

**TUMWATER HEARING EXAMINER  
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**CONVENE:** 6:00 p.m.

**CASE NUMBER:** **TUM-24-1446 Vista Views at Black Lake Phased Preliminary Plat and Infrastructure Exception**

**DESCRIPTION OF PROPOSAL:** The Applicant requests approval to construct a 184 single family plat in a phased development. An infrastructure exception is required due to utilities proposed to be constructed adjacent to critical areas and critical area buffers.

**PROJECT NAME:** Vista Views at Black Lake

**OWNER/  
APPLICANT:** **Allen and Virginia Bodenhamer Trustees**  
22 S Barracks Lane  
Salmon, ID 83467

**APPLICANT:** **Rob Rice**  
Rob Rice Homes  
1868 State Ave NE  
Olympia, WA 98506

**PROJECT  
PROPONENT/  
REPRESENTATIVE:** **Jeff Pantier**  
Hatton Godat Pantier  
3910 Martin Way E, Suite B  
Olympia, WA 98506

**PUBLIC HEARING:** Hearing Examiner Mark Scheibmeir convened the public hearing at 6:00 p.m. to consider the Applicant's request for approval to construct a 184 single family plat in a phased development. An infrastructure exception is required due to utilities proposed to be constructed adjacent to critical areas and critical area buffers. The City's case number is TUM-24-1446. The Applicant is requesting approval to construct 184 single family homes in two phases on parcels located in the Single-Family Low Density (SFL) zone district. The SFL zone allows single family homes as a permitted use. The proponent wishes to develop the project in phases through the phased preliminary plat process, which allows developments over 100 lots to be constructed up to 4 phases. The project is also requesting an infrastructure exception to construct utilities adjacent to critical areas and critical area buffers. Prior to the hearing, he reviewed the Staff Report and Exhibits prepared by staff, as well as other materials relevant to the proposal.

Examiner Scheibmeir reported the purpose of the hearing is to provide City staff with an opportunity to present the Staff Report and recommendations and any proposed conditions followed by an opportunity for the Applicant to respond to the City's presentation and either add to or subtract from the City's

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recommendations. Public testimony will follow. He imposed a five-minute timeline for those testifying. Both the City and the Applicant will have an opportunity to respond to any testimony. All testimony will be under oath or affirmation. Examiner Scheibmeir explained that the hearing is for fact-finding and is regulated by the facts received through testimony or other sources of information. Once all testimony and other information is received and thoroughly reviewed, he will render a decision on the proposal consistent with Tumwater development regulations and the Tumwater Comprehensive Plan.

Examiner Scheibmeir cited the following exhibits:

- Exhibit 1 Staff Report January 22, 2025
- Exhibit 2 Preliminary Plat 11-18-2024
- Exhibit 3 Vicinity Map
- Exhibit 4 Zoning Map
- Exhibit 5 Public Notice Certification 01-21-2025
- Exhibit 6 Notice of Application 10-18-2024
- Exhibit 7 Mitigated Determination of Non-significance with SEPA Checklist 12-20-2024
- Exhibit 8 Public Hearing Notice 08-16-2024
- Exhibit 9 Notice of Application Public Comments (Exhibits 9A-9S) Exhibit 10 SEPA Public Comments (Exhibits 10A-10W)
- Exhibit 11 Public Hearing Public Comments (Exhibits 11A-11B) Exhibit 12 Critical Area and Wetland Mitigation Plan 08-08-2024 Exhibit 13 Critical Area Advanced Studies Stand Alone 06-14-2023 Exhibit 14 Critical Area Pump Station Mitigation Plan 09-20-2024 Exhibit 15 Preliminary Drainage Report 10-01-2024
- Exhibit 16 Gopher Report 10-30-2022
- Exhibit 17 Gopher Report 08-18-2023
- Exhibit 18 Gopher Report 07-30-2024
- Exhibit 19 Transportation Impact Analysis 11-22-2024
- Exhibit 20 Concurrency Ruling 12-02-2024
- Exhibit 21 Safe Walks to School Analysis 10-01-2024
- Exhibit 22 Tree Retention and Replacement Plan 10-01-2024
- Exhibit 23 Water Sewer Availability Letter 10-01-2024
- Exhibit 24 Project Narrative 10-01-2024
- Exhibit 25 Plat Name Certificate 10-01-2024
- Exhibit 26 Pearsall Recorded Graded Easement 10-01-2024
- Exhibit 27 Pearsall Recorded Waterline Easement 10-01-2024
- Exhibit 28 Easement Agreement 10-01-2024
- Exhibit 29 Preliminary Civil Plans 10-01-2024
- Exhibit 30 Chapter 18.10 Single Family Low Density Residential Zone District
- Exhibit 31 Maps from General Sewer Plan

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Examiner Scheibmeir reviewed corrections he received from City. The Staff Report was corrected to reflect three phases rather than two phases as referenced on page 1 of the Staff Report. The City in conjunction with the Applicant recommends a modification to proposed Condition 45 relating to a left-turn lane into the project from 49<sup>th</sup>.

**CITY TESTIMONY:** Examiner Scheibmeir administered the oath to Tumwater Senior Planner Alex Baruch.

Planner Baruch reported the request is to subdivide two properties totaling 54.36 acres into 184 single family lots through the phased preliminary plat process. The Applicant is also requesting an infrastructure exception to construct utilities adjacent to critical areas and critical area buffers. Both the preliminary plat and infrastructure exception require Hearing Examiner review and approval.

The property is located at 3717 49<sup>th</sup> Ave and 3825 58<sup>th</sup> Lane and is zoned Single Family Low Density residential. The properties are mostly flat with a decrease in elevation to Wetland A to the northwest and an increase in elevation to the east. The property historically has been used to raise cattle and has several outbuildings and a home on the property.

Surrounding properties are zoned Single Family Low Density with parcels zoned Multi-family Medium, Single Family medium and Neighborhood Commercial to the west and northwest.

The subdivision is proposed to be developed in three phases with 103 lots in the first phase, 47 lots in the second phase and 34 lots in the third phase. Frontage improvements, infrastructure extension, traffic improvements, safe routes to school path, stormwater, open space and wetland mitigation would be completed during the first phase of construction. Phases 2 and 3 will include the surrounding streets and infrastructure associated with those portions of the development internal to the subdivision.

The preliminary plat application was submitted and subsequently a Notice of Application was issued on October 18, 2024. During the Notice of Application comment period, the Nisqually Indian Tribe, Squaxin Island Tribe, Department of Archaeology and Historic Preservation, Thurston County, and several community members commented on the project. The tribes and DAHP requested a cultural resource study be completed prior to issuance of any grading work on the property. Condition 8 was included in response to their comments. Community comments related to school pedestrian connections, pickup and drop-off at the school, density, open space, stormwater drainage, utility connections, transportation impacts, emergency service impacts, best planning practices, and wetland impacts. The City responded to the different concerns included in response letters within Exhibit 9.

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The project was reviewed by the City of Tumwater Transportation Manager who provided a transportation concurrency ruling which stated that trips proposed to be sent through the Tumwater Boulevard/I-5 Interchange will require payment of mitigation fees or construction of the required interchange improvements. Additionally, improvements to the intersection of Black Lake Belmore Road and Black Lake Boulevard SW were identified as the project created failing movements at that intersection.

The City reviewed a SEPA Environmental Checklist and other information submitted by the Applicant. A Mitigated Determination of Non-Significance (MDNS) was issued on December 20, 2024 and no appeals of the SEPA threshold determination were filed.

During the SEPA comment period, the Olympia Regional Clean Air Agency submitted comments on the requirements for construction dust and demolition permits as it relates to the need for asbestos surveys. The Washington State Department of Ecology commented on the application with some specific comments related to elements of construction activities and critical area review. The Applicant and the Applicant's consultant have responded to the Department of Ecology's concerns in a series of emails and response letters. The Department of Ecology also responded to the Applicant's responses. No formal resolution to the comments has been achieved at this time. Several community members also sent comments to the City about the SEPA determination. The comments included concerns about the transportation network, schools, critical area impacts, and water availability. The City responded to the different concerns which are included in the response letters within Exhibit 10.

A Public Hearing notice was sent out on January 17, 2025. Comments have been received by various members of the public and have been included as updated Exhibit 11. Staff recently received an additional public comment earlier in the day, which will be forwarded following the hearing to both the Applicant and the Hearing Examiner. Notices for all three processes were mailed to property owners located within 300 feet of the subject property and various agencies, posted on-site, and published in The Olympian.

Various studies were provided by the Applicant regarding environmental elements to the site.

Staff reviewed the critical area reports which included an evaluation of the wetland regulations, impacts to wetlands, and a wetland infrastructure exception. Three wetlands were identified on-site. Wetland A is a large Category II wetland in the northwest portion of the property that has a 150-foot buffer that can be reduced to 110 feet by meeting specific criteria. Wetlands B and C are located in the middle of the site and were classified as category four wetlands

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with 50-foot buffers that can be reduced to 40 feet by meeting required criteria. This development proposes to remove the two small wetlands which can be allowed when following Tumwater Municipal Code (TMC) requirements in 16.28.095. The wetland report for the project details the small wetland standards and the wetland biologist's responses to each of the required criteria under Exhibit 12 section 4.2 of the report along with Exhibits 10S and 10T. After review of the wetland reports and additional documentation provided by the Applicant, staff agrees with the findings and the proposed mitigation.

Additionally, a wetland infrastructure exception is proposed to install frontage improvements and infrastructure along the frontage of 49<sup>th</sup> Avenue and a sewer pump station adjacent to Black Lake Belmore Road SW. The infrastructure would impact Wetland A on the north and west side of the wetland. The infrastructure aligns with the City's Transportation Comprehensive Plan and Sewer and Water Plans for that area of the City. With the proposed mitigation plans listed in the Wetland and Pump Station reports. Staff recommends approval of the infrastructure exception.

The geographic area of the subject property includes soils preferred by the Mazama Pocket Gopher, a listed protected species. Mazama Pocket Gopher reports dated October 2022, August 2023, and July 2024 conclude that no gopher mounds were observed on the subject property. Additionally, no Oregon Spotted Frog critical habitat is mapped on the subject property and while potential Oregon spotted frog habitat occurs in Wetland A, no preferred habitat occurs in Wetland A according to the critical area reports.

A professional forester's report including a tree inventory and tree protection plan were submitted for review for the project. The inventory reflects 275 existing trees on the site. The TMC requires retention of 20% of trees on-site or 12 trees per acre, whichever is greater. Retention of 12 trees per acre would require retaining 653 trees on-site. Since the proposed development does not have the required amount of trees in a pre-developed state, the development would need to add trees to equal the required amount post-development. A total of 378 additional trees need to be planted to meet the tree ordinance standards. This will be provided as a part of the landscape plan for the subdivision. A preliminary landscape plan was provided in Exhibit 29 on sheet 10.

The property is zoned Single-Family Low Density (SFL). Single-family detached dwelling units are an allowed use. The Single Family Low Density zoning district requires a minimum density of 4 dwelling units per acre and a maximum of 7 dwelling units per acre with a transfer of development rights from Thurston County. The applicant is proposing 5.92 dwelling units per acre which is under the maximum 6 dwelling units per acre without the transfer of development rights.

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The minimum lot size in the single family low density zone district is 3,200 square feet with 4,000 square feet proposed for the smallest sized lot. The minimum lot width is 50 feet, except for alley loaded lots, which reduces the lot width to 40 feet. Some of the lots within the subdivision are proposed to be alley loaded which allows the lots to be 40 feet wide. Maximum building height is 35 feet. Front yard setbacks are 10 feet, side yard setbacks are 5 feet, and rear yard setbacks are 20 feet. The proposed homes must meet design guidelines for single family homes at the time of building permit submittal. Those requirements will be reviewed during the building permit process for the homes.

The minimum open space requirement is 10 percent of total land area. Based on a review of the preliminary plat, it appears that the zoning criteria are met or will be reviewed during building permit applications.

The Aquifer Protection Overlay district applies to the property, which restricts hazardous uses to protect aquifer recharge areas. Residential subdivisions are not a restricted land use in the Aquifer Protection Overlay.

Staff finds that the phased preliminary plat and infrastructure exception as conditioned conform to the Tumwater Comprehensive Plan, TMC, planning standards, development standards, and policies of the City of Tumwater. Staff recommends approval of the phased preliminary plat and infrastructure exception with the attached conditions.

Examiner Scheibmeir said the site mapping included in the exhibits appears to be an earlier version when the project was intended to be a two-phased project. The map reflects Division 1 and Division 2 but lacks Division 3. He asked for identification of the location for all three phases.

Planner Baruch responded that Exhibit 2, Preliminary Plat, reflects Division 1 encompassing lots 1-103, Division 2 located to the right encompasses lots 104-150, and Division 3 to the left encompasses lots 151-184.

Examiner Scheibmeir said it appears Division 1 is located within the entire north/south area of the project. Planner Baruch explained that the outline of Division 2 is located within the dotted line on the map and is located to the right. A public street and homes are part of Division 1. A new road, 58<sup>th</sup> Lane, will be constructed as part of Division 1. Division 3 is located to the southwest.

Examiner Scheibmeir referred to no SEPA appeals received by the City. He asked about the expiration of the SEPA appeal period. Planner Baruch advised that the appeal period expired on January 10, 2025. Planner Baruch verified that no changes were made to the MDNS as a result of any public or agency comments.

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Examiner Scheibmeir requested additional information on how the City counts existing trees. The Critical Areas Mitigation Plan proposes planting approximately 900 cedars around Wetland A and the farm pond. As noted, the tree plan requires, according to the standard calculations, an additional 378 trees. He asked whether the figures were added together or whether any part of the 900 trees for wetland mitigation are counted toward the 378 trees required for tree protection.

Planner Baruch said he understands that the tree protection and tree planting associated with the replanting is a separate action from the mitigation planting.

Examiner Scheibmeir cited mitigation plans for the preliminary plat and impacts along 49<sup>th</sup> as well as the proposed elimination of Wetlands B & C, and the mitigation plan for the proposed pump station. He wants to ensure that any mitigation is not double counted. The mitigation plan for the pump station notes that it will impact 5,000 square feet of buffer to Wetland A with the mitigation proposal of 15,800 square feet of enhanced buffer elsewhere around Wetland A. However, the mitigation plan for other impacts reflects square footage of 15,800 in the plan. It is important to ensure mitigation measures are not applied twice by claiming mitigation for the pump station and mitigation for impacts to 49<sup>th</sup> or in the elimination of Wetlands B & C.

Planner Baruch recommended deferring the response to the inquiry to the Applicant's consultant.

Examiner Scheibmeir recommended preparing a checklist of questions to defer to the Applicant for a response.

Examiner Scheibmeir cited the mitigation plan for impacts to the primary site and the numerous mitigations of an expansion of the wetland, expanded buffer, and restoration of wetland and buffer. It is unclear however, what mitigation measures are proposed for the utility impacts along 49<sup>th</sup> as opposed to the elimination of Wetlands B & C. He asked about any source of information that differentiates the mitigation for each area.

Planner Baruch advised that the mitigation for Wetlands B & C is well defined in the report; however, the impacts to the wetland along 49<sup>th</sup> is a tentative question as the intent is to reduce the level of impacts to the extent possible during construction. Although the location and necessary right-of-way and improvements along 49<sup>th</sup> have been tentatively identified, staff wants to ensure that those improvements tie appropriately on the back of the sidewalks affording an opportunity to evaluate the impacts and propose mitigation appropriately during the review of the impact. The report includes mitigation for the impacts along 49<sup>th</sup> Avenue; however, there is variable right-of-way in that area requiring some project shifting to enable completion of the improvement.

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Examiner Scheibmeir asked whether all wetland mitigation would be completed during Phase 1. Planner Baruch affirmed wetland mitigation would be completed during Phase 1.

Examiner Scheibmeir cited a written comment from Franklin Polk dated November 1, 2024, citing his opposition of the proposed development as the site is located within a high groundwater hazard area and would violate Thurston County's Critical Areas Ordinance. Staff provided a lengthy response to Mr. Polk's many comments; however, a response to that specific question was not included in the response. He asked whether the lack of a response is because the City believes Thurston County's ordinance does not apply or whether there are other reasons.

Planner Baruch responded that the property is located within the City of Tumwater and City regulations apply to development on property. Thurston County's regulations are not applicable to the property. The project is required to complete a drainage report as required by the City's Drainage Design and Erosion Control Manual. The drainage report is required to address all stormwater including runoff collection, conveyance, storage, treatment, infiltration, and release. Because of concerns with high groundwater in the vicinity, the reports and further studies must be completed prior to approval of the proposed plan. A preliminary drainage report has been completed; however, staff is confident the project could move forward after additional documentation is provided during site development grading.

Examiner Scheibmeir said his review deserves some thought as to the basis for eliminating Wetlands B & C based on economic impacts. In other jurisdictions, he has been reluctant to grant variances or special use exemptions simply based on the economics of a project. The proposal is different and he recognizes that there are many components regarding the issue. Approval of variances has created some nervousness based on economic impacts as opposed to the viability of development. He asked for additional elaboration on the City's perspective on the proposed project and how the City has addressed similar projects where wetlands have been removed.

Planner Baruch advised that he could not speak to other instances where small wetlands were eliminated as other projects in the City that have proposed a similar request. For this project, staff examined the entirety of the development, the amount of infrastructure, and potential public benefit to the surrounding area for an opportunity to connect to City sewer, which would increase environmental benefits by reducing the number of septic systems in the Black Lake basin and surrounding area. The proposal aligns with the City's Sewer Comprehensive Plan and the Transportation Plan for street improvements. The

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development is responsible for extending utilities to the project. Staff agreed the project aligned with the City's criteria within the Critical Areas Ordinance.

Examiner Scheibmeir requested an additional explanation of both passive and active open spaces required for the project, as well as the public benefit open spaces would provide.

Planner Baruch reported the project includes a proposed storm pond that meets a six-month requirement of a dry pond. One of the conditions includes a requirement to include an accessible path to the bottom of the open space and a sign at the intersection of the sidewalk advising the public of available open space for recreational use. A trail is proposed surrounding the storm pond and extends to a portion of an enhanced wetland buffer area. The ordinance includes an allowance for pathways through wetland buffers that counts toward the required open space. A park with an open lawn and play area is denoted as Track C to provide additional amenities and open space area for the community. The amount of sidewalk throughout the subdivision and connection to an existing asphalt path on Black Lake Belmore Road connects the subdivision to the school.

Examiner Scheibmeir questioned whether some conflict exists between the goals of protecting the large wetland (Tract A) with the goal of using Tract B as open space and providing walking paths as Tract A would be fenced to discourage public access. Because both features are close in proximity, it appears the City is marrying two disparate purposes with the protection of one and public use of the other. He asked staff whether the proposal would achieve the goal.

Planner Baruch affirmed that the uses are allowed within the Open Space Ordinance. The ordinance speaks to allowing walking paths through wetland buffers as an amenity, which meets a portion of the open space requirements.

Planner Baruch responded to questions as to the visual appearance of frontage improvements. Along 49<sup>th</sup> Avenue, the improvements include curb, gutter, planter strip with street trees, and sidewalk along the portion abutting the property. Additionally, 58<sup>th</sup> Lane is a private street and would be converted to a public street and improved to City street standards connecting to Blake Lake-Belmore Road. Along Blake Lake Belmore Road to the south, a four-foot wide asphalt path will lead to the school.

Examiner Scheibmeir asked whether the City requires any frontage improvements in the area of the pump station.

Planner Baruch said that other than the extension of water, no other frontage improvements are required for the parcel.

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Examiner Scheibmeir commented on the extensive exchange between the Applicant's wetland's expert and the Department of Ecology with eight reports completed discussing the adequacy of the wetland examinations. As noted in the Staff Report, the outcome appears to be inconclusive; however, testimony by staff indicated that notwithstanding the uncertainty, it is the position of staff that the studies are adequate and mitigation is sufficient. He asked Planner Baruch whether he would like to add more information to his summary.

Planner Baruch advised that the Staff Report covers all those issues for wetland reports. The Applicant likely will address those conversations as well.

Examiner Scheibmeir cited some concerns by members of the public regarding the protection of Oregon spotted frogs. Some discussion about the frogs occurred between the Applicant and the Department of Ecology, as well as the Applicant and some environmental groups about protecting the frogs. He asked whether staff has any concerns that the recommended condition would adequately protect Oregon spotted frogs.

Planner Baruch confirmed that protections are in place to protect the Oregon Spotted frog and its potential habitat.

Examiner Scheibmeir commented on the Department of Ecology's positions. Based on hundreds of pages of material, it appears the Department of Ecology is suggesting another study in the early part of the growing season to satisfy the Department's position that the species would be protected. He asked for a response from staff on the Department of Ecology's suggestion.

Planner Baruch said the report aligns with other similar reports the City has received and approved for other projects from different project consultants. Studies and observations occurred on the property and additional data sheets were provided in additional reports. Staff does not believe the City has any concerns with the existing critical area report and the findings.

Examiner Scheibmeir referred to the site plan and questioned why 58<sup>th</sup> Lane would not be extended and stubbed at the easterly boundary of the site instead of construction of a cul-de-sac to the west. He questioned the reason for not extending the road to the boundary of the site to meet the City's street connectivity goals.

Planner Baruch explained that instead of extending a partially existing cul-de-sac at the end of 58<sup>th</sup> Lane, another east-west road has a stub out for connectivity to the adjacent parcel, which aligns with the transportation goals for connectivity to adjacent parcels that would develop in the future. He described current conditions of the area and existing structures and adjacent parcels. The overall

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transportation network identifies potential connections to Trospen Road in the future with the current proposal for internal connectivity through the parcel to the east that would meet with a road that eventually connects to Trospen Road.

**APPLICANT  
TESTIMONY:**

Examiner Scheibmeir administered the oath to Jeff Pantier, Chris Carlson, Rob Rice, Curtis Wambach, and Chloe McIntyre.

**Jeff Pantier, Hatton Godat Pantier, 3910 Martin Way E, Suite B, Olympia, WA 98506**, reported he is a professional land surveyor and is responsible for the preliminary plat layout under consideration (Exhibit 2).

Mr. Pantier thanked Planner Baruch for his precise and thorough presentation.

Vista Views at Black Lake is a proposed subdivision in process for the last three years. The planning process included several site specific technical evaluations that culminated in a project that will achieve the Applicant's objectives while also serving the public interest in providing needed housing, supplies, and infrastructure to support the southwest region of the City of Tumwater. Technical studies include wetlands, wildlife, groundwater, soil and geotechnical, transportation, stormwater, sanitary sewer routing, and potable water distribution. The process included some unique situations. For a successful project, a number of off-site easements and right-of-ways were required and acquired by the Applicant to achieve the goals of the Comprehensive Sewer Plan.

The project includes 184 single family lots on a 54-acre site. The lots are carefully planned to provide some diversity in the housing types built on the site comprised of different lot sizes and front-load and rear-loaded lots for an improved streetscape versus a conventional subdivision. Rob Rice has developed many of the same types of communities both in Tumwater and throughout the region.

In response to the Examiner's inquiry concerning Tracts B & C, the total area of two tracts to be used for passive and active recreation is over 4 ½ acres. Other open spaces will be provided in addition to the two tracts including the critical area tract A. Each lot will be served by City of Tumwater sanitary sewer connecting to the existing system located one mile north of the site in the Mottman Industrial Park. Water will be extended from the existing system located along 49<sup>th</sup> Avenue SW and Black Lake Belmore Road SW. The completed system will provide for multiple system loops and connections to provide redundancy and fire flow for the completed complex. Each lot will be accessed by public streets and alleys and constructed to City's standards. The streets are designed with a focus on interconnectivity with careful consideration of existing topography. The subdivision is considered to be a walkable community based on its current design.

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As part of Phase 1, the north/south through road from 49<sup>th</sup> Avenue SW on the north to 58<sup>th</sup> Avenue on the south will be constructed.

Sidewalks will be provided along each side of public streets throughout the subdivision for safe walking routes to the Black Lake Elementary School and bus waiting areas. The safe walking route to the school includes construction of a pathway from the southwest corner of the site to the existing pathway located near the school.

Stormwater will be managed with water quality treatment and infiltration systems located in the northwest area of the site. The systems will be designed in accordance with the Tumwater Drainage Manual. Chloe McIntyre will provide more details on the stormwater design.

Sanitary sewer construction for the project is significant both cost wise and because of the magnitude of the system. The gravity sewer extension will extend three quarters of a mile on 49<sup>th</sup> Avenue and Black Lake Belmore Road SW. A force main will extend approximately one mile north to Mottman Industrial Park. A new sanitary pump station will be constructed serving the region as well as the east and northeast sides of Black Lake.

Mr. Rice has acquired several easements to construct the improvements at a total cost of over \$4 million. The project will provide a public benefit as it will serve a larger region along the Black Lake area and supports the City's Sewer Comprehensive Plan.

Examiner Scheibmeir administered the oath to Aaron Van Akin, with Health & Associates.

Mr. Van Aken said he is a principal engineer at Heath & Associates as well as a licensed civil engineer specializing in traffic engineering with over 10 years of experience. He authored the November 2024 Traffic Impact Analysis (TIA) report for the project. The traffic impact analysis evaluates anticipated traffic generated by the project and its impact on the surrounding network. At the time of the report, the project was proposed as 186 single-family dwelling units; however, the proposal is currently for 184 single-family dwelling units. The project is located on approximately 54 acres and the site will have access to 49<sup>th</sup> Avenue SW via a new public road extending south connecting to 58<sup>th</sup> Lane SW.

The traffic study identifies the scope of the impacts by working in conjunction with the City of Tumwater, Thurston County, the City of Olympia, and the Washington State Department of Transportation (WSDOT). All agencies with the exception of the City of Olympia provided requirements and comments. The process resulted in the evaluation of 10 nearby intersections. The 10

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intersections are depicted in Figure 3 of the Traffic Impact Analysis. The analysis determined that the existing level of service standard by all agencies is LOS D or better. All identified intersections meet the current LOS. The 186 single family dwelling units were estimated to generate 1,786 daily trips and 178 PM peak hour trips. The team evaluated a seven-year horizon of 231 assuming full build-out and occupancy of the development along with several others in-process developments and future growth in the City. All study intersections maintained LOS C or better conditions with the exception of Black Lake Boulevard SW and Black Lake Belmore Road SW. This intersection was projected to operate at LOS F or failing conditions both with and without the project. Mitigation measures were recommended to offset the project's impact.

The measures include construction of a separate northbound left and right turn lane (currently a single lane) to increase capacity for turning. Additionally, the construction of a westbound acceleration lane on Black Lake Boulevard would allow a two-staged entry onto the roadway. The combined improvements were projected to reduce the LOS from F to C bringing the intersection into acceptable standards. Another component of the proposed mitigation is increased pedestrian connectivity off-site by constructing an approximately 280 foot walking path along the east side of Black Lake Belmore Road to provide a continuous walking route to the elementary school. The last mitigation measure is payment of traffic impact fees and SEPA mitigation fees totaling approximately \$850,000. The fees would provide funding for future projects listed on the City's Six-Year Transportation Improvement Plan.

The TIA was reviewed, updated, and approved by all 3 agencies. The proposed mitigation was determined to offset the impacts of the project.

Examiner Scheibmeir questioned whether the proposal by the Applicant to eliminate the condition requiring a left turn lane into the development from 49<sup>th</sup> was based on information he received earlier from the City.

Mr. Van Aken replied that he could not speak to the timing or how the action was requested so late in the process.

Examiner Scheibmeir advised that he would follow up with City staff. However, the analysis concludes that a left turn lane was not needed at 49<sup>th</sup>. He asked for feedback on that analysis.

Mr. Van Aken said the left turn lane was based on the WSDOT Design Manual for left turn guidelines for storage of two-lane controlled facilities. As the City and other jurisdictions do not identify any criteria, most jurisdictions default to the WSDOT Design Manual. It is essentially a function of advancing opposing and left turning vehicles and speed limits. The analysis revealed that the site

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fell below the warrant threshold criteria, which resulted in a recommendation that the left turn lane was not necessary.

Examiner Scheibmeir noted several public comments expressing concerns about traffic impacts. He believes 58<sup>th</sup> will be less traveled than 49<sup>th</sup> because of the layout of the subdivision. He asked Mr. Van Aken to provide a response to his belief.

Mr. Van Aken replied that the distribution of traffic is essentially balanced based on modeling provided by the Thurston Regional Planning Council (TRPC). TRPC models traffic distribution for the region. Based on the modeling, usage is essentially a 50/50 split between the two access points.

Examiner Scheibmeir asked about the specific numbers for existing traffic.

Mr. Van Aken advised that approximately 55% of the traffic was assigned on to 49<sup>th</sup> Street access.

Examiner Scheibmeir asked whether the project's dynamics, geography, and points of interest would lead to some doubts about the division of traffic.

Mr. Van Aken responded that the team reviewed the modeling and analysis and agreed it was based on the origin, destination, and location of the home on the plat. Generally, with outlined distributions, it is an appropriate estimation.

Examiner Scheibmeir invited Mr. Van Aken to respond to some of the comments relating to traffic or the analysis.

Mr. Van Aken cited comments from Rick Guthrie's concerns about safety at intersections at 49<sup>th</sup> Avenue SW and Black Lake Belmore Road and 54<sup>th</sup> Avenue and Trosper Road. The intersections were examined through a capacity evaluation and a review of five-year collision histories. Intersection 4 had three incidents in the last five years while intersection 6 experienced one incident. Incident history did not reveal any patterns or other issues that would warrant further investigation. Both intersections were determined to have adequate capacity for additional traffic loads.

Another comment from Becky Riley concerned the methodology or the data collected in the traffic study related to COVID impacts. The team collected traffic counts in April 2024. At that time, all agencies were accepting new count data as time had sufficiently elapsed since the pandemic. Another concern surrounded safe walking routes. The team responded by including a mitigation measure of construction of 280 feet of off-site walking path to provide a continuous walking route.

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Examiner Scheibmeir thanked Mr. Van Aken for his testimony.

Mr. Pantier requested confirmation that all supplemental submittals pertaining to wetlands and responses to neighborhood comments were assigned as exhibits to ensure the record includes all comments and responses.

Planner Baruch advised that some public comments recently received by staff prior to the public hearing are not included in Exhibit 11. Otherwise, Exhibit A-E includes all public comments received previously by staff.

Planner Baruch responded to questions about inclusion of other comments. He identified the information included in several of the exhibits. The additional comment from Bonnie Blessing and will be included in Exhibit 11 as item F. He confirmed he would send the comment to the Examiner and attorney Health Burgess.

Examiner Scheibmeir commented that the attachments/exhibits embedded in Exhibits 9, 10, and 11 appear to be comments received before and after the SEPA appeal date.

Mr. Pantier addressed street connectivity and traffic issues. In terms of the extension of 58<sup>th</sup> to the east, the property immediately east of the subject property and the property immediately south east of the subject property are owned by the same group. The stub road to be provided on the south side of lot 122 provides access to that ownership. During the traffic study, Mr. Van Aken examined left turn warrants along 49<sup>th</sup> into the project site. As he stated, based on WSDOT criteria, the data did not meet the warrants for a left turn pocket at that location. The City's default is improvement to frontage along an existing street that meets City street standards. However, in that specific location, the width available would preclude sufficient space to add a turn lane.

Planner Baruch said City staff agreed with the analysis during a discussion earlier in the day and realized the error in the condition and that it should be removed.

Mr. Pantier referred to the conversation about the distribution of traffic. The team received data on traffic distribution from TRPC, which reviewed the data several times. However, after TRPC provided the distribution information, TRPC considered the City of Tumwater's capital improvement at the interchange of Trospen Road and Interstate 5. That project is significant as roundabouts were constructed resulting in free-flowing traffic and reduced congestion.

Chris Carlson, Planning Manager, Godat Pantier, agreed with the thoroughness of the staff report and presentation. He has served as a professional planner for

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34 years and previously worked at the City of Tumwater in various capacities leaving as the City's Permit Manager approximately four years ago.

Mr. Carlson reviewed the prior use of the property. Up to 30 heads of cattle grazed on the property for many years with unfettered access to Wetland A, which is considered a Category 2 wetland as identified in the Critical Areas Report. Grazing activity in the area and in the buffer of the wetland has degraded its condition severely over the years. The consulting biologist identified B and C wetlands. A year-long study by the biologist identified those areas as wetlands by utilizing extra methodology in the wetland guidance. One indicator was the hydrology using data measuring devices over the course of the year-long study. The wetlands are small at approximately 2,100 square feet and 1,600 square feet in area. Three sections in the City's wetland code pertinent to wetlands are 16.28.095 for small wetland standards that allow for the elimination of wetlands that are less than 4,000 square feet if specific criteria are satisfied. The code requires mitigation of compensation when wetlands are less than 4,000 square feet. As the wetlands are classified as Category 4, the lowest rating for a wetland, mitigation is required at specific ratios. Mitigation of impacts will be at a ratio of 30:1 well above the City's requirements.

As the City's code lacks a separate mitigation sequencing section, the City's requirements in 16.28.180 include specific criteria that apply to the two wetlands for avoiding wetland impacts that enable for the elimination of the wetlands. Section 16.28.180 D requires the Applicant to demonstrate that the impacts are necessary and unavoidable based on a reasonable alternative, which will accomplish the applicant's objective. Avoidance criterion was achieved by submission of an alternate project site layout with 50-foot buffers on Wetlands B & C, which eliminated 17 lots. The option did not meet the Applicant's objective for the property. Additionally, the City's objectives speak to increasing housing stock and housing affordability. The option eliminates lots within the subdivision, contrary to the City's policy to increase housing stock in the City as well as complete streets and connectivity. The alternate layout requires several dead-end cul-de-sacs that would prevent connectivity through the neighborhood and inhibits emergency service response. Another issue with cul-de-sacs within the alternate layout would result in the dead ending of the City's water mains in that portion of the subdivision, which would prevent looping of the system promoted by the City for numerous reasons including preventing stagnant water at the end of the water main. The project is likely the only project that could assume the cost of construction of a sewer pump station consistent with the Tumwater Sewer Comprehensive Plan. The site offers a significant environmental benefit by providing connectivity to sanitary services to improve groundwater and surface water quality. Black Lake to the west of the site is listed on the Clean Water Act 303 D list for phosphorus. Septic systems are a main source of phosphorus polluting surface water bodies.

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Proposed wetland mitigation would be increased and exceed the requirements of the code. The project team believes the project design proposed by the Applicant is a reasonable alternative that accomplishes the Applicant's objective and many of the City's objectives.

The Applicant is also requesting an infrastructure exception because of the location of the wetland adjacent to the north boundary of the property off 49<sup>th</sup> as part of the City's development guide. The Applicant is required to construct urban street improvements of curb, gutter, sidewalk, landscape strip, separated sidewalk, and street lights. Because the project encroaches further into the small buffer on 49th Avenue, the Applicant included a section in the critical areas report that describes the criteria for infrastructure exception. The Applicant believes the proposal meets the requirements for the Examiner to consider granting the infrastructure exception.

Mr. Carlson addressed the Examiner's prior questions regarding the tree count. The Applicant's proposed mitigation for the enhancement of the wetland and wetland buffer include additional trees that are not part of the 378 trees that are required by TMC 16.08 for tree protection and replacement. The trees replaced to meet the requirements of the ordinance require a different tree standard.

In terms of concerns of double counting of wetland mitigation, all mitigation around Wetland A is not part of any mitigation for other requirements.

With respect to high groundwater concerns, Thurston County regulates high groundwater hazard areas through its critical areas ordinance with restrictions and setbacks that do not apply to the project. The project site is under the jurisdiction of the City of Tumwater, which regulates high groundwater hazard areas through implementation of the City's Stormwater Drainage Manual.

Mr. Pantier introduced Curtis Wambach, M.S. Senior Biologist and Principal with EnviroVector, to provide a presentation of a summary of most of the information that has been reviewed.

Examiner Scheibmeir requested a copy of the presentation following the public hearing. He entered the presentation material as Exhibit 32.

Mr. Wambach reviewed his education and professional experience. Following completion of his Master of Science degree in biology, he managed a non-profit organization rehabilitating wetlands and streams for two years prior to assuming a consultant position at Talasaea Consultants in 1999. He gained extensive knowledge and experience preparing wetland determinations, delineating wetlands, and applying advanced methods, including hydrology monitoring, chemical analysis of soils, and redox testing of soils. Since 1999, he prepared

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numerous advanced study reports approved by local, state, and federal agencies, including the US Army Corps of Engineers (USACE).

Mr. Wambach's presentation identified and reviewed 11 reports/documents prepared for the project. Seventeen site visits occurred during the two-year study. First steps for evaluating a wetland involved reviewing aerial photographs and agency databases. Historical aerial photographs and agency databases supported the evaluation and delineation as analyzed and described in two of the reports. The USACE (2010) Regional Supplement states that transitory flooding following heavy storm events and flooding during years of high precipitation can frequently occur in non wetlands. Low resolution aerial photographs should be reviewed but are not reliable if they are only the solitary indicator of wetland hydrology. Care must be used in applying this indicator (flooding and aerial photographs) because surface water may be present in non wetland areas immediately after a rainfall event or during periods of unusually high precipitation, runoff, tides, or river stages. Some non wetlands flood frequently for a brief period based on information in the Regional Supplement.

Mr. Wambach described the routine on-site determination method, which is considered a rapid assessment method. Wetland A was delineated using this method. The method was applied on the southern portion of the property. No wetland indicators were identified in the areas mapped as hydric soils in the southern portion of the property. However, disturbances were identified associated with long-term agricultural practices that occurred on the southern portion of the property that could have masked or altered wetland indicators. Mr. Wambach reviewed procedures applied during the assessment. The Advanced Study Report identifies the procedural steps to identify the best methods to use in the study. The study followed the procedural steps to determine the appropriate method and provided a step by step procedural process. The procedures contained in Chapters 2 to 4 resulted in Chapter 5 for difficult situations. Following the procedural steps in Chapter 5, three appropriate methods were determined practical to perform on the property. The methods were shallow groundwater monitoring during the wettest part of the growing season, chemically testing soils using alpha, alpha-dipyridyl, and Redox Test evaluating Oxidation Reduction Potential (Eh).

Seventeen groundwater monitoring wells were installed in the area mapped as hydric soils in addition to three deeper wells to determine whether there was hydrostatic pressure. Table 7 in the advanced studies report speaks to specifications of the monitoring wells. The specifications are from a manual that provides instruction on how to perform the procedures. Testing included using water level data loggers to record water levels every hour.

Mr. Wambach explained how all data was interpreted utilizing guidance in the Regional Supplement. Data was segmented into three parts of (1) the water level

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must be within 14 or more consecutive days of flooding, ponding, or a water table twelve inches (30 cm) or less below the soil surface, (2) must occur during the growing season, and (3), must be at a minimum frequency of five (5) years in ten (10) fifty percent or higher probability.

Mr. Wambach shared data generated at the Olympia Regional Airport reflecting the average precipitation for each month, a range of average of 30% less than or 30% more than the average, and the average precipitation per month. The average precipitation per month is 40.17 inches, a normal precipitation. During the study period, precipitation was normal.

The second condition is the growing season. Field methods for deterring the growing season include measuring soil temperatures or observance of above ground growth of plants. Either procedure can be used. Testing was performed using the soil temperature method as measuring plant growth is variable and not practical. A soil temperature data logger was installed on February 8, 2023 collecting hourly soil temperatures 12 inches below the surface until May. The high volume of data calculated the growing season to the hour it began. Mr. Wambach shared a graph of the soil temperature data. Data reflected that the growing season began on March 17, 2023 at 1 p.m.

Mr. Wambach summarized the hydrology study results. Wells 2, 15, and 16 were positive for wetland hydrology. All wells were negative for alpha, alpha-dipyridyl. Wetlands B & C were delineated because the hydrology was positive and Redox was positive. All remaining sample tests were negative. Mr. Wambach displayed aerial photographs taken in February of Wetlands B & C reflecting no water or habitat.

The mitigation plan provides a 30:1 ratio for rehabilitation. The required rehabilitation is 3:1. Mr. Wambach reviewed mitigation measures proposed for the project. High-quality wetlands will be created at a 1:1 replacement to loss ratio to form one large contiguous wetland habitat. The created wetland will replace low quality Category IV wetlands within the livestock pasture in favor of a high quality, forested Category II wetland system. Existing disturbed soils and non-native plants would be excavated to form a shallow depression. A clay layer would be installed to maintain wetland hydrology if the hydrology criterion is not satisfied. Invasive weeds will be eliminated. Native plant species would be installed throughout the created wetland system to provide the maximum habitat diversity.

Mr. Pantier explained that the reasoning for the enhanced mitigation ratio of 30:1 versus the standards was because of the degraded nature of the sites. Planting and replanting of the buffers as well as other enhancements will provide benefits to the development.

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Mr. Wambach reported some adjustments have been made to mitigation, with the created wetland much larger and an increase in plant density at the pump station to restore the cattle pasture into a forested condition.

Mitigation will improve habitat for the Oregon spotted frog as well as for stormwater as the stormwater pond will serve as the infiltration facility to prevent flash flooding downstream. No discharge of stormwater from the pond will occur to Wetland A. No Mazama pocket gopher mounds were identified on the property after three years of studies.

Examiner Scheibmeir asked about the process for calculating the perimeters of Wetlands B and C. Mr. Wambach said the calculation was through the observation of soft brush growing within the area that did not exist outside the boundary.

Examiner Scheibmeir noted that one of the issues addressed by the Department of Ecology spoke to the numerous sources of aerial photographs and multiple agency databases and the collective and universal belief that wetlands are present across a portion of the site. The agency pointed out that with so much universal belief that wetlands exist, the agency questioned why it would not be possible for another examination of the site to ensure other locations do not exist outside the area of the two wetlands.

Mr. Wambach responded that as previously mentioned, the agency databases are the first step review followed by site visits as aerial photographs are only snapshots in time. The Regional Supplement addresses those conditions and cautions against using only aerial photographs because they are a snapshot in time. Frequent flooding can occur outside of the growing season without producing wetland conditions. On-site studying is necessary. Additionally, two years were spent extensively studying the site during 17 site visits. The study collected thousands of data points in those areas.

Examiner Scheibmeir requested feedback on his previous question as to whether mitigation measures were counted twice. Mr. Wambach reviewed mitigation measures proposed for the created wetland, wetland rehabilitation, restoration of forest within the graded buffer, buffer enhancement, and the new wetland buffer. He corrected a graph indicating the ratio for Wetlands B and C. Mitigation is a ratio of 1:15 rather than a 1:5 ratio as depicted on the graph. For infrastructure impacts, mitigation is at a ratio of 1:25.

Examiner Scheibmeir said the figures represent a double allocation of mitigation for Wetlands A, B & C which has also been allocated as mitigation for the pump station. It appears there is a double allocation of new wetland buffer.

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Mr. Wambach explained that the allocation is extra and was allocated to the buffer as the mitigation is beyond the required ratio.

Mr. Pantier introduced Chloe McIntyre to address questions on stormwater.

Examiner Scheibmeir questioned whether the stormwater facilities as designed would impact the hydrology of Wetland A by denying stormwater.

Ms. McIntyre explained that the design for stormwater is to convey a majority of all stormwater to an on-site infiltration pond with water infiltrating to the groundwater aquifer beneath the pond. The aquifer is hydraulically tied to the wetland with water entering the wetland naturally through the substrate rather than directly or through flash flooding surface flow directly to the wetland. She affirmed his interpretation as there would be sufficient connectivity between the stormwater system and the wetland to ensure its hydrology.

**PUBLIC  
TESTIMONY:**

Examiner Scheibmeir invited members of the public to provide testimony.

Tumwater Permit Manager Tami Merriman advised of several individuals who were unable to remain to testify because of physical reasons and timing for medication. They asked her to share their message. She identified the couple as **James Giovannini** and **Pamela Callaway**. The live on property located between the wetland and the entrance to the project site on 49<sup>th</sup>. They are very concerned and were not aware of all the documents as reviewed during the presentations. They are concerned as to how the development will impact their home and their property specifically. They reached out to the City in the past and were unsuccessful and would like to speak to someone who can explain the project.

Manager Merriman identified members of the public that were no longer present but had intended to testify:

- Don Wakefield
- Melinda & Chris Gordon
- Lance Brender

Examiner Scheibmeir individually administered the oath to each speaker.

**Ramona Fultz** said she is registering a complaint with the City of Tumwater after learning that the project has been underway for three years with multiple processes at great expense while the public only learned about the development at the end of October 2024. She feels that taxpaying citizens are an afterthought and that testifying is only a formality and the public is irrelevant. She is unhappy as there should be a community connection with development proposals of this type. She is incensed and has a list of questions.

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Examiner Scheibmeir asked Ms. Fultz to provide her questions to enable him to identify the appropriate individual to respond.

Ms. Fultz said the general issue is that she and other community members are taxpayers who pay the bills, yet they only learned about the proposal very late in the process. She would like some kind of change in the procedures to ensure residents can be advised of development proposals earlier in the process rather than three years later when it appears decisions have been pre-determined and decided. Another objection is the location as the project proposal relates to the definition of urban sprawl, which is the spreading of urban development, such as houses and shopping centers on undeveloped land near a City. The entire area is rural. The state's Growth Management Act is supposed to alleviate urban sprawl. The development actually expands urban sprawl into a rural farmland area. She could support the proposal if it was closer to the City center or if there were more than just two-lane roads. Today, they must travel miles to find a four-lane road. The proposal would likely add 400 to 500 more cars. Another concern is the wildfire danger and evacuations. She is doubtful that she could survive today because of the difficulty of evacuating on two-lane roads. Another concern is the school and congestion. Parents park on her easement. Her home is served by two entrances and exits with no line of sight around parked cars. The issue has been documented with the school district and the City of Tumwater. Adding more traffic on 58<sup>th</sup> Lane will only increase congestion and worsen visibility issues. Visibility is an important issue as she lost a brother who was only 21 years of age caused by a visibility problem on a highway involving a logging truck driver crossing the center lane because of a car parked alongside the road. She has multiple concerns about the project. The exit and entrance to 58<sup>th</sup> Lane should not be allowed. She recommended reconsidering extending another access point from 58<sup>th</sup> Lane if the proposal is approved, although she opposes the project.

**Gary Flutz** said that Black Lake Belmore Road and 49<sup>th</sup> Street is served by a 3 way stop sign with the southbound Black Lake Belmore Road traffic having unencumbered access. He asked about any plans to mitigate that stop sign configuration. On 49<sup>th</sup> where the proposed entrance/exit is planned, he asked about any improvement to the railroad crossing and whether the speed limit will remain 40 mile miles an hour since there will be no (left turn lane accessing the development.

**Carol Webster** said her concerns surround stormwater runoff. Within the area of Black Lake Belmore Road and south of 49<sup>th</sup> the area experiences constant flooding during rainy seasons. She has experienced flooding in the last couple of months with water across the road requiring the City to install temporary signs advising motorists of water over the roadway. The fields at the bottom located to the west turn into a lake with ducks swimming on the property during rain

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events. With the proposed amount of impervious surface that will be constructed on the hill, she questioned the amount of additional water that will travel to the area and block the road. It continues to be a reoccurring issue during rainy seasons. It appears the traffic studies were not conducted during the rain events.

**Guy Bogdanovich, 3827 58<sup>th</sup> Lane**, said he owns a 2.45 acre parcel at the corner of 58<sup>th</sup> Lane and Black Lake Belmore Road. His question and concern regards the increase in traffic on 58<sup>th</sup> Lane SW. He appreciated the Examiner's observation of the logistics of the proposal and the anticipated amount of traffic accessing 49<sup>th</sup> as opposed to 58<sup>th</sup>. During the last 4 years since his retirement, he has observed the substantial amount of traffic generated by four existing homes. He asked whether any provisions are included for mitigation other than a stop sign for traffic at the end of 58<sup>th</sup> Lane because waiting time at the stop sign will be substantial due to the increase in traffic. During the summer, traffic increases to access a popular county park, Kennydale Park, located south of Black Lake Elementary. His experience with traffic off 58<sup>th</sup> Lane onto Black Lake Belmore for the last 33 years leads him to question whether there was any consideration for anything other than a stop sign or a provision for a turn lane either on Black Lake Belmore or 58<sup>th</sup> Lane SW.

**Lois Greisen** said she lives off 58<sup>th</sup> Lane SW. The proposal will impact her as well as all neighborhoods. Neighbors are concerned about the school as the school houses many portable buildings to accommodate students. She questioned how the school anticipates supporting more students and whether that issue was studied. The pasture is a wetland based on her pictures of the area. Wildlife frequent the property when wet. Golden eagles, bald eagles, blue herons, vultures, and geese and ducks are present on the site. Another concern is the intersection at 49<sup>th</sup> and Black Lake Belmore Road. According to the information shared, only three collisions were documented in three years; however, many members of public chuckled when that information was shared as the area is often covered with broken glass from fender bender accidents quite frequently as the three-way stop is confusing for motorists. Adding a turn lane would not resolve the issue.

**Pat Greisen** added that traffic on the southbound lane of Black Lake Belmore Road during school hours often experiences a backup past 58<sup>th</sup> Lane for more than an hour or more during morning and afternoon school hours.

**Ms. Greisen** reported that a neighbor spoke to a staff member at the City and was informed that residents of the development would be allowed to park along 58<sup>th</sup> Lane. Examiner Scheibmeir confirmed the design of the roads enables parking on all proposed streets.

Examiner Scheibmeir agreed with a request from Heather Burgess, Attorney for the Applicant, to provide an extended opportunity until Monday, February 3,

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2025 at 5 p.m. for the Applicant and City to provide comprehensive written responses to issues raised during public testimony.

Examiner Scheibmeir invited members of the public participating via zoom to provide testimony.

**Bonnie Blessing** commented on the interesting presentation on the hydrologic studies and wetland mitigation towards the north of the property. Her concern is the needed separation between surface water and groundwater as Planner Baruch indicated more studies would be completed to ensure there is separation. Additionally, she questioned whether the stormwater manual includes appropriate guidance as she understands that the manual allows improvement of downstream conveyances. She asked about the potential of any relationship concerning groundwater pumping options or draining of adjacent marshes as her concern is ensure the water table is sufficiently below ground. She discovered spotted frogs in the marsh and the frogs lay eggs in shallow water, which could be lost. Wetlands are located approximately 600 feet or more to the southeast of the subject parcel. The stormwater manual allows improvement of off-site conveyances and she would like that issue addressed because of potential changes to the hydrology to marshes located off-site to the southeast. The marsh provides habitat for listed species.

**David Stauffer** said he lives at the end of 58<sup>th</sup> Lane at the cul-de-sac. He cited the Examiner's discussion about the possibility of extending the road to the property to the east. There is insufficient room between his house and the centerline of 58<sup>th</sup> Lane to enable extension of the road. Between Littlerock Road and Black Lake Belmore and the 49<sup>th</sup> intersection, approximately six major developments have added hundreds of home to the community. He is okay with growth, but there are many choke points along the roads on 70<sup>th</sup> Avenue, Kirsop Road, 66<sup>th</sup> Avenue, Belmore, 49<sup>th</sup> and Black Lake Boulevard that will never be improved. There are many areas along those routes that have a swamp on both sides of the road. Property owners are not going to fund widening the roads sufficiently for a walking path or bicycle lane let alone expanding the number of lanes. Today, Black Lake Belmore is barely wide enough to accommodate two cars. Many people walk along the road and often fall into the ditch. Adding another 400 cars speaks to when the City plans to address all the choke points along the roads between Littlerock Road and Black Lake Boulevard. There is too much traffic and the City is not mitigating traffic flow along those chokepoints. Property owners pay taxes for infrastructure, transit, police and fire services within the limits of the City with none of those services afforded to the area where he lives. The City has no plans to increase the road width of Black Lake Belmore Road, which is unacceptable.

**Esther Kronenberg** said she is speaking on behalf of the Clean Black Lake Alliance, a citizen's non-profit organization to preserve the health of the Black

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Lake basin. The organization has several concerns about the project related to water quality, wildlife habitat, and the drastic change in character within the rural area. The addition of 184 houses and nearly 1,800 daily vehicle trips will add a significant burden of stormwater pollution to existing degraded water bodies and tributaries which provide habitat to federally endangered species. The Department of Ecology has twice raised concerns about the methodology and dating used to delineate wetlands on the property. The agency questioned why the impacts of the two wetlands could not have been avoided. The response from the consultant was that the Applicant's objective would not be accomplished, which reflects that the consultant was hired to achieve those desired results and is not an impartial biologist. As the Department of Ecology stated, the desire to develop a certain number of units is not a demonstration of need. The Applicant's response was that project engineers would address the issue. SEPA law includes several provisions requiring the lead agency to consider impacts on endangered/threatened species, habitat, adverse impacts on other locations, and the cumulative impacts of the proposal. The submittal does not include any analysis on whether the change in water levels will impact Oregon spotted frogs. There is no analysis by Tumwater of the entire basin area at full build-out instead of a piece-mealing development proposals. There was no analysis of the impact from the loss of trees and mitigation for damage to pavement caused by downstream conveyance. The application indicates the development would not release additional stormwater to downstream conveyance systems and raised a similar question to the Department of Ecology about whether the wetlands are significantly more expensive than the proposal claims. Earlier, neighbors testified about marsh and swamp land and water over the road. There is also a hazardous waste site close to a culvert. Frank's place was listed by the Department of Ecology as a contaminated site with groundwater possibly contaminated by lead, metals, and many other unknown substances. The wetland on the site was graded and filled with solid waste and debris. She asked whether the City considered the hazardous site in any assessment of cumulative impacts to the Black Lake basin. It appears the City has not considered the impacts within the assessments on the entire watershed and endangered species that live in the urban growth area or other ongoing projects in the same rural area. At the very least, an assessment of the impacts on groundwater withdrawal and seasonal flooding is necessary for threatened species, for wildlife habitat, and the possibility of more runoff to Black Lake. The Department of Ecology recommended another site visit. The Clean Black Lake Alliance believes it is time the City of Tumwater exert its legal and ethical responsibility to protect natural resources and wildlife under its jurisdiction. The project should have an Environmental Impact Statement (EIS) review. It is not possible to continue building on top of the watershed that supplies the City's drinking water without serious consequences in the future.

Examiner Scheibmeir responded that most of the requests are not under his authority, such as reconsidering the SEPA Determination or to impose an EIS.

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The SEPA Determination included an appeal period. No appeals were submitted. That portion of the process is fixed for purposes of his consideration and legally, he is unable to change the SEPA Determination.

**Betsy Norton** commented that her concerns surround biodiversity, habitat loss, and the failure of water resources management to maintain quantity and quality to support ecosystems, wildlife, and humans. In the application packet, the City states that after the exchange between the Applicant's environmental consultant and the Washington Department of Ecology, no formal resolution was achieved. It is concerning that the Hearing Examiner would render decision and staff would provide a recommendation without a final resolution from the Department of Ecology. She urged the Examiner to resolve the issue prior to issuing a decision. Secondly, the proposal removes the ecosystem function of the underground aquifer recharge levels 1 and 2. She asked whether Tumwater has reviewed the cumulative long-term impacts on groundwater levels and drinking water availability for City residents as a result of incrementally reducing the recharge function each time a development request is approved. The application states that 55% of the development site will be impervious surface, a calculation that must include the area under Wetland A. Wetland A comprises a significant part of the total area in the northwest corner. She asked whether the remaining non-Wetland A area of the developed parcel meets the 60% impervious surface calculation limit. She believes it is possible to meet the letter of the law but not the intent. The City should have analyzed the development in terms of the likely cumulative impact of all similar developments in the area on stormwater volume in the neighborhood and the likely impacts downstream including the cumulative effect of all new impervious surface, the cumulative loss of stormwater absorption ability as prairie and grasslands are paved, and the cumulative loss of wetlands and wildlife habitat. Finally, the cumulative impacts of those actions combined with more extreme rain events from global warming will affect all development concurrently. She is hopeful the City will consider the cumulative impacts of the incremental decisions and reconsider whether the intent is to weaken environmental protections and wetlands at this time.

Planner Baruch advised that Betsy Norton also forwarded comments via email as she was unsure if she would be able to rejoin the meeting. He will forward the comments to all parties after the meeting as Exhibit 11G.

Examiner Scheibmeir advised that rather than afford an opportunity for the City or the Applicant to respond to the comments, he will adjourn the meeting to enable the parties to submit written responses to public comments as previously discussed no later than Monday, February 3, 2025 by 5 p.m.

Examiner Scheibmeir thanked everyone for attending and participating in the hearing.

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**ADJOURNMENT:**       **With there being no further business, Examiner Scheibmeir adjourned the public hearing at 9:36 p.m.**

Prepared by Valerie L. Gow, Recording Secretary/President  
Puget Sound Meeting Services, [psmsoly@earthlink.net](mailto:psmsoly@earthlink.net)