

1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

3 **TOLL BROS., INC.**, a Pennsylvania
4 corporation,

HEX2024-016
(LU22-0055)

5 **Appellant,**

6 **v.**

DECISION AND ORDER ON
APPEAL OF MITIGATED
DETERMINATION OF
NONSIGNIFICANCE

7 **CITY OF TACOMA**, a Washington
8 Municipal corporation, through its

9 Planning and Development Services,

10 **Respondent.**

11 **THIS MATTER** came on for hearing before JEFF H. CAPELL, the Hearing
12 Examiner for the City of Tacoma, Washington, (the “City”), on August 29, 2024 (the
13 “Appeal Hearing”). Appellant Toll Bros., Inc. (“Appellant” or “Toll Bros.”) was represented
14 at the hearing by Attorney Clara Park, of Van Ness Feldman LLC. The City’s Planning and
15 Development Services Department (“PDS”) was represented by Chief Deputy City Attorney
16 Steve Victor.

17 **BACKGROUND**

18 On August 7, 2022, the City issued a Mitigated Determination of Nonsignificance
19 (“MDNS”) threshold environmental determination for a preliminary plat (the “Plat”) applied
20 for by Toll Bros. During the 14-day appeal period for the MDNS, Michael Ollivant filed a
21 Notice of Appeal of the MDNS on August 21, 2024. The following day, Toll Bros. also filed

DECISION AND ORDER
ON MDNS APPEAL

1 an appeal of the MDNS (on August 22, 2024). Mr. Ollivant and Toll Bros. participated in a
2 prehearing conference held by the Hearing Examiner on August 26, 2024. Thereafter,
3 Mr. Ollivant withdrew his appeal on August 27, 2024. As a result, the Applicant became the
4 sole appealing party.

5 The Appeal Hearing was held in the afternoon of August 29, 2024, after a public
6 hearing was conducted on the Plat application in the A.M. of the same day. In its appeal, Toll
7 Bros. challenged the validity of two mitigation conditions the City had imposed in the
8 MDNS. During the Appeal Hearing, it became apparent that the parties were not terribly far
9 apart on these two conditions, and it seemed as though they might be able to resolve the
10 issues presented without extensive intervention from this Office.¹

11 At the close of the hearing, due to the foregoing, and a previously scheduled
12 unavailability on the Examiner's part, the parties were given approximately two weeks' time
13 to see if they could reach a resolution on the Appeal Hearing issues. The parties submitted a
14 document on September 13, 2024, memorializing the result of their discussion which became
15 Exhibit C-12 of the combined hearing record for the Plat hearing and the Appeal Hearing.

16 On September 30, 2024, the Examiner sent an email to the parties seeking
17 confirmation of their intentions, as memorialized in Exhibit C-12, and he received a prompt
18 clarifying response.

19 ANALYSIS

20 Hearing Examiner Rule of Procedure 2.13 sets forth the following regarding
21 settlement of an appeal:

¹ The Office of the Hearing Examiner.”

1 **RECONSIDERATION/APPEAL OF EXAMINER’S DECISION**

2 **RECONSIDERATION:**

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

20 **APPEAL TO SUPERIOR COURT OF EXAMINER’S DECISION:**

21 **NOTICE**

Pursuant to the Official Code of the City of Tacoma, Section 1.23.160, the Hearing Examiner's
decision is 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 shall be
commenced within 21 days of the entering of the decision by the Hearing Examiner, unless
otherwise provided by statute.