown, but existing larger parcel boundaries are still not clearly defined.
- b. Show and label location of utility facilities on the parcel (Subject Property), if any, as well as any utility connections (e.g., lines (overhead/underground), meters, poles, transformers, storm/sanitary sewer). There is a storm drain showing on parcel 0320284035 not shown on the site plan that needs to be addressed. All utility easements will need to be dedicated via the BLA map or separate easement document with City approved language.
- c. Show and label any existing easements and include associated Pierce County Clerk document recording numbers.
- d. Upload all easements to ACCELA for review prior to recording BLA.
- e. Show any use of third party property for development (whether for access, utilities, etc.). Any such use will require proof of consent from that third party owner.
- f. Unpaid assessments may apply which will need to be paid prior to any permits being issued. Exact assessment amounts will be calculated at time of Site Development review. Unpaid in-lieu of assessment sewer fees are outstanding on much of the Subject Property. Please contact Lee Russell at [lrussell@cityoftacoma.org](mailto:lrussell@cityoftacoma.org) for information related to the in-lieu sewer charges.

### 3. BUILDING AND LAND USE

- a. Any future development of the residential lots shall be consistent with the R-2 Single-family Dwelling District (TMC 13.06.020) and PRD Planned Residential Development District (TMC 13.06.070), all other applicable sections of the TMC.
- b. The Site shall be developed substantially in the manner described in the submitted site plan and narrative, including setbacks, housing construction method, green building techniques, and housing design. Any modification to the site plan conditionally approval herein shall be subject to the approval of the Director of Planning and Development Services.
- c. The Homeowner Agreement shall be finalized and recorded prior to certificate of occupancy and the sale of any residence.
- d. One single-family home is allowed per leasehold area.
- e. Front yard driveways are required to share a driveway with a neighboring lot.
- f. A 25-foot wide setback and landscaping is required along East 80<sup>th</sup> and East D Streets.
- g. Construction shall comply with the adopted Building Code(s) at the time of building permit application acceptance.

### 4. CRITICAL AREAS

- a. A Notice on title shall be recorded per the requirements of TMC 13.11.280.A.1 prior to final approval for development is issued (issuance of site development permit).
- b. The Applicant shall provide mitigation and vegetation management according to the approved *“Critical Area Report and Mitigation Plan for the Green Harbor Communities-The Preserve PRD Rezone”*, Revised February 2020, prepared by Bill Rehe.

- c. The Applicant shall notify the City's Senior Environmental Specialist when the vegetation is installed and provide an As-Built (Year 0) for the installation.
- d. The Applicant shall provide an annual Monitoring Report for a period of 5 years to the City's Senior Environmental Specialist by September 31st of each year.
- e. The Applicant shall provide a split rail fence or similar approved fence along the preserved wetland, wetland buffer and Biodiversity Area Boundaries and install signage along the fence. The signs shall be the approved City of Tacoma Critical Area Boundary signs.
- f. A site plan shall be provided for review with each building permit. This site plan shall show any critical area buffers which extend onto the leasehold area, the footprint of the home, and the split rail fence delineating the buffer area.
- g. The Applicant shall provide sureties for the installation and monitoring of the mitigation plan. Three contract bids or the City's Bond Quantity Worksheet shall be used to determine the appropriate bond quantities. The Applicant shall provide a Performance Bond and a Maintenance and Monitoring Bond prior to approval of development permits.
- h. The Applicant shall provide a Conservation Easement for the retained wetland, wetland buffer and remaining Biodiversity Area/Corridors prior to approval of development permits.

5. STORM AND SANITARY SEWERS

- a. The Project shall comply with all applicable requirements contained in the City of Tacoma Stormwater Management Manual (the "SWMM"), Side Sewer and Sanitary Sewer Availability Manual, Tacoma Municipal Code 12.08, Tacoma Municipal Code 2.19, Tacoma Municipal Code 10.14, Tacoma Municipal Code 10.22 and the Right-of-Way Design Manual in effect at time of vesting land use actions, building or construction permitting.
- b. Any utility construction, relocation, or adjustment costs shall be at the Applicant's expense.

***The following conditions shall be met prior to final PRD occupancy/inspection:***

- c. This Site is presently served by the City stormwater drainage system. The City stormwater drainage system shall be extended to serve the Project Site and/or the required street improvements and may require a Work Order permit, or else another method of stormwater management meeting all requirements of the City of Tacoma SWMM shall be provided. To start the work order, contact Planning and Development Services – Site Development Group at (253) 591-5760.
- d. This Site is presently served by the City sanitary sewer system along East D Street frontage and via an existing public easement along the western border of the proposed improvements for which access shall be maintained per the ROW Design Manual. The City sanitary sewer shall be extended to serve homes within the Project Site in order to meet the Side Sewer design requirements. The Applicant has proposed a public sewer extension for service to individual homes which shall be constructed per the ROW Design Manual and Side Sewer design requirements, including a 15-foot public easement to all sanitary infrastructure. A Work Order permit shall be required. To start the work order, please contact Planning and Development Services – Site Development Group at (253) 591-5760.
- e. Each building shall have an individual side sewer connection to the public sanitary sewer.

- f. A preliminary site plan and supporting documentation shall be prepared to demonstrate Project design and verify Site suitability for incorporation of features and elements to meet the Greenroads Bronze certification threshold, at minimum.

While submission to Greenroads for formal certification is not required as part of this PRD Land Use process, sufficient documentation to demonstrate minimum scoring for Bronze Certification is required. Sufficient documentation shall include a memorandum document for each of the twelve (12) Greenroads Project Requirements as well as how (at a minimum) twenty-eight (28) points would be earned from the possible 49 Voluntary Core Credits and Voluntary Extra Credits.

- g. Included in the preliminary site plan shall be a storm and sanitary sewer utility plan shall be prepared to show a preliminary design for storm and sanitary sewer mitigation for review and approval by the Site Development Group. Approved construction permits (Work Order and/or Site Development Permit) covering the entire Site may be substituted for the preliminary stormwater and/or sewer utility plan.
- h. If the proposal includes separate stormwater facilities to mitigate stormwater on each lot or group of lots (or leasehold areas as the case may be), facility sizing and amount of allowed impervious surface to be routed to the facility shall be shown on the preliminary stormwater and/or sewer utility plan (approved construction permits covering the entire Site may be substituted for the preliminary stormwater and/or sewer utility plan). This may be in the form of a table that includes lot number, roof hard surface allowed in square feet, other hard surface allowed in square feet, and dimensions of each stormwater facility. Facility sections and details may be shown on the associated preliminary stormwater utility plan or construction permits.
- i. A Covenant and Easement Agreement shall be required for all projects with private storm drainage systems.
- j. All easements required for public storm and/or sanitary sewer extensions shall be granted to the City of Tacoma and be prepared by the City of Tacoma Public Works, Real Property Services Division. The recording numbers shall be indicated within the PRD Site Plan. Once the utility location(s) on the site are/is approved by the City, the Site Development Group reviewer shall coordinate with Public Works, Real Property Services Division to prepare the easement for recording prior to final approval of the PRD.
- k. A Consent to Encroach Agreement is required for any portion of a building encroaching into a City storm/sanitary/utility easement. Environmental Services will facilitate the development of the agreement, if needed.

***The following conditions/statements shall be inked on the Final PRD site plan, prior to approval. The statements and conditions may be modified after submittal of a preliminary stormwater and/or sewer utility plan. Additional conditions may be required after submittal of a preliminary stormwater and/or sewer utility plan prior to final PRD approval.***

- l. A preliminary Site Plan, including a utility plan, dated / /20, was approved by the Site Development Group under permit number LU19-0100. Additional permits and approvals are required for construction.
- m. WARNING: This PRD contains a private storm drainage system. Private storm drainage systems

are the sole responsibility of the owners, successors and assignees of all lots/leasehold areas being served by the private storm drainage system. Responsibility includes, but is not limited to, constructing, maintaining, and allowing City inspection of the private storm system in accordance with a separately recorded covenant and easement document.

Covenant and Easement Recording No.

- n. This PRD contains private storm and/or sanitary sewer easements. No permanent structure(s) shall be erected within the private easement area(s). Permanent structures shall mean any concrete foundation, concrete slab, wall, rockery, pond, stream, building, deck, overhanging structure, fill material, tree, recreational sport court, carport, shed, private utility, fence, or other site improvement that restricts or unreasonably interferes with the need to access or construct utilities in said easement(s). Permanent structures shall not mean improvements such as flowers, ground cover and shrubs less than 3 feet in height, lawn grass, asphalt paving, gravel, or other similar site improvements that do not prevent the access of men, material, and machinery across, along, and within the said easement area.

Private Easement Recording No.

- o. This PRD contains public storm and/or wastewater easements. No permanent structure(s) shall be erected within the public easement area(s) unless specifically approved in writing by the City of Tacoma Director of Public Works. Permanent structures shall mean any concrete foundation, concrete slab, wall, rockery, pond, stream, building, deck, overhanging structure, fill material, tree, recreational sport court, carport, shed, private utility, fence, or other site improvement that restricts or unreasonably interferes with the City of Tacoma's access to install, construct, inspect, maintain, remove, repair and replace public storm and/or sanitary sewer utilities in said easement(s). Permanent structures shall not mean flowers, ground cover and shrubs less than 3 feet in height, lawn grass, asphalt paving or gravel improvements that do not prevent the access of men, material, and machinery across, along and within the said easement area. Land restoration by the City within the said easement area due to construction or maintenance, shall mean planting grass seed or grass sod, asphalt paving and gravel unless otherwise determined by the City of Tacoma.

Public Easement Recording No.

- p. If the actual stormwater improvements installed vary from those on the preliminary Site Plan, including the utility plan, so that the recorded Covenant and Easement Agreement does not reflect actual constructed improvements, an additional (replacement) Covenant and Easement Agreement shall be developed, signed by the property owner and the City and recorded by the property owner.
- q. Final design of the stormwater facilities may require modifications to the site layout and/or a reduction in number of available building space. Construction permits for each building shall be approved by the Site Development Group prior to construction.
- r. Construction on the parcel, including private roads and alleys, is limited to the hard surface as provided within the approved Stormwater Site Plan or as shown on the preliminary stormwater and/or sewer plan or permit SDEV - . If additional hard surfaces beyond that approved under the previously noted permits are created, additional stormwater mitigation may be required. If stormwater mitigation differs from that approved under the previously noted plan(s) or permit(s),

additional review by the Site Development Group is required and will include evaluation of the site and site plan created as part of this PRD.

***The following conditions are applicable to building/development permits associated with this proposal:***

- s. All stormwater shall be managed in compliance with the City of Tacoma SWMM.
- t. The Applicant shall review SWMM Minimum Requirements #1-10 and comply with all applicable requirements.
- u. Per Minimum Requirement #5, projects that meet or exceed the SWMM thresholds shall employ, where feasible and appropriate, Onsite Stormwater Management BMPs to infiltrate, disperse, and retain stormwater runoff onsite to the maximum extent feasible.
- v. Water quality shall be provided for all projects that meet or exceed the thresholds for Minimum Requirement #6 as outlined in the City of Tacoma Stormwater Management Manual. Pollution-generating hard surfaces created and/or replaced offsite as a result of this project shall count toward the pollution-generating hard surface total.
- w. Flow control or other mitigation in accordance with the City of Tacoma SWMM shall be provided for all projects that meet or exceed the thresholds for Minimum Requirement #7 as outlined in the City of Tacoma SWMM. Hard surfaces created and/or replaced offsite as a result of this Project shall count toward the hard surface total.
- x. All projects shall comply with Minimum Requirement #10: Off-Site Analysis and Mitigation.
- y. Wetland and/or associated buffers exist on this site. Minimum Requirement #8: Wetlands Protection may apply.
- z. Public and private stormwater shall be managed in separate water quality and flow control facilities.
- aa. All public stormwater facilities shall be located in right-of-way, a tract dedicated to the City of Tacoma or easement per the SWMM Volume 3 Chapter 13 and as approved in writing by Environmental Services.
- bb. Stormwater facilities, other than conveyance, are required to be located in a separate tract dedicated to an association for private facilities or to the City of Tacoma for public facilities per the SWMM, Volume 3, Section 3.7.1.
- cc. This Project is located in the natural drainage course of abutting properties. Adequate provisions shall be made to collect drainage that naturally flows across the Project Site.
- dd. It appears this Project will disturb one or more acres of land, or is part of a larger common plan of development or sale that has disturbed or ultimately will disturb one or more acres of land; and discharge stormwater from the site. Coverage under a Washington State Department of Ecology (“Ecology”) NPDES Stormwater Construction General Permit (“CSWGP”) may be required. For assistance with the CSWGP contact the Ecology Southwest Region Pierce County Permit Administrator: (360) 407-7451. For Information about the Construction Stormwater General Permit and requirements, visit Ecology’s ISWGP webpage: <https://ecology.wa.gov/Regulations-Permits/Permits-certifications/Stormwater-general->

permits/Construction-stormwater-permit. To submit a Notice of Intent (NOI) for coverage under the CSWGP apply online through Ecology's WQWebPortal:  
<https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Water-quality-permits-guidance/WQWebPortal-guidance>.

- ee. Each building shall be independently connected to the City sanitary sewer at the building construction stage. Permits for this work must be obtained. Multiple units and buildings that are under single ownership and located on a single parcel may use shared private side sewers that connect to the public sanitary sewer, however design requirements for total number of connections to an end of line manhole as well as capacity must still be met. In the event that this development is divided into more than one parcel in the future (whether from platting, boundary line adjustments, lot segregations, or any other land use actions), each new parcel shall have an individual side sewer connection to the public sanitary sewer. This may require re-routing any existing shared side sewers, or constructing new side sewers in order to individually connect each parcel to the public sanitary sewer. A public sanitary sewer extension may also be required in order to individually connect each parcel. Notice of this requirement will be recorded on title of this parcel.
- ff. Where a fixture is installed on a floor level that is lower than the next upstream manhole cover of the public or private sewer serving such drainage piping, said fixture shall be protected from back flow of sewage by installing an approved type of backwater valve. Fixtures on floor levels above such elevation shall not discharge through the backwater valve.
- gg. If pumping of sewage is required due to site conditions, plans and calculations for the pump system shall be prepared per City standards and submitted to Environmental Services - Site Development Group for review and approval prior to issuance of a side sewer connection permit.
- hh. Existing public easements are known to exist on the Site; the Applicant shall comply with all easement provisions.

## 6. PROTECTION OF ADJACENT PROPERTIES

With the development of the Project, the Applicant shall be responsible for adverse impacts to other property abutting the Project. The Project shall be designed to mitigate impacts including, but not limited to, discontinuities in grade, abrupt meet lines, access to driveways and garages, and drainage problems. Slopes shall be constructed with cuts no steeper than 1-1/2:1, and fills no steeper than 2:1, except where more restrictive criteria is stipulated by the soils engineer. When encroaching on private property, the project engineer shall be responsible to obtain a construction permit from the property owner. The design shall be such that adverse impacts are limited as much as possible. When they do occur, the project engineer shall address them.

## 7. STREETS, DRIVEWAYS, SIDEWALKS AND UTILITIES

- a. Cement concrete sidewalk shall be constructed abutting the site along East D Street to the approval of the City Engineer. Where ADA and other compliance with applicable laws and regulations can still be achieved, the City shall consider possibly meandering the sidewalk to preserve existing trees. New sidewalk shall, however, meet Public Right-of-Way Accessibility Guidelines and requirements set forth by the Americans with Disabilities Act.
- b. Cement concrete curb and gutter shall be constructed, abutting the Site along East D Street to the



approval of the City Engineer. See Tacoma design reference DR-04 for the alignment of the curb.

- c. East D Street fronting the Subject Property shall be restored in accordance with the City's Right-of-Way Restoration Policy. The City's records indicate that this Block of East D Street is Asphalt Concrete Pavement. Restoration shall be in accordance with Tacoma standard plan SU-15A.
- d. Existing travel-calming 'speed humps' on East D Street shall be maintained.
- e. The type, width, and location of all driveway approaches serving the Site shall be approved by the City Engineer.
- f. The southern vehicular ingress point should be marked to clarify that it is ingress only due to one-way circulation on Site. Its width may be reduced to match all other one-way streets on the Site.
- g. Per the PRD proposal, and if approved, a 10-foot-wide pedestrian path shall be constructed to the approval of the City Engineer in the unimproved East 80<sup>th</sup> Street right-of-way, according to Public Works Standards at time of submittal and shall meet Public Right-of-Way Accessibility Guidelines and requirement set forth by the Americans with Disabilities Act. CPTED considerations shall also be taken into account to provide maximum safety for the pedestrian path.
- h. Streetlighting along the Project side of the street (west side of East D Street) will be required. Lighting calculations will be required for review.
- i. Lighting along the Project side of the pedestrian trail along East 80th Street shall be calculated and sent in for review.
- j. A Work Order is required. A licensed professional civil engineer must submit the street plans for review and approval following the City's work order process. To initiate a work order, contact the Site Development Group at (253) 591-5760. A performance bond is required for all work orders per TMC 10.22.070.F.
- k. The future Private Accessway shall be improved to Public Works Standards or as depicted in the PRD site plan, as conditionally approved herein, which includes roadway with a minimum width of 20 feet, sidewalks and planter strip as depicted in the PRD proposal. The minimum roadway section shall meet City Design Standards at time of submittal. It shall include necessary drainage.
- l. The Private Accessway shall meet the Greenroads standards as represented by the Applicant in Exhibit C-8.
- m. A pedestrian walkway connection must be provided to the East 80th Street pedestrian path at the SW corner of the Subject Property.
- n. A pedestrian walkway connection must be provided to the East D Street pedestrian path at the intersection of Street 7 and Street 4.
- o. All T-intersections must have 6 ramps to serve each of the pedestrian crossings separately.
- p. Driveways for Lots 7, 8, 28, and 29 must be realigned.
- q. Provide additional signage enforcing one-way traffic flow at Street 4 & 7 intersection.

r. Provide additional signage enforcing one-way traffic flow at Street 3 & 6 intersection.

8. TACOMA POWER

The civil plans will need to be corrected. The easement shown on the plans will need to be recorded and will need to be deeper at the shared lot lines between properties (leasehold areas). The plans show an area 5'x10' on each property (leasehold area), whereas they need to be 5'x15'. Per the easement requirements listed in the previous comments, "a 5-foot easement parallel to all side lot lines at the front 15 feet of each lot."

9. TACOMA WATER

a. Proposed parcel C has no easement to water service to reach this parcel. Provide easement for water/utilities.

*Advisory Notes:*

- b. City ordinance 12.10.045 requires a separate water service and meter for each parcel. New water services and meters will be placed directly in front of each lot/leasehold area where possible. Prior approval by Tacoma Water is required for other non-typical locations.
- c. Tacoma Water Crews must complete all work on Tacoma Water facilities.
- d. An existing 3/4" service provided service to 7599 East D Street.
- e. Existing 8" DI water main in East D Street is available to provide service to this Project. Calculated pressure is approximately 76-79 psi.
- f. Also, an existing 8" CI water main in East 80th Street is available to provide service to this Project. Calculated pressure is approximately 76-83 psi.
- g. Existing water meter(s) to Subject Property may be utilized or disconnected from the water main.
- h. If new water services or modification of existing water services are required, they will be sized and installed by Tacoma Water after payment of the Service Construction Charge, and the Water Main Charge, and the System Development Charge. Call Water Permit Counter at 253-502-8247 for residential sizing and pricing.
- i. If fire sprinklering for single family dwelling (SDF), contact the Tacoma Water Permit Counter at (253) 502-8247 for policies related to combination fire/domestic water service connections. If fire service is required it will be designed by your fire consultant and installed by Tacoma Water. Approved fire plans must be submitted to Tacoma Water. Current size permitted is a 1" service with a 3/4" meter. New services install timeline: 2 weeks to complete estimating plus an additional 4-6 weeks to install service once payment is received.
- j. The Applicant is advised to obtain private utility easements for any property-side water pipes leading from the City meter to the building on any portion(s) existing on adjacent parcels.
- k. New water services and meters will be placed directly in front of each lot/leasehold area where possible. Prior approval by Tacoma Water is required for other non-typical locations.
- l. The Uniform Plumbing Code requires that a pressure-reducing valve (PRV) be installed on the customer's property side service line if pressure exceeds 80 PSI.
- m. If a new fire hydrant is required at a location with an existing water main, the hydrant will be

installed by Tacoma Water after payment of an installation charge.

- n. If existing water facilities need to be relocated or adjusted, they will be relocated by Tacoma Water at the Applicant/developer's expense.
- o. Tacoma Water facilities must remain accessible at all times. Any damage to Tacoma Water facilities will be repaired by Tacoma Water crews at the expense of the Applicant/developer.
- p. Extension of a permanent water main may be needed to serve the estimated 73 SFD and provide fire protection. If needed, the extension of water main shall be constructed by private contract. Contact Jesse Angel at (253) 502-8280 for information. Private contract timeline: 4-6 weeks to begin design plus an additional 4-6 weeks to complete design
- q. General utility clearances:
  - (1) Sanitary sewer mains and side sewers shall maintain a minimum horizontal separation of ten (10) feet from all water mains and water services. When extraordinary circumstances dictate the minimum horizontal separation is not achievable, the methods of protecting water facilities shall be in accordance with the most current State of Washington, Department of Ecology "Criteria For Sewage Works Design". Vertical separation of eighteen (18) inches from Tacoma Water facilities.
  - (2) For utilities other than sanitary sewer, the proposed facilities shall have a minimum horizontal separation of five (5) feet and vertical separation of twelve (12) inches from Tacoma Water facilities.
  - (3) For aerial utilities, Tacoma Water requires a minimum of 20 feet above our water facilities.
- r. Please call 1-800-424-5555 or 811 and request underground utility locates at least 48 hours prior to commencement of digging.

#### 10. FIRE PROTECTION

Fire sprinklers to be provided throughout all the homes. This will mitigate hydrant spacing as well as the private road at the center of the development which does not meet fire apparatus standards.

#### 11. SOLID WASTE

The Homeowner Agreement shall specify the method and requirement for placement of garbage, recycling, and yard waste containers on the correct side of the one-way street to allow for collection. Each home shall have individual service.

#### 12. MISCELLANEOUS

- a. Prior to obtaining building or grading permits, the Applicant shall contact the appropriate City departments to make the necessary arrangements for all required improvements. The required departmental approvals shall be acquired from, but not necessarily limited to, Tacoma Power (383-2471), Tacoma Water (383-2471), and Public Works (591-5525).
- b. Should any evidence of archaeological material be uncovered during the course of the Project, all work in the vicinity shall cease and the City of Tacoma Historic Preservation Officer, as well as the Puyallup Tribe of Indians Historic Preservation Office, shall be contacted.
- c. The Applicant is advised that PRD districts may be modified per TMC 13.05.130.F, PRD District Modifications. Any modification to the amount, quality, or condition of sustainability

features and/or open space (other than individual private yard space) will require additional review and permitting.

**C. USUAL CONDITIONS:**

1. The recommendation and decision set forth herein is based upon representations made and exhibits, including development plans and proposals and intended use, submitted at the hearing conducted by the Hearing Examiner. Any **substantial** change(s) or deviations(s) in such development plans, proposals, or conditions of approval imposed shall be subject to the approval of the Hearing Examiner and may require additional hearings.
2. If the recommendation made herein leads to approval of the requested rezone, such approval shall be subject to all applicable federal, state, and local laws, regulations, and ordinances. Compliance with such law, regulations, and ordinances are conditions precedent to the approval granted and are continuing requirement of such approvals. By accepting any resulting approval, the Applicant represents that the development (the Project) and activities allowed will comply with such laws, regulations, and ordinances. If, during the term of the approval granted, the development (the Project) and activities permitted do not comply with such laws, regulations, and ordinances, the Applicant shall promptly bring such development or activities into compliance.

**26.** Any finding of fact herein which may be more properly deemed or considered a conclusion of law is hereby adopted as such.

**RECOMMENDATION:**

The Hearing Examiner recommends approval of the requested rezone/PRD overlay, subject to the above listed conditions.

**PERMITS:**

The permits accompanying the herein recommended rezone/PRD overlay, specifically the PRD site plan, the Critical Areas Minor Development Permit and the Boundary Line adjustment, are conditionally approved subject to the City Council's decision on the rezone/PRD overlay. If the rezone/PRD overlay is rejected by the City Council, approval of the permits shall be void.

**DATED** this 30th day of September, 2020.

  
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**JEFF H. CAPELL, Hearing Examiner**

## NOTICE

### RECONSIDERATION/APPEAL OF EXAMINER'S RECOMMENDATION

#### RECONSIDERATION:

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

#### 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.

Once the permit decisions are finalized, any appeal thereof should be taken pursuant to the provisions of the Land Use Petition Act (LUPA, RCW 36.70C).

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND RECOMMENDATION ETC.**