

**OFFICE OF THE HEARING EXAMINER,**

**CITY OF TACOMA**

**REZONE RECOMMENDATION AND CRITICAL AREAS**

**VERIFICATION PERMIT FINALIZATION DECISION**

**APPLICANT:** Royal Construction Group, LLC (herein, the “Applicant” or “Royal.”)

**FILE NO.:** HEX 2022-020 (LU22-0134)

**SUMMARY OF REQUEST:**

1) A request to rezone an approximately 0.34-acre site from R-2, Single-family to C-1, Neighborhood Commercial for the development of a 12-unit apartment building; and 2) a Critical Area Verification to confirm the location and type of wetland and buffer in the vicinity of the Site.

**LOCATION:**

The real property subject to the requested rezone (the “Rezone”) and the Critical Area Verification Permit (“CAVP”) is located generally at the street address of 8441 South C Street, and is assigned Pierce County tax parcel no. 4533000200 (herein, the “Site” or the “Subject Property”). The Site is located within Section 33 Township 20 Range 03 Quarter 24, Parkland (Tacoma), Washington, and is legally described as follows:

Section 33 Township 20 Range 03 Quarter 24 HOLLIDGE PAC AVE ADD: HOLLIDGE PAC AVE  
ADD L 20 THRU 24 B 2, RECORDS OF PIERCE COUNTY, WASHINGTON.  
SITUATED IN THE CITY OF TACOMA, COUNTY OF PIERCE, STATE OF WASHINGTON.

**RECOMMENDATION:**

The Hearing Examiner recommends approval of the Rezone, subject to the conditions set forth herein below. Under the authority set forth in Tacoma Municipal Code (“TMC”) sections 1.23.050.A.1, 1.23.130, and chapters 13.05, 13.06, 13.11 and 13.12, the Examiner heard testimony and reviewed the presented record regarding the Rezone. The Examiner’s recommendation of approval is based on the hearing and the hearing record.

**DECISION:**

The Critical Area Verification Permit is hereby finalized/approved.

**PUBLIC HEARING:**

After reviewing the Preliminary Report submitted by Planning and Development Services (herein the “PDS Report”—*Ex. C-1<sup>1</sup>*) and all attendant information on file, the Hearing Examiner convened an in-person /

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<sup>1</sup> Certain typographical errors were corrected in Exhibit C-1 after the hearing in order to correct the record. As a result, some references are made to “Ex. C-1 Corrected.”

hybrid public hearing on the Rezone and CAVP on December 15, 2022.<sup>2</sup>

**TESTIMONY:**

**For the City:** Larry Harala, Principal Planner, PDS Land Use  
Allison Cook, Environmental Specialist, PDS, Land Use

**For the Applicant:**

Robert Plummer, Evergreen A-One Contracting<sup>3</sup>

**FINDINGS, CONCLUSIONS, RECOMMENDATION AND DECISION:**

**FINDINGS OF FACT:**

**The Application**

1. Royal Construction Group, LLC, a Washington limited liability company (again the “Applicant” or “Royal”) submitted an application, through its duly designated representative, requesting the reclassification of an approximately 0.34-acre site from R-2, Single-family to C-1, Neighborhood Commercial for the development of a 12-unit apartment building. The Site has a Future Land Use Map designation of Neighborhood Commercial in the City’s *One Tacoma-Comprehensive Plan*.<sup>4</sup> The Applicant’s intended development includes improving the Site with parking and landscaping in addition to apartment housing units. All parking would be accessed from South C Street. *Harala Testimony, Plummer Testimony; Ex. C-1.*

2. PDS determined Royal’s application to be technically complete on September 28, 2022. Royal’s filing included an application for a Critical Area Verification Permit (again the “CAVP”) to confirm the location and type of critical areas and buffers that may affect the Site. PDS’ critical area staff determined a CAVP is required under controlling law due to the presence of a wetland on a neighboring parcel. Obtaining a CAVP is then required as a precursor to development of the Site. The Rezone application also required review under SEPA, as addressed further below. *Ex. C-1, Ex. C-9. Ex. C-10.*

**The Site**

3. The Subject Property is a single parcel with approximately 120 feet of frontage along South 86th Street and 125 feet in width along its other direction running north to south. The total Site area is approximately 15,000 square feet. Five historical 25-foot by 120-foot platted lots have been combined to give the Subject Property its current size and configuration. *Harala Testimony; Ex. C-1.*

4. The Site is currently vacant. This is not a new condition for the Site as permit records and historic aerial photos show it as undeveloped and vacant since at least 1931. *Harala Testimony; Ex. C-1.*

5. The Site slopes slightly downward from east to west, with very little contour. Pacific

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<sup>2</sup> This hearing was conducted with in-person participation in the City Council Chambers and also participation over Zoom at no cost to any participant with video, internet audio, and telephonic access. The Petitioner’s representatives participated over Zoom. The City was present in the Council Chambers.

<sup>3</sup> Mr. Plummer is Royal’s duly designated representative in this matter. *See Exhibit C-2 Owner Information, Property Owner Free Consent Form.*

<sup>4</sup> Sometimes referred to herein simply as the “Comp Plan.”

Avenue is one parcel over from the Subject Property on the east. Pacific Avenue is designated a principal arterial by the City and it is also a State Highway (SR 7). In addition, it is designated as a pedestrian street by the City's Comp Plan and the Land Use Code (TMC 13.06.010.D). Pacific Avenue is fully built-out with curb, gutter, and sidewalk. South C Street runs up to the Site along the west side.<sup>5</sup> South 86th Street runs along the Site's southern border. South 86th and South C Streets are both platted as 60-foot-wide residential streets. Both are partially built-out with curb, gutter, and sidewalk. South 86th Street has curb and gutter but no sidewalk along the Site frontage. South C Street will need to be extended with a driveway constructed as part of the development of the Subject Property. *Harala Testimony; Ex. C-1 and Ex. C-1 Corrected.*

6. Pierce Transit bus stops are located on Pacific Avenue, relatively close to the Subject Property. Pierce Transit Route 1 serves Pacific Avenue with 15-minute peak-hour service, and the Pacific Avenue corridor is planned for bus rapid transit within the next few years, which will make public transport even more frequently available presumably. *Harala Testimony; Ex. C-1 Corrected.*

7. The surrounding area presents diverse uses with everything from commercial-retail, to single-family and multi-family residential uses. There is a single-family home located to the west of the Site, and office uses are found to the north and south. Commercial and multifamily uses are located to the east of the Subject Property. Ryan's Park is located approximately 1,800 feet (5 blocks) to the northwest of the Site at South 80th and South D Streets and Fern Hill Park is located at South 88th Street and Fawcett Avenue both which could provide recreational opportunities to the residents of the Applicant's intended development. *Harala Testimony; Ex. C-1 Corrected.*

8. The Site was originally zoned R-2 One-Family Dwelling District in 1953 when the City's zoning code was first established. No reclassification has been made since then. Permit history indicates no use of the Site for residential, commercial or accessory structures. Available aerial images indicate that the Site has been vacant and unimproved as far back as 1931. *Harala Testimony; Ex. C-1.*

9. There have been multiple rezones in the vicinity of the Subject Property along Pacific Avenue. The area across Pacific Avenue and north of South 79th Street was designated the "Upper Pacific Crossroads Mixed Use District" in the early 1990s in anticipation of transit-oriented dense development. The area surrounding the Site is a patchwork of commercial and residential zoning, such as T, C-1, C-2, and R-4-L. The properties to the east of the Site are developed with commercial uses such as retail and fast food and the properties to the west and south are developed primarily with multifamily residential. *Harala Testimony; Ex. C-1.*

10. As mentioned above, the City's Comprehensive Plan Future Land Use Map designates the Site as being located within the "Neighborhood Commercial" land use category. This designation supports the requested reclassification to C-1, as C-1 is more consistent with that category than the current R-2 designation. The target density for the "Neighborhood Commercial" land use category is 14-36 dwelling units per net acre. The proposed density for the 15,000 square foot Subject property is just under the 36 dwelling units per acre target, coming in at 12 proposed units on 0.3444 acres. *Harala Testimony; Ex. C-1. Ex. C-8.*

### **The Project**

11. Royal proposes to construct a 12-unit apartment building on the southern side of the Site.

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<sup>5</sup> Even after making some corrections to street references, it appears that PDS had its compass directions reversed. *Ex. C-1 Corrected* p. 2 of 13 and p. 3 of 13 ¶ 2.

The proposal includes a minimum of 15 parking stalls across from the north face of the building, with two accessible spaces and a van accessible space. Parking and vehicular access to the Site is proposed to be from a driveway off South C Street. Three electric vehicle recharge spaces, and secured bike storage is also proposed in the Applicant's site plan. The proposed development will provide required landscaping and open space for the residents' use. PDS has determined that the Applicant's submitted preliminary plans for the proposed development would meet applicable requirements for the C-1 zoning district. *Ex. C-1.*

### **The CAVP**

12. A critical areas verification permit (the "CAVP") was submitted to verify the existence (or absence) and type of critical areas on the Site, or in adjacent areas close enough to still affect the Site, typically within 300 feet. In this instance, the City was aware of a wetland on a neighboring property from prior work and so that knowledge factored into the CAVP process. *Harala Testimony, Cook Testimony; Ex. C-10.*

13. In conjunction with the CAVP, the Applicant submitted (a) a Critical Area Report, titled "Royal Apartments Wetland Delineation@Tacoma\_Rpt.pdf," dated March 2022, and (b) a surveyed site plan, titled "Wetland Delineation and Buffer Survey," also dated March 2022. Both submissions were prepared by John Comis Associates, LLC (collectively the "Wetland Docs"). *Ex. R-9.* The City evaluated the Wetland Docs and then produced its own memorandum dated October 20, 2022. *Id.*

14. No critical areas were found on the Subject Property, but the existence of a wetland on neighboring property was confirmed in the Wetland Docs and through City staff review. The rating score for the neighboring wetland was determined (and ultimately agreed on by the parties) to be 17 points, making the wetland rate as a category III wetland with a standard buffer width of 75 feet. The 75-foot buffer of what the parties refer to as "wetland 'A'" extends onto the northwest corner of the Subject Property occupying a small corner area of approximately 150 square feet. *Id.*

15. Given the parties' agreement regarding the conclusions of the Wetland Docs and the City's review, and in the absence of any contrary evidence presented on the record, the Examiner concurs in the verified information regarding critical areas and the Subject Property, i.e., that there are no critical areas on the Site, and that there are minimal restrictions that attach to the buffer area that extends onto the Site, but these will have to be addressed as the Subject Property is developed.

### **Environmental Review**

16. Review under SEPA was required prior to the hearing and the issuance of this Recommendation because rezone applications are not exempted as minor land use decisions from SEPA review. *Ex. C-1.*

17. PDS conducted this review prior to the rezone hearing. Pursuant to the State's SEPA Rules (*WAC 197-11*) and the City of Tacoma's Environmental Code (*TMC 13.12*), the proposed rezone and CAVP were considered under required environmental analysis. After its review, the City issued a Determination of Nonsignificance (the "DNS") threshold determination on November 30, 2022. Issuance of the DNS was based on a review of the Applicant's Environmental Checklist, the project plans, the Applicant's narrative memorandum, the Wetland Docs, the City's technical memorandum, and comments received from City staff. The appeal period expired on December 14, 2022, at 5:00 pm, just prior to the hearing. No timely filed appeals of the DNS were received prior to the hearing. *Harala Testimony; Ex. C-1, Ex. C-3, Ex. C-4, Ex. C-6, Exs. C-9 and C-10.*

## **The Hearing**

18. A Public Hearing Notice was issued on November 9, 2022, and was mailed to owners of record and/or taxpayers of record for property within 400 feet of the Site, and also mailed and/or e-mailed to the South End Neighborhood Council, qualified neighborhood and business groups, City staff, and outside agencies. In addition, property information signs were posted on the Site. The Public Hearing Notice was posted on the City’s website along with the application documents. *Ex. C-1.*

19. Representatives from the City and the Applicant testified at the hearing.

20. No non-party members of the public appeared in person or virtually to comment at the hearing.

21. During the hearing, in response to a question from the Examiner, the Applicant expressed no objection to the City’s recommended conditions, as set forth in the hearing record. *Plummer Testimony.*

22. The PDS Report, entered into the record as Exhibit C-1,<sup>6</sup> is generally accurate in its description of the Rezone, general and specific facts about the Site, applicable sections of the Comp Plan, and applicable regulatory codes. The PDS Report<sup>7</sup> is incorporated herein by reference as though fully set forth. However, to the extent that anything in the PDS Report conflicts with the contents of this Recommendation and Decision, this Recommendation and Decision shall control.

23. Any conclusion of law<sup>8</sup> below, which may be more properly deemed or considered a finding of fact, 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 a reclassification (rezone) request. The final decision on any requested reclassification is made through an ordinance by the City Council. *TMC 1.23.050.A.1 and TMC 13.05.* The Hearing Examiner has authority over deciding whether to approve the CAVP pursuant to TMC 13.05.080.A, TMC 13.05.090.E, and TMC 13.05.110.C, which allow the Hearing Examiner to consider consolidated applications where an open-record hearing is required, effectively taking on the authority of the PDS Director to make permit decisions of first instance.

2. The Applicant must show by a preponderance of the evidence that the Rezone meets the criteria for approval as set forth in TMC 13.05.030.C. The preponderance of the evidence standard requires “that the evidence establish the proposition at issue is more probably true than not true.”<sup>9</sup> The preponderance of the evidence standard is at the low end of the spectrum for burden-of-proof evidentiary standards in the U.S. legal system and is not particularly difficult to meet.<sup>10</sup>

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<sup>6</sup> Along with the corrected version.

<sup>7</sup> As corrected by PDS.

<sup>8</sup> Conclusions of Law may be abbreviated as “CoL” hereafter.

<sup>9</sup> *Mohr v. Grant*, 153 Wn.2d 812, 822, 108 P.3d 768 (2005) (plurality opinion); *In re Pers. Restraint of Schley*, 191 Wn.2d 278, 286-287, 421 P.3d 951, 957 (2018).

<sup>10</sup> *In re Custody of C.C.M.*, 149 Wn. App. 184, 202-203, 202 P.3d 971, 980 (2009); *Mansour v. King County*, 131 Wn. App.

3. An applicant is entitled to rely on and benefit from all evidence presented at the hearing, and admitted into the hearing record, regardless of the source.

4. The requirements of SEPA have been met by the City's having reviewed the rezone application and issuing the DNS,<sup>11</sup> which has not been appealed. *FoF 16 and 17.*<sup>12</sup>

### **The Rezone**

5. Compliance with TMC 13.05.030.C:<sup>13</sup> "An applicant seeking a change in zoning classification must demonstrate consistency with all of the following criteria:"<sup>14</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 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.

As referenced above, the Applicant bears the burden of establishing by a preponderance of the evidence to show that the requested rezone conforms to all of the foregoing criteria, which are addressed below in turn. *TMC 1.23.070.A.*

The required items are examined in turn now as follows:

6. 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.*"

PDS staff's analysis of this criterion provided the following:

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255, 266, 128 P.3d 1241, 1246-1247 (2006).

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

<sup>12</sup> FoF stands for "Finding of Fact."

<sup>13</sup> Exhibit C-1 erroneously references TMC 13.05.030.B, which governs area-wide rezones.

<sup>14</sup> Numbering of the criteria is kept the same as in the TMC for consistency.

The site’s current zoning of R-2 One-Family Dwelling District is not one of the zoning districts that is listed as appropriate for the “Neighborhood Commercial” land use designation. Per the Comprehensive Plan:

“This designation is characterized primarily by small-scale neighborhood businesses with some residential and institutional uses. Uses within these areas have low to moderate traffic generation, shorter operating hours, smaller buildings and sites, and less signage than general commercial or mixed-use areas. There is a greater emphasis on small businesses and development that is compatible with nearby, lower intensity residential areas.”

Single-family development is not compatible within this land use designation; however, the current zoning would restrict development to single-family development. The proposal to rezone the site would bring the site and use into conformity with the Neighborhood Commercial land use designation.

While the site is located on South 86th Street & South C Street, it is situated less than one block from Pacific Avenue to the east of the site. Pacific Avenue is a key transit route in the City of Tacoma, one of the few arterials with 15-minute peak-hour transit service. The street is designated as a location for future transit improvements, including Bus Rapid Transit which is currently under development with system construction expected to begin in the fall of 2024.

The sites to the east and north are designated Neighborhood Commercial and the sites to the south and west are designated mid-scale residential.

Neighboring also developed properties that are commercial and multi-family residential in nature. Pacific Avenue is a busy arterial with high frequency transit. Development of this location with apartment dwellings which are needed to help maintain supply and help stabilize affordability. The site is also well positioned to provide residential units access to transit which helps reduce reliance on auto exclusive transportation.

Staff would note that the proposed density is in line with target density per the Comprehensive Plan.

The Comprehensive Plan policies which are highlighted in Exhibit C-8 have been identified by staff and the applicant to support this request.

It is hard to argue with the fact that the current zoning designation of R-2 One-Family Dwelling District is not in harmony with the “Neighborhood Commercial” land use designation for the Subject Property in the City’s Comprehensive Plan. Approving the Rezone clearly achieves that missing harmony by reclassifying the Subject Property with zoning that conforms to the present “Neighborhood Commercial” land use designation. The Applicant’s use of the Subject Property would then have to conform to both the land use designation and the compatible zoning classification. The proposed use of multi-family housing does just that, as addressed further at CoL 8. This criterion is met.

7. 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 TMC 13.05.030.C.b.(2) that deals with substantial changed conditions, the City provided the following analysis:

The zoning and use pattern in the area has changed significantly since the adoption of the zoning code in 1953. The Comprehensive Plan designation for the area is “Neighborhood Commercial” and this reclassification implements that designation.

The City’s analysis under this criterion carries forward the incongruity of the current zoning and the Comp Plan’s land use designation. There was also substantial evidence presented (*FoF 7~9*) that the environs of the Site have changed in character significantly since the current R-2 zoning designation was put in place in 1953. What was once mostly single-family residential neighborhoods now has a character much more in keeping with the requested “Neighborhood Commercial” designation. This criterion is met.

8. 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.”*

The District Establishment Statement for the C-1 General Neighborhood Commercial District is found at TMC 13.06.030C.2. In its analysis, PDS had this to say about whether the Rezone is consistent with the district establishment statement for the zoning classification being requested:

The intent of the C-1 Neighborhood Commercial District is “to contain low intensity land uses of smaller scale, including office, retail, and service uses. It is characterized by less activity than a community commercial district. Building sizes are limited for compatibility with surrounding residential scale. Residential uses are appropriate. Land uses involving vehicle service or alcohol carry greater restriction. This classification is not appropriate inside a plan designated mixed-use center or single-family intensity area.” [Emphasis added.]

As noted in the discussion of the Comprehensive Plan goals and policies, above, the site proposed for rezone to C-1 implements the Comprehensive Plan future land use designation, with the proposed development meeting the development standards to ensure compatibility with neighboring uses and development. Applicable zoning regulations are excerpted in Exhibit C-7, as well as Exhibit C-10.

The Applicant intends to develop the Subject Property as a multi-family residential use. Multi-family residential use is currently encouraged by the policies set forth in the Comp Plan for this area, but prohibited by the anachronistic R-2 designation still in place. The intended multi-family use conforms with the intended uses set forth in the district establishment statement, and therefore, this criterion is met.

9. Recent Area-Wide Rezone—TMC 13.05.030.C.b.(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.”*

The Site has not been rezoned within the last two years...or ever. *FoF 8*. This criterion is satisfied.

10. 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.”*

PDS staff’s analysis of this criterion provided the following:

The proposal was reviewed for environmental impacts per the City’s SEPA process. It was determined that the proposal will have no adverse impacts on either the human or built environment – including the future residents on the site.

Further, the City has adopted land use and development regulations to protect the health, safety, and welfare of the community as a whole. In addition to minimum building and safety codes, the applicant will be required to meet all applicable land use development regulations – which have been adopted to ensure a quality development that fits in with the vicinity. This includes landscaping requirements, parking standards, tree canopy coverage, design standards, and setback regulations. At the time of development the applicant will also be required to complete off-site improvements for vehicular and pedestrian access, improvements which will benefit the neighborhood as a whole. These improvements will be in accordance with City of Tacoma code, rules, regulations and requirements at the time of development.

Finally, the City has multiple goals and policies related to the creation of multiple types and styles of housing to be available to multiple types of households. The applicant proposes to provide 12 additional units of housing along a major transportation corridor, in walking distance to services.

As set forth above, potential environmental impacts of the Rezone and its intended development have been reviewed with that review resulting in a determination of non-significance. The development of the Subject Property will have to comply with applicable regulations that will further help ensure that the use of the Subject Property bears the relationships to the public that are required by this criterion.

The City’s Comp Plan is the City Council’s overarching policy statement regarding land use. The City Council has already made the determination that the Subject Property best fits within a designation of General Commercial and that the uses that come along with that designation are essentially in the best interest of the public at the Site. Implementing a use compatible with the Comp Plan designation through an aligning rezone, and doing so in accordance with development conditions such as those imposed here, and that will be imposed as the Site develops, will ensure that any potential negative impacts are thoroughly outweighed by the addition of much needed housing to the Tacoma housing market.

One of the biggest challenges in the areas of public health, safety and welfare facing the City at present is homelessness and housing affordability. Developing the Subject Property in compliance with applicable laws, ordinances and regulations, together with the conditions set forth herein and in the TMC, will ensure that this criterion is met both because the development will not have any appreciable adverse impacts on the health, safety, morals, or general welfare of the people of Tacoma, but also will

help alleviate one of Tacoma’s most pressing social, health, welfare issues—homelessness.

Given the foregoing, the Examiner concludes that the requirements of TMC 13.05.030.C.b.(5) are met or will be met through the development of the Subject Property for the use specified and in conformance with applicable laws and the conditions set forth herein.

11. Compliance with TMC 13.11.220 B.1—Critical Area Verification Permit: TMC 13.11.220 B.1 allows for an applicant to request verification of critical areas “[o]n [ ] [a] subject site or within 300 feet of the subject site without submitting plans for a specific project.” The Applicant here requested such a verification be performed and then worked with the City to conduct necessary studies and submit them for review. The City reviewed the Applicant’s information to confirm the Applicant’s submissions. Given that this has been done and there is no disagreement in any of the conclusions of the Applicant’s experts and the City’s expert staff, as well as no contradictory evidence presented on the record, the CAVP is ready for approval/finalization. *FoF 12~15.*

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

13. Accordingly, the Rezone is recommended for approval and the CAVP is also hereby approved. This recommended approval makes the Rezone and the development of the Site subject to the following conditions:

**SECTION A. CONDITIONS OF APPROVAL:**

“Conditions” set forth herein are derived primarily from the PDS Report and the City’s memorandum regarding the CAVP, other submissions in the record, and testimony from the hearing. Compliance with (i.e., final satisfaction of) many of the conditions below will be achieved through the Applicant’s development of the Subject Property after finalization of the Rezone (assuming final approval of the Rezone) rather than through this preliminary approval process. On-going compliance with these conditions as the development progresses is required, however.

As set forth at FoF 22 above, the PDS Report is incorporated herein by reference. Not everything that appears in the PDS Report, or elsewhere in the record, as a condition to development is repeated here. That does not mean that the Applicant should not still reference helpful language from the record as guidance for its development process, and it also does not mean that some of these very general “conditions” or advisory information *will not* come into play in the finalization of the Rezone or the later development of the Subject Property, or that the recommendations and information in the record are not also good guidelines to follow, even if not included here.

To the extent that any express language in the PDS Report conflicts with the language in this Recommendation/Decision, this Recommendation/Decision shall control. Omission of any language from the PDS Report in this rezone Recommendation does not constitute a conflict necessarily.

The recommendation of approval of the Rezone herein does not release the Applicant from federal, state, local or other permitting requirements for subsequent development of the Subject Property, nor does anything in this Decision take precedence over application of, and compliance with, the TMC.

1. LAND USE

- a. Any future development of the Site shall be consistent with the C-1 Neighborhood Commercial development standards (TMC 13.06.030), the Landscaping Code (TMC 13.06.090.B), Parking Code (TMC 13.06.090.C), Transit Support Facilities (TMC 13.06.090.H), Bicycle and Pedestrian Support Standards (TMC 13.06.090.F), Residential transition Standards (TMC 13.06.090.J) and all other applicable sections of the Tacoma Municipal Code.
- b. The required Landscape Plan shall provide the type, size and location of trees, shrubs, and groundcover plan for the Site, to include open yard space, site perimeter, and tree canopy coverage.
- c. Per Exhibit C-10 the landscaping plan will comply with all critical area buffering, fencing and landscaping recommendations and requirements. The Applicant will work with staff at the time of permitting to ensure that permit applications are compliant. A notice on title will also be required at the time of development permits to document the surveyed wetland buffer.
- d. The sidewalk along the east side of South C Street shall be extended north to a location that can reasonably provide curb ramps for a pedestrian crossing at South C Street, recognizing that development and pedestrian access through or in the wetland buffer is restricted.
- e. Curb ramps at South 86th Street and South C Street crossing the north leg, south, and east leg will be improved to support access to the enhanced pedestrian crossing on Pacific Avenue on the south leg.
- f. Vehicular gates crossing the drive aisle, must be located at least 20 feet from sidewalks and street, and must be located on private property, to prevent vehicles from blocking sidewalks or street

## 2. GENERAL

Prior to obtaining building or grading permits, the Applicant shall contact the appropriate City departments and outside agencies to make the necessary arrangements for all required improvements. The required departmental approvals shall be acquired from, but not necessarily limited to, Planning and Development Services (253-591-5030), Tacoma Power (253-383-2471), Tacoma Water (253-383-2471), and Public Works Department (253-591-5525) the Tacoma-Pierce County Health Department and Washington Department of Ecology.


### **RECOMMENDATION:**

The Hearing Examiner recommends approval of the Rezone, subject to the above listed conditions.

### **DECISION:**

The related Critical Area Verification Permit meets the criteria set forth in the Tacoma Municipal Code and is approved/finalized.

**DATED** this 28th day of December, 2022.

  
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**JEFF CAPELL, Hearing Examiner**

## N O T I C E

### **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/recommendation issued 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 that do not set forth the alleged errors shall be dismissed by the Examiner. It shall be within the sole discretion of the Examiner to determine whether an opportunity shall be given to other parties for response to a motion for reconsideration. The Examiner, after a review of the matter, shall take such further action as he/she deems appropriate, which may include the issuance of a revised decision/recommendation. (*Tacoma Municipal Code 1.23.140*)

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

Within 14 days of the issuance of the Hearing Examiner's final recommendation, any aggrieved person or entity having standing under the ordinance governing such application and feeling that the recommendation of the Examiner is based on errors of procedure, fact or law may 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**

### **NOTICE OF RECONSIDERATION/APPEAL OF EXAMINER'S DECISION RECONSIDERATION TO THE OFFICE OF THE HEARING EXAMINER:**

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

## N O T I C E

### **APPEAL TO SUPERIOR COURT OF EXAMINER'S DECISION**

Pursuant to the Official Code of the City of Tacoma, Section 1.23.160, the Hearing Examiner's decision may be appealable to the Superior Court for the State of Washington. Any court action to set aside, enjoin, review, or otherwise challenge the decision of the Hearing Examiner will likely need to be commenced within 21 days of the issuance of the decision by the Examiner, unless otherwise provided by statute.

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
RECOMMENDATION AND  
DECISION - 12**