

**OFFICE OF THE HEARING EXAMINER**

**CITY OF TACOMA**

**DECISION ON MAJOR MODIFICATION TO**

**AN EXISTING PLANNED RESIDENTIAL DEVELOPMENT**

**APPLICANT:** Copper Ridge, LLC, a Washington limited liability company (hereinafter the “Applicant” or “Copper Ridge”), is the applicant for the present request for a major modification to the existing Planned Residential Development overlay in place at the Subject Property (defined below). The Applicant was represented at the hearing by Craig Deaver, Principal, C.E.S. NW Inc. and Evan Mann, Entitlement Manager, Copper Ridge, LLC/SoundBuilt Homes. For purposes of this Decision, the references to “Applicant” and/or “Copper Ridge” 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.:** HEX2024-017

**SUMMARY OF REQUEST:**

This Decision arises together with a request for a 119-lot Full Plat Subdivision (the “Plat”) on an approximately 28.21-acre site, the intended development of which requires a Planned Residential Development (separately “PRD”) Major Modification (collectively “PRDMM”). The Plat and PRDMM are accompanied by a Critical Area Minor Development Permit (“CAMDP”). The Plat includes open space, open space recreational areas, public roads,<sup>1</sup> sidewalks, and utilities. Review under the State Environmental Policy Act (“SEPA”) is required because more than 20 new single-family residential units/lots are being proposed, and anticipated site grading will be more than 500 cubic yards (10,000 cubic yards).

**LOCATION:**

The Site is located within the South End neighborhood of Tacoma and is addressed on one side as 7432 East D Street, and on the south side as 113 East 80th Street. It is within Section 28, Township 20, Range 03, Quarters 42 and 43, Tacoma, Washington. The Site is already located within the City’s “R2-PRD” Single-Family Dwelling Planned Residential Development District, but the Applicant intends to modify the PRD to better accommodate its intended development. The Site consists of the following eight tax parcels to the south and west of Charlotte’s Blueberry Park: 0320284097, 0320284064, 0320284096, 0320284098, 0320284228, 0320284227, 0320284226, 0320284225.

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<sup>1</sup> The City’s Exhibit C-1 references “private roads” at Page 1 of 39. This appears to be an incorrect leftover from the Prior PRD Plan. The Applicant testified at the hearing that the roads proposed in the Plat are intended to be public. *Deaver Testimony*.

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND DECISION**

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

## **DECISION:**

The Hearing Examiner hereby approves the requested PRD Major Modification subject to conditions set forth herein below.<sup>2</sup>

## **PUBLIC HEARING:<sup>3</sup>**

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 Plat and the PRD Major Modification request on October 10, 2020.<sup>5</sup> The hearing record was held open to allow the parties an opportunity to either reach agreement on City-proposed conditions of approval or submit in writing further explanation for why the conditions should be imposed (City) or not imposed (Applicant). The City submitted its additional information on October 17, 2024. The Applicant was given until October 24, 2024, to respond to the City regarding proposed conditions of approval, and it did so by emailed submission on the deadline. The Examiner conducted a site visit to the Subject Property on October 18, 2024.

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

### City of Tacoma

- Larry Harala, Principal Planner, PDS, City of Tacoma

### Copper Ridge

- Craig Deaver, C.E., Land Planning and Survey Consultant, C.E.S. NW Inc.
- Evan Mann, Entitlement Manager, Copper Ridge, LLC
- Jeff Mallahan, Senior Ecologist, Wetland Resources, Inc.
- Aaron Van Aken, P.E., PTOE, MBA, Traffic Consultant, Heath & Associates, Inc.

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<sup>2</sup> As will be explained further below, the majority of the “conditions” recommended herein are not necessarily conditions precedent that must be satisfied prior to approving the PRD Major Modification. Rather, they are requirements applicable to the proposed development of the Subject Property as a PRD.

<sup>3</sup> Under the authority set forth in Tacoma Municipal Code (“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) a companion full plat, (2) a Critical Areas Minor Development Permit, and (3) an appeal of the SEPA determination for the Site that was issued as a Mitigated Determination of Non-significance (“MDNS”). The MDNS was appealed by the Applicant under Hearing Examiner File No. HEX2024-018. *Also see Finding of Fact 15.* The Examiner has approved all permits and issues a decision on the MDNS appeal contemporaneously herewith.

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

<sup>5</sup> The public hearing in this matter was scheduled to be conducted in City Council Chambers in the Tacoma Municipal Building. Prior to the commencement of the proceedings, the microphone system in Council Chambers went down. As a result, the hearing was moved to the Hearing Examiner office’s conference room also located in the Tacoma Municipal Building with remote access using Zoom teleconferencing with both internet visual and audio access. Separate telephonic access via call in number on Zoom was also available at no cost to any participant. Witnesses and members of the public participated in-person and over Zoom.

## **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION**

## Public Comment

Members of the public who offered testimony/comment at the hearing, either in person or remotely, included all of the following:

- Steven Jeffries, 103 East 82nd Street, Tacoma
- Jonathan Strivens, Strivens@outlook.com
- Karla Strivens, karla.strivens@gmail.com
- April Smith, LarchmontCares@gmail.com
- Andrea Haug, Senco253@gmail.com
- Suzanne (Last Name and contact not given).

Written comments were submitted pre-hearing as part of the City’s exhibit submittals as well, and these are included in the record as Exhibit C-2.

## **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION:<sup>6</sup>**

### **FINDINGS OF FACT:**

1. The Applicant submitted an application through its duly designated representative requesting a 119-Lot Full Plat Subdivision<sup>7</sup> (again the “Plat”) and Planned Residential Development (separately “PRD”) Major Modification (collectively the “PRDMM”), together with a Critical Area Minor Development Permit (“CAMDP”) on the approximately 28.21-acre Subject Property. PDS determined Copper Ridge’s permit application technically complete on February 21, 2023, but additional revisions were made, and additional information submitted through July 2024. *Harala Testimony, Deaver Testimony, Mann Testimony; Ex. C-1.*

2. Copper Ridge purchased the Subject Property from Green Harbor Communities, Inc. (“GHC”).<sup>8</sup> During GHC’s ownership of the Subject Property, it completed a 73-unit PRD development plan in 2020 with a different layout and concept (the “Prior PRD Plan” *see Exhibit C-11*).<sup>9</sup> The Hearing Examiner held a hearing on the Prior PRD Plan on September 10, 2020, and the City Council approved the PRD Overlay on November 10, 2020, in Ordinance No. 28697. GHC had purchased the Subject Property as surplus from Tacoma Public Schools in 2018. *Ex. C-1, Ex. C-11.*

3. The Subject Property is heavily impacted by critical areas (wetlands and biodiversity areas/corridors) and has experienced negative temporary site conditions over the years such as the frequent establishment of homeless camps and the conduct of other illegal activities thereon. *Harala*

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<sup>6</sup> As much as it can be, this Decision is limited to the PRDMM alone. An integrated decision on the PRDMM, the Plat and the CAMDP might have been nice, but the Examiner also concluded it would have been too messy. The separation notwithstanding, there will be much information between decisions that is related and even repeated. That seems to be inescapable. The MDNS appeal will also have its own separate decision.

<sup>7</sup> Previous iterations of the Plat had 127 lots proposed. The parties clarified that the Plat under consideration for approval, and that formed the “Site Plan” basis for review of the PRDMM is the version with 119 proposed lots/residential dwelling units.

<sup>8</sup> GHC was a Washington corporation but it is now administratively dissolved.

<sup>9</sup> The current PRD Overlay approved for GHC under the Prior PRD Plan is referred to herein as the “Current PRD.”

*Testimony; Ex. C-1.*

4. The zoning of the Site and surrounding area is “R-2” Single-Family Dwelling District and has been so since 1953 when the City first implemented its modern zoning paradigm. As referenced above, the Site went through the rezone process to have the present PRD overlay added to the R-2 designation in 2020 under city of Tacoma Planning and Development Service application #LU19-0100. *Ex. C-11.*

5. The Site is located within an area of lower density single-family housing with most houses in the surrounding area being of mid- to late-twentieth century vintage, built in a mix of both platted and unplatted underlying properties. The developed areas to the west tend to be larger lots with significant yards/open space, with the areas to the east and south being more typical sizes for city blocks in incorporated Tacoma. Surrounding streets are residential collector streets and range in size and condition, with varying levels of fully developed improvements, e.g., several do not have curb, gutter, or sidewalk. *Harala Testimony; Ex. C-1.*

6. Charlotte’s Blueberry Park borders the Subject Property to the north. This Metropolitan Parks District property is about 20 acres in size (about 10 acres of which are wetlands) and includes a playground, community garden, and blueberry farm. The park also includes trails and picnic areas. *Id.*

7. The Upper Pacific Crossroads Mixed Use District is located to the west/northwest of the Site fronting along Pacific Avenue. Pacific Avenue is served by Pierce Transit Route 1, and East 72nd Street is served by Route 202 with several stops within approximately a half mile of the Subject Property. *Id.*

8. The Comprehensive Plan designates the Site as Parks and Open Space per the Comprehensive Plan Land Use Map. This designation arises primarily from the fact that the Subject Property is presently open space, as well as from the prior ownership of the Tacoma School District. In other words, the designation is more descriptive of present conditions than it is concretely regulatory. The existing R-2 Single-Family Dwelling District designation with approved PRD overlay already allows for residential development on the Subject Property. *Harala Testimony; Ex. C-1, Ex. C-10.*

9. The Site is large for undeveloped tracts in Tacoma. It is somewhat irregular in shape and is presently comprised of the eight tax parcels listed in the “LOCATION” section above. The Subject Property measures about 935 feet from east to west, and as much as 1,650 feet from north to south. As referenced above, the Site is approximately 28.21 acres in area. The Subject Property is bounded by East D Street on the east, unimproved East 80th Street on the south, Charlotte’s Blueberry Park on the north, and private property to the west. *Harala Testimony, Deaver Testimony; Ex. C-1, Ex. C-3.*

10. The Site terrain is generally flat. Access to utilities necessary for the Applicant’s intended development can be had through extensions from existing lines in the adjacent right-of-way areas of East D Street and East 80th Street. In addition to the utilities present in surrounding right-of-way, there is a storm line that runs diagonally through the Subject property in a 50-foot-wide easement. *Id.*

11. Four wetlands (Wetlands A-B and D-E) have been identified on the Subject Property along with one drainage feature (Drainage Feature 1). As already set forth herein, the Site is mainly

undeveloped at present, and is predominated by the identified wetlands and open space/forested area. *Harala Testimony, Mallahan Testimony; Ex. C-1, Ex. C-3, Ex. C-4.*

12. The area of the Subject Property starting from the southeast corner near the intersection of East D Street and East 80th Street is the most suitable for development in that there are no critical areas or other similar barriers to construction there. The Applicant has proposed preserving and enhancing most of the critical areas located on the Subject Property and developing only about 10 acres of the Site for “missing middle” housing.<sup>10</sup> GHC’s Prior PRD Plan also intended to provide missing middle housing, but of a slightly different type and different layout. *Harala Testimony, Deaver Testimony, Mann Testimony; Ex. C-1, Ex. C-3, Ex. C-9, Ex. C-11.*

13. As stated above, the Plat proposes 119 lots for development with attached townhome dwellings (the “Project”). The townhouse<sup>11</sup> style dwellings will be three story units with ground floor garages. The floorplans range from approximately 1,700 to 2,100 square foot units. The homes are proposed to be 3- or 4-bedroom layouts with a variety of floor plans. Current home designs utilize abundant windows to give an open, roomy floor plan. Again, development of the townhomes will be clustered on the southeastern corner of the Site to minimize impacts to critical areas and maximize the retention of native vegetation. The proposed home lots will be approximately 1,573 square feet to 4,225 square feet in area, which is smaller than required minimums in an R-2 zone without the added flexibility that a PRD Overlay affords. Homeowners will have access to common areas, open space, and at least some trail(s), as at least one trail is proposed to run through the Subject Property more or less in line with the existing storm line easement. The Project proposes that many outdoor recreational opportunities will be provided for by the Subject Property’s adjacency to Charlotte’s Blueberry Park. *Id.*

14. The Applicant proposes to conduct significant clearing and grading of the southeast portion of the Site slated for development. Such clearing and grading will be subject to its own permitting process and review when the time comes. Resulting/remaining tree canopy for the whole of the Subject Property should still be greater than 30% given that approximately 17 acres of the Site will remain undeveloped due to biodiversity and wetland critical area status and protections. The city of Tacoma has a 30% tree canopy coverage goal set forth in the One Tacoma Plan<sup>12</sup> Environment + Watershed Element, Urban Forest Policy EN-4.29. The developed area of the Site, in and of itself, will likely not achieve 30% coverage in spite of street tree requirements and other landscape plantings. City staff has proposed a condition of approval (*see Ex. C-1 at §1.5.*) that addresses concerns from the community at the initial loss of all existing mature tree canopy on the developed portion of the Site that will also help serve as screening and as a transition from the surrounding roadways and developed areas to the critical areas on the Subject Property. The Applicant has objected to this condition as overreaching. *Harala Testimony, Deaver Testimony, Mann Testimony; Ex. C-1, Ex. C-2, Both parties’ post-hearing*

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<sup>10</sup> Missing middle housing is not defined in the TMC although it is a term used in the Comprehensive Plan and prevalently in affordable housing discussions in general. The National League of Cities describes it as follows: “Missing middle housing refers to housing that provides diverse housing options along the spectrum of affordability, which includes duplexes, triplexes, fourplexes and bungalows... Typical middle housing types include multiunit structures such as townhomes, duplexes, triplexes and fourplexes. Other examples can include cluster homes and cottage courts.” <https://www.nlc.org/article/2024/01/23/what-is-missing-middle-housing/>.

<sup>11</sup> The terms “townhouse” and “townhome” are used interchangeably herein.

<sup>12</sup> Referred to herein as the “Comprehensive Plan” or “Comp Plan.”

*submissions on conditions, (collectively the “Conditions Submissions”).*

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 Mitigated Determination of (Environmental) Non-significance (“MDNS”) for the Plat on September 24, 2024 (Exhibit C-4). This determination was based on “[a] review of the [Applicant’s] environmental checklist and attachments, other information on file with the City of Tacoma, and the policies, plans, and regulations” applicable to the Subject Property and the Plat. *Ex. C-4*. The appeal deadline for this determination was October 8, 2024. An appeal was filed by the Applicant on the deadline challenging certain mitigation conditions imposed in the MDNS. The SEPA appeal hearing was held on October 17, 2024. The Examiner’s appeal decision was issued contemporaneously with this Decision under Hearing Examiner File No. HEX2024-018.

16. Public Notice of the Project application and public hearing was mailed on August 21, 2024, to property owners and residents within 1,000 feet of the boundaries of the Site. Notice of application was also sent to interested neighborhood groups, the local neighborhood council, Tacoma School District, Metropolitan Parks District, and reviewing agencies. Public Notice signs were posted on the Site and notice was posted on the PDS website. City staff received numerous telephone calls from area residents during the public comment period. Ten written public comments were received expressing concerns generally about retaining trees on the Site, critical area impacts, loss of privacy to abutting properties and possible traffic impacts. *Ex. C-2, Ex. C-4, Ex. C-6*.

17. As part of the Project review process, PDS provided notification of the PRDMM/Plat request to various City departments/divisions, and outside governmental and non-governmental agencies. Departmental comments and requirements regarding the Plat and the overall Project are included in the PDS Report and in the Hearing Record as Exhibit C-8. These agencies/departments/divisions recommended conditions they believed would be properly attached to the Plat and PRDMM were they to be approved. Most of the recommended conditions have more to do with regulating the actual development of the Subject Property than they do the approval of the PRDMM or the Plat upfront and in isolation. At the hearing, the Applicant objected to, or requested revisions to recommended Conditions 5, 10, 12, 16, 31, and 35.f The Examiner allowed the parties to provide further authority and argument for their positions on these contested conditions post hearing in the Conditions Submissions. *Harala Testimony; Ex. C-1, Ex. C-8*.

18. Comment/review letters on the Project were received from both the Washington State Department of Ecology (“Ecology”) and the Washington Department of Fish and Wildlife. Both letters provided advisory conditions and comments related to development of the Site. Neither letter expressed opposition to the subdivision action applied for in the Plat or the zoning modification represented in the PRDMM. *Ex. C-2*.

19. The PDS Report (Exhibit C-1) accurately describes the requested PRDMM and the Project, general and specific facts about the Site, applicable sections of the Comp Plan, and applicable regulatory codes. The PDS Report is in the Hearing Record 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 Decision, this Decision shall control.

20. 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 decision in regard to the PRD Major Modification request pursuant to TMC 13.05.090.E., 13.05.110.C., and TMC 1.23.120 because the PRDMM is part of a package of multiple land use applications for the same development project, at least one of which (the Plat) requires an open-record, public hearing. In such cases, all permits are consolidated for review before the Hearing Examiner. Under TMC 13.05.130.C., “Major Modifications,” the PDS Director is tasked with considering and deciding “Major modifications to Site Rezone Permits that do not change the site’s zoning designation...” such as is happening here with the PRDMM.<sup>13</sup> Because of the aforementioned consolidation, the Examiner steps into the Director’s shoes to decide the PRDMM, as well as the Plat and CAMDP.

2. The requirements of SEPA have been met for the Plat and the consolidated permits by the City’s issuance of the MDNS,<sup>14</sup> which the Applicant has appealed. The MDNS appeal was heard on October 17, 2024, continued from the overall hearing which began one week earlier on October 10, 2024. The MDNS appeal decision is issued separately, but contemporaneously with this Decision.

## **PRD MAJOR MODIFICATION ANALYSIS AND CONCLUSIONS**

### **GENERAL REZONE REQUIREMENTS**

3. As noted in the PDS Report, evaluating a major modification to an existing PRD overlay technically requires a complete rezone analysis of the Subject Property. The same as when the Prior PRD Plan was approved, the base zoning of R-2 in place on the Subject Property does not change. The PRDMM does not seek to remove the PRD overlay, but rather only to modify what the PRD overlay allows in order to accommodate the Project. The Project is different from the Current PRD approved in 2020. The Project presents a different layout and greater density, among other differences. In order to assess these modifications and determine whether they should be approved, 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 addressed below. Under TMC 13.05.030.C.b., the applicant for a rezone is required to demonstrate consistency with all of the following criteria:<sup>15</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

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<sup>13</sup> See Conclusion of Law (“CoL”) 3, below.

<sup>14</sup> See TMC 13.12.440.

<sup>15</sup> Numbering of the criteria is kept the same as in the TMC for consistency.

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.

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

5. **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 R-2 Single-Family Dwelling District zoning classification for the Subject Property is not proposed to change. Rather, the Applicant is requesting that modifications to the existing PRD overlay be approved. The PRD Major Modification will allow for more flexibility in layout and greater density than the Prior PRD Plan, but the Project will conform to the existing zoning classification in that the Site will be developed for single-family residential use. *FoF 4, 8, 13.*

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, 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 R-2-PRD 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 areas and open space.

Given that the Project will preserve approximately 65% of the Subject Property as open space, the Examiner concludes that the PRDMM will still have the Subject Property in compliance with both the R-2 zoning classification and the “[l]and use intensity designation of the property, policies, and other pertinent provisions of the Comprehensive Plan” in that the Project preserves the majority of the Subject property as open space while still developing approximately 35% of the Subject Property as residential units. As such, the requested PRDMM “[i]s generally consistent with the applicable land use intensity designation of the property...” and is also generally consistent with the “[p]olicies, and other pertinent provisions of the Comprehensive Plan.” The PDS Report (*Ex. C-1*) and Exhibit C-10 set forth numerous Comp Plan policies and goals that are advanced by the Applicant’s intended use of the Subject Property for a PRD residential development. 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-10. Representative of these consistent goals and policies<sup>16</sup> are the following, which relate very specifically to the Project:

### **URBAN FORM**

**Goal UF-1** Guide development, growth, and infrastructure investment to support positive outcomes for all Tacomans.

**Goal UF-11** Preserve and protect open space corridors to ensure a healthy and sustainable environment and to provide opportunities for Tacomans to experience nature close to home.

**Policy UF-13.2** Promote infill development within the residential pattern areas that respects the context of the area and contributes to the overall quality of design.

### **DESIGN + DEVELOPMENT**

**Goal DD-1** Design new development to respond to and enhance the distinctive physical, historic, aesthetic and cultural qualities of its location, while accommodating growth and change.

**Policy DD-4.2** Encourage more housing choices to accommodate a wider diversity of family sizes, incomes, and ages. Allow adaptive reuse of existing buildings and the creation of accessory dwelling units to serve the changing needs of a household over time.

**Policy DD-4.3** Encourage residential infill development that complements the general scale, character, and natural landscape features of neighborhoods. Consider building forms, scale, street frontage relationships, setbacks, open space patterns, and landscaping. Allow a range of architectural styles and expression, and respect existing entitlements.

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<sup>16</sup> These are representative only. This is not an exhaustive list of Comp Plan goals and policies advanced by the PRDMM and the Project. Even Exhibit C-10 is probably not exhaustive.

**Goal DD-12** Integrate and harmonize development with the natural environment.

**Policy DD-12.1** Ensure that new building and site development practices promote environmental health and ecosystem services, such as pollutant reduction, carbon sequestration, air cooling, water filtration, or reduction of stormwater runoff.

**Policy DD-12.2** Encourage flexibility in the division of land, the siting and design of buildings, and other improvements to reduce the impact of development on environmentally sensitive areas, maintain natural landforms, retain native vegetation, protect specimen trees, and preserve open space.

### **ENVIRONMENT GOALS**

**Policy EN-3.3** Require that developments avoid and minimize adverse impacts, to the maximum extent feasible, to existing natural resources, critical areas and shorelines through site design prior to providing mitigation to compensate for project impacts.

**Policy EN-3.7** Encourage site planning and construction techniques that avoid and minimize adverse impacts to environmental assets.

**Policy EN-4.29** Ensure that plans and investments are consistent with and advance efforts to improve the quantity, quality and equitable distribution of Tacoma’s urban forest:

- a. Strive to achieve a citywide tree canopy cover of 30 percent by the year 2030 (“30 by 30”).

### **HOUSING GOALS**

**GOAL H-1** Promote access to high-quality affordable housing that accommodates Tacomans’ needs, preferences, and financial capabilities in terms of different types, tenures, density, sizes, costs, and locations.

**Policy H-1.6** Allow and support a robust and diverse supply of affordable, accessible housing to meet the needs of older adults and people with disabilities, especially in centers and other places which are in close proximity to services and transit.

**Policy H-2.7** Encourage a range of housing options and supportive environments to enable older adults to remain in their communities as their needs change.

**GOAL H-2** Ensure equitable access to housing, making a special effort to remove disparities in housing access for people of color, low-income households, diverse household types, older adults, and households that include people with disabilities.

**Policy H-2.2** Support barrier-free access for all housing consistent with the Americans for Disabilities Act (ADA). Consider additional actions to increase access such as implementation of visit ability and universal design features.

**GOAL H-4** Support adequate supply of affordable housing units to meet the needs of residents vulnerable to increasing housing costs.

**Policy H-4.9** Increase the supply of permanently affordable housing where practicable.

**GOAL H-5** Encourage access to resource efficient and high performance housing that is well integrated with its surroundings, for people of all abilities and income levels.

**Policy H-5.3** Encourage housing that provides features supportive of healthy and active living, such as high indoor air quality, useable open areas, recreation areas, community gardens, and crime-preventative design.

**Policy H-5.7** Encourage site designs and relationship to adjacent developments that reduces or prevents social isolation, especially for groups that often experience it, including older adults, people with disabilities, communities of color, and immigrant communities.

Again, approving the PRDMM for the Subject Property promotes the various Comp Plan goals and policies set forth in Exhibit C-10 of the hearing record, of which those reproduced above are representative. As a result, the Examiner concludes that the standards set forth in TMC 13.05.030.C.b.(1) are met.

**6. 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 deal with substantial change, the City restated the same analysis that was presented in its staff report for the Prior PRD Plan as follows:

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[s] or recommendation[s] set forth in the Comprehensive Plan, [making] it [ ] unnecessary to demonstrate changed conditions supporting the requested rezone.” Those provisions and recommendations are represented by the goals and policies set forth in Conclusion of Law 5 above and more broadly in Exhibit C-10. As such, the second prong of TMC 13.05.030.C.b.(2) is met.

**7. 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 gave the following analysis 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. Given that over half the site will remain a designated critical area and open space and preserved in perpetuity this is appropriate. *Ex. C-1.*

As with the Prior PRD Plan (and Current PRD, as approved), no change to the present zoning classification is requested as part of the PRDMM. Given that, this criterion is satisfied.

**8. 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.”*

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 PRDMM application. As a result, the criterion set forth at TMC 13.05.030.C.b.(4) is satisfied.<sup>17</sup>

**9. 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.”*

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

As part of the Major Modification justification, the applicant has shown that the development is appropriate and desirable for the neighborhood, allowing an economic use of the land while preserving the bulk of the site as open space/critical areas.

The Examiner’s analysis of this criterion has not materially changed since the Prior PRD Plan was considered in 2020. The Comp Plan sets forth policies and goals that embody the City Council’s approach to promoting the “public health, safety, morals, or general welfare” of the denizens of Tacoma. The PRDMM and the Project will further those goals and policies. The TMC sets forth 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 PRDMM request and the intended development of the Subject Property are consistent with the public health, safety, morals and general welfare of the community, City

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<sup>17</sup> An area-wide rezone may be coming in the form of the City’s Home in Tacoma initiative, but it will not be in effect before the approval granted herein. Harala testified at the hearing that for the Project to proceed, this PRDMM would still be necessary.

departments and divisions, and related agencies reviewed and commented on the PRDMM and the proposed development, recommending 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. *FoF 17, 18.*

As in 2020, perhaps even more so in 2024, the city of Tacoma and western Washington in general are still experiencing severe shortages 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.

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 of Conclusion of Law 23 as the development of the Subject Property unfolds, and by facilitating the increased supply of housing in the Tacoma market.

**10. TMC 13.05.030.C.b. Summary and Conclusion**—All criteria of TMC 13.05.030.C.b, as applicable to the requested PRDMM are met for the reasons stated above.

#### **MAJOR MODIFICATION SPECIFIC REQUIREMENTS**

**11. TMC 13.05.130.C.**—Although nothing in the PDS report specifically states the reason for the PRDMM being processed as a Major Modification and not a Minor Modification, the Examiner concludes that, at a minimum, TMC 13.05.130.B.2. and TMC 13.05.130.F.1.b.<sup>18</sup> disqualify the Project from being processed as a Minor Modification. As a Major Modification, the Project must meet the following “standards” set forth in TMC 13.05.130.C:

1. Major modifications shall be processed in the same manner and be subject to the same decision criteria that are currently required for the type of permit being modified. Major modifications to Site Rezone Permits that do not change the site’s zoning designation shall be considered by the Director and processed as a Process II permit, consistent with the regulations found in Section 13.05.070.D. Major modifications to Conditional Use Permits shall be processed as a Process I permit, consistent with the regulations found in Section 13.05.070.C. Major Modification to a Type I Urban Design Project Review permit shall be reviewed at the Final Design step (see Section 13.19.040.F.1.). Major Modification to a Type II Urban Design Project Review permit shall be reviewed at the Final Design step (see Section 13.19.040.F.2.).

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<sup>18</sup> TMC 13.05.130.B.2. states that to qualify for processing as a Minor Modification, “The proposal [must] [ ] not add to the site or approved structures more than a 10 percent increase in square footage.” The Project’s increased density and number of units likely exceed this restriction. TMC 13.05.130.F.1.b. states that a PRD District Modification may only be processed as a minor modification if there is “No increase in density, number of dwelling units, or lots is proposed...” The PRDMM Project increases all these over the Prior PRD Plan/Current PRD.

2. In addition to the standard decision criteria, the Director or Hearing Examiner shall, in their review and decision, address the applicability of any specific conditions of approval for the original permit.

As regards the first sentence of TMC 13.05.130.C.1., the analysis of the PRDMM/Project against the general criteria for a rezone has already been made above, and the conclusion has been made that the criteria are met. *CoL 5~10.*

As regards TMC 13.05.130.C.2., the Current PRD (the original permit), approving the Prior PRD Plan, was heavily conditioned in the Hearing Examiner's Recommendation to the City Council which the City Council adopted on its way to approving the Current PRD in Ordinance No. 28697. The Examiner considers the conditions included in the Current PRD (the original permit), but concludes that the conditions of approval set forth herein and largely restated in the Plat Decision are sufficient for approval, and as such replace the conditions of the original permit. *FoF 2.*

**12. TMC 13.05.130.F.2.**—This section of the TMC requires conformity with the following for approving Major Modifications of PRD Districts:

2. In addition to the standard criteria applicable to major modifications to a PRD District rezone and/or site approval, such major modifications to fully or partially developed PRD Districts shall only be approved if found to be consistent with the following additional decision criteria:

a. The proposed modification shall be designed to be compatible with the overall site design concept of the originally approved site plan. In determining compatibility, the decision maker may consider factors such as the design, configuration and layout of infrastructure and community amenities, the arrangement and orientation of lots, the layout of different uses, and the bulk and scale of buildings, if applicable, with a particular focus on transition areas between existing and proposed development.

b. The proposed modification shall be generally consistent with the findings and conclusions of the original PRD rezone decision.

c. If the existing PRD District is nonconforming to the current development standards for PRD District, the proposed modification does not increase the district's level of nonconformity to those standards.

These are now examined in turn.

**13. TMC 13.05.130.F.2.a.**—*“The proposed modification shall be designed to be compatible with the overall site design concept of the originally approved site plan. In determining compatibility, the decision maker may consider factors such as the design, configuration and layout of infrastructure and community amenities, the arrangement and orientation of lots, the layout of different uses, and the bulk and scale of buildings, if applicable, with a particular focus on transition areas between existing and proposed development.”*

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND DECISION**

The Current PRD and Prior PRD Plan’s proposed preservation of critical areas and open spaces, with development of a small percentage of the overall Site are the same as what is proposed under the PRDMM. As with the Prior PRD Plan, the PRDMM proposes clustered missing middle housing with the intention that such housing be more affordable than typical housing offerings in the Tacoma market. As such, the Examiner concludes that the PRDMM is sufficiently compatible with the Prior PRD Plan to be approved for modification.<sup>19</sup> *FoF 1, 2, 11~13.*

**14. TMC 13.05.130.F.2.b.**—*“The proposed modification shall be generally consistent with the findings and conclusions of the original PRD rezone decision.”*

The Examiner is uniquely situated to evaluate and decide this criterion given that he made the findings and conclusions of the original PRD rezone decision that were adopted verbatim by the City Council in passing Ordinance No. 28697. Although there are some layout changes, increased density, and differences in the types of residential buildings proposed, these changes do not materially alter the findings and conclusions made in the Examiner’s Recommendation on the Prior PRD Plan as adopted in Ordinance No. 28697. Development is still concentrated in the same area of the Subject Property. Critical Areas and remaining open space are still preserved. The type of development is the same—missing middle, affordable housing. Nothing has changed in the availability of utilities or other material development factors. This criterion is met.

**15. TMC 13.05.130.F.2.c.**—*“If the existing PRD District is nonconforming to the current development standards for PRD District, the proposed modification does not increase the district’s level of nonconformity to those standards.”*

No evidence was presented at the hearing or otherwise in the record that the existing PRD District is nonconforming.<sup>20</sup> The Examiner’s having played a not insignificant role in the Current PRD Overlay coming into existence, is quite certain (even in the forementioned absence of evidence) the Current PRD is not nonconforming making this criterion inapplicable. The Prior PRD Plan was not built. The Subject Property remains largely unimproved.<sup>21</sup>

**16. TMC 13.06.070.C. PRD Planned Residential Development District.**—In addition to all the foregoing requirements and standards, a PRD Major Modification must demonstrate that it continues to meet the 13.06.070.C Planned Residential Development Overlay District requirements. The Applicant provided the letter and materials found at Exhibit C-12 as its response to PRD and Rezone Criteria. The City’s analysis of these requirements is found in the PDS Report. As with the above batteries of standards and criteria, these are now looked at in turn to the extent applicable here as opposed to elsewhere in the companion decisions being issued on the permits combined for hearing. *Ex. C-1, Ex. C-12.*

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<sup>19</sup> For what it is worth, the Examiner finds this criterion somewhat illogical in its approach. A PRD modification is inherently a proposed change to what exists presently—a Major Modification all the more so. Analyzing whether to approve a modification based on how similar, or compatible it is with the PRD being modified seems a bit pretzely in its logic.

<sup>20</sup> The PDS Report does indicate on Page 11 of 39 at item J. that there are no nonconforming uses on the Subject Property.

<sup>21</sup> GHC did build, or partially build what were intended to be model homes. These have been or will be demolished.

17. **TMC 13.06.070.C.2. “Purpose.”**—TMC 13.06.070.C.2. begins with the following statement of purpose (quoted in full):

The PRD Planned Residential Development District is intended to: provide for greater flexibility in large scale residential developments; promote a more desirable living environment than would be possible through the strict regulations of conventional zoning districts; encourage developers to use a more creative approach in land development and stormwater management; provide a means for reducing the improvements required in development through better design and land planning; conserve natural features and retain native vegetation; provide a high quality of urban design pursuant to creating a livable and attractive neighborhood and place-making; facilitate more desirable, aesthetic, and efficient use of open space; promote sustainable building and site design practices; and promote the voluntary incorporation of affordable housing through provision of voluntary density bonuses.

The PRDMM and the Project align with this part of the TMC’s purpose statement in that they are hoping to exercise somewhat greater flexibility (*see e.g., lot sizes, FoF 13*) to develop much needed missing middle housing while still conserving natural features of the Subject Property. The Project intends to provide a high-quality designed, livable and attractive neighborhood. The Project is the kind of development the PRD purpose statement intended.

TMC 13.06.070.C.2. continues with the following:

The PRD District is intended to be located in areas possessing the amenities and services generally associated with residential dwelling districts, and in locations which will not produce an adverse influence upon adjacent properties.

The Subject Property is already under an approved PRD Overlay. It is in a residential R-2 zoned area. It is in a residential dwelling district and the MDNS adequately considered adverse influences on adjacent properties.

Lastly, TMC 13.06.070.C.2. provides this:

Land classified as a PRD District shall also be classified as one or more of the regular residential zoning districts and shall be designated by a combination of symbols (e.g., R-3-PRD planned residential development district).

The Subject Property is already classified as R-2-PRD and will remain so classified even after approval of the PRDMM.

18. **TMC 13.06.070.C.3. “District procedures.”**— TMC 13.06.070.C.3. sets forth the procedures for applying for a PRD reclassification. No application procedures were placed in issue at the hearing. TMC 13.06.070.C.3. requires that “An application for site approval shall accompany a request for reclassification to a PRD District.” Here, the Applicant submitted not just a request for site approval, but its request for approval of a preliminary plat (the Plat) for the Subject Property. Plats are generally more detailed than site plans, and in this case, the Plat more than adequately fills the site plan/site



approval requirement. A decision on approval of the Plat is issued contemporaneously with this PRDMM Decision (the “Plat Decision”).

TMC 13.06.070.C.3. states in part that “The Hearing Examiner shall conduct a public hearing on all applications for site approval which accompany a reclassification request and shall have approval authority on such site approval...” The required public hearing was held on October 10, 2024. TMC 13.06.070.C.3 continues by stating, “In acting upon a request for site approval, the Hearing Examiner or Director shall consider, but not be limited to, the following criteria:...” and then lists multiple, apparently non-exclusive criteria to be used in evaluating the request for site approval. Because the Applicant’s request for preliminary plat approval subsumes what would otherwise be the PRD site approval, these criteria are addressed in the Plat Decision mainly at Conclusions of Law 12 and 13.

**19. TMC 13.06.070.C.4., General requirements**—TMC 13.06.070.C.4. then sets forth multiple “General requirements” that all PRD applications must meet if applied for after December 1, 2015, which is the case here. TMC 13.06.070.C.4. has seventeen subsections, a. through q. The Examiner now list subsections a through q for reference together with conclusions regarding their satisfaction, as applicable, based on the record. 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 independent 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.

*Compliance with this subsection will be required, but compliance will be achieved as the entitlement/development process continues. It is not a condition that must be met in full before approval of the PRDMM can be granted. Site approval is granted in the Plat Decision.*

- d. No building permit shall be issued without a site approval.

*Same conclusion as subsection c. immediately above.*

- e. The site approval shall expire as provided in Chapter 13.05.

*This is a requirement, true, but not one of approval. It is more an admonishment to the Applicant that nothing good lasts in perpetuity.*

- 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 below in this Decision at Section A of Conclusion of Law 23. These Conditions are largely repeated in the Plat Decision. They will have to be complied with as development of the Subject Property progresses.*

- 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 this PRDMM decision or the Plat approval.

*The Project will be a PRD residential development that substantially 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.

*Here, we revisit public welfare and Comp Plan compliance (from above) with the added bonus of ensuring that no abnormal public burden is imposed. No impacts detrimental to the public have been shown in the record to this point that cannot be adequately mitigated. On the other hand, many public benefits will obtain from the addition to the housing supply, and multiple goals and policies of the Comp Plan have been shown to be furthered by the PRDMM and*

*the Project. No real detriment from the PRDMM/Project has been shown to outweigh these 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.

*The Plat and the Project as proposed do an 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 at Finding of Fact 7 above. In addition, the Project will include adding sidewalks and other pedestrian amenities which will allow this standard to be satisfied.*

- 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 of 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 proposed for improvement to provide greater site connection to the surrounding street and pedestrian grid.<sup>22</sup>*

- 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 PRDMM and the Plat. Necessary facilities will be addressed 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.

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<sup>22</sup> This last sentence represents a significant difference from the Prior PRD Plan in which East 80th Street was only proposed to be improved with a pedestrian path.

*The City's utilities departments/divisions have reviewed the PRDMM and the Plat. Necessary utility facilities will be addressed in the Section A. Conditions and as development progresses.*

- 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, as conditioned, provides for open space and some recreational opportunities. The park immediately to the north together with other area facilities add to the mix.*

- 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:*

*The applicant will complete the required utility, curb, gutter sidewalk, drainage, flood control and all other required off-site improvements as part of the preliminary plat process. Conditions are required as part of this decision that must be completed prior to completion of the final plat. The average lot size of 2,181 square feet is below the 13.06.020.F, District Development Standards, 3,000 square foot, Townhouse Dwellings, minimum lot area. However, provision for adequate open space, landscaping, site access and individual lot requirements are generally being met.*

*No phasing was indicated at the hearing or otherwise in the record. This factor should be satisfied in the final plat approval process, and as development happens without discrete phasing.*

- 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.

*Once developed, the Subject Property and common areas therein will be under the authority and management of the Homeowners Association to be created per conditions of approval. The Applicant is aware of this requirement. As with most contemporary integrated developments, the Homeowners Association will be responsible for the matters covered by this standard.*

**20. TMC 13.06.070.C.5., Urban design, sustainability and connectivity and TMC 13.06.070.C.6., Internal Circulation and accessways**—TMC 13.06.070.C.5. and .6. are both more concerned with the PRD site plan or, in this case, the Plat. Given that, these criteria are considered in the Plat Decision.<sup>23</sup>

**21. TMC 13.06.070.C.7. through TMC 13.06.070.C.10.**—A careful review of these sections of the TMC 13.06 PRD Overlay code indicates that the provisions found therein are geared more toward regulating the actual development of a PRD project once begun rather than upfront conditions that must be satisfied in order to approve a Major Modification to an existing PRD. Nonetheless they are addressed in brief as a subgroup here (as they also were in the Prior PRD Plan Recommendation).

**21.1. TMC 13.06.070.C.7.**, titled “District use restrictions” sets forth the allowed uses in a (presumably approved) 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. Subsection b. allows “Townhouses” which are the Applicant’s intended type of residential unit for the Project. *FoF 4, 13.*

**21.2. TMC 13.06.070.C.8.** is titled “Height regulations” and requires that PRD buildings and structures conform to the underlying residential district zoning restrictions. The height of the Applicant’s residences will be limited to what is currently allowed by the existing R-2 zoning per this code provision. *FoF 13.*

**21.3. 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 Plat 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 also Condition 3 below.*

**21.4. 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 (the Plat) sets aside closer to 65 percent of the overall Subject Property for open space This requirement is met. *FoF 5, 11, 13.*

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<sup>23</sup> See Plat Decision CoL 12 and 13.

**21.5.** Lastly, **TMC 13.06.070.C.11.** sets forth the “Parking regulations” applicable to PRDs. The Plat and Applicant’s submittals indicate that each house will include two off-street parking spaces in garages, with additional parking in driveways, which keeps the Project in compliance with TMC 13.06.090.C.3.h. *FoF 13.*

**22.** Findings entered herein, based on substantial evidence in the hearing record, support an overall conclusion that the proposed PRDMM is consistent with applicable criteria and standards for rezones generally and for approving PRDs and Major Modifications thereto specifically, provided the conditions set forth herein are complied with by the Applicant when developing the Subject Property. Likewise, the requirements for the accompanying permits (the Plat and CAMDP) have been met (*See accompanying Plat Decision combined with the CAMDP Decision of even date herewith*).

**23.** Accordingly, the PRD Major Modification is approved, 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 (the Project) after approval of the requested PRDMM than they do with the PRDMM request itself, i.e., they are not recommended herein as conditions precedent to approving the PRDMM. 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 19 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 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 Decision, this Decision shall control. Omission of any language from the PDS Report in this Decision does not necessarily constitute a conflict.

This approval of the PRDMM does not release the Applicant from state 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, except insofar as some variations are allowed expressly in the TMC for PRDs. *See Usual Condition 2 below.*

As referenced in Findings of Fact 13 and 17 above, the Applicant objected to the City’s recommended conditions 5, 10, 12, 16, 31, and 35.g, and the parties submitted the Conditions Submissions post hearing in support of their respective positions for imposing (City) and either deleting or revising (Applicant) the challenged conditions. The Examiner addresses each of the challenged conditions below as they present.

TMC 13.06.070.C.4.f. gives the Examiner the following authority regarding the conditioning of PRD approvals:

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.

In accordance with that authority, the present PRDMM is approved, subject to the following conditions derived from reviewing City and Tacoma Public Utility staff recommended conditions of approval for the PRDMM and accompanying permits as applicable to the Project. The Examiner has not attempted to separate out Plat/CAMDPA Conditions from PRDMM Conditions given that most Conditions relate more to the development of the Project as a whole, than to any one specific permit as a condition precedent to approval. If specific assignment is necessary, that has been done herein below.

#### LAND USE AND BUILDING CONDITIONS<sup>24</sup>

1. Formation of a Homeowners Association will be required at the time of development; however, conservation easements, covenants and restrictions are also required for critical area, stormwater and public utility requirements. It is the developer's responsibility to ensure that all applicable requirements are satisfactorily linked to the referenced Homeowners Association. –Advisory-- If this is not completed in a manner that satisfies all conditions and requirements the developer risks future delays and legal expense.
2. Any structures on site will require demolition via an approved demolition permit prior to submission for the Final Plat.
3. The townhouse setback standards for the development will be: interior lot 20-foot front, 5-foot side, 20-foot rear yard and for corner lots a 10-foot side yard setback. If the front and rear yard

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<sup>24</sup> The Examiner has left some of the City's original language used in proposing these conditions alone in the process of adopting and incorporating these conditions. To that end, any uncorrected references to "site" or "property" mean the Subject Property or the Site as defined herein, "project" in most instances means the Project, and references to the "developer" or "owner" mean the Applicant, but also would include any successors in interest. Non-capitalized terms in this Section generally refer to their capitalized defined counterparts from above in the Findings and Conclusions Some language herein has the lead-in "—Advisory—" because it is just that, advisory and not an express condition. Advisory language is flagged, but retained in order to preserve context.

setbacks are reduced in future land use code, then the current setbacks may be applied.

4. An unanticipated discovery plan, compliant with the City of Tacoma Historic Preservation Office guidelines, shall be in place prior to any excavation or major ground disturbance on the site. For questions or concerns please contact Reuben McKnight, Historic Preservation Officer or Susan Johnson, Historic Preservation Coordinator.
5. A 10% tree canopy coverage requirement for the developed portion of the site, calculated based on the developed portion of the site only (the approximately 10 acres to be developed portion of the site) shall be required. The method of calculation shall be the standard in city of Tacoma Land Use code at the time of development. While this condition will not need to be met until the time of development, it is being placed as a condition of approval for the PRD to ensure tree canopy remains on the site in perpetuity. It is anticipated that perimeter street tree placement, non-critical area open space trees can meet this requirement. Trees within utility tracts, and along trails within the developed portion of the site can also contribute to this requirement. The calculation will be required on the landscape plan at the time of permitting.

*In spite of the Applicant's request to remove this condition, the Examiner retains it. Despite the plentiful tree coverage on the undeveloped majority of the Site, responsible development of the developed portion of the Site must still include a certain amount of tree cover to account for such things as aesthetics and heat dissipation in a dense development.*

*The Applicant's argument fails to meet its burden to show that this condition is unwarranted. The Comp Plan encourages tree retention on properties designated parks and open space. Tree retention helps to alleviate air quality issues and heat concerns. The Applicant's argument that there is no 10% coverage requirement in the TMC when the overall Subject Property exceeds 30% coverage is unpersuasive. The TMC does not need to expressly set forth such a requirement. TMC 13.06.070.C.4.f., as well as TMC 1.23.130 allow the Examiner to impose reasonable conditions on development. Ten percent is a minimal requirement. In the Conditions Submissions, the Applicant argued that the City must look at the Project as a whole. This contention cuts both ways. Approving the removal of this condition ignores the immense benefit that trees provide, not only from a nearby adjacency (in the undeveloped portion of the Site), but also in the portion of the Site where the people who purchase Copper Ridge's townhomes will spend the majority of their time living.*

*As stated above, the 10% coverage requirement will likely be met through street tree placement and non-critical area open space trees. As development progresses, if the foregoing turns out to be incorrect, or the Applicant believes that achieving 10% tree coverage on the developed portion of the Site will make the Project financially infeasible, the Applicant may contact the Office of the Hearing Examiner to request a hearing to show cause for why this condition cannot be feasibly met, and the Examiner will reconsider this condition at that time.*

#### CRITICAL AREA CONDITIONS

6. A Notice on title shall be recorded per the requirements of TMC 13.11.280.A.1. prior to recording the Final Plat.
7. The Applicant shall provide mitigation and vegetation management according to the approved "Critical Areas Report and Mitigation Plan for The Preserve" (LU22-0244), revised May 23, 2024, prepared by Wetland Resources Inc. with the corrections regarding MUA 12 not being a Biodiversity Area, the interrupted buffer of Wetland D near East 80th Street., and the area reduced

#### **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION**



by the dispersal trenches.

8. The proposed dispersal trenches are located within the proposed mitigation areas. While mitigation is not required for the dispersal trench placement, the area taken for the dispersal trenches cannot be considered mitigation area. The mitigation (ratios and total area) will need to be revised to show the true mitigation amounts, or please verify that the total ratios proposed for mitigation do not include the dispersal trenches. There is more mitigation proposed than required and there is also the small area near East 80th Street (1,086 square feet) that can offset the dispersal trench areas in the demonstration of compliance.
9. The Applicant shall notify the City's Senior Regulatory Compliance Analyst when the vegetation is installed and provide an As-Built (Year 0) for the installation. The As-Built shall be approved prior to entering the monitoring period.
10. The Applicant shall monitor the mitigation areas for 10 years and provide a Monitoring Report to the City in Years 1, 2, 3, 5, 7, and 10 by October 1st of each year. Should the performance standards fail to be met during any monitoring period, contingency actions and additional monitoring will be required.

*The Applicant requested that this condition be limited to 5 years for both monitoring and reporting citing to TMC 13.11.230.B.4. and TMC 13.11.290(2), arguing that the 10-year period is not mandated by the TMC. The Applicant should refer to the authority already stated above for the Examiner's ability to condition land use approvals. The City correctly pointed out that both these code sections list a 5-year period as a minimum, not a maximum. The City further supported its position with published standards from Ecology in its latest publications regarding best available science. Best available science is not arbitrary when it comes from publicly available publications of the state agency tasked with environmental protection. The City is certainly free to terminate monitoring and reporting at a prior point if there are grounds to do so, but otherwise this condition will remain. The reporting and monitoring obligation can certainly be transferred to the HOA put in place at the development if such is appropriate during the 10-year period.*

11. The Applicant shall provide a split rail fence or similar approved fence along the preserved wetland buffer and/or Biodiversity Area Boundaries and install signage along the fence. The signs shall be the approved City of Tacoma Critical Area Boundary signs and shall be spaced in a manner that allows visibility between signs. The final placement shall be approved as part of the Site Development Permit.
12. The Homeowners Association rules shall include the following statement: The mitigation provided will be maintained in perpetuity even though formal reporting to the City is complete. Continued maintenance is required to keep the mitigation areas compliant with the mitigation proposed and approved. *[Revised condition per the parties' agreement in the Conditions Submissions]*
13. 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.
14. The Applicant shall record a Conservation Easement for the retained wetland, wetland buffer and remaining Biodiversity Area/Corridors prior to the recording of Final Plat.

15. The Homeowners Association’s Covenants, Conditions and Restrictions will include long-term protection measures and maintenance for the critical area tracts and shall be recorded with the Final Plat.
16. The Applicant shall comply with the requirements of the City of Tacoma Stormwater Management Manual with the intent of maintaining the pre-project wetland's hydroperiods for Wetland D to preserve existing amphibian populations within Wetland D. If the pre-project wetland's hydroperiods cannot be maintained and adjustments, as may be allowed by the City's Stormwater Management Manual, are requested, additional permitting may be required. The Applicant shall use Best Available Science (published by either local, state or federal regulatory authorities/agencies at the time of a vesting action) to ensure any changes in the wetland hydrology created by the Project are mitigated through appropriate permitting. *[Revised condition per the parties’ agreement in the Conditions Submissions with some addition from the Examiner]*
17. The Applicant shall demonstrate that the required 25-flow paths required for the proposed dispersal trenches are completely located outside of the wetland boundary of Wetland D, and Wetland A, including the winter months when higher water levels may be anticipated.

**SITE DEVELOPMENT CONDITIONS**

18. Documentation to demonstrate the Project’s compliance with the Greenroads requirement has not been provided by the Applicant. Applicant’s Response to Comments, dated 06/04/2024 referenced a “GreenRoads prescore” document, however the document included Built Green scoring information. Per TMC 13.C.5.f., the proposal must provide documentation of the incorporation of both green building and site features, including Built Green AND Greenroads.

The Applicant shall prepare and submit a typical checklist for residential plan review showing compliance with the standards for Greenroads (like the documentation provided for Built Green). Regarding Site Review offsite improvement concerns, the Applicant must provide documentation that the Project incorporates design features to meet the Bronze Level certification standards for Greenroads. While submission to Greenroads for formal certification is not required as part of the PRD 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 minimum) twenty-eight (28) points would be earned from the possible 49 Voluntary Core Credits and Voluntary Extra Credits. 06/04/2024 referenced a “GreenRoads prescore” document, however the document included Built Green scoring information. Per TMC 13.C.5.f., the proposal must provide documentation of the incorporation of both green building and site features, including Built Green AND Greenroads.

19. East D Street fronting the property shall be improved to a minimum width of 28 feet from face of existing east curb to face of new west curb, with a minimum 16 feet of pavement west of roadway centerline and shall include necessary drainage. Cement concrete curb and gutter, 5-foot planter strip and 5-foot sidewalk shall be constructed, abutting the site(s), along the west edge of East D Street at an alignment to be determined by and to the approval of the City Engineer. This will require half street improvements meeting the minimum roadway section Design Standards at time of submittal.
20. East 80th Street fronting the property shall be improved to a minimum width of 24 feet from back of new asphalt wedge curb on the south side to face of new north curb and shall include necessary

drainage. Cement concrete curb and gutter, 5-foot planter strip and 5-foot sidewalk shall be constructed abutting the site(s) along the northern edge of East 80th Street at an alignment to be determined by and to the approval of the City Engineer. This will require half street improvements meeting the minimum roadway section Design Standards at time of submittal.

21. Improvements to East 80th Street shall require connection to existing streets to the south, including paving of the intersections with East C Street and East B Street, meeting the minimum design standard at time of submittal.
22. Proposed new street East 79th Street within the Project Site shall be improved to Public Works Standards including a minimum width of 28 feet with cement concrete curb & gutter on both sides and 5-foot sidewalk on the west/north side. The minimum roadway section shall meet City Design Standards at time of submittal. It shall include necessary drainage, and any additional unsuitable foundation excavation material must be removed as directed by the City Engineer. The future right-of-way shall be a minimum of 36 feet.
23. Proposed new street East C Street within the Project Site shall be improved to Public Works Standards including a minimum width of 28 feet with cement concrete curb & gutter and 6.5-foot sidewalk on both sides. The minimum roadway section shall meet City Design Standards at time of submittal. It shall include necessary drainage, and any additional unsuitable foundation excavation material must be removed as directed by the City Engineer. The future right-of-way shall be a minimum of 42 feet.
24. Proposed new street Court B within the Project Site, where no on-street parking is located due to driveways, shall be improved to Public Works Standards including a minimum/maximum width of 20/24 feet with cement concrete curb & gutter on both sides and 5-foot sidewalk with 6-foot planter strip on the west side. The minimum roadway section shall meet City Design Standards at time of submittal. It shall include necessary drainage, and any additional unsuitable foundation excavation material must be removed as directed by the City Engineer. The future right-of-way shall be a minimum of 36 feet.
25. Proposed new street Court B within the Project Site, where on-street parking is located, shall be improved to Public Works Standards including a minimum width of 28 feet with cement concrete curb & gutter on both sides and 5-foot sidewalk on the west/north side. The minimum roadway section shall meet City Design Standards at time of submittal. It shall include necessary drainage, and any additional unsuitable foundation excavation material must be removed as directed by the City Engineer. The future right-of-way shall be a minimum of 36 feet.
26. Directional cement concrete curb ramps shall be constructed at the intersection of East 80th Street and East C Street. Ramps shall be installed on the NW and NE corner(s) of the intersection and align with current Tacoma and ADA standards.
27. Directional cement concrete curb ramps shall be constructed at the intersection of East D Street with East 80th Street. Ramps shall be installed on the NW and SW corners with receiving ramps on the east side of East D Street, according to the City of Tacoma Curb Ramp Matrix, and align with current Tacoma and ADA standards.
28. Directional cement concrete curb ramps shall be constructed at the intersection of East D Street and East 78th Street, Ramps shall be installed on the NW and SW corners with directional ramps on the NE and SE corner of the intersection, according to the City of Tacoma Curb Ramp Matrix,

and align with current Tacoma and ADA standards.

29. Directional cement concrete curb ramps shall be constructed at the intersection of East D Street and East 77th Street. Ramps shall be installed on the NW and SW corners with directional ramps on the NE and SE corner of the intersection, according to the City of Tacoma Curb Ramp Matrix, and align with current Tacoma and ADA standards.
30. Directional cement concrete curb ramps shall be constructed at the intersection of East D Street and East C Street (new connection to PRD). Ramps shall be installed on NW and SW corners of each intersection, with receiving ramps on the east side of East D Street, according to the City of Tacoma Curb Ramp Matrix, and align with current Tacoma and ADA standards.
31. Directional cement concrete curb ramps shall be constructed at the intersection of E 'D' Street and E 75th Street *as part of the sidewalk extension to Blueberry Park*. Directional curb ramps shall be installed on the NW and SW corners of the intersection, with receiving ramps on the east side of E 'D' Street, according to the City of Tacoma Curb Ramp Matrix, and align with current Tacoma and ADA standards.

*After discussion with the Applicant, the City revised its original recommended condition here. The Applicant asked for this condition's removal in conjunction with its MDNS Appeal. Given that the Applicant's MDNS Appeal has been denied, this condition is retained in its revised form.*

32. The type, width, and location of all driveway approaches serving the site(s) shall be approved by the City Engineer.
33. East D Street fronting the property shall be restored from any utility cuts, patches, or damage in accordance with the Right-of-Way Restoration Policy. The City's records indicate that the 7400-7800 Blocks of East D Street is Asphalt Concrete Pavement. Restoration shall be in accordance with Tacoma standard plan SU-15A.
34. 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.

#### **PUBLIC WORKS – TRAFFIC ENGINEERING CONDITIONS**

35. The Project is expected to add new vehicle, bicycle, and pedestrian trips to existing public streets while also building out a grid of new streets. This results in potential for new conflicts between all modes of traffic that can be minimized through thoughtful design. It also presents an opportunity to design the street system to facilitate and encourage active transportation by providing direct routes to the existing transportation grid. To minimize vehicular traffic conflict, promote safety, and to promote active transportation, the following conditions must be met.
  - a. Condition: Proposed streets shall align with the existing public street grid to the extent practicable. The central north-south public street through the development shall be a Condition: East 80th Street shall be constructed along the southern Site frontage per City of Tacoma Right-of-Way Design Manual standards for a "Half Street" section. East 80th Street shall connect to the existing East B Street at its western end including a sidewalk connection from the north side of East 80th Street to the west side of East B Street aligned with East C Street at a new intersection of East C Street and East 80th Street.

- b. Condition: A central shared-use path shall extend in an east-west orientation through the Site aligned with East 78th Street. This path shall be constructed in lieu of any requirement to build a full access public East 78th Street. The shared-use path must be in a public right-of-way or a permanent public easement. Raised crosswalks shall be constructed where the shared-use path crosses any street, court, or alley within the Site.
- c. Condition: Proposed lots shall have vehicular access from an alley or court in the rear of the lot where practicable. Only driveways connecting to alleys and courts may be spaced more closely than 50' on center. Driveways connecting to the new East C Street or to the existing public East D Street shall be spaced 50' apart measured from centerline to centerline. Adjacent parcels may share a single driveway entrance to meet this standard. Garage doors shall be setback from alleys or streets 2'- 5' or  $\geq 20'$  to prevent alley or street encroachments.
- d. Condition: Street and alley sections shall be constructed according to the following standards specific to this Planned Residential Development community
  - i. East C Street – 42' right-of-way, 6.5' sidewalk both sides, curb & gutter both sides, 28' traveled way measured from face of curb to face of curb.
  - ii. Court B (segments with no on-street parking due to driveways) – 36' right-of-way, 5' sidewalk on the west side, 6' planter strip/driveway approach on the west side, curb & gutter both sides, 20'min.-24'max. traveled way measured from face of curb to face of curb.
  - iii. Court B (northern segment where on-street parking fits between proposed driveways) – 36' right-of-way, 5' sidewalk on the west side, curb & gutter both sides, 28' traveled way measured from face of curb to face of curb.
  - iv. East 79th Street - 36' right-of-way, 5' sidewalk on the north side/ west side, curb & gutter both sides, 28' traveled way measured from face of curb to face of curb.
  - v. Alley –20' right-of-way, 2' gravel shoulders both sides, asphalt wedge curb one side, 16' traveled way inclusive of wedge curb.
  - v. Shared-use path – 14' right-of-way, 10' wide paved pathway in the center with 2' level landscaped area on each side.
- e. Condition: Curb bulbs shall be constructed at the intersections of all streets and courts proposed within the development, and at all new intersections with existing public streets, with the exception of the intersection of East 80th Street and East D Street, where the half street section width does not permit on-street parking and does not provide sufficient width to bulb the curb into a parking lane. Additional curb bulbs shall be constructed on the west side of East D Street where the central shared-use path meets East D Street at its intersection with East 78th Street and where the shared-use path crosses East C Street in a raised crosswalk. Curb bulbs shall bulb into the street or court wherever the road section is 28' wide or greater, which allows for on-street parking. The City Engineer shall approve all curb bulb designs.
- f. Condition: Traffic calming, such as speed humps or similar device, shall be constructed each on the 8000 Block of East C Street and 8000 Block of East D Street to address cut through and increased traffic. The City Engineer shall approve the design and locations. Notification shall be provided to the residents on each block regarding the placement of traffic calming prior to construction. *[Revised condition per the parties' agreement in the Conditions Submissions]*

- g. Condition: An assessment of streetlighting levels shall be calculated for streets, specifically East C Street within the development, and East 80th Street and East D Street abutting the development. Identified infrastructure needs, including streetlights poles, junction boxes, conduits, service cabinet, etc., shall be constructed. Infrastructure shall be located in the right-of-way or utility easements with appropriate inclusion in easement description.
36. All city of Tacoma Street Lighting requirements shall be met at the time of development. **–Advisory–**It is advisable to incorporate installation during the site development phase of development. The Applicant is advised to work with the Street Lighting and Signals Public Works Staff: Viki Marsten, [vmarsten@cityoftacoma.org](mailto:vmarsten@cityoftacoma.org), 253-591-5556.

#### STORMWATER/WASTEWATER

37. Final design of the stormwater facilities must be in compliance with the Stormwater Management Manual in effect at that time and compliance may require modification to the lot layout and a reduction in the number of available building lots.
38. The information provided does not vest the Project to stormwater or wastewater requirements. The proposed development shall comply with all applicable requirements contained in the City of Tacoma Stormwater Management Manual, Side Sewer and Sanitary Sewer Availability Manual, City of Tacoma Right-of-Way Design Manual and Tacoma Municipal Code in effect at time of vesting land use actions, building, or construction permits.
39. Any utility construction, relocation, or adjustment costs shall be at the Applicant's expense.
40. The hydrology report and associated plans are considered preliminary and intended to determine the feasibility of compliance with the Stormwater Management Manual. The drawings and associated reports are not approved for construction and do not show compliance with the Stormwater Management Manual.
41. The engineering analysis submitted in support of the preliminary plat application is not final, and more in-depth engineering analysis will be required for the development permitting phase.
42. The Site is not presently served by the City stormwater drainage system. The City stormwater drainage system shall be extended to serve the onsite and offsite improvements through the City's Work Order process, or another method of stormwater management meeting all requirements of the City of Tacoma Stormwater Management Manual shall be provided.
43. This Site is not presently served by the City's wastewater system. The City wastewater system shall be extended to serve the Project Site through the City's Work Order process.
44. Each new parcel shall have an individual side sewer connection to the public sanitary sewer. This may require re-routing 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.
45. Private sanitary sewer and/or storm easements shall be provided across any parcel(s) that side sewers or private storm must cross to serve parcels which do not have direct access to a public sanitary sewer or storm main, as applicable.

46. A Work Order and a Site Development Permit covering the entire Project shall be approved prior to recording of the final plat. The construction of the improvements are required prior to final plat.
47. The proposal includes utilizing separate stormwater facilities to mitigate stormwater. The facility sizing and amount of allowed surfaces to be routed to the facility shall be shown on the construction plans. 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, pervious surfaces allowed in square feet and dimensions of each stormwater facility. Facility sections and details may be shown on construction permit plans.
48. A Covenant and Easement Agreement shall be required where private stormwater facilities are proposed.
49. 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 Department. The recording numbers shall be inked on the final plat.
50. All required site development map statements shall be inked on the Final Plat Map at the time of Submittal. (*See Exhibit C-12.*)
51. Any utility construction, relocation, or adjustment costs shall be at the Applicant's expense.

#### TACOMA POWER

52. All Tacoma Power Easement requirements must be provided for during the Preliminary Plat process and properly inked on the map prior to submission for final plat. Tacoma Power's easement requirements state no structures in the 10-foot frontage easement. Before submitting for final plat, confirm with Tacoma Power that all necessary easements have been added or modified, as necessary, on the plat map. (*See comment memo Exhibit C-12.*)
53. All city of Tacoma Street Lighting requirements shall be met at the time of development.  
**--Advisory--**It is advisable to incorporate installation during the site development phase of development. The Applicant is advised to work with the Street Lighting and Signals Public Works Staff: Viki Marsten, vmarsten@cityoftacoma.org, 253-591-5556.

#### TACOMA WATER

54. Tacoma Water requires that the water main be installed on Site, sampled, and put into service prior to the submission for final plat. Please coordinate directly with Tacoma Water on questions or concerns.

#### **B. ADVISORY COMMENTS FOR FUTURE PERMITTING (site development, building permit and the Final Plat submission).**

In the PDS Report, the City included approximately seven pages of content under the immediately above heading as advisory comments. These are incorporated in this Decision in the same sense recounted in Finding of Fact 19 that the PDS Report is generally incorporated herein except to the extent that the PDS Report and this Decision differ, in which case this Decision controls. Advisory comments are not

conditions and are more specifically not conditions that must be satisfied for the approval of the PRDMM to be granted, and therefore, they are not given space here in this Decision. Some advisory comments may become conditions in the development of the Project as that progresses. Omitting them here has no effect on that.

**C. USUAL CONDITIONS:**

1. The 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. The approval hereby granted is still 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 a continuing requirement of this approval. By accepting this 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.

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

**DECISION:**

The Hearing Examiner hereby approves the requested PRD Major Modification subject to the above listed conditions.

**DATED** this 26th day November, 2024.

  
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**JEFF H. CAPELL, Hearing Examiner**



## NOTICE

### RECONSIDERATION/APPEAL OF EXAMINER'S DECISION

#### **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*).

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

## 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.