



HEARING EXAMINER MEETING AGENDA

**Online via Zoom and In Person at
Tumwater City Hall, Sunset Room, 555
Israel Rd. SW, Tumwater, WA 98501**

**Wednesday, December 14, 2022
6:00 PM**

The Tumwater Hearing Examiner is an appointed official of the City, and rules upon land use and zoning matters. Within 10 business days of the conclusion of the hearing, the Examiner shall render a decision, including findings and conclusions. Questions on the operation and procedures of the Hearing Examiner may be directed to the Community Development Department at 360-754-4180.

1. Call to Order
2. Public Hearing
 - a. Three Lakes Crossing Appeal of Administrative Decision (TUM-22-1101)
3. Adjourn

Meeting Information

The Hearing Examiner and participants will be attending remotely. The public is welcome to attend in person, by telephone or online via Zoom.

Watch Online

<https://us02web.zoom.us/j/85904067388?pwd=YVJITEwwb3JUS0pCRVFqRWNERjBOUT09>

Listen by Telephone

Call (253) 215-8782, listen for the prompts and enter the Webinar ID 859 0406 7388 and Passcode 499490.

Post Meeting

Audio of the meeting will be recorded and later available by request, please email CityClerk@ci.tumwater.wa.us

Accommodations

The City of Tumwater takes pride in ensuring that people with disabilities are able to take part in, and benefit from, the range of public programs, services, and activities offered by the City. To request an accommodation or alternate format of communication, please contact the City Clerk by calling (360) 252-5488 or email CityClerk@ci.tumwater.wa.us. For vision or hearing impaired services, please contact the Washington State Relay Services at 7-1-1 or 1-(800)-833-6384. To contact the City's ADA Coordinator directly, call (360) 754-4128 or email ADACoordinator@ci.tumwater.wa.us.

TO: City of Tumwater Hearing Examiner
FROM: Jared Crews, Design Engineer
DATE: December 14, 2022
SUBJECT: Three Lakes Crossing Appeal of Administrative Decision (TUM-22-1101)

1) Recommended Action:

Uphold City of Tumwater administrative decision regarding Development Guide requirements to underground existing overhead utilities.

2) Background:

Copper Ridge, LLC appeals an administrative decision for Three Lakes Crossing Site Development/Grading Permit concerning undergrounding of existing overhead utilities along the frontage of Henderson Blvd. SE, in conjunction with the Appellant's development of a preliminary plat and planned unit development.

3) Alternatives:

- ☐ Deny Appeal and Affirm Administrative Decision Case No. TUM-22-1101
 - ☐ Approve Appeal and Revers Administrative Decision Case No. TUM-22-1101
 - ☐ Modify Administrative Decision Case No. TUM-22-1101
 - ☐ Remand Case No. TUM-22-1101 for further analysis
-

4) Attachments:

Exhibit 1	Administrative Decision Request 09-13-2022
Exhibit 2	Administrative Decision 09-21-2022
Exhibit 3	Appeal of Administrative Decision 10-03-2022
Exhibit 4	Tumwater Response to Motion for Summary Judgement 10-17-2022
Exhibit 5	Declaration of Jeffery S. Meyers 12-02-2022
Exhibit 6	Declaration of Jared Crews 12-02-2022

COPPER RIDGE, LLC

PO Box 73790
Puyallup, WA 98373
Phone: 253.848.0820

September 13, 2022

Jared Crews
Engineer II
City of Tumwater Transportation & Engineering
555 Israel Road SW
Tumwater, WA 98501

RE: Three Lakes Crossing Permit #TUM-22-1101 Request for Clarification

Dear Jared:

This letter is a formal request for an Administrative Decision as it relates to the undergrounding of offsite existing overhead utilities along the frontage of Henderson Boulevard. In the review comments provided on August 31, 2022, item #12 under the “Street” section (Page 4) states:

This project shall be required to underground the existing overhead utilities along Henderson Blvd. Please address this on the plan set.

Upon further inquiry as to where in the Tumwater Municipal Code this requirement exists, we were told that “TMC 17.12.200 Underground Utilities” is the controlling code section. This section reads:

Electrical power, telephone, cable television, fiber optics and other transmission lines shall be installed underground.

Title 17 is the controlling title as it relates to Land Division and new plats. Furthermore, TMC17.12 lays out the General Design Standards for new development and construction. In that context, TMC 17.12.200 is clearly referencing new onsite utility installation related to plats. As the overhead power on Henderson is existing, it cannot be installed, and read plainly, this code would not require us to relocate it underground. That being said, all onsite utilities will be installed underground per this code section.

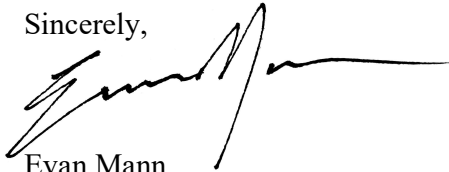
On it’s face, this code section does not require undergrounding of existing utilities and is very clear by stating that utilities “shall be installed” not “shall be relocated” underground. Cities that have relocating requirements have very clear separate code sections relating to undergrounding of existing utilities. Furthermore, this condition of approval does not exist in the Hearing Examiner Decision which is very common when this is intended to be a requirement by jurisdictions. This request has major cost and time implications that do not appear to be supported by code.

Even if the poles for the overhead utilities along Henderson Boulevard need to be relocated horizontally to allow for the placement of new road, curb, gutter, and sidewalk, that relocation would not qualify as an installation.

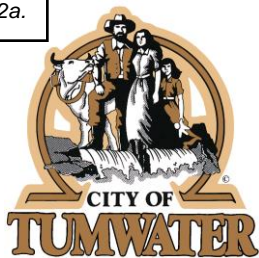
Based on the plain reading of this code section, we request that this condition be removed from the most recent comment letter and that any existing offsite overhead utilities remain overhead as is allowed by the Tumwater Municipal Code. If the City feels that they are warranted in the requirement to underground the existing overhead utilities along Henderson Boulevard, then we request a formal Administrative Decision justifying this requirement so we can take further action per TMC 17.02.140 allowing us to appeal this decision before a hearing examiner.

Please review this request and let us know if you have any additional questions or would like to discuss this issue further. I am available by phone at 253-820-7835 or email at evan@soundbuilthomes.com. We look forward to hearing from you on this issue.

Sincerely,

A handwritten signature in black ink, appearing to read 'Evan Mann', with a long horizontal flourish extending to the right.

Evan Mann
Entitlement Manager
Copper Ridge, LLC
evan@soundbuilthomes.com



City Hall
555 Israel Road SW
Tumwater, WA 98501-6515
Phone: 360-754-5855
Fax: 360-754-4138

September 21, 2022

Evan Mann
Entitlement Manager
Copper Ridge, LLC
PO Box 73790
Puyallup, WA 98373

RE: Three Lakes Crossing Permit #TUM-22-1101 Response to Request for Clarification

Dear Evan:

Please consider this letter as the formal response to your request for administrative decision as it relates to the undergrounding of existing overhead utilities along the frontage of Henderson Blvd.

In which the City is requiring the installation of existing overhead utilities underground with the proposed project improvements.

Where you testified that the applicable code and guidelines relate to “new” utilities rather than “existing” utilities.

The Administrative Decision is as follows:

After reviewing the applicable codes and guidelines as they relate to the project, the City of Tumwater has decided the requirement to install the existing overhead utilities underground stands.

Justification:

Chapter 3, section 3.14 Utility Locations, sub-section B states new and existing facilities shall comply with provisions as set for in Tumwater Municipal Code 17.12.200, Land Division.

The provision from Tumwater Municipal Code 17.12.200, Land Division states that electrical power, telephone, cable television, fiber optics and other transmission line shall be installed underground.

The City of Tumwater finds that the Three Lakes Crossing project is subject to the above codes and guidelines and is required to install the existing overhead utilities underground.

If you have any questions, please don't hesitate to call me at 360-754-4140 or email me at jcrews@ci.tumwater.wa.us.

Sincerely,

Jared Crews
Engineer II
City of Tumwater
Transportation & Engineering Department

COPPER RIDGE, LLC

PO Box 73790
Puyallup, WA 98373
Phone: 253.848.0820

October 3, 2022

Melody Valiant, MMC
City Clerk
City of Tumwater
555 Israel Road SW
Tumwater, WA 98501

RE: Three Lakes Crossing Permit #TUM-22-1101; Appeal of Administrative Decision

Dear Melody:

This letter is a formal Appeal of an Administrative Decision issued September 21, 2022, as it relates to the undergrounding of offsite existing overhead utilities along the frontage of Henderson Boulevard. Per Tumwater Municipal Code (TMC) 17.02.140 we are able to appeal an administrative decision before a hearing examiner by first providing written notice of appeal to the City Clerk within 14 days of the decision being appealed.

In the review comments provided on August 31, 2022, item #12 under the “Street” section (Page 4) states:

This project shall be required to underground the existing overhead utilities along Henderson Blvd. Please address this on the plan set.

On September 13, 2022, we made a formal Request for Clarification detailing how City of Tumwater Code does not support the requirement to underground existing overhead utilities. See attached Request for Clarification Letter. In response to that request, an Administrative Decision was provided by Jared Crews, Engineer II, in which the City further claims that the undergrounding of existing overhead utilities is required. See attached Administrative Decision Letter.

Frankly, we disagree and believe that City code does not support the undergrounding of existing overhead utilities and would like the opportunity to appeal this decision before a hearing examiner. We believe the City erred in their analysis of code and that a plain review of code would not result in the costly undergrounding of overhead utilities along the frontage of the proposed Three Lakes Crossing project.

In the Administrative Decision letter, the City states the following as justification for requiring that the existing overhead utilities be converted to underground:

Chapter 3, section 3.14 Utility Locations, sub-section B states new and existing facilities shall comply with provisions as set for in Tumwater Municipal Code 17.12.200, Land Division.

The provision from Tumwater Municipal Code 17.12.200, Land Division states that electrical power, telephone, cable television, fiber optics and other transmission line shall be installed underground.

For clarification, the “Chapter 3” being referenced in the above justification is in reference to the Tumwater Development Guide and not found in the Tumwater Municipal Code. Section 3.14 is titled “Utility Locations”. That section reads:

All new utilities including services from overhead power facilities to new residential or commercial structures shall be installed underground by the utility owning said facility, and new and existing facilities shall comply with provisions as set forth in TMC 17.12.200, Land Division, and provisions as set forth in franchise agreements between the City and the utility.

Utilities converted from overhead to underground on existing roadways may be located within the right-of-way.

This section is very clear that it is contemplating new services and new connections being installed underground, which we will do. While there is a brief mention at the end of this section to converting from overhead to underground, this mention is specific to the allowance for those utilities to remain in the right of way. This section in no way indicates that existing overhead facilities must be converted to underground.

Ultimately, Section 3.14 of the Tumwater Development Guide refers to the Tumwater Municipal Code as the controlling language for how and where utilities are installed. In particular TMC 17.12.200 which reads:

Electrical power, telephone, cable television, fiber optics and other transmission lines shall be installed underground.

Title 17 is the controlling title as it relates to Land Division and new plats. Furthermore, TMC17.12 lays out the General Design Standards for new development and construction. In that context, TMC 17.12.200 is clearly referencing new onsite utility installation related to plats. As the overhead power on Henderson is existing, it cannot be installed, and read plainly, this code would not require us to relocate it underground. That being said, all onsite utilities will be installed underground per this code section.

On it’s face, this code section does not require undergrounding of existing utilities and is very clear by stating that utilities “shall be installed” not “shall be relocated” underground. Cities that have relocating requirements have very clear separate code sections relating to undergrounding of existing utilities. Furthermore, this condition of approval does not exist in the Hearing Examiner Decision which is very common when this is intended to be a requirement by jurisdictions. This request has major cost and time implications that do not appear to be supported by code.

Even if the poles for the overhead utilities along Henderson Boulevard need to be relocated horizontally to allow for the placement of new road, curb, gutter, and sidewalk, that relocation would not qualify as an installation.

Based on the plain reading of these code sections, we request that this condition be removed from the most recent comment letter and that any existing offsite overhead utilities remain overhead as is allowed by the Tumwater Municipal Code.

Please review this request and let us know if you have any additional questions or would like to discuss this issue further. I am available by phone at 253-820-7835 or email at evan@soundbuilthomes.com. We look forward to hearing from you on this issue.

Sincerely,

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Evan Mann
Entitlement Manager
Copper Ridge, LLC
evan@soundbuilthomes.com

Attachments:

Request for Clarification

Administrative Decision

CC:

Jared Crews

Kurt Wilson

COPPER RIDGE, LLC

PO Box 73790
Puyallup, WA 98373
Phone: 253.848.0820

ATTACHMENT 1

September 13, 2022

Jared Crews
Engineer II
City of Tumwater Transportation & Engineering
555 Israel Road SW
Tumwater, WA 98501

RE: Three Lakes Crossing Permit #TUM-22-1101 Request for Clarification

Dear Jared:

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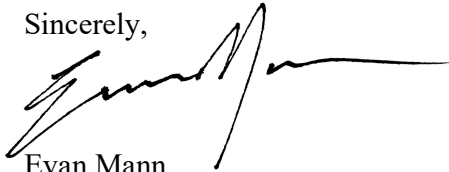
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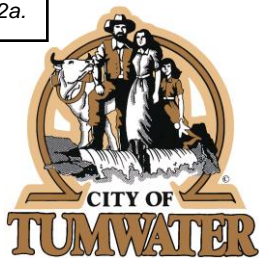
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Evan Mann
Entitlement Manager
Copper Ridge, LLC
evan@soundbuilthomes.com



ATTACHMENT 2

City Hall
555 Israel Road SW
Tumwater, WA 98501-6515
Phone: 360-754-5855
Fax: 360-754-4138

September 21, 2022

Evan Mann
Entitlement Manager
Copper Ridge, LLC
PO Box 73790
Puyallup, WA 98373

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Sincerely,

Jared Crews
Engineer II
City of Tumwater
Transportation & Engineering Department

**BEFORE THE HEARING EXAMINER
IN AND FOR THE CITY OF TUMWATER**

In the Matter of the Appeal of:

Copper Ridge, LLC

Of an Administrative Decision

NO. TUM-22-1101

**CITY OF TUMWATER'S RESPONSE TO
MOTION FOR SUMMARY JUDGMENT**

I. INTRODUCTION

This case presents a question of whether the Tumwater development regulations requiring that utility transmission lines be installed underground may be applied to Copper Ridge's new development. Because the new development directly impacts the location of the existing lines, the City may validly apply the undergrounding requirement to the impacted lines. The Examiner should therefore deny the Appellant's motion for summary judgment and grant summary judgment to the City.

II. FACTS

The appellant, Copper Ridge, LLC is the developer of a new 45 lot, single-family residential development, known as Three Lakes Crossing, which was approved by the Hearing Examiner in a decision issued by the Examiner on July 15, 2022. Myers Decl., Exhibit 1. The property is located at 6609 and 6715 Henderson Boulevard. The new development requires construction of 68th Avenue SE through the plat to provide access; and requires street frontage improvements along Henderson Boulevard, including widening of the road and installation of streetlights.

**CITY OF TUMWATER'S RESPONSE TO MOTION FOR
SUMMARY JUDGMENT – 1
Cause No.: TUM-22-1101**

*LAW, LYMAN, DANIEL,
KAMERRER & BOGDANOVICH, P.S.*
ATTORNEYS AT LAW
2674 R.W. JOHNSON RD. TUMWATER, WA 98512
P.O. BOX 11880 OLYMPIA, WASHINGTON 98508-1880
(360) 754-3480 FAX: (360) 357-3511

The Three Lakes Crossing project requires the construction of additional pavement, curb, gutter, planter strip, sidewalk, streetlights, landscaping, and a new intersection along the Henderson Blvd frontage. Currently there are private utility poles supporting overhead utilities owned by multiple entities along Henderson Blvd. the recent development plans submitted to obtain construction permits showed that the project is proposing to relocate the utility pole and overhead utilities as they will conflict with the required improvements along Henderson Blvd. Crews Decl., at 2.

The existing utility pole is located in the middle of future 68th Avenue where it will meet Henderson Blvd. The applicant is proposing to move this pole to a new location just behind the required sidewalk. The proposed relocation will also move the overhead utilities into conflict with the required streetlights along Henderson Blvd. The existing lines are not high enough to provide the 10 feet of separation from the streetlights necessary to meet PSE's requirements. To meet such a requirement would require installation of new poles. Crews Decl. at 2-3.

In response to the submittal of plans, the City noted the impacts to the existing lines and commented on the plans that the lines must be undergrounded. The applicant questioned this requirement and requested an administrative interpretation. The City's administrative interpretation confirmed the requirement to install these lines underground as provided by the Tumwater Development Guide and TMC 17.12.200.

III. ARGUMENT

A. TUMWATER'S DEVELOPMENT REGULATIONS REQUIRE UNDERGROUNDING OF ALL UTILITIES THAT ARE PART OF A PROPOSED DEVELOPMENT.

1. The Hearing Examiner has required the Applicant to comply with the Tumwater Development Guide as a condition of preliminary plat approval.

As an initial matter, the Applicant must comply with the terms of the Tumwater Development Guide (TDG) under the unappealed conditions set forth in the preliminary plat approval. Having failed to

1 appeal these conditions, it cannot now collaterally attack these requirements, including the
 2 undergrounding of utility transmission lines set forth in TDG 3.14(B).

3 The Hearing Examiner's plat approval conditions require installation of certain improvements
 4 which directly affect existing utility lines and compel that they be moved. Condition 9 requires:

5 Street frontage improvements including curb and gutter, sidewalk, landscape strip, bike
 6 lane, street illumination, and storm drainage facilities complying with the design
 7 requirements of the Tumwater Development Guide shall be constructed along the property
 8 frontage on Henderson Boulevard. Adequate right-of-way shall be dedicated to contain the
 improvements.

9 Similarly, Condition 23 of the plat approval requires all engineering to meet the requirements of
 10 the TDG, stating:

11 All engineering designs and construction will need to be in accordance with the City of
 12 Tumwater's Development Guide and WSDOT standards

13 The issue now presented is whether the City's plan review comments correctly applied the TDG
 14 to the utility transmission facilities impacted by the Three Lakes Crossing project by requiring the lines
 15 be installed underground. The proper interpretation of the City's requirements is that the requirement to
 16 underground these lines is proper.

17
 18 **2. The Tumwater Development Guide requires new and existing utility transmission lines
 be installed underground.**

19 Section 3.14(B) of the Tumwater Development Guide is relied upon by Appellants. Appellants
 20 point only to the first sentence concerning new overhead power facilities which must be installed
 21 underground. That point is not disputed. However, it does not answer whether utility lines that must be
 22 moved and replaced due to the applicant's development must install the replaced lines underground to
 23 comply with the City's Code. That question requires analysis of the second part of Section 3.14(B).

24 The full language of Section 3.14(B) provides:
 25
 26

1 All new utilities including services from overhead power facilities to new residential or
 2 commercial structures shall be installed underground by the utility owning said facility,
 3 and new and existing facilities shall comply with provisions as set forth in TMC 17.12.200,
 4 Land Division, and provisions as set forth in franchise agreements between the City and
 5 the utility.

6 Utilities converted from overhead to underground on existing roadways may be located
 7 within the right-of-way.

8 This provision requires “existing” facilities to comply with TMC 17.12.200, which expressly
 9 requires underground installation of utility lines. The Appellant’s interpretation never addresses the
 10 language used in the second part of this sentence. Of course, ordinances must be interpreted so as to give
 11 effect to all the language used by the Council in adopting the requirement. Additionally, the City’s
 12 interpretation of its own code is entitled to deference [I]n any doubtful case, the court should give great
 13 weight to the contemporaneous construction of an ordinance by the officials charged with its
 14 enforcement.” *Morin v. Johnson*, 49 Wn.2d 275, 279, 300 P.2d 569 (1956); *Milestone Homes, Inc. v. City*
 15 *of Bonney Lake*, 145 Wn. App. 118, 127, 186 P.3d 357, 362 (2008); *Citizens to Preserve Pioneer Park,*
 16 *LLC v. City of Mercer Island*, 106 Wn.App. 461, 475, 24 P.3d 1079 (2001) (courts generally accord
 17 deference to an agency's interpretation of an ambiguous ordinance).

18 Additionally, Section 3.14(B) must be read in conjunction with other parts of the TDG that define
 19 how it is applied. TDG Section 3.3 states that the standards in the TDG “shall govern all new construction
 20 and upgrading of facilities, both in the right-of-way and on-site.” Thus, the requirements of the TDG
 21 presumptively apply both when new construction is conducted, but also when facilities are upgraded.
 22 Here, the applicant’s construction requires displacement of the existing lines and reinstallation of new the
 23 lines. Even under the applicant’s construction, the existing poles would be inadequate and would need to
 24 be upgraded to new taller poles to provide adequate clearance from the newly required streetlights.
 25
 26

1 Because the replacement of the poles with new taller poles would upgrade these existing facilities, the
 2 standards of the TDG requiring undergrounding of “new and existing facilities” would apply.

3 **3. Tumwater’s Municipal Code requires all utility transmission lines be installed**
 4 **underground.**

5 Similarly, Appellants interpretation of the City’s municipal code assumes its own preferred
 6 conclusion. Appellants reach this result by reading into TMC 17.12.200 language that is not there. The
 7 language of TMC 17.12.200 does not use the word “new” despite the applicant’s use of that language in
 8 quoted portions of their own appeal. See Motion at 3:7. Appellants then argue that the plain text of TMC
 9 17.12.200 requires that new transmission lines must be buried, but not existing lines. Motion at 4:19.
 10 This argument reads into the ordinance language that would require that “only” new lines must be installed
 11 underground. But the ordinance does not have such limiting language. It requires that utility transmission
 12 lines “shall be installed underground”.
 13

14 The appellant’s argument does not address the situation presented here, where the direct impact of
 15 the development forces removal of utility facilities and that they be subsequently installed after required
 16 construction of new streets and frontage improvements. TMC 17.12.200 specifies how such impacted
 17 lines are to be installed: such lines “shall be installed underground”. Thus, the plain language of TMC
 18 17.12.200 supports the City’s interpretation.
 19

20 The use of the words “shall be” does not negate the requirement or limit it only to new utilities.
 21 Instead, it is the implied insertion of the word “new” that was not used in the City’s ordinance, that the
 22 applicant seeks to accomplish. “Shall” merely indicates a mandatory condition, as opposed to a permissive
 23 or optional meaning, as in “may”. *Erection Co. v. Dep’t of Labor & Indus.*, 121 Wash.2d 513, 519, 852
 24 P.2d 288 (1993).
 25
 26

1 Likewise, the word “install” does not compel the applicant’s desired result. Install means “to set
 2 up or fix in position for use or service”. Black’s Law Dictionary, Sixth Edition, 1990. Where a developer
 3 must take down an existing pole because it is in the middle of the street, or cannot use existing lines in
 4 their present location because they encroach in the required ten feet of separation needed for overhead
 5 lines, they must be set up or fixed in a new position so that they can be used or put in service. As such,
 6 the relocation of the impacted transmission facilities requires that they be “installed” within the meaning
 7 of the language used by the Ordinance.
 8

9 The intent to require undergrounding of utility lines is further supported by the legislative history
 10 when the undergrounding requirement was adopted by the City Council in 1992. The City Council held
 11 a public hearing to discuss the adoption of the Tumwater Development Guide and was asked how it related
 12 to undergrounding of wiring. The City’s engineer responded that “undergrounding of utility lines is
 13 addressed in the subdivision ordinance. It is required in connection with a long plat.” This colloquy was
 14 followed by the statement of Councilmember Kmet, who pointed to TMC 17.12.200 which required that
 15 such transmission lines “shall be installed underground.” This demonstrates the long-standing
 16 interpretation of both staff and the Council to require undergrounding of utility transmission lines.
 17

18 **B. THE CITY’S REQUIREMENT FOR UNDERGROUND UTILITY LINES DIRECTLY**
 19 **IMPACTED BY THE APPLICANT’S DEVELOPMENT DOES NOT VIOLATE RCW**
 20 **82.02.020.**

21 The appellants also argue that the requirement to install the impacted utility lines underground
 22 would be an unauthorized tax, fee or charge on development in violation of RCW 82.02.020. Appellants
 23 cite *Isla Verde Int’l Holdings, Inc. v. City of Camas*, 146 Wn.2d 740, 753, 49 P.3d 867 (2002) and
 24 *Benchmark Land Co. v. City of Battle Ground*, 146 Wn.2d 685, 694-95, 49 P.3d 860 (2002). These cases
 25 are distinguishable and do not support finding a violation of RCW 82.02.020 here.
 26

1 *Isla Verde* involved two requirements. First the City required a 30% set aside of the undeveloped
 2 parcel for open space. Secondly, it required the developer to provide a secondary access to the new
 3 development. The first requirement was held unlawful under RCW 82.02.020, however the second
 4 requirement was sustained. The former was invalid because it did not qualify under the statutory exception
 5 for requirements that are “reasonably necessary as a direct result of the proposed development.” *Isla*
 6 *Verde*, 146 Wn.2d at 759-61. However, the secondary access requirement was necessary as a direct result
 7 of the proposed development, so the court upheld the requirement finding that it was “reasonably
 8 necessary to provide fire protection for the residents of the new Dove Hill subdivision”. *Isla Verde*, 146
 9 Wn.2d at 767.

11 *Benchmark* likewise involved imposition of frontage improvements on a portion of an existing
 12 exterior roadway, which was not impacted by the new development. The Court found that the existing
 13 road did not meet new design standards, so it was a pre-existing deficiency that the City could not require
 14 be remedied absent a direct impact from the proposed development. *Benchmark*, 146 Wn.2d at 695.

16 These cases actually support the City’s application of the undergrounding requirement to utility
 17 lines directly impacted by new construction. Both *Isla Verde* and *Benchmark* turned on the presence or
 18 lack of a direct impact in rejecting the open space requirement *Isla Verde* and the frontage improvements
 19 in *Benchmark* where such impact was lacking, but approving the secondary access condition imposed to
 20 serve the safety demands necessitated because of the new development. Here, the basis for imposing the
 21 undergrounding requirement on the existing lines is supported because the applicant’s development
 22 directly impacts the existing lines, forcing them to be removed and relocated. The Tumwater development
 23 regulations require that this installation be done underground.

25 This issue came before the Court of Appeals in *Detray v. City of Lacey*, 132 Wn. App. 1008, 2006
 26 WL 701938 (2006), an unpublished but similar decision that rejected undergrounding of utility lines

1 whose location was not impacted by the proposed development, but sustained such a requirement if
 2 necessary due to the improvements required to accommodate the new development. The Court of Appeals
 3 stated, in salient part:

4 But a left turn lane would require additional widening of 37th Avenue Southeast—
 5 widening that would not be necessary absent the development. We have held that the City
 6 may require DeTray to pay for this widening. To the extent the left turn lane widening
 7 adds to the need to move utility poles, the City may require DeTray to pay part of the cost
 8 of moving the utility lines underground. We vacate the condition requiring DeTray to pay
 all the cost of moving the utility lines underground and remand to the hearing examiner
 for further proceedings on this issue.

9 *DeTray v. City of Lacey*, 2006 WL at *8.

10 Thus, the Examiner should deny the motion for summary judgment because the City may validly
 11 require a developer to underground utility lines that are directly impacted by the new construction. Here,
 12 as demonstrated by the Declaration of Jared Crews, the need to relocate the lines is because the existing
 13 pole location is in the middle of the new development's access road (future 38th Ave. SE) and the overhead
 14 lines would not have sufficient clearance from required streetlights. Thus, the need to move the lines is
 15 directly related to the new development and it is not an unlawful tax fee or charge under RCW 82.02.020.

17 IV. CONCLUSION

18 The City correctly interpreted its development guide and TMC 17.12.200 to require that existing
 19 utility transmission lines impacted by a proposed development be installed underground. Its interpretation
 20 is entitled to great weight and should be affirmed by the Examiner.

21 DATED this 2nd day of December 2022.

23 LAW, LYMAN, DANIEL, KAMERRER
 & BOGDANOVICH, P.S.

24 

25 Jeffrey S. Myers, WSBA #16390
 26 Attorney for City of Tumwater

CERTIFICATE OF SERVICE

I hereby certify, under the penalty of perjury, under the laws of the State of Washington that I have caused a true and correct copy of the attached document to be served upon the below listed party via email and U.S. Mail:

Counsel for Plaintiffs:

Heather L. Burgess
 Christopher H. Pierce-Wright
 111 – 21st Avenue SW
 Olympia, Washington 98501
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 Facsimile: 360.742.3519
 Email: hburgess@phillipsburgesslaw.com
cpiercewright@phillipsburgesslaw.com

DATED this 17th day of October, 2022 at Tumwater, WA.

/s/ Blake Myers
 Blake Myers, Legal Assistant

**BEFORE THE HEARING EXAMINER
IN AND FOR THE CITY OF TUMWATER**

In the Matter of the Appeal of:

Copper Ridge, LLC

Of an Administrative Decision

NO. TUM-22-1101

DECLARATION OF JEFFREY S. MYERS

I, Jeffrey S. Myers, hereby state and declare as follows:

1. I am over the age of eighteen, am competent to testify herein and make this declaration based on personal knowledge. I am the attorney for the City of Tumwater in this matter.

2. Attached hereto as **Exhibit C-7** is a true and correct copy of the Hearing Examiner decision dated July 15, 2022 approving the Three Lakes Crossing Preliminary Plat and Planned Unit Development.

3. Attached hereto as **Exhibit C-8** is a true and correct copy of the minutes of the Tumwater City Council from July 7, 1992.

I make this declaration under penalty of perjury under the laws of the State of Washington.

DATED this 2nd day of December 2022 at Tumwater, Washington.



Jeffrey S. Myers, WSBA #16390

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF TUMWATER**

In the Matter of the Application of)	Nos. TUM-21-1895 and TUM-22-0036
)	
Evan Mann, Copper Ridge, LLC)	Three Lakes Crossing Preliminary
)	Plat and Planned Unit Development
)	
)	
For Approval of a Preliminary Plat and)	FINDINGS, CONCLUSIONS,
<u>Planned Unit Development</u>)	AND DECISION

SUMMARY OF DECISION

The request for a preliminary plat and planned unit development, to subdivide a 9.68-acre property into 45 lots for single-family residential development, with associated appurtenances and improvements, at 6609 and 6715 Henderson Boulevard, is **APPROVED**. Conditions are necessary to address specific impacts of the proposal.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held an open record hearing on the request on June 22, 2022, utilizing a hybrid approach allowing for live participation or participation by remote access technology.

Testimony:

The following individuals provided testimony under oath at the open record hearing:

Alex Baruch, City Associate Planner
Evan Mann, Applicant Representative
Scott Kaul, P.E.

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, dated June 15, 2022
2. Preliminary Plat Plan Set (10 Sheets), dated April 25, 2022
3. Vicinity Map
4. Mitigated Determination of Nonsignificance, dated May 13, 2022; SEPA Environmental Checklist, reviewed May 9, 2022; Critical Areas Report, EnviroVector, dated September 15, 2021; Mazama Pocket Gopher Screening Report, EnviroVector, dated September 28, 2021; Traffic Impact Analysis and Traffic Queuing Report, Heath and Associates, Inc., dated December 10, 2021
5. Notice of Public Hearing, dated June 9, 2022

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6. Preliminary Plat Application, received December 16, 2021
7. Notice of Application, dated January 18, 2022
8. Zoning Map
9. Certification of Public Notice, dated June 9, 2022
10. Notice of Application Comments:
 - a. Comment from Squaxin Island Tribe, dated January 18, 2022
 - b. Comment from Nisqually Indian Tribe, dated January 2022
 - c. Comment from Bryon Agan, dated January 27, 2022, with email string
 - d. Applicant Response to Comments, dated February 3, 2022, with email string
 - e. Comment from Robert Kondrat, dated February 15, 2022
11. Transportation Concurrency Ruling, dated February 8, 2022
12. SEPA Comments
 - a. Comment from Bryon Agan, dated May 15, 2022, with email string
13. Tree Replacement Plan, AHBL, dated December 8, 2021
14. Critical Areas Report, EnviroVector, dated September 15, 2021
15. Mazama Pocket Gopher Screening Report, EnviroVector, dated September 28, 2021
16. Traffic Impact Analysis and Traffic Queuing Report, Heath and Associates, Inc., dated December 10, 2021
17. Comment from Washington Department of Archaeology and Historic Preservation, dated May 12, 2022
18. Geotechnical Report, Insight Geologic, Inc., dated December 16, 2021

The Hearing Examiner enters the following findings and conclusions based upon the admitted testimony and exhibits:

FINDINGS

Application and Notice

1. Evan Mann, of Copper Ridge, LLC (Applicant), requests approval of a preliminary plat and planned unit development to subdivide a 9.68-acre property into 45 lots for single-family residential development, with associated infrastructure and amenities. Associated improvements would include three open space and tree tracts; active and passive open space areas; two private shared access tracts; a wetland buffer tract; utility extensions; stormwater management features; construction of 68th Avenue SE through the plat; and street frontage improvements along Henderson Boulevard. The property is located at 6609 and 6715 Henderson Boulevard.¹ *Exhibit 1, Staff Report, pages 1 through 3; Exhibit 2; Exhibit 3; Exhibit 6; Exhibit 13.*
2. The City of Tumwater (City) determined that the application was complete on January 11, 2022. On January 13, 2022, the City provided notice of the application by mailing or emailing notice to property owners within 300 feet of the subject property and to

¹ The property is identified by Thurston County Tax Parcel Nos. 12701320105, 7930000010, 79300000101. *Exhibit 1, Staff Report, page 1; Exhibit 3.*

reviewing departments and agencies and by posting notice on-site, with a comment deadline of February 2, 2022. On January 18, 2022, the City published notice of the application in the *Olympian* and posted notice on the City website. On June 9, 2022, the City provided notice of the open record hearing associated with the application in the same manner. *Exhibit 1, Staff Report, page 5; Exhibit 5; Exhibit 7; Exhibit 9.*

3. The City received the following comments from reviewing agencies and from members of the public in response to its notice materials:
 - The Squaxin Island Tribe and the Nisqually Indian Tribe submitted comments noting that the project area has a high potential for the location of cultural resources and requesting that a cultural resources survey and report be completed for the project. As discussed below, the Applicant later submitted a cultural resource assessment that was reviewed by the Washington State Department of Archaeology and Historic Preservation (DAHP).
 - DAHP stated that it reviewed the cultural resource assessment for the site and that it agreed with the assessment's results and recommendations. It noted that no cultural resources were found during the survey, and, therefore, DAHP does not recommend further direct archaeological supervision of the project but recommends that a standard Inadvertent Discovery Plan should be followed during all ground disturbing activities.
 - Bryon Agan raised concerns about the proposed development's traffic and safety impacts at the intersection of Henderson Boulevard and 68th Avenue, noting existing issues at the intersection with regard to safe crossing conditions for bicyclists and pedestrians. He requested that the Applicant be required to conduct a traffic impact analysis addressing the proposal's impacts to the intersection. Mr. Agan also inquired about why the proposal would construct a new vehicular access point on Henderson Boulevard rather than completing an extension of Dennis Street SE to connect to Henderson Boulevard. City staff provided a response, which noted that the proposal would be reviewed for traffic considerations, explaining that an extension of Dennis Street SE would not be feasible due to the presence of wetlands. The Applicant also provided a response, which noted that a full traffic impact analysis was submitted for the proposed development.
 - Robert Kondrat raised concerns about the proposal's traffic impacts, particularly at the intersection of Henderson Boulevard and Tumwater Boulevard. He also expressed concerns about the increased development in the area generally impacting the historic character of the neighborhood. In addition, Mr. Kondrat raised concerns about the environmental impacts of the proposed development, particularly with regard the removal of trees that would be required for the project.

Exhibit 1, Staff Report, pages 5 and 6; Exhibit 10; Exhibit 17.

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State Environmental Policy Act

4. The City Community Development Department (CDD) acted as lead agency and analyzed the environmental impacts of the proposal under the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington RCW (RCW). CDD reviewed the Applicant's environmental checklist and other information on file and determined that, with mitigation measures, the proposal would not have a probable significant adverse impact on the environment. Accordingly, CDD issued a Mitigated Determination of Nonsignificance (MDNS) on May 13, 2022, with a comment deadline of May 27, 2022, and an appeal deadline of June 3, 2022. The City received one comment on the MDNS from Bryon Agan, who expressed concerns that the SEPA analysis did not adequately address the proposal's traffic and safety impacts to the intersection of 68th Avenue and Henderson Boulevard. The MDNS was not appealed. The MDNS would require the Applicant to construct a new intersection at Henderson Road and 69th Avenue SE to ensure safe traffic movements and to either construct a roundabout at the intersection of northbound Interstate 5 On/Off Ramp and Tumwater Boulevard or pay a mitigation fee to help fund the City's planned transportation improvements to the intersection. *Exhibit 1, Staff Report, pages 1, 7, and 8; Exhibit 4; Exhibit 12.*

Comprehensive Plan and Zoning

5. The property is within the Brush Prairie Neighborhood and is designated "Single Family Low Density Residential" and "Single Family Medium Density Residential" under the City Comprehensive Plan. The Single Family Low Density Residential land use designation allows for a density of four to seven dwelling units per acre. *Comprehensive Plan, Land Use Element, page 34.* The Single Family Medium Density designation allows for a density of six to nine dwelling units per acre. *Comprehensive Plan, Land Use Element, page 34.* The Comprehensive Plan provides that the density of new development within the Single Family Low Density Residential and the Single Family Medium Density Residential land use designations "should be averaged over the entire site in order to reach the maximum densities required to accommodate future population" and that it "is not the intent of the City to require that lots be a specific size but that densities are met as an average of the overall site." *Comprehensive Plan, Land Use Element, pages 34 and 35.* The proposed development would provide a density of six dwelling units per acre in the portion of the property designated Single Family Low Density Residential and eight dwelling units per acre in the portion of the property designated Single Family Medium Density Residential. City staff determined that the proposal would be consistent with the Comprehensive Plan. *Exhibit 1, Staff Report, page 3.*
6. The property is located in both the "Single-Family Low Density Residential" (SFL) zoning district and the "Single-Family Medium Density Residential" (SFM) zoning

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district. The intent of the SFL zoning district is to preserve and establish peaceful, low-density neighborhoods in which owner-occupied, single-family structures are the dominant form of dwelling unit; to guide residential development in a manner that encourages and plans for the availability of public services and community facilities; and to encourage the development of attractive residential areas that provide a sense of community, establish a pedestrian-friendly atmosphere, and contain a variety of housing types. *Tumwater Municipal Code (TMC) 18.10.010*. The intent of the SFM zoning district is to provide for a high standard of development for residential areas of moderate density in which single-family housing is the primary form of development; provide designated areas in which a minimum net density of six units per acre and a maximum net density of nine units per acre apply to promote the efficient use of land; guide residential development in such a manner as to encourage and plan for the availability of public services and community facilities such as utilities, police and fire protection, streets, school, parks and recreation; encourage development of attractive residential areas that provide a sense of community, establish a pedestrian-friendly atmosphere and contain a variety of housing types; and to ensure that development without municipal utilities is at a density and in a configuration that enables cost effective urban density in-fill development when municipal utilities become available. *TMC 18.12.010*.

Single-family detached housing is allowed in both the SFL and the SFM zoning districts. *TMC 18.10.020; TMC 18.12.020.A*. The SFL zone requires a minimum net density of four units per acre and a maximum net density of six units per acre, with a maximum net density of seven dwelling units per acre allowed through the purchase of transfer of development rights, and the SFM zone requires a minimum net density of six units per acre and a maximum net density of nine units per acre. *TMC 18.10.050; TMC 18.12.050*. The proposed development would provide a density of six dwelling units per acre in the portion of the property zoned SFL and eight dwelling units per acre in the portion of the property zoned SFM zone, in accord with the density requirements of the respective zoning districts. *Exhibit 1, Staff Report, pages 9 and 10; Exhibit 2; Exhibit 8*.

7. TMC 18.10.050 provides development standards applicable to the SFL zoning district, which include required minimum lot sizes of 3,200 square feet and minimum lot widths of 50 feet, with a minimum lot width of 40 feet for lots with an alley located adjacent to a side property line. *TMC 18.10.050.D*. TMC 18.12.050 provides development standards applicable to the SFM zoning district, which provide minimum lot and width requirements identical to those of the SFL zoning district. The Applicant's project plans show that the smallest lot within the subdivision would measure 3,998 square feet, satisfying the minimum lot size requirements in both zoning districts. The project plans indicate that 26 of 45 proposed lots would be less than 50 feet wide and not adjacent to an alley. The Applicant, however, proposes to develop the property as a Planned Unit Development (PUD) to provide relief from the minimum lot width requirement, as discussed in detail later in this decision. The SFL and SFM zoning districts require minimum front yard setbacks of 10 feet, side yard setbacks of 5 feet, and rear yard

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setbacks of 20 feet. *TMC 18.10.050.I; TMC 18.12.050.I*. Because the Applicant proposes to develop the property under the City's PUD provisions, the setback requirements for the SFL and SFM zones apply only to the perimeter boundary lines of the site. *TMC 18.36.080.C*. The Applicant's project plans demonstrate that the proposed development would comply with applicable setback requirements.

Development standards for the SFL and SFM zoning district also require new development projects to designate a minimum of 10 percent of the gross site area as open space with both passive and active recreation facilities for the enjoyment of residents. *TMC 18.10.050.K; TMC 18.12.050.K; TMC 17.12.210.A and .G*. The Applicant proposes to meet this requirement by providing 0.97 acres of open space within five tracts that would contain active and passive recreation elements, which amounts to approximately 10 percent of the 9.68-acre site. As conditioned, the proposal would comply with all other development standards applicable to the SFL and SFM zoning districts. *Exhibit 1, Staff Report, pages 3, and 9 through 12; Exhibit 2; Exhibit 6; Exhibit 13*.

8. The property is located in the Aquifer Protection (AQP) overlay zoning district. The AQP overlay district is intended to "protect vulnerable and/or critical aquifer recharge areas within the city and urban growth area" by "controlling the use and handling of hazardous substances and uses of land that pose a threat to groundwater." *TMC 18.39.010*. The proposed residential subdivision is not a restricted use within the AQP overlay district. *TMC 18.39.040. Exhibit 1, Staff Report, page 10*.

Existing Site, Critical Areas, and Surrounding Development

9. The 9.68-acre subject property is relatively flat and slopes down on the western portion of the site. The site is currently developed with a home, a business, and miscellaneous outbuildings, which would be demolished. Surrounding land uses are mainly residential in nature, except one property to the south that is zoned Neighborhood Commercial. The property to the north is zoned Multifamily Medium Density Residential. The parcels to the east, west, and southwest are zoned SFL, with a portion of these properties being developed as the Tumwater Boulevard Plat. The surrounding area is developed with a mixture of newer subdivisions that are in the site development/final plat process stage, older residential uses, small businesses, and undeveloped parcels. EnviroVector prepared a Mazama Pocket Gopher Screening Report for the Applicant, dated September 28, 2021, which determined that the site does not contain any mounds characteristic of those created by Mazama pocket gophers and that the subject property and vicinity contains only a marginal potential for Mazama pocket gopher habitat.

EnviroVector also prepared a Critical Areas Report (CAR) for the Applicant, dated September 15, 2021. The CAR identified an offsite 1.03-acre Category III wetland (Wetland A) 58 feet south of the property. The 150-foot buffer associated with the offsite wetland extends onto the southern portion of subject property. All proposed development

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would occur outside of the on-site buffer area, and the on-site buffer area would be protected within a wetland buffer tract (Tract F). *Exhibit 1, Staff Report, pages 2, 6, and 8; Exhibit 2; Exhibit 4; Exhibit 14; Exhibit 15.*

Trees

10. Chapter 16.08 TMC regulates the removal and preservation of existing trees on a development site. AHBL prepared a tree plan for the proposal, dated December 8, 2021. TMC 16.08.070.R requires that, when land clearing is performed in conjunction with a specific development proposal, not less than 20 percent of the trees, or not less than 12 trees per acre (whichever is greater), must be retained. The property contains 368 trees. Based on the size of the property and the number of existing trees, TMC 16.08.070.R would require that a minimum of 80 trees be retained on the project site. According to the Applicant's tree plan, a total of 10 trees would be retained on-site. When the required number of trees cannot be retained on-site, the City's tree code allows mitigation in the form of planting three replacement trees for each tree removed in excess of the retention standard. *TMC 16.08.070.R.3.* The Applicant proposes to plant 210 replacement trees on-site to mitigate for the 70 trees that would be removed in excess of the 80 trees required to be retained, in accord with this requirement and the Applicant's calculations related to such requirement. City staff reviewed the Applicant's tree plan and determined that it would comply with the City's tree protection and replacement ordinance.² *Exhibit 1, Staff Report, page 8; Exhibit 13.*

Stormwater

11. Insight Geologic, Inc., prepared a geotechnical and stormwater investigation for the Applicant, dated December 16, 2021. Stormwater runoff from pollution-generating impervious surfaces would be collected and conveyed to an on-site infiltration system. The Applicant's final stormwater drainage design would be required to comply with the 2018 City of Tumwater Drainage Design and Erosion Control Manual. *Exhibit 1, Staff Report, pages 2 and 12; Exhibit 4; Exhibit 18.*

Utilities and Services

12. Water and sewer service to the subdivision would be provided by the City. Utility extensions necessary for public water and sewer service to the property would be installed in accordance with the requirements of the Tumwater Development Guide. Puget Sound Energy would provide electricity and natural gas services, Comcast and CenturyLink would provide telecommunication services, and garbage collection would

² Although the staff report indicates that City staff reviewed the Applicant's calculations concerning tree retention and replacement requirements, the Hearing Examiner's own review has left him with the impression that there may be a miscalculation. Accordingly, City staff shall reassess the Applicant's materials to ensure that no unintentional errors have occurred.

be provided by Pacific Disposal. All utilities on-site would be underground pursuant to TMC 17.12.200. *Exhibit 1, Staff Report, pages 2, 3, and 9; Exhibit 2.*

Access, Parking, and Traffic

13. Access to the property and to lots within the subdivision would be provided by an extension of a public road, 68th Avenue SE, which would complete a connection from Henderson Boulevard to Tumwater Boulevard. The public street extensions through the subdivision would include sidewalks that would connect to sidewalks that would be installed as part of required frontage improvements to Henderson Boulevard, which would ensure safe walking conditions for students residing in the subdivision. The Applicant would be required to provide two paved off-street parking spaces for each lot within the subdivision. Heath and Associates, Inc., prepared a traffic impact analysis (TIA) for the proposed development, dated December 10, 2021. The TIA determined that the proposed development would generate 424 new average daily trips, with 31 AM peak-hour trips and 42 PM peak-hour trips. The TIA further determined that all studied intersections would continue to operate at an acceptable level of service following a full build-out of the project. Heath and Associates also prepared a Traffic Queuing Report for the proposed development, dated December 10, 2021, which determined that the proposal would provide an adequate queuing distance for vehicles entering and leaving the subdivision. The City Transportation Manager reviewed the Applicant's Transportation Concurrency Application and determined that, with conditions, the proposal would meet City concurrency requirements. These conditions include requirements that the Applicant pay required transportation impact fees, construct transportation improvements as shown on the formal site plan, and either construct a roundabout at the northbound Interstate 5 On/Off Ramp and Tumwater Boulevard intersection or pay a mitigation fee to help fund the City's planned transportation improvements to the intersection. City staff reviewed the proposal and determined that it would be consistent with the City's Transportation Plan. *Exhibit 1, Staff Report, pages 2 through 7, and 16; Exhibit 2; Exhibit 6; Exhibit 11; Exhibit 16.*
14. The City has adopted a Sustainable Development Plan for the Thurston Region to reduce vehicle miles traveled and to preserve sensitive areas, farmland, forestland, prairies, and rural lands. The project site is located more than a half-mile from an urban center but within an area designated for residential growth. City staff determined that the proposed development would be consistent with the Sustainable Development Plan for the Thurston Region by providing compact development in an urban area while protecting environmentally sensitive lands by developing residential uses at a low density. *Exhibit 1, Staff Report, pages 4 and 5.*

Schools and Parks

15. Children residing within the proposed subdivision would be served by the Tumwater School District. School impact fees would be assessed for each dwelling unit in the subdivision at the building permit stage. As noted above, the Applicant would install

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sidewalks along the streets within the subdivision and would construct frontage improvements along Henderson Boulevard that would include installation of sidewalks, which would ensure safe walking conditions for students residing within the subdivision. *Exhibit 1, Staff Report, page 12; Exhibit 2.*

16. The Parks and Recreation element of the Comprehensive Plan does not identify any neighborhood or community parks in the vicinity of the project site. As noted above, the Applicant proposes to set aside 0.97 acres of open space within three tracts that would contain active and passive recreation elements, which would satisfy the open space requirements for the proposed plat. Park impact fees would be assessed for each dwelling unit in the subdivision at the building permit stage, which could be used to fund park improvements. City staff determined that the proposal would be consistent with the Parks and Recreation element by the payment of the required park impact fees and by the Applicant providing active and passive open space areas within the subdivision that would exceed the minimum requirements of the municipal code. *Exhibit 1, Staff Report, pages 3 and 4; Exhibit 2.*
17. The City participates in the Thurston Regional Planning Council, which adopted a Thurston Regional Trail Plan in December 2007. City staff determined that the proposed project would not affect implementation of this plan. *Exhibit 1, Staff Report, page 4.*

Planned Unit Development

18. The Applicant requests approval to develop the property as a planned unit development (PUD) in order to provide relief from the minimum lot width standards generally applicable to the SFL and SFM zoning districts. The intent of PUDs is to encourage new development not limited by strict application of the City's zoning code. *TMC 18.36.010.A.* More specifically, the purpose of PUDs is to (1) encourage flexibility in design and development that will result in a more efficient and desirable use of land; (2) permit flexibility of design, placement of buildings, use of required open spaces, circulation facilities, and off-street parking areas, and otherwise better utilize the potential of sites characterized by special features, such as geography, topography, size or shape; (3) provide for maximum efficiency in the layout of streets, utility networks, and other public improvements; (4) produce an integrated or balanced development of mutually supportive uses that might otherwise be inharmonious or incongruous; and (5) provide a guide for developers and City officials who review and approve developments meeting the standards and purposes of this chapter. *TMC 18.36.010.B.*

PUDs achieve these purposes by providing relief from the minimum requirements of the underlying zone, with the following exceptions:

- A. Minimum Project Size. There is no minimum project size for a planned unit development.
- B. Project Densities. Densities established by the underlying zone district shall prevail.

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- C. Setbacks. Project setbacks as required by the underlying zoning district shall prevail on all perimeter boundary lines.
- D. Land Coverage. Maximum land coverage, as established by the underlying zone district, may be exceeded by no more than 25 percent.
- E. Uses Allowed. The use of the development shall be limited to those allowed either as permitted, accessory, or conditional uses in the underlying zones.
- F. Open Space/Park. The open space/park dedication requirements of the underlying zoning district shall prevail.

TMC 18.36.080.

Under TMC 18.36.050, all PUDs must (1) substantially conform to the Comprehensive Plan, (2) harmonize with the surrounding area or its potential future use, and (3) ensure the size of the proposed overlay can accommodate the proposed development. City staff reviewed the proposal and determined that it would meet all requirements related to approval of a PUD. *Exhibit 1, Staff Report, pages 10 and 11; Exhibit 2; Exhibit 6.*

Testimony

19. City Associate Planner Alex Baruch testified generally about the application review process, explaining that the City reviewed the application for consistency with the Comprehensive Plan, zoning requirements, and critical areas ordinances. Mr. Baruch described how the City provided notice of the application, associated public hearing, and MDNS, consistent with state and local requirements. He noted that the Squaxin Island Tribe requested a cultural resource survey, which was later completed by the Applicant. Mr. Baruch also explained that a few public comments were received in response to the City's notice materials that expressed concerns about increased traffic in the area and potential impacts to area wildlife from further development. Mr. Baruch noted that the City reviewed the traffic information provided by the Applicant and, ultimately, determined that the proposal would meet concurrency requirements. Mr. Baruch also discussed environmental review under SEPA and testified that the MDNS issued by the City was not appealed. Mr. Baruch clarified several details about the proposal, including explaining more about the property being split-zoned, and detailed how the Applicant's use of the planned unit development overlay (PUD) ordinance would allow for flexibility in sight design. *Testimony of Mr. Baruch.*
20. Applicant Representative Evan Mann testified about several technical aspects of the proposal, including providing further detail about how stormwater on-site would be managed, how the Applicant would ensure there is a safe location for a bus stop for school-age children residing within the development to walk to (as there are no schools within walking distance currently), and how the Applicant would utilize the PUD ordinance in relation to the proposal, including reducing minimum lot widths. *Testimony*

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of Mr. Mann.

21. Scott Kaul, P.E., also testified on behalf of the Applicant and explained that most of the stormwater on-site would be infiltrated and would likely travel toward the southwest (after percolating underground), providing for the potential of hydrologic recharge to the wetland adjacent to the property. *Testimony of Mr. Kaul.*

Staff Recommendation

22. Mr. Baruch testified that City staff recommends approval of the preliminary plat and preliminary planned unit development, with conditions. Mr. Mann testified that the Applicant would adhere to the recommended conditions. *Exhibit 1, Staff Report, pages 11 through 18; Testimony of Mr. Baruch; Testimony of Mr. Mann.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner has authority to hear and decide applications for preliminary plats and planned unit developments. The Hearing Examiner may grant, deny, or grant with such conditions, limitations, modifications, and restrictions as the Hearing Examiner finds necessary to make the application compatible with applicable laws and regulations, including but not limited to compatibility with the environment, the Comprehensive Plan, other official policies and objectives, and land use regulatory enactments. *TMC 2.58.090.A; TMC 2.58.130.A.2; Table 14.08.030.*

Criteria for Review

Preliminary Plat

The Hearing Examiner shall inquire into the public use and interest proposed to be served by the establishment of the proposed land division. *TMC 17.14.040.A.* Under TMC 17.14.040.A, the Hearing Examiner shall determine whether

appropriate provisions are made for, but not limited to, the public health, safety and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, other grounds, transit stops, potable water supplies, sanitary wastes, parks and recreation playgrounds, schools and school grounds, fire protection and other public facilities, and shall consider all other relevant facts, including the physical characteristics of the site, and determine whether the public interest will be served by the land division. Further, consideration shall be given for sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school.

If the Hearing Examiner finds that the proposed division of land makes appropriate provisions, and makes written findings to that effect, then it shall be approved. If the Hearing Examiner

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finds that the proposed land division does not make such appropriate provisions or that the public use and interest will not be served, then the Hearing Examiner shall disapprove the proposed division of land. *TMC 17.14.040.A.*

Dedication of land, provision of public improvements to serve the land division, and/or payment of impact fees allowed by state law, to any public body, may be required as a condition of land division approval. The Hearing Examiner shall not, as a condition of approval, require an Applicant to obtain a release from damages from other property owners. The Hearing Examiner will consider the physical characteristics of a proposed land division site and may disapprove a proposed division because of flood, inundation, or wetland conditions. Construction of protective improvements may be required as a condition of approval. *TMC 17.14.040.B, C, and D.*

The subdivision provisions of the Tumwater Municipal Code are substantially similar to RCW 58.17.110(2), which provides:

A proposed subdivision and dedication shall not be approved unless the city, town, or county legislative body makes written findings that: (a) Appropriate provisions are made for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and (b) the public use and interest will be served by the platting of such subdivision and dedication. If it finds that the proposed subdivision and dedication make such appropriate provisions and that the public use and interest will be served, then the legislative body shall approve the proposed subdivision and dedication.

Planned Unit Development

TMC 18.36.050 provides the following, specific to planned unit developments:

The application for a planned unit development shall be heard before the hearing examiner of the city at a duly published public meeting. The hearing examiner's decision to approve or deny the development shall be based on at least, but not limited to, the following criteria:

- A. Substantial conformance to the Tumwater comprehensive plan;
- B. The proposal's harmony with the surrounding area or its potential future use; and

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- C. The adequacy of the size of the proposed overlay to accommodate the contemplated developments.

The criteria for review adopted by the Tumwater City Council are designed to implement the requirement of Chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with City development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

Conclusions Based on Findings

Preliminary Plat

1. **With conditions, the preliminary subdivision would make appropriate provisions for the public health, safety, and general welfare and for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, and schools and school grounds.** Part of the property is designated Single Family Low Density Residential under the City Comprehensive Plan and is located in the Single-Family Low Density Residential (SFL) zoning district, which requires a minimum net density of four units per acre and a maximum net density of six units per acre, with a maximum net density of seven dwelling units per acre allowed through the purchase of transfer of development rights. The proposal is for a subdivision with a net density of six dwelling units per acre in this area. The other portion of the property is designated Single Family Medium Density Residential under the City Comprehensive Plan and is located in the Single-Family Medium Density Residential (SFM) zoning district, which requires a minimum net density of six units per acre and a maximum net density of six units per acre, with a maximum net density of nine dwelling units per acre. This area of the property would have a net density of eight dwelling units per acre. The Applicant would set aside approximately 0.97 acres of the gross site area for open space that would contain both passive and active recreation elements to meet the recreational needs of future residents of the subdivision, exceeding the 10 percent of open space required under the municipal code.

The Applicant's project plans demonstrate that the proposed development would comply with all applicable development standards for the SFL and SFM zones through application of the City's Planned Unit Development (PUD) provisions. The project's compliance with the requirements of the PUD provisions is addressed in Conclusion 3 below. The property is located in the Aquifer Protection overlay zoning district (AQP) and would meet all requirements of the overlay district. Single-family residential development is not a restricted use within the AQP overlay zone district. The proposed development would be compatible with surrounding development, which is characterized by a mixture of newer subdivisions that are in the site development/final plat process stage, older residential uses, small businesses, and undeveloped parcels.

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A critical areas report prepared for the proposed development identified an off-site Category III wetland, which requires a standard 150-foot protective buffer that extends onto the southern portion of the subject property. All proposed development activities would occur outside of the wetland buffer, and the on-site buffer area would be protected within a wetland buffer tract. No other regulated critical areas or associated buffers were identified on or near the property. Following verification of tree retention calculations and requirements by City staff, the Applicant would retain 10 of the 368 trees currently on the property and would plant replacement trees on-site in a quantity to satisfy the City's tree retention and replacement ordinance. The Applicant proposes to manage stormwater on-site by collecting and conveying stormwater runoff from pollution-generating surfaces to a pre-settling cell for water quality treatment before being routed to an on-site infiltration system. The City would review the Applicant's final engineered stormwater drainage design for compliance with the 2018 City of Tumwater Drainage Design and Erosion Control Manual.

Access to the property and to lots within the subdivision would be provided by an extension of 68th Avenue SE, a public road, through the subdivision, which would complete a connection between Henderson Boulevard and Tumwater Boulevard. The Applicant would construct grading and frontage improvements on Henderson Boulevard and at the intersection of Henderson Boulevard and 68th Avenue SE, including the installation of curbs, gutters, sidewalks, landscape strips, bicycle lanes, street lighting, and storm drainage facilities. The public road extensions through the subdivision would include sidewalks on both sides that would connect to sidewalks on Henderson Boulevard and that would be installed as part of the required frontage improvements. Applicant Representative Evan Mann testified at the hearing that the Applicant would ensure that there would be a safe location for a bus stop for school-age children residing within the development to walk to.

The Applicant's TIA determined that the proposed development would generate 424 new average daily trips, with 31 AM peak-hour trips and 42 PM peak-hour trips. The Applicant would be required to pay transportation impact fees to mitigate for the project's impacts to the City's transportation network. The TIA further determined that all studied intersections would continue to operate at an acceptable level of service following a full build-out of the project. The City Transportation Manager reviewed the proposal and determined that, with conditions, the proposal would meet City concurrency requirements. These conditions include requirements that the Applicant pay required transportation impact fees, construct the transportation improvements described above, and either construct a roundabout at the northbound Interstate 5 On/Off Ramp and Tumwater Boulevard intersection or pay a mitigation fee to help fund the City's planned transportation improvements to the intersection. Two paved off-street parking spaces would be provided for each lot within the subdivision. There are adequate utilities to

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serve the proposed development. The City would provide water and sanitary sewer service to the development.

Conditions, as detailed below, are necessary to ensure that the project satisfies all local and state requirements for preliminary plat approval. *Findings 1, 5 – 22.*

2. **With conditions, the proposed subdivision would be consistent with development regulations, considering land use type, development level, infrastructure, and development characteristics, such as development standards, as required by Chapter 58.17 RCW and Title 17 TMC.** The City provided reasonable notice and opportunity to comment on the proposal. The City received several comments on the proposal from members of the public in response to its notice materials, who generally raised concerns about tree removal and the proposal's traffic impacts, stormwater impacts, wetland impacts, and impacts to wildlife habitat. As discussed above in Conclusion 1, the proposal would comply with the City's tree protection and replacement ordinance. The proposal also includes required street frontage improvements that would improve the existing condition of Henderson Boulevard and the intersection with 68th Avenue SE, and, as conditioned, the proposed development would meet City concurrency requirements. Stormwater impacts of the proposed development would be addressed by the City through its review of the Applicant's final engineered stormwater drainage design for compliance with the 2018 City of Tumwater Drainage Design and Erosion Control Manual. The project would comply with the City's critical areas ordinance by restricting development to outside of the on-site buffer associated with an offsite Category III wetland to the south and by protecting the on-site buffer area within a dedicated wetland buffer tract. The geographic area of the property is known to be occupied by Mazama pocket gophers, but a Mazama Pocket Gopher Screening Report conducted for the proposal determined that the site does not contain any mounds characteristic of those created by the Mazama pocket gopher and that the subject property and vicinity contains only a marginal potential for Mazama pocket gopher habitat.

The City also received an agency comment from the Squaxin Island Tribe, which requested that a cultural resources survey be completed for the project. A cultural resources survey was later completed for the project, which did not identify evidence of cultural or archaeological resources being located on the property. As a condition of preliminary plat approval, the Applicant would be required to immediately halt construction activity and notify appropriate agencies if archeological artifacts are encountered during construction.

Environmental impacts of the proposed development were considered, as required by SEPA, and the City issued an MDNS on May 13, 2022, which was not appealed. With approval of the requested planned unit development addressed in Conclusion 3 below, the preliminary plat would provide residential development consistent with all applicable

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development regulations. City staff determined that, with conditions, the proposal would be consistent with all applicable local and state requirements, including the applicable Comprehensive Plan, municipal code, and development standards, and that the public interest would be served by the platting of the subdivision. The Hearing Examiner concurs with this assessment. Conditions, as detailed below, are necessary to ensure that the proposal meets all criteria required for plat approval. *Findings 1 – 22.*

Planned Unit Development

3. **With conditions, the proposal would be consistent with the requirements for a planned unit development under TMC 18.36.050.** Under TMC 18.36.010, the purpose of using a PUD overlay is to (1) encourage flexibility in design and development that would result in a more efficient and desirable use of land; (2) permit flexibility of design, placement of buildings, use of required open spaces, circulation facilities, and off-street parking areas, and otherwise better utilize the potential of sites characterized by special features, such as geography, topography, size or shape; (3) provide for maximum efficiency in layout of streets, utility networks, and other public improvements; (4) produce an integrated or balanced development of mutually supportive uses that might otherwise be inharmonious or incongruous; and (5) provide a guide for developers and City officials who review and approve developments.

Approval of the PUD would provide relief from the minimum lot width requirements of the SFL and SFM zones. In addition, approval of the PUD would allow the development to waive setback requirements applicable to the SFL zone, apart from required setbacks from the perimeter boundary lines of the site. Providing relief from the minimum lot width requirement would allow for a sensible lot layout while protecting on-site critical areas and providing passive and active open space areas satisfying code requirements. The PUD overlay would be adequate in size to accommodate the contemplated development and, as discussed above in Conclusions 1 and 2, the proposal, with conditions, would be consistent with all applicable local and state requirements, including the applicable Comprehensive Plan, municipal code, and development standards, and would be harmonious with surrounding development. The public interest would be served by the platting of the subdivision and planned unit development. As discussed in the above conclusions, and as detailed below, conditions are necessary to ensure that the proposal meets all criteria required for plat approval and approval of a planned unit development. *Findings 1, 5 – 22.*

DECISION

Based on the preceding findings and conclusions, the request for a preliminary plat and planned unit development, to subdivide a 9.68-acre parcel into 45 lots for single-family residential

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development, with associated appurtenances and improvements, at 6609 and 6715 Henderson Boulevard, is **APPROVED**, with the following conditions:³

1. Stormwater from impervious surfaces associated with the project shall be managed in accordance with the City of Tumwater 2018 Storm Drainage Manual.
2. Erosion and sediment control measures that comply with the City of Tumwater 2018 Storm Drainage Manual shall be implemented during construction of the project to prevent sediment-laden runoff from entering surface waters.
3. A Site Development/Grading Permit shall be obtained from the City for grading, street, sidewalk and utility construction, tree removal, and construction of storm drainage facilities.
4. Should contaminated soils be encountered during construction, all of the following shall apply:
 - A. Construction activity shall be immediately suspended;
 - B. The contractor shall immediately notify the Washington State Department of Ecology;
 - C. Contaminated materials shall be properly handled, characterized, and disposed of consistent with applicable regulations.
5. Should archeological artifacts be encountered during construction, all of the following shall apply:
 - A. Construction activity shall be immediately suspended;
 - B. The contractor shall immediately notify the City of Tumwater Community Development Department; and
 - C. The contractor shall immediately notify the Washington State Department of Archeology and Historic Preservation; and
 - D. The contractor shall immediately notify potentially affected tribal nations including, but not limited to, the Squaxin Island Tribe, Chehalis Tribe, and Nisqually Tribe.
6. Fill for the project shall be clean material, void of solid waste or organic debris.
7. Disposal of construction debris and overburden associated with construction and grading activity that is not suitable for fill is required to be disposed of at an approved location.

³ Conditions include legal requirements applicable to all developments as well as requirements designed to mitigate specific impacts of the proposal.

8. The Applicant shall secure a National Pollutant Discharge Elimination System (NPDES) Construction Storm Water General Permit from the Washington State Department of Ecology.
9. Street frontage improvements including curb and gutter, sidewalk, landscape strip, bike lane, street illumination, and storm drainage facilities complying with the design requirements of the Tumwater Development Guide shall be constructed along the property frontage on Henderson Boulevard. Adequate right-of-way shall be dedicated to contain the improvements.
10. The 68th Avenue SE improvements shown on the site plan shall be shown on the site development grading plan submittal and constructed prior to final plat approval.
11. Full lane overlays are required after patching. Additional improvements might be required on the opposing frontage, such as widening, realigning the crown to centerline of right-of-way or feathering to meet City of Tumwater standards. All accesses will meet City standards.
12. The City's water and sewer utilities shall be extended to serve the needs of the subdivision. The utility extensions shall be in accordance with the Tumwater Development Guide requirements in place at the time the preliminary plat application was vested. All necessary right-of-way and/or easement will need to be dedicated.
13. A 16-inch water main is required in Henderson Boulevard.
14. The project must meet minimum fire flow requirements. If the required fire flow cannot be achieved, residential fire sprinklers shall be required in the dwelling units.
15. A separate permit and engineered design are required for any retaining walls on-site if the height of the wall is over 4 feet measured from the bottom of the footing or if the wall is supporting a surcharge.
16. A final geotechnical engineering report shall be submitted for the grading and site work. The report shall include conclusions and recommendations for grading procedures, soil design criteria for structures or embankments required to accomplish the proposed grading and recommendations and conclusions regarding the site geology.
 - A. All grading and filling work shall be conducted in accordance with the approved geotechnical report. Compaction testing of the soils under the building foundations and utility trenches shall be verified by the geotechnical engineer of record and the Washington Association of Building Officials (WABO) registered special inspection agency and inspectors.

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17. Fire hydrants shall be provided at all intersections and at approximately 600-foot spacing along the internal streets.
18. Demolition permits are required to be issued by the City prior to removal of existing structures on the property. A separate permit is required for each structure.
19. A demolition permit is required to be issued by the Olympic Region Clean Air Agency for each structure proposed to be removed from the property. Olympic Region Clean Air Agency (ORCAA) regulations require an asbestos survey for all demolition projects. Prior to any demolition project, the following must be completed:
 - A. A good faith asbestos survey must be conducted on the structure by a certified Asbestos Hazardous Emergency Response Act (AHERA) building inspector;
 - B. If asbestos is found during the survey, an Asbestos Removal Notification must be completed, and all asbestos-containing material must be properly removed prior to the demolition; and
 - C. If the structure is larger than 120 square feet, a Demolition Notification must be submitted regardless of the results of the asbestos survey.
20. All water wells on the site shall be abandoned in accordance with Washington State Department of Ecology requirements. A permit from the Department of Ecology shall be obtained for each well to be abandoned.
21. All septic systems on the property shall be abandoned in accordance with Thurston County Environmental Health requirements. A permit shall be obtained from Thurston County Environmental Health for each separate system that will be abandoned.
22. The project proponent shall be responsible for providing the City with all costs associated with the installation of water, sewer, street, and storm drainage systems that are dedicated to the City of Tumwater
23. All engineering designs and construction will need to be in accordance with the City of Tumwater's Development Guide and WSDOT standards
24. All street construction, utility installation, and storm drainage work require engineered plans certified by a professional engineer licensed to practice in the State of Washington. The plans shall be submitted for review and approval by the City.
25. Any public or private utility relocation necessary to construct the project is the sole responsibility of the project proponent.
26. The Applicant is required to submit a performance surety and surety agreement prior to release of the Site Development/Grading Permit to ensure successful completion of the

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required public improvements. The amount of the surety shall be 150 percent of the proponent engineer's estimate of completing the required public improvements.

27. The Applicant shall be responsible for the maintenance and timely repair of all public improvements for a period of 30 months following final certification by the City and shall submit a surety and surety agreement for maintenance equal in value to fifteen (15) percent of the total value of the required public improvements certified by the Public Works Director.
28. Maintenance of the on-site storm water system will be the responsibility of the project proponent, their successors, or assigns. A stormwater maintenance agreement will be recorded against the property prior to or concurrent with final plat approval.
29. Back flow prevention is required on all irrigation services in accordance with the AWWA Cross Connection Control Manual.
30. A landscape and irrigation plan must be submitted with Site Development and Grading Permit application for the proposed street planter strips, proposed open space tracts, and the storm water facilities showing proposed plantings, tree types and heights, and other vegetation. Street trees are required to be installed along Henderson Boulevard and the proposed interior public streets in accordance with the Tumwater Development Guide and Comprehensive Street Tree Plan.
31. Each residential lot shall have a building site no less than 3,200 square feet in area within which a suitable building can be built and served by utilities and vehicular access unless dedicated or restricted by covenant for open space, park, recreation, or other public use.
32. The maximum lot-coverage for impervious surface shall be 75 percent of the total area of the lot, consistent with the increased maximum lot coverage allowed with a PUD under the municipal code.
33. Two off-street parking spaces are required for each lot. Driveways shall be a minimum of 18 feet in length.
34. Residences must provide pathway from building entry to sidewalk separate from the driveway, provide weather protection at entries, and at least 8 percent of front facade shall include transparent windows or doors.
35. Where lots abut an alley, the garage must take access from the alley.
36. Garages must be set back from the public street at least 5 feet further than the enclosed portion of the house, and garage doors shall occupy no more than 50 percent of the ground-level façade facing the street.

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37. Impact fees for traffic, community parks, and schools will be assessed to each dwelling unit in the subdivision as building permits are issued. The impact fees will be in accordance with the most current fee resolution adopted by the City at the time of vesting of the building permit applications. Credit shall be given for the existing residential uses on the site.
38. An integrated pest management plan approved by the Thurston County Environmental Health must be submitted prior to final plat approval.
39. All legal descriptions on documents submitted to the City must be accompanied with an appropriate drawing that the City can use to verify the legal description.
40. The Professional Land Surveyor responsible for the surveying of the project must obtain a permit from Department of Natural Resources before any existing survey monuments are disturbed.
41. The Applicant must provide and maintain a current Plat Name Reservation Certificate approved by the Thurston County Auditor.
42. Property taxes must be paid in full for the current year, including any advance and delinquent taxes, before a Final Plat can be recorded.
43. The Applicant shall comply with the City's Tree Protection and Replacement Standards, following review and reassessment by City staff of the materials provided by the Applicant related to this issue. Replacement trees must be planted in proposed tree protection open spaces, prior to other placement on site. The size of the tree protection open space area(s) associated with the project is required to be a minimum of 5 percent of the buildable area of the site.
44. The following condition will be required to be noted on the Final Plat:
 - A. All landscaped areas in public rights-of-way shall be maintained by the owner and his/her successor(s) and may be reduced or eliminated if deemed necessary for or detrimental to City road purposes.
45. A Homeowners Association is required. Prior to final plat approval, the project proponent shall supply the City with copies of the grantee organization's articles of incorporation and bylaws, and with evidence of a binding commitment to convey. The articles of incorporation shall provide that membership in the organization shall be appurtenant to ownership of land in the land division; that the corporation is empowered to assess such land for costs of construction and maintenance of the improvements and

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property owned by the corporation, and that such assessments shall be in lien upon the land.

46. The Applicant shall comply with the mitigation measures contained in the SEPA Mitigated Determination of Nonsignificance, issued on May 13, 2022.

DECIDED this 15th day of July 2022.



ANDREW M. REEVES
Hearing Examiner
Sound Law Center

HEARING EXAMINER POST-DECISION PROCEDURES

The following sections of the Tumwater Municipal Code outline procedures for requesting reconsideration of a decision by the Tumwater Hearing Examiner and appealing a decision made by the Tumwater Hearing Examiner.

TMC 2.58.135 Reconsideration.

Upon the written request of a party of record filed with the city clerk within five working days of the hearing examiner's written decision, such decision may be reconsidered at the discretion of the hearing examiner. The request for reconsideration must state the grounds upon which the request is made. In the event reconsideration is granted, the hearing examiner shall have an additional 10 working days to render a written final decision.

TMC 2.58.150 Appeal from examiner's decision.

- A. In cases where the examiner's jurisdictional authority is to render a decision, the decision of the examiner shall be final and conclusive unless appealed to superior court within the applicable appeal period as set forth in TMC 2.58.180.
- B. In cases where the hearing examiner decision is appealable to the city council, the decision of the examiner shall be final and conclusive unless appealed within the applicable appeal period as set forth in this section.
- C. Appeals to the city council must be filed with the city clerk by the applicant or other party of record, a department of the city, county or other agency within 14 calendar days following rendering of such decision. Persons not in attendance at the hearing but who submit written information prior to the hearing which becomes a part of the record of the hearing shall also have appeal rights. Such appeal shall be in writing, shall contain all grounds on which error is assigned to the examiner's decision and shall be accompanied by a fee as established by resolution of the city council; provided, that such appeal fee shall not be charged to a department of the city or to other than the first appellant.
- D. In the event an apparent prevailing party files an appeal to preserve appeal rights and no opposing appeals are filed, said party may, by giving written notice thereof to the city clerk, abandon their appeal and in such event shall be refunded their filing fee.
- E. The timely filing of an appeal shall stay the effective date of the examiner's decision until such time as the appeal is adjudicated by the city council or is withdrawn.
- F. Within five days after the final day upon which an appeal may be filed, notice thereof and of the date, time and place for city council consideration shall be mailed to the applicant, all other parties of record and anyone who submitted written information prior to the hearing. Such notice shall additionally indicate the deadline for submittal of written arguments as prescribed in TMC 2.58.160.

TMC 2.58.180 Judicial appeals.

Final decisions (after exhausting administrative remedies) may be appealed by a party of record with standing to file a land use petition in the Thurston County superior court, except shoreline permit actions which may be appealed to the shoreline hearings board. Such petition must be filed within 21 days of issuance of the decision as provided in Chapter 36.70C RCW.

Updated: June 10, 2013

TUMWATER CITY COUNCIL, REGULAR MEETING
TUMWATER CITY HALL, 555 ISRAEL RD. S.W.
July 7, 1992

APPROVED

CONVENE:

7:00 P.M.

PRESENT:

Mayor Peter N. Fluetsch, Councilmembers Greg Gurske, Ralph Osgood, Sharon Carrier, Peter Kmet, Jean Muller, Chris Leicht, and Suzanne Cofer. Also present were City Administrator Leonard Smith, Finance Director Gayla L. Gjertsen, Community and Economic Development Director Doug Baker, Public Works Director Greg Wilder, City Engineer John Norman, Assistant City Engineer Jay Eaton, Development Services Manager John Hubbard, Associate Planner Michael Matlock, Fire Chief Rich Ridgeway, Engineer II Doug Johnston, and Facilities Manager Phil Trask.

PUBLIC COMMENT:

Mr. Jerry Morrisette addressed the Council and requested to be placed on the agenda at a future meeting in order to address the Council regarding the criteria for the consultant selection process.

Motion:

Councilmember Osgood moved, seconded by Councilmember Gurske, to place this issue on a future agenda. Motion carried.

MAYORAL PROCLAMATION:

Mayor Fluetsch proclaimed the month of July, 1992 as STARS Recognition and Appreciation Month in the City of Tumwater.

INTRODUCTION OF NEW EMPLOYEE:

Fire Chief Ridgeway introduced Jim McGarva, new Fire Prevention Lieutenant for the City of Tumwater.

VCB PRESENTATION:

Ms. Kathy Kasnoff, Executive Director for the VCB, updated the Council on the upcoming Christopher Columbus Rediscover America Ballooning Quest to be held September 4-6, 1992.

Motion:

Councilmember Kmet moved, seconded by Councilmember Osgood, to refer the issue of sponsoring a balloon for the City of Tumwater to the Budget Committee for consideration. Motion carried.

CONSENT CALENDAR:

- a) Approval of Minutes: Special meeting of May 18, 1992
Regular meeting of June 16, 1992
- b) Approval of Warrants
- c) Bid Acceptance: Aerial Manlift
- d) Resolution No. 462, Pipeline Crossing Agreement; Authority to Solicit Bids for Roadways and Utilities - Pioneer Park

Councilmember Cofer requested Item d be removed for discussion.

Motion:

Councilmember Muller moved, seconded by Councilmember Kmet to approve the Consent Calendar as amended. Motion carried.

**TUMWATER CITY COUNCIL, REGULAR MEETING
TUMWATER CITY HALL, 555 ISRAEL RD. S.W.**

July 7, 1992

**ITEM D - RESOLUTION
NO 462, PIPELINE CROSSING
AGREEMENT; AUTHORITY
TO SOLICIT BIDS FOR
ROADWAYS & UTILITIES
FOR PIONEER PARK:**

Councilmember Cofer inquired what the anticipated cost for this project is for this particular item. Engineer Norman responded that staff does not have the final Engineer's estimates at this time. They are asking for the authority to solicit bids in order to fast track this item.

Director Wilder stated there is a total budget amount for the project of \$975,000. Councilmember Cofer inquired if that amount would be spent this year. Director Wilder stated staff expects to spend all but 20% of it this year. That dollar amount is for the entire Phase I of the park.

Councilmember Cofer stated she wanted to bring an idea before the Council for consideration. She felt that perhaps this is not the time to move on this request to solicit bids. Perhaps the Council should have an opportunity to decide whether the currently allocated dollars for Phase I of Pioneer Park should be reallocated. The City has a shortfall in terms of funding the fire station - perhaps some of these monies could be diverted to help pay for costs of the fire station. This would not halt the development of the park - just slow it down. She stated she felt it is important to realize this is a priority in the Capital Facilities Plan. Perhaps this particular solicitation for bids should be postponed until after the Council has had an opportunity to discuss priorities at the work sessions on the CFP in August.

Councilmember Leicht stated that the IAC grant the City received for \$300,000 was based on that fact that it had to be a match of at least \$300,000. Because of the willingness of the City to pay for \$675,000, hoping to get a grant of \$300,000, it was looked on favorably by IAC and the City received the grant. The awarding of the grant was predicated on a contribution of the city of \$675,000. Councilmember Leicht stated that at the Council retreat, staff was directed to come up with a funding mechanism. He stated he would like to let staff take care of this as the Council directed them.

Councilmember Kmet inquired if the plans and specs have actually been prepared. Administrator Smith responded that there was an approved Master Plan adopted by the City Council.

Engineer Norman stated staff will be 90% complete with plans and specs by the end of this week. They are being prepared as directed by Council.

Councilmember Kmet stated he felt Phase I should proceed, but as the Council looks at the CFP, future phases of the park should be weighed against the fire station.

**TUMWATER CITY COUNCIL, REGULAR MEETING
TUMWATER CITY HALL, 555 ISRAEL RD. S.W.
July 7, 1992**

**ITEM D, RESOLUTION
NO. 462, PIPELINE CROSSING
AGREEMENT; AUTHORITY
TO SOLICIT BIDS FOR
ROADWAYS AND UTILITIES
FOR PIONEER PARK (Con't):**

Councilmember Muller stated that the General Government Committee had discussions which included citizen comments about the design. These were sent to the IAC. The issue came back to the General Government Committee. In the discussions that took place, the citizens had some specific questions and concerns which the Committee felt could be dealt with and incorporated at a later date. Councilmember Muller expressed concern to see that those questions and concerns are followed through and pursued with the citizens who voiced them.

Councilmember Carrier stated that Phase I of the park was reviewed in depth last year when preparing the CFP. There was extensive public input at that time. She stated she felt this project should not be held hostage for another project.

Motion:

Councilmember Carrier moved, seconded by Councilmember Leicht, to approve Resolution No. 462.

Councilmember Cofer stated that it is the Council's prerogative to pause and reflect on the fact that there is a need for funding for the fire station and where that money will come from. The City could risk losing some of the volunteer firefighters if the new station is delayed. She stated that perhaps Council needs to consider other funding alternatives to successfully accomplish both of these projects.

Councilmember Muller stated her concern about taking the money awarded by grant for the park and using it for the fire station - it would, in effect, be breaking a contract the City has entered into.

Motion:

Councilmember Carrier amended her motion to include authority to go to bid. The second concurred.

Councilmember Cofer asked for a roll call vote.

Councilmember Gurske called for the question. A roll call vote was taken. The motion carried with Councilmembers Gurske, Osgood, Carrier, Kmet, Muller, and Leicht voting yes. Councilmember Cofer voted no.

**PUBLIC HEARING:
RESOLUTION NO. 459,
SIX YEAR TRANSPORTATION
IMPROVEMENT PROGRAM:**

Assistant Engineer Eaton stated that the City of Tumwater is required by law to update the Six-Year Transportation Improvement Program (TIP) each year. The program is to detail the needs for street construction projects for the next six years. The program is used by the Transportation Improvement Board to arrange their program and also to prioritize lists of

**TUMWATER CITY COUNCIL, REGULAR MEETING
TUMWATER CITY HALL, 555 ISRAEL RD. S.W.
July 7, 1992**

**PUBLIC HEARING:
RESOLUTION NO. 459,
SIX YEAR TRANSPORTATION
IMPROVEMENT PROGRAM
(Con't):**

projects to be selected for Urban Arterial Trust Account and Transportation Improvement Account grant funds. The Thurston Regional Planning Council also uses it as a planning tool. Any project on which the City applies for funding from state or federal grants must be listed on the TIP. State law requires that the TIP be adopted following a public hearing process.

Mayor Fluetsch opened the public hearing at 7:52 p.m. There was no public testimony. Mayor Fluetsch closed the public hearing at 7:53 p.m.

Motion:

Councilmember Osgood moved, seconded by Councilmember Gurske, to approve Resolution No. 459. Motion carried.

**PUBLIC HEARING:
RESOLUTION NO. 461,
RATIFYING THE THURSTON
COUNTY COUNTY-WIDE
PLANNING POLICIES:**

Director Baker stated Resolution 461 would adopt the draft County-Wide Planning Policies. These policies have been under review since August, 1991, by the Thurston County-Wide Policy Coordinating Committee. This is a requirement of the Growth Management Act that these county-wide policies be put in place to guide our future comprehensive planning and zoning in the individual jurisdictions. The policies address ten topic areas: urban growth, urban services, joint planning, siting county and state wide capital facilities, fiscal impact analysis, economic development, affordable housing, transportation, environmental quality, and population projects and urban growth. The Coordinating Committee will be meeting again on August 19.

Director Baker stated that when the Committee meets again, they will review the proposed changes brought forth by the individual jurisdictions and whether or not to approve them. The Planning Commission held its public hearing last week. There were no public comments at that hearing and the Commission recommended that the Council approve the Resolution.

Mayor Fluetsch inquired what would happen if the Council approves the Resolution at this meeting and then there are additional changes - will the Council have an opportunity to review the impact of those changes?

Director Baker responded that at the August 10 meeting, the representatives would have the ability to go ahead and approve the planning policies with changes. But, if they felt the changes were significant, they could come back to the individual jurisdictions and have a new Resolution of adoption. The memorandum on how these policies are to be adopted does not cover what has happened at the County Commissioner level.

Mayor Fluetsch opened the public hearing at 8:00 p.m.

**TUMWATER CITY COUNCIL, REGULAR MEETING
TUMWATER CITY HALL, 555 ISRAEL RD. S.W.
July 7, 1992**

**PUBLIC HEARING:
RESOLUTION NO. 461,
RATIFYING THE THURSTON
COUNTY COUNTY-WIDE
PLANNING POLICIES
(Con't):**

Mr. Paul Telford addressed the Council and inquired about the Vision Statement. Director Baker responded that the Vision Statement for Thurston County has not been drafted as of this date. It is anticipated that will not be available for review for a number of weeks.

Mayor Fluetsch stated that eight of the ten items addressed in these policies were mandated by the Urban Growth Management legislation. Mr. Telford inquired if there would be a public hearing on the Vision Statement. Mayor Fluetsch responded that there would probably not be any public hearings - it will basically be a summary of the ten points.

Mayor Fluetsch closed the public hearing at 8:05 p.m.

Councilmember Kmet stated that there is no definite statement about providing for adequate parks and open space in the Environmental Quality section. He inquired if that was intentional. Director Baker responded that there were specific items that the Growth Management Act wanted to have addressed in these policies. Environmental quality was not an item required by state law. This was an additional item that was added by the committee. The Growth Management Act requires that we deal with the open space plans. One of the proposed amendments by the County Commissioners highlights open spaces as an item to be added.

Councilmember Kmet stated he would like to see a direct statement regarding open spaces.

Councilmember Muller stated that the Comprehensive Plan will have an element entitled Parks and Recreation.

Councilmember Kmet proposed the addition of a statement (numbered 9.8) to provide for adequate open space in parks to address community recreational needs, educational opportunities, and other purposes.

Motion:

Councilmember Osgood moved, seconded by Councilmember Cofer, to refer this issue to the General Government Committee for further review.

Councilmember Cofer spoke in support of the motion. She stated she felt the document needs to be more specific - it is too general. She felt the committee should strengthen some of the language. Councilmember Cofer recommended the committee read Bill Daley's memo of May 20, 1992, referring to this document.

Councilmember Muller asked for clarification from the Council as to direction for the General Government Committee.

**TUMWATER CITY COUNCIL, REGULAR MEETING
TUMWATER CITY HALL, 555 ISRAEL RD. S.W.
July 7, 1992**

**PUBLIC HEARING:
RESOLUTION NO. 461,
RATIFYING THE THURSTON
COUNTY COUNTY-WIDE
PLANNING POLICIES
(Con't):**

Councilmember Osgood asked for clarification from Councilmember Cofer regarding her statements. Councilmember Cofer responded that if it is the intent of this Council that they would like to see some of the language strengthened pertaining to growth and they would like to address the concerns that Councilmember Kmet raised - the Committee should look at the written testimony that was submitted pertaining to growth. She stated she did not feel an adequate job has been done.

Motion:

Councilmember Gurske called for the question. Motion carried.

Councilmember Kmet asked for copies of the referenced information for the General Government Committee packet.

Councilmember Carrier stated she felt the General Government Committee should not be reviewing all the work that was done. She felt they should review comments made by the County Commissioners and also review Councilmember Kmet's suggestions from this meeting.

Councilmember Osgood stated that the intent of his motion was to give the General Government Committee time to review and also consider any recommended changes - not to look at every aspect of the document.

**PUBLIC HEARING:
ORDINANCE NO. 1328,
ADOPTING THE TUMWATER
DEVELOPMENT GUIDELINES
MANUAL:**

Associate Planner Matlock stated that Ordinance No. 1328 would adopt the draft Development Guidelines Manual. There will be annual reviews of this document. The document is based on Lacey's standards - which have been revised to meet Tumwater's needs. Associate Planner Matlock reviewed the Chapter headings and what each contains.

Mayor Fluetsch opened the public hearing at 8:33 p.m.

Ms. Nancy Stevenson, Tumwater Hill Neighborhood Assoc., addressed the Council and commended them for producing the guide. She stated she was pleased to see the changes that have been made, such as sidewalks on both sides of the street and the addition of street trees. **She inquired how the guide addresses underground wiring, landscaping, and bike paths.** Associate Planner Matlock responded that bike paths are not addressed in the document. They will be a part of the Parks and Open Space Plan and the Transportation Plan. Landscaping will probably not reside in the Development Standards at all. Commercial landscaping will be addressed in a separate ordinance. **Engineer II Johnston stated that the undergrounding of utility lines is addressed in the subdivision ordinance. It is required in connection with a long plat.**

**TUMWATER CITY COUNCIL, REGULAR MEETING
TUMWATER CITY HALL, 555 ISRAEL RD. S.W.
July 7, 1992**

**PUBLIC HEARING:
ORDINANCE NO. 1328,
ADOPTING THE TUMWATER
DEVELOPMENT GUIDELINES
MANUAL (Con't):**

Councilmember Kmet stated that in Section 17.12.200 of the Tumwater Municipal Code it states.. "electrical power, telephone, cable television, fiberoptics and other transmission lines shall be installed underground."

Ms. Stevensen encouraged the Council to include bike paths and landscaping, in addition to what is included in the guide presently.

Mayor Fluetsch closed the public hearing at 8:38 p.m.

Motion:

Councilmember Osgood moved, seconded by Councilmember Carrier to refer this issue back to the Public Works Committee for futher review. Motion carried.

**PUBLIC HEARING:
ORDINANCE NO. 1332,
VESTING OF DEVELOPMENT
RIGHTS:**

Director Baker stated that this ordinance specifies when a development will vest its development rights. The state law RCW 19.27.095 requires all local governments to have an ordinance that clearly specifies when a complete building permit is obtained so that vesting of development rights is clearly defined at that point. Staff has drafted this ordinance to reflect the state law. Ordinances from other jurisdictions were also reviewed by staff as examples to follow. The Planning Commission held a public hearing last week on this issue. They recommend approval of the ordinance. Director Baker stated that Lacey, Olympia, and Thurston County do not have ordinances in place that comply with the state law.

Mayor Fluetsch opened the public hearing at 8:41 p.m.

Ms. Nancy Stevenson, Tumwater Hill Neighborhood Assoc., addressed the Council and inquired how this will impact a project in progress, such as Jackson's development. Will this ordinance make a change for them? Director Baker responded that it would not because the issue of vesting and the state law have been items of definition over the last 30 to 40 years in a number of court cases. The ordinance simply sets forth in detail what applicants need to do to get complete building permit applications.

Mayor Fluetsch closed the public hearing at 8:43 p.m.

Motion:

Councilmember Gurske moved, seconded by Councilmember Muller, to approve Ordinance No. 1332.

Councilmember Cofer referred to letter H on page 2 of the ordinance and inquired if a building permit would not be considered complete until all of the necessary permits are in.

Director Baker responded that the applicant would have to fill out the application forms, but the Supreme Court, in a case decided against the City of Bellevue in 1987, held it unconstitutional that a city withhold

TUMWATER CITY COUNCIL, REGULAR MEETING**TUMWATER CITY HALL, 555 ISRAEL RD. S.W.****July 7, 1992****PUBLIC HEARING:
ORDINANCE NO. 1332,
VESTING OF DEVELOPMENT
RIGHTS (Con't):**

vesting until after a specific permit is approved. What Bellevue was attempting to do with their ordinance was to say to an applicant - if you need a Conditional Use permit, that permit must be approved before you can actually vest your project. The Supreme Court overturned that ordinance, saying that was unreasonable. The applicant can be required to submit the permit application form and pay the fee - at that point they would be vested - they do not have to wait for approval of all necessary permits.

Motion:

The question was called for. Motion carried.

**HISTORICAL COMMISSION/
SESQUICENTENNIAL
CELEBRATION UPDATE:**

Director Baker stated that one of the items authorized by the Council for the Commission to review is the 150 year celebration of Tumwater. That celebration will occur in 1995. The Commission is considering holding a public hearing in September or October to get public input. Items which they would like to explore include: a historical interpretive center and a request for Pabst Brewing Co. to produce an Olympia Beer product to celebrate the 150 year celebration for Tumwater.

Councilmember Muller inquired about the process the Commission would follow with the public input received. Director Baker stated they would prepare a plan on how to proceed and that plan would be presented to the Council for review and approval.

Councilmember Cofer inquired if money has been set aside in the operational budget for this event. Administrator Smith responded that the celebration will be held in 1995 so information regarding funding would appear in the budget for 1995.

**MUNICIPAL PUBLIC HEALTH
SERVICE AGREEMENTS:
JOINT ANALYSIS:**

Administrator Smith stated the City has been involved in protracted negotiations, now moving to arbitration, with Thurston County - in conjunction with the cities of Olympia and Lacey - on health services. The decision was made, early on, to allow the larger jurisdictions to take the lead in preparing both negotiating materials and defense for the City in terms of arbitration. The City Attorneys for Lacey and Olympia have served as lead counsel in order to avoid duplication of effort and excess cost. They have requested access to two consulting groups - one being the Georgette Group which would help them analyze the types of required health services that are mandated by the state which cities are to help fund and, secondly, the accounting firm of Ernst & Young to help analyze the County's cost numbers related to County proposals on the cities' share of those costs. We have agreed with Olympia and Lacey that the respective share of the cost of the arbitrating proceedings would be on the basis of population, making Tumwater's share approximately 16% of those overall costs. In these two contracts, our total costs should be approximately

**TUMWATER CITY COUNCIL, REGULAR MEETING
TUMWATER CITY HALL, 555 ISRAEL RD. S.W.
July 7, 1992**

**MUNICIPAL PUBLIC HEALTH SERVICE AGREEMENTS:
JOINT ANALYSIS (Con't):** \$9,000. Staff recommends that the Council approve the interlocal agreement and the letter of agreement for the public health services analysis and authorize the Mayor to sign.

Councilmember Cofer stated she has concerns and questions about the entire issue and inquired if it would be possible to postpone a decision on this item until the Council could discuss the issues surrounding the matter. Perhaps that should be done in Executive Session.

Administrator Smith stated that if the Council is to consult on legal matters regarding this issue, an attorney should be present to meet the Executive Session requirements. The City Attorney is on vacation, however, he is not the attorney representing the City on this matter. This is a matter of some urgency because the information is needed to prepare an adequate defense. Administrator Smith stated the central issue is whether to proceed collectively with the cities of Olympia and Lacey or to consider a more independent course. If the Council wishes to consider a different path, staff would have to explore the possibilities.

Motion:

Councilmember Carrier moved, seconded by Councilmember Gurske, to approve the interlocal agreement and letter of agreement for public health services analyses and authorize the Mayor to sign.

Councilmember Kmet stated he is concerned with Phase II of this study - the tasks that refer to setting up a multi-city agency in lieu of or parallel to a county-wide public health agency. Administrator Smith responded that the legal staff believed that as part of the arbitration proceedings it may important to discuss what the cities' cost might be if the services were provided in some other manner. Our legal counsel believes that to have information regarding that cost is helpful to them in stating the cities' position. This is not an effort or a decision to set up a different health agency.

Motion:

Councilmember Muller called for the question. Motion carried.

**GENERAL GOVERNMENT
COMMITTEE:**

**LIVING HISTORY MUSEUM,
PUD AUTHORIZATION,
CLARIFICATION OF INTENT:**

Councilmember Muller reported that David Shade, Project Coordinator for Living History Museum project, provided a general timetable and goals of the Newmarket Living History Museum. The Association is ready to file the application for a Certificate of Appropriateness. With approval to proceed from the City, the Association can prepare the site, move the log cabin to the site, and begin business operations. The Committee discussed their concerns regarding the siting of the project as it might conflict with

**TUMWATER CITY COUNCIL, REGULAR MEETING
TUMWATER CITY HALL, 555 ISRAEL RD. S.W.
July 7, 1992**

**LIVING HISTORY MUSEUM,
PUD AUTHORIZATION,
CLARIFICATION OF INTENT
(Con't):**

the master plan for the district and questions regarding financial capabilities, timelines, and how farm animals in the area will affect the water quality of the river and wetlands. The Committee asked that the Association wait a few more weeks until the Council decides about the funding of the Historical District Master Plan.

Councilmember Muller reported that the Committee directed staff to identify dates for staff to meet with the Association to discuss the Council's decision regarding the Master Plan; how to proceed with and a possible timeline for the Living History Museum; and the process to follow if the Museum site has to be moved. The Committee asked the Historical Association to wait to file their application for a Certificat of Appropriateness until Council makes a decision.

**ORDINANCE NO. 1335,
RELATING TO STRUCTURES
ALLOWED IN YARD
SETBACK AREAS:**

Councilmember Muller reported that this ordinance clarifies several provisions concerning required setbacks in all zone districts. It relates to allowed in setback areas, amending Section 18.04.540 of the TMC. Councilmember Muller outlined the specific changes that were recommended by the Committee.

Motion:

Councilmember Muller moved, seconded by Councilmember Gurske, to refer Ordinance No. 1335 to the Planning Commission for review at their next meeting.

Councilmember Cofer referred to Section 18.04.540 of the TMC. She stated she agreed with the change, but they should also be made consistent throughout the Code. For example, 18.04.310 - open spaces needs to be changed to open areas. She suggested the Planning Commission review that part of the Code also for consistency. 18.05.540 is a definition and all of the new language that has been added is a lot of detail. Perhaps, it belongs in provisions dealing with open space and setbacks instead of the definition.

Councilmember Leicht referred to Section 18.04.540, Item A-2 - spas/hot tubs thirty (30) inches in height - thought it should be depth not height. Also, it should be clarified which items the 30 inches in height refers to.

Motion:

The question was called for. Motion carried.

**PUBLIC WORKS
COMMITTEE:**

**APPEAL OF STAFF DENIAL
OF PRIVATE WELL
REQUEST:**

Councilmember Carrier reported that some time ago, representatives of the First Church of the Nazarene began discussions with City staff regarding their plan to drill a private well to be used for irrigation of their plan

**TUMWATER CITY COUNCIL, REGULAR MEETING
TUMWATER CITY HALL, 555 ISRAEL RD. S.W.
July 7, 1992**

**APPEAL OF STAFF DENIAL
OF PRIVATE WELL
REQUEST (Con't):**

fields. The primary impetus for their proposal was the cost of the water provided by the municipal system as all of their water currently being used comes through their master water meter and, therefore, carries sewer charges as well. The church feels that, in the long run, it would be more beneficial for them to incur the up-front costs of drilling a well and constructing pumping facilities than to continue to pay City water rates for the water used to irrigate the fields.

Councilmember Carrier stated that staff has consistently recommended the installation of a separate water meter for irrigation purposes only which would not include the associated sewer costs. Staff has denied the request for a private well based on the fact that the church is within the City's water service area and the City does not allow new water service providers to establish themselves.

Motion:

Councilmember Carrier moved, seconded by Councilmember Leicht, to affirm staff's position on denial of the well request. Motion carried.

**SOMERSET:
ACCEPTANCE OF
OVERLOOK PARK:**

Councilmember Carrier reported that as part of the construction on Tumwater Hill, Jackson Development was required to construct an overlook park. The park is now complete. Development Services and Parks & Facilities staff have completed their inspections of the Overlook Park and find it ready for acceptance.

Motion:

Councilmember Carrier moved, seconded by Councilmember Gurske, to accept the Overlook Park project for City ownership and maintenance. Motion carried.

**LOTT PRETREATMENT
INTERGOVERNMENTAL
AGREEMENT:**

Councilmember Carrier reported that pretreatment of industrial waste discharged into the City's sewer collection system and subsequently into the LOTT treatment facility is required by the federal Clean Water Act. Enforcement of these regulations is delegated to the Washington Department of Ecology. DOE is now acting to delegate pretreatment enforcement authority to the LOTT partnership. As a partner in the LOTT system, Tumwater has an obligation to participate.

Councilmember Carrier stated that the LOTT Advisory Committee has approved Resolution 920602 recommending the partners approve the Intergovernmental Agreement for Industrial Waste Pretreatment Program and, subsequently, adopt the LOTT Discharge and Industrial Pretreatment Ordinance.

Councilmember Leicht stated that due to the fact his company will benefit from this action, he would withdraw from voting.

**TUMWATER CITY COUNCIL, REGULAR MEETING
TUMWATER CITY HALL, 555 ISRAEL RD. S.W.
July 7, 1992**

**LOTT PRETREATMENT
INTERGOVERNMENTAL
AGREEMENT (Con't):**

Motion:

Councilmember Carrier moved, seconded by Councilmember Osgood, to approve and authorize the Mayor to sign the Intergovernmental Agreement for Industrial Waste Pretreatment Program. Motion carried.

**MEMORANDUM OF
UNDERSTANDING FOR
PREPARATION OF A
COMMUTE TRIP
REDUCTION PLAN FOR
THURSTON COUNTY:**

Councilmember Carrier reported that as a result of the adoption of SSHB 1671 by the State Legislature, each local government in the eight counties specified in the legislation, including Thurston County, must adopt by ordinance, a Commute Trip Reduction Plan by January 31, 1993. Participants in the plan are the local agencies themselves and each employer with 100 or more employees arriving at work between the hours of 6:00 a.m. to 9:00 a.m. The first Memorandum of Understanding was based on the premise that a single Commute Trip Reduction plan for all of Thurston County would be prepared as opposed to each local jurisdiction having to prepare an individual plan. It is believed that a single plan will be more effective in setting requirements for both employers and local governments, will improve coordination and consistency, and, by marshalling resources, will avoid duplication of effort.

Councilmember Carrier stated that the purpose of the proposed Memorandum of Understanding, July 1992, is:

1. To affirm that a single Commute Trip Reduction Plan for all of the affected jurisdictions of Thurston County will be prepared;
2. To establish Intercity Transit as the lead agency responsible for coordinating the participation of the affected jurisdictions and drafting the plan for Thurston County;
3. To specify the process for preparing a Commute Trip Reduction Plan that meets the requirements of State law and follows the plan implementation guidelines of the State Commute Trip Reduction Task Force.

Councilmember Carrier stated that funding for this phase of the plan's development is being provided by Washington State Energy Office grants to Intercity Transit and the local jurisdictions for a total amount of \$165,000. The only commitment required from the City of Tumwater will be staff time to attend the meetings of the Technical Advisory Committee.

**TUMWATER CITY COUNCIL, REGULAR MEETING
TUMWATER CITY HALL, 555 ISRAEL RD. S.W.
July 7, 1992**

**MEMORANDUM OF
UNDERSTANDING FOR
A COMMUTE TRIP
REDUCTION PLAN FOR
THURSTON COUNTY
(Con't):**

Councilmember Muller referred to the Scope of Work and inquired if there is a mechanism for amendments to the Plan. Expressed concern that such a mechanism is vital. Mr. Randy Riness, Intercity Transit, responded that this plan will not be program specific - it will essentially be policy and procedure. A review and adjustment mechanism could certainly be added.

Motion:

Councilmember Carrier moved, seconded by Councilmember Osgood, to approve and authorize the Mayor to sign the Memorandum of Understanding: An Agreement to Prepare a Commute Trip Reduction Plan for Thurston County, dated July 1992.

Councilmember Muller inquired how the concern she expressed previously would be addressed. Engineer II Johnston stated that if this is approved by Council, the technical advisory group will begin working on the next element of the Plan. An ordinance will come to Council late this year or early next year at which time they can determine if the committee has adequately addressed the concern.

The question was called for. Motion carried.

**INTERGOVERNMENTAL
REPORTS:**

**THURSTON COUNTY
GROUND WATER ADVISORY
COMMITTEE:**

Councilmember Carrier reported that the final meeting will be held this week to approve the final changes. It will be coming to the Council for approval.

**THURSTON COUNTY MEDIC
ONE BOARD:**

Councilmember Cofer reported that the Board met during the AWC Conference and she was unable to attend. There were no major issues to report.

URBAN GROWTH MGMT.:

Councilmember Kmet asked Director Baker to report on the meeting. Director Baker stated that Leonard Bauer attended the meeting. Final impact fee preparations were discussed - the discussion will be continued at the next meeting.

**CITY ADMINISTRATOR'S
REPORT:**

Administrator Smith thanked the Council for their generous response in regard to the retirement reception for Marlene Westhoff and Jerry Petheram.

The date of Monday, July 13, 1992 at 7:00 p.m. was set for a worksession on the State Satellite Campus Core Area. Staff will determine what room the meeting will be held in.

**TUMWATER CITY COUNCIL, REGULAR MEETING
TUMWATER CITY HALL, 555 ISRAEL RD. S.W.
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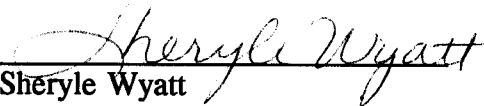
REQUEST BY

COUNCILMEMBER MULLER:

Councilmember Muller stated she had agreed to go to the Tenino Parade on July 25. She will not be able to attend and inquired if anyone would be able to attend on her behalf. No one was available.

ADJOURN:

There being no further business, the meeting was adjourned at 9:38 p.m.


Sheryle Wyatt

Deputy City Clerk

APPROVED as corrected July 21, 1992

**BEFORE THE HEARING EXAMINER
IN AND FOR THE CITY OF TUMWATER**

In the Matter of the Appeal of:

Copper Ridge, LLC

Of an Administrative Decision

NO. TUM-22-1101

DECLARATION OF JARED CREWS

I, Jared Crews, hereby state and declare as follows:

1. I am over the age of eighteen, am competent to testify herein and make this declaration based on personal knowledge. I am employed by the City of Tumwater as an Engineer II with the City of Tumwater Transportation & Engineering Department. My job responsibilities include private development review and permitting assistance. I review development and construction plans for compliance with City requirements, including the Tumwater Development Guide.

2. The Three Lakes Crossing project requires the construction of additional pavement, curb, gutter, planter strip, sidewalk, streetlights, landscaping, and a new intersection along the Henderson Blvd frontage. Currently there are private utility poles supporting overhead utilities owned by multiple entities along Henderson Blvd. These lines are fairly and accurately depicted in **Exhibit C-1. Exhibit C-1** also includes my comments in red which identify the locations of the Three Lakes Crossing property and relevant utility features.

3. Currently the project is proposing to relocate the utility pole and overhead utilities as they will conflict with the required improvements along Henderson Blvd. **Exhibit C-2** is an enlargement of plans taken from Sheet 3 of 33 in the first civil plan set submitted by the applicant on July 29, 2022. **Exhibit C-2** depicts the location of existing utilities and my comments in red identify which of the existing utilities will conflict with the required improvements along Henderson Blvd..

4. The applicant is proposing to relocate the utility poles and utility lines from their existing locations to new locations. The existing utility pole is located in the middle of future 68th Avenue where it will meet Henderson Blvd. The applicant is proposing to move this pole to a new location just behind the required sidewalk. The proposed relocation will move the overhead utilities into conflict with the required streetlights along Henderson Blvd. as shown in **Exhibit C-3**. **Exhibit C-3** is taken from Sheet 11 of 49 in the Civil plans submitted by the applicant on October 31, 2022, with my comments showing where the conflict will occur in the red.

5. In coordination with Puget Sound Energy (PSE), it was confirmed that additional new infrastructure would need to be installed to accommodate the relocation. A new additional utility pole would need to be installed on the south side of the proposed 68th Ave intersection to provide service to an existing single family home on the east side of Henderson Blvd, 6276 Henderson Blvd SE.

6. The existing utility pole would also need to be replaced with a new taller utility pole because the overhead utilities would not meet separation criteria from the required streetlights. PSE has a requirement that overhead utility lines be separated from streetlights by a minimum of 10 feet. The existing pole is inadequate to achieve this separation and could not be used because of conflicts with the new development's streetlights. This is depicted in **Exhibit C-3** and **Exhibit C-5**. The blue line in **Exhibit C-3** depicts the approximate location of the applicant's proposed overhead transmission lines. However, the lines cannot be installed as proposed by the applicant because, according to PSE, an

1 additional pole would be needed for the existing residence at 6726 Henderson St. This would require
2 installation of a new pole, which would also have to be higher than the existing pole due to conflict with
3 the separation requirement for streetlights required for the new development, which must be 35 feet tall.
4 This is depicted in **Exhibit C-4** and again in **Exhibit C-5**. Under the Tumwater Development Guide and
5 TMC 17.12.200, the newly moved transmission lines must be underground. **Exhibit C-5** is a
6 photograph demonstrating the separation requirement, with a proposed streetlight superimposed below
7 overhead utility lines.
8

9 7. The existing utility lines cannot remain in place due to the applicant's proposed
10 development. They must be moved to accommodate the newly constructed street (68th Avenue SE) and
11 improvements (streetlights and frontage improvements) required as a direct result of the new
12 development. As explained in the administrative decision issued on September 21, 2022 (attached as
13 **Exhibit C-6**), Chapter 3, Section 3.14 of the Tumwater Development Guide requires compliance with
14 TMC 17.12.200 for both new and existing facilities. TMC 17.12.200 requires utilities to be installed
15 underground. It is not limited to new utilities.
16

17 **I make this declaration under penalty of perjury under the laws of the State of**
18 **Washington.**

19 DATED this 2nd day of December 2022 at Tumwater, Washington.
20

21
22 
23 Jared Crews
24
25
26

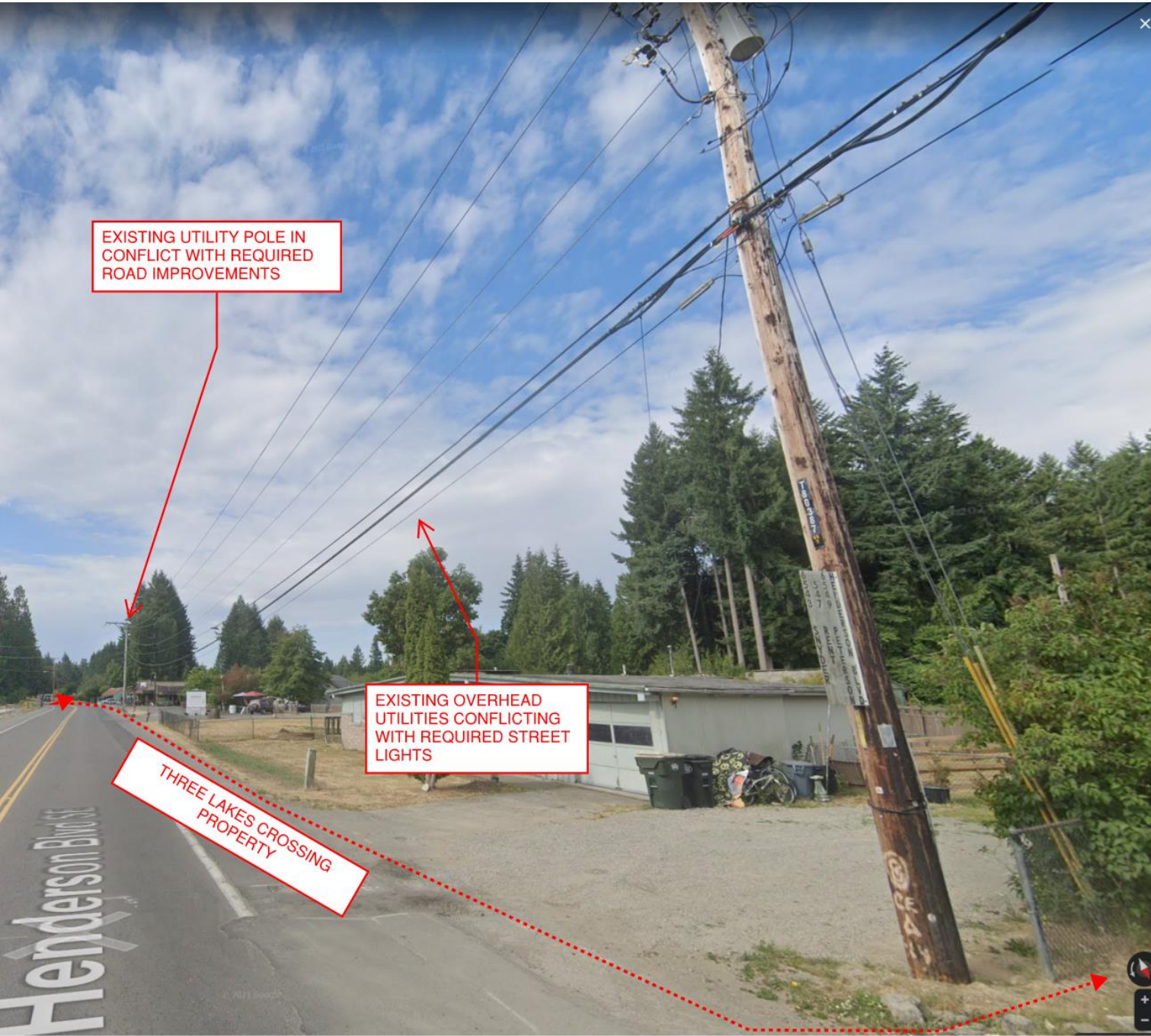
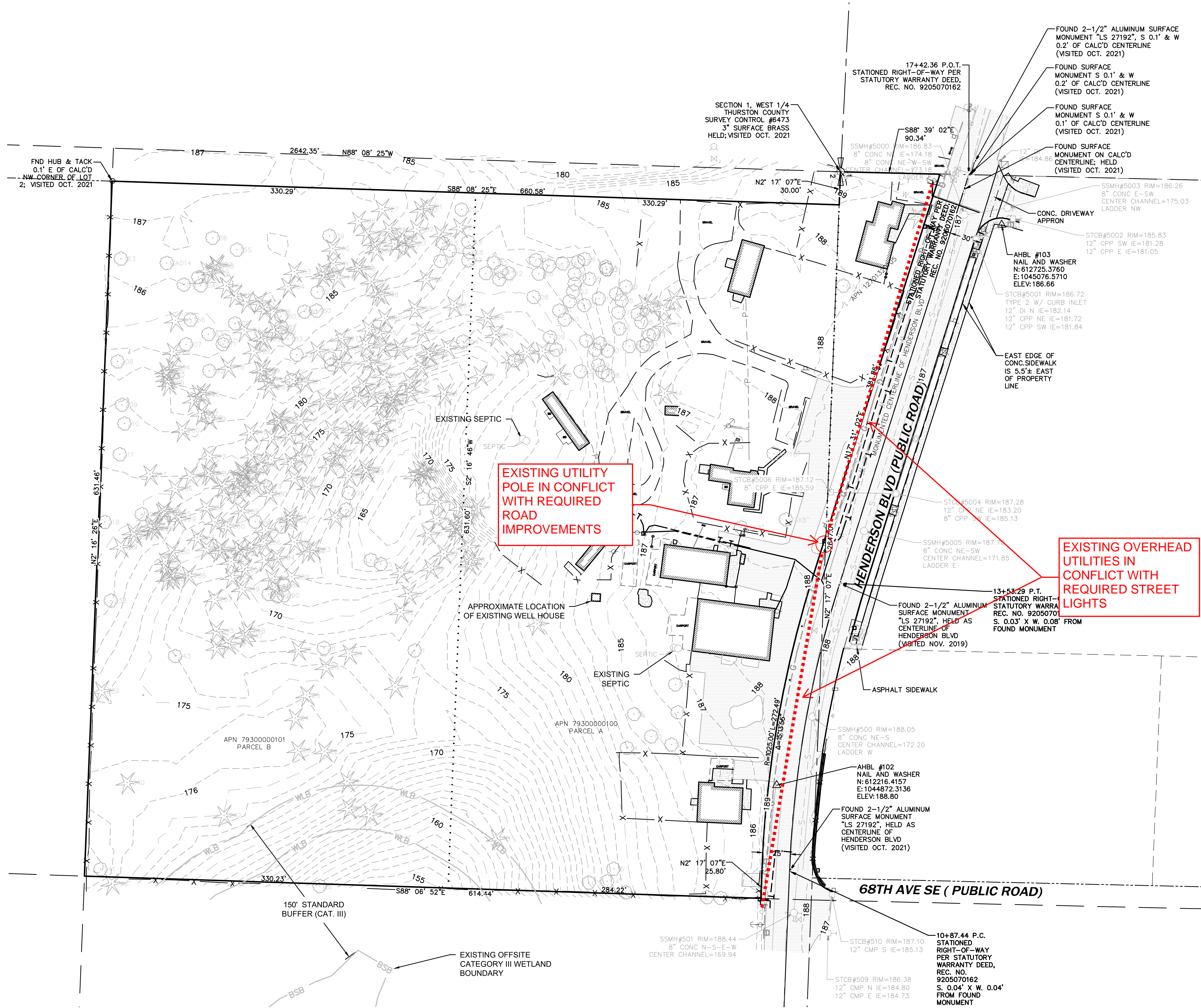


EXHIBIT 1

THREE LAKES CROSSING

A PORTION OF THE NE 1/4 OF THE SE 1/4 OF SEC. 2 & THE NW 1/4 OF THE SW 1/4 OF SEC.1 , TWN. 17 N., RGE. 1 W. W.M.
CITY OF TUMWATER, THURSTON COUNTY, WASHINGTON.



EXISTING SEPTIC AND WELLS NOTE

1. THE EXISTING SEPTIC SYSTEM IS TO BE DECOMMISSIONED PER THURSTON COUNTY DEPARTMENT OF HEALTH REQUIREMENTS.
2. IF THERE ARE ANY ACTIVE WELLS ONSITE THEY SHALL BE DECOMMISSIONED PER THURSTON COUNTY DEPARTMENT OF HEALTH STANDARDS.

LEGAL DESCRIPTION

PARCEL A:
LOTS 1 AND 2 OF THOMPSON ADDITION TO BRIGHTON PARK, AS RECORDED IN VOLUME 7 OF PLATS, PAGE 29 1/2; EXCEPTING THEREFROM THE EAST 10 FEET; TOGETHER WITH THAT PORTION OF ROAD ADJOINING SAID LOT 1 ON THE EAST AS VACATED BY ORDER RECORDED UNDER FILE NO. 8110140026. AND EXCEPT THAT PORTION CONVEYED TO THURSTON COUNTY BY DEED RECORDED APRIL 23, 1993 UNDER AUDITOR'S FILE NO. 9304230302.

PARCEL B:
THAT PART OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 17 NORTH, RANGE 2 WEST, W.M.; LYING WESTERLY OF COUNTY ROAD KNOWN AS HENDERSON BOULEVARD. EXCEPT THAT PORTION CONVEYED TO THURSTON COUNTY BY DEED RECORDED APRIL 23, 1993 UNDER AUDITOR'S FILE NO. 9304230301. IN THURSTON COUNTY, WASHINGTON.

LEGEND

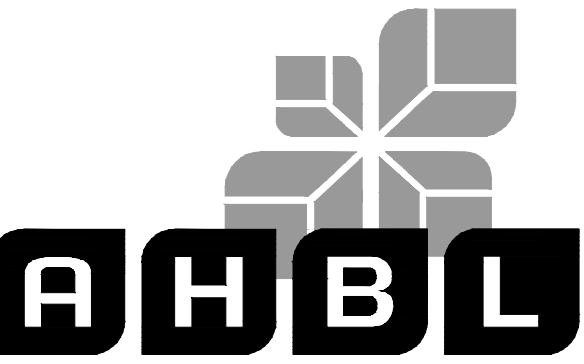
- FOUND MONUMENT AS NOTED
- SET NAIL AND WASHER
- FOUND PROPERTY CORNER
- BOLLARD
- MAIL BOX
- SIGN AS NOTED
- CLEANOUT
- SANITARY SEWER MANHOLE
- STORM CATCH BASIN
- STORM MANHOLE
- CABLE RISER
- GAS VALVE
- GUY ANCHOR
- UTILITY POWER POLE
- JUNCTION BOX
- LUMINAIRE
- FIRE HYDRANT
- WATER VALVE
- BUILDING DECK
- CONIFEROUS TREE AS NOTED
- DECIDUOUS TREE AS NOTED

- D — STORM LINE
- S — SEWER LINE
- W — WATER LINE
- G — GAS LINE
- P — ELECTRICAL LINE
- T — COMMUNICATION LINE
- FENCE
- ASPHALT
- CONCRETE

APPROVED FOR CONSTRUCTION

BY: _____ DATE: _____
DIRECTOR OF PUBLIC WORKS

APPROVAL EXPIRES: _____



TACOMA • SEATTLE • SPOKANE • TRI-CITIES

2215 North 30th Street, Suite 300, Tacoma, WA 98403
253.383.2422 TEL 253.383.2572 FAX www.ahbl.com WEB

Project Title:

THREE LAKES CROSSING

Client:

COPPER RIDGE, LLC

P.O. BOX 73790
PUYALLUP, WA 98373

CONTACT:
EVAN MANN (253) 820-7835

Project No.

2210648.10

Issue Set & Date:

SITE DEVELOPMENT

7/29/2022



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Know what's below.
Call before you dig.

EXISTING CONDITIONS PLAN

Designed by: ML Drawn by: TS Checked by: MW/SK

Sheet No.

C0.2

2 of 32 Sheets



Know what's below.
Call before you dig.

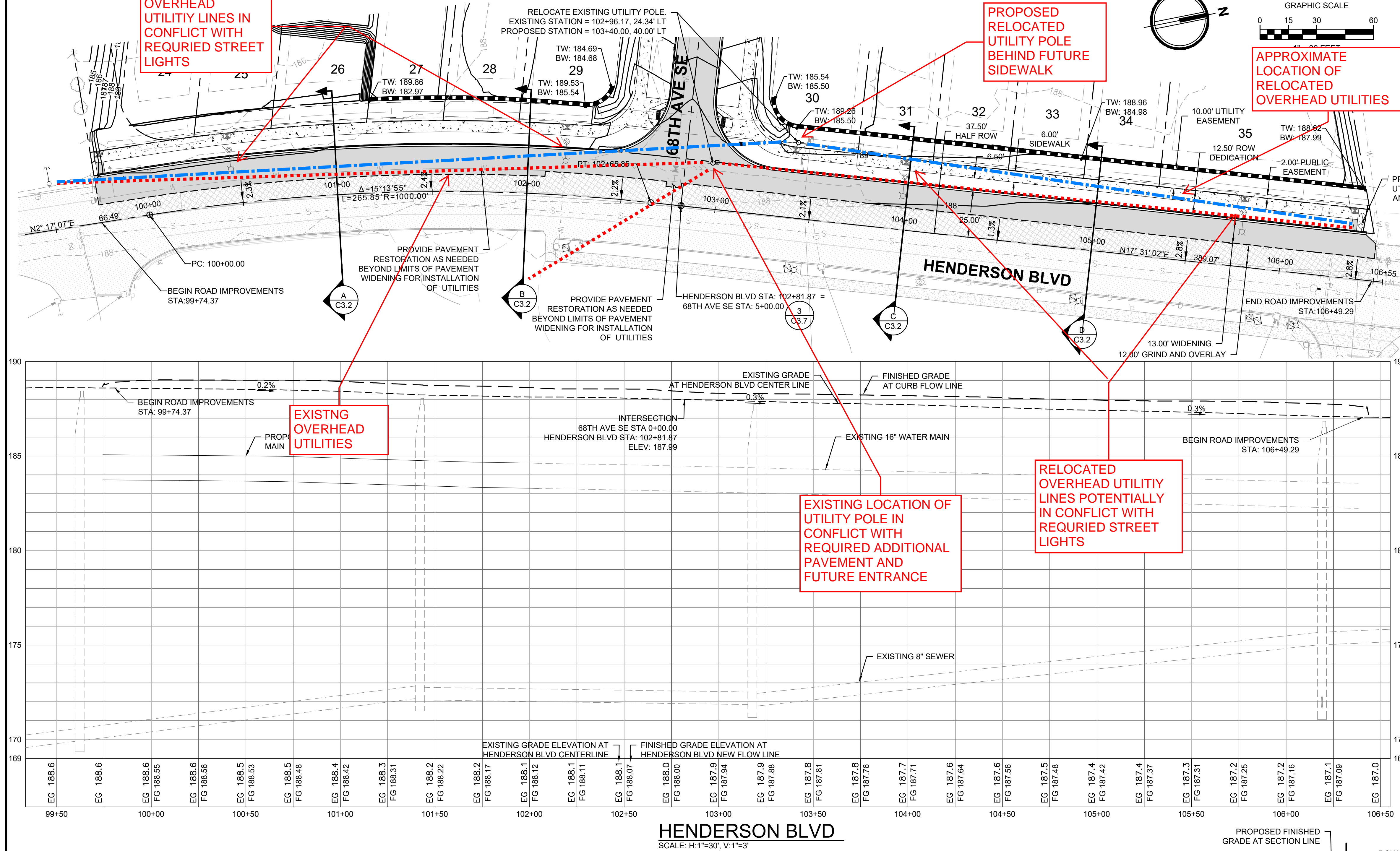
RELOCATED
OVERHEAD
UTILITY LINES IN
CONFLICT WITH
REQUIRED STREET
LIGHTS

THREE LAKES CROSSING

A PORTION OF THE NE 1/4 OF THE SE 1/4 OF SEC. 2 & THE NW 1/4 OF THE SW 1/4 OF SEC.1, TWN. 17 N., RGE. 1 W. W.M.
CITY OF TUMWATER, THURSTON COUNTY, WASHINGTON.

PROPOSED
RELOCATED
UTILITY POLE
BEHIND FUTURE
SIDEWALK

APPROXIMATE
LOCATION OF
RELOCATED
OVERHEAD UTILITIES



HENDERSON BLVD
SCALE: H:1"=30', V:1"=3'

VERTICAL DATUM

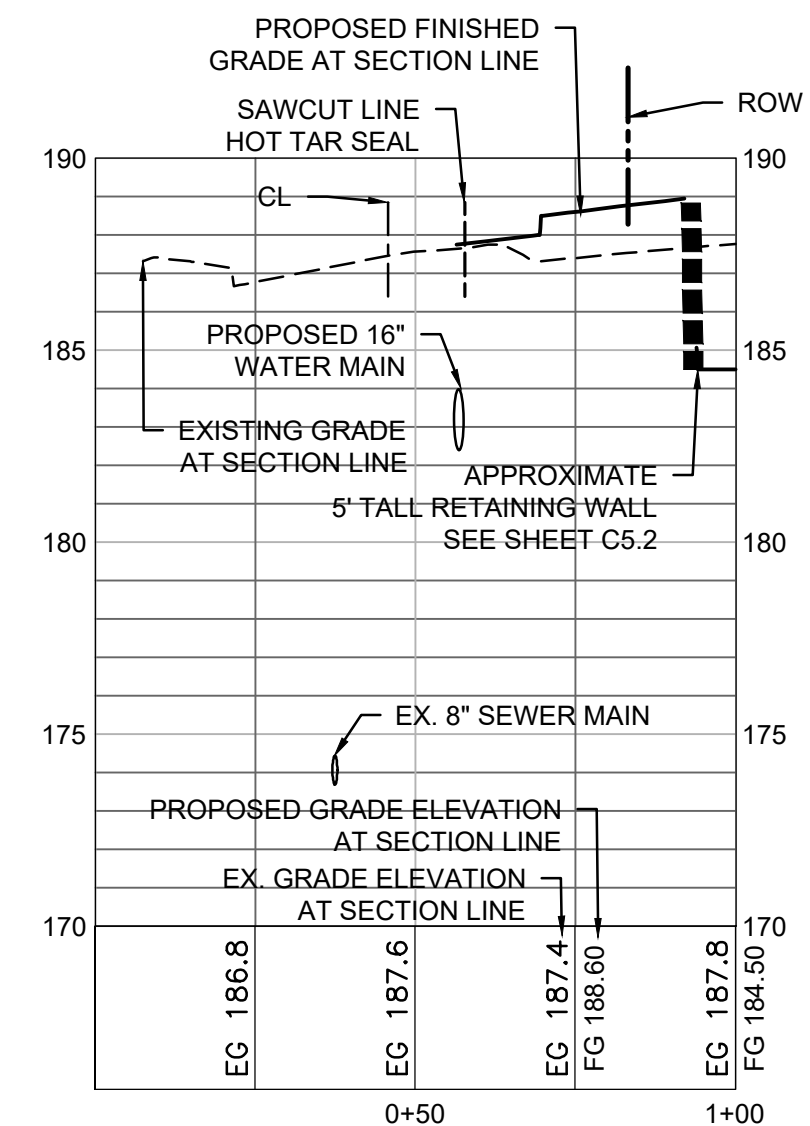
NAVD 1988 VERTICAL DATUM BASED ON THURSTON COUNTY
SURVEY CONTROL POINTS #991 AND #6473.
DATUM CONVERSION: NGVD29 + 3.4' = NAD88

PAVEMENT NOTE

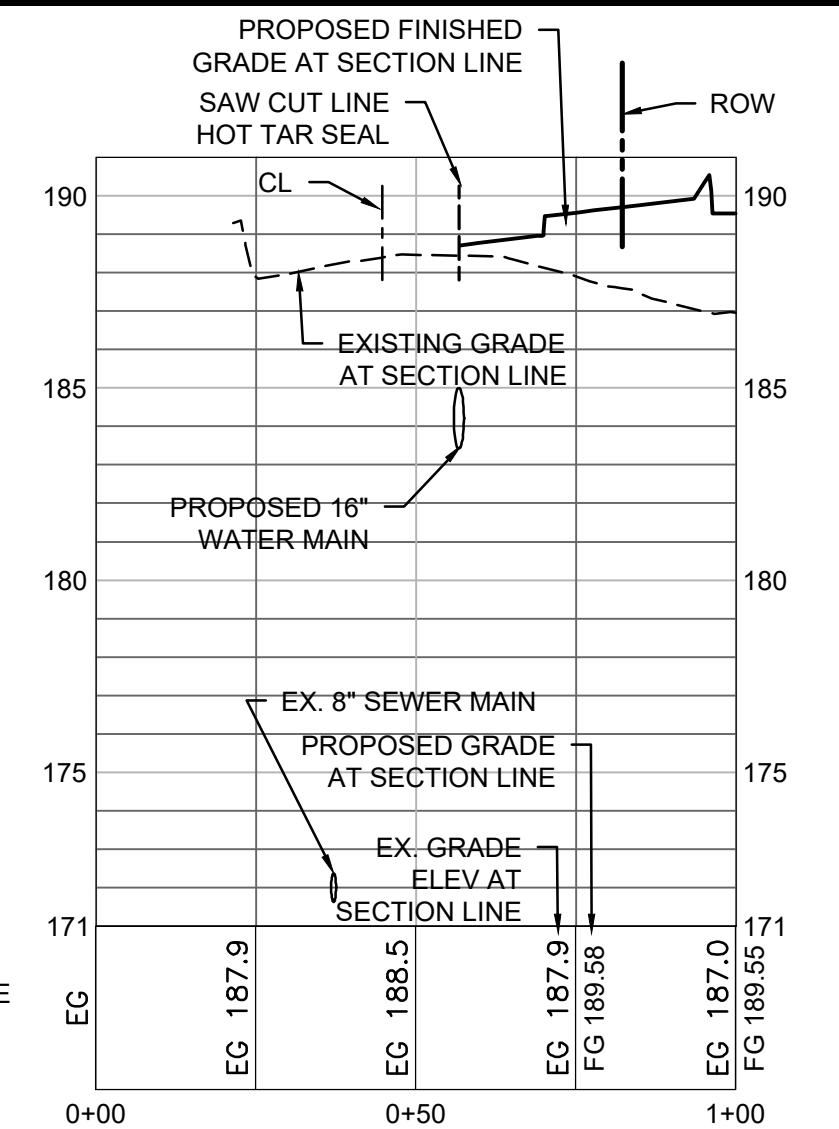
- CONTRACTOR SHALL POUR THE FINAL HMA LIFT FOR THE WIDENING SECTION AND THE GRIND / OVERLAY AT THE SAME TIME. THERE SHALL BE NO JOINTS / SEAMS IN THE FINAL PAVED SURFACE.
- CURB AND GUTTER SLOPED AT 0.50% OR LESS IS TO BE PLACED BY MACHINE

STORM NOTES

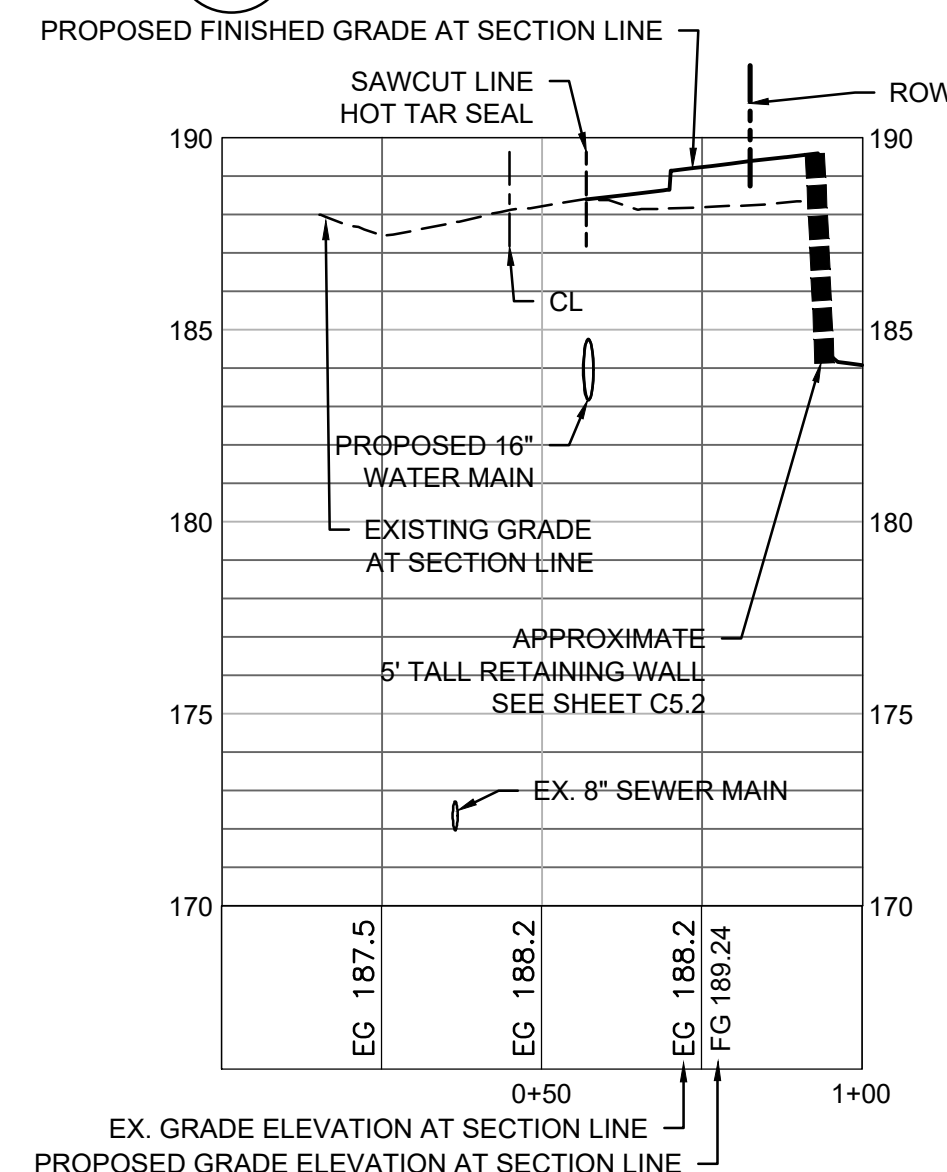
- ALL STORM DRAIN LINES ARE TO BE CPEP UNLESS OTHERWISE NOTED
- ANTI-DUMP DISCS PER DETAIL 3 ON SHEET C5.3 SHALL BE PROVIDED ON ALL STORM STRUCTURES. THE ANTI-DUMP DISCS CAN BE OBTAINED AT CITY HALL FROM THE WATER RESOURCES DEPARTMENT



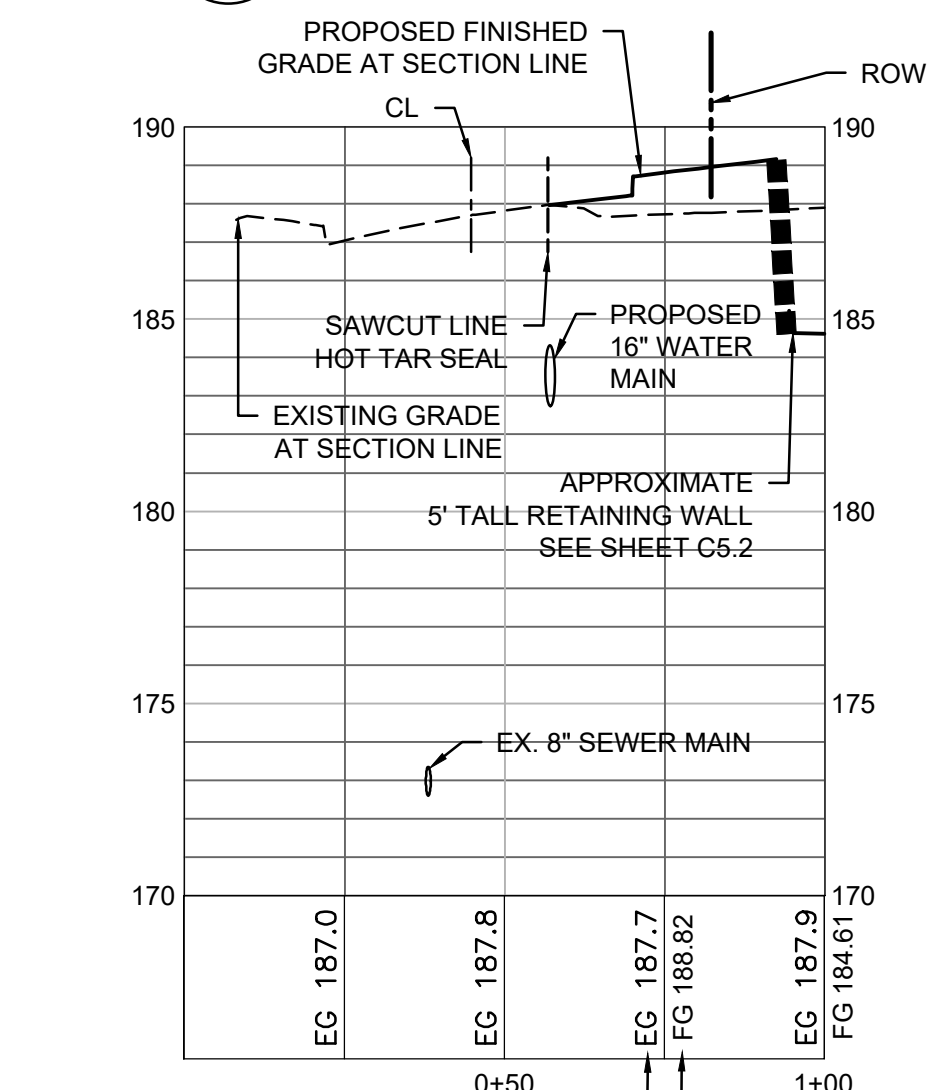
SECTION D
SCALE: H:1"=30', V:1"=3'



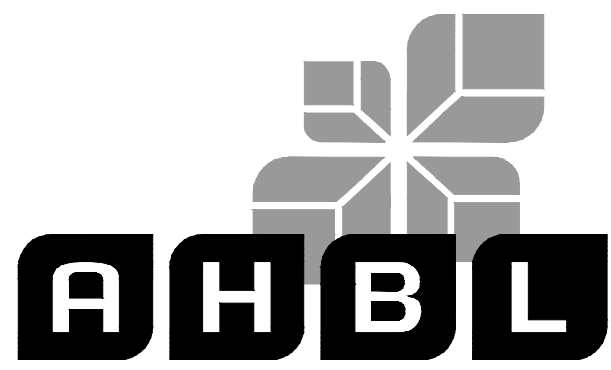
SECTION A
SCALE: H:1"=30', V:1"=6'



SECTION B
SCALE: H:1"=30', V:1"=6'



SECTION C
SCALE: H:1"=30', V:1"=6'



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THREE LAKES CROSSING

Client:

COPPER RIDGE, LLC

P.O. BOX 73790
PUYALLUP, WA 98373

CONTACT:
EVAN MANN (253) 820-7835

Project No.

2210648.10

Issue Set & Date:

SITE DEVELOPMENT

10/28/2022



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A

A

A

A

REVISED PER CITY COMMENTS RECEIVED 9/8/22
Revisions:

Sheet Title:

HENDERSON BLVD PLAN AND PROFILE

Designed by: Drawn by: Checked by:
ML TS MW/SK

Sheet No.

C3.2

11 of 49 Sheets



Know what's below.
Call before you dig.

NEW REQUIRED UTILITY
POLE TO PROVIDE
SERVICE TO 6726
HENDERSON BLVD PER
PSE

APPROXIMATE
LOCATION OF
RELOCATED
OVERHEAD UTILITIES

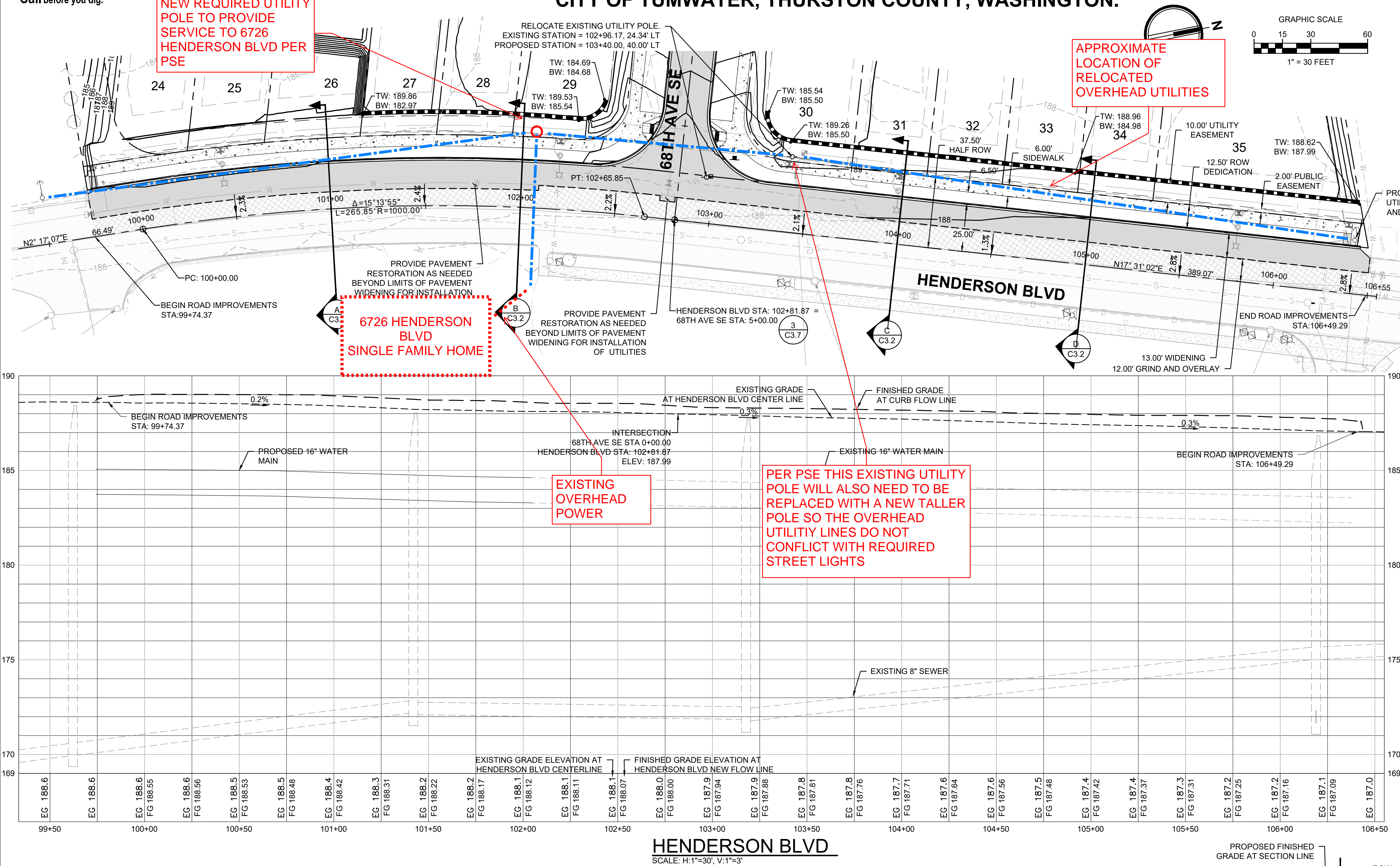
EXISTING
OVERHEAD
POWER

PER PSE THIS EXISTING UTILITY
POLE WILL ALSO NEED TO BE
REPLACED WITH A NEW TALLER
POLE SO THE OVERHEAD
UTILITY LINES DO NOT
CONFLICT WITH REQUIRED
STREET LIGHTS

6726 HENDERSON
BLVD
SINGLE FAMILY HOME

THREE LAKES CROSSING

A PORTION OF THE NE 1/4 OF THE SE 1/4 OF SEC. 2 & THE NW 1/4 OF THE SW 1/4 OF SEC.1 , TWN. 17 N., RGE. 1 W. W.M.
CITY OF TUMWATER, THURSTON COUNTY, WASHINGTON.



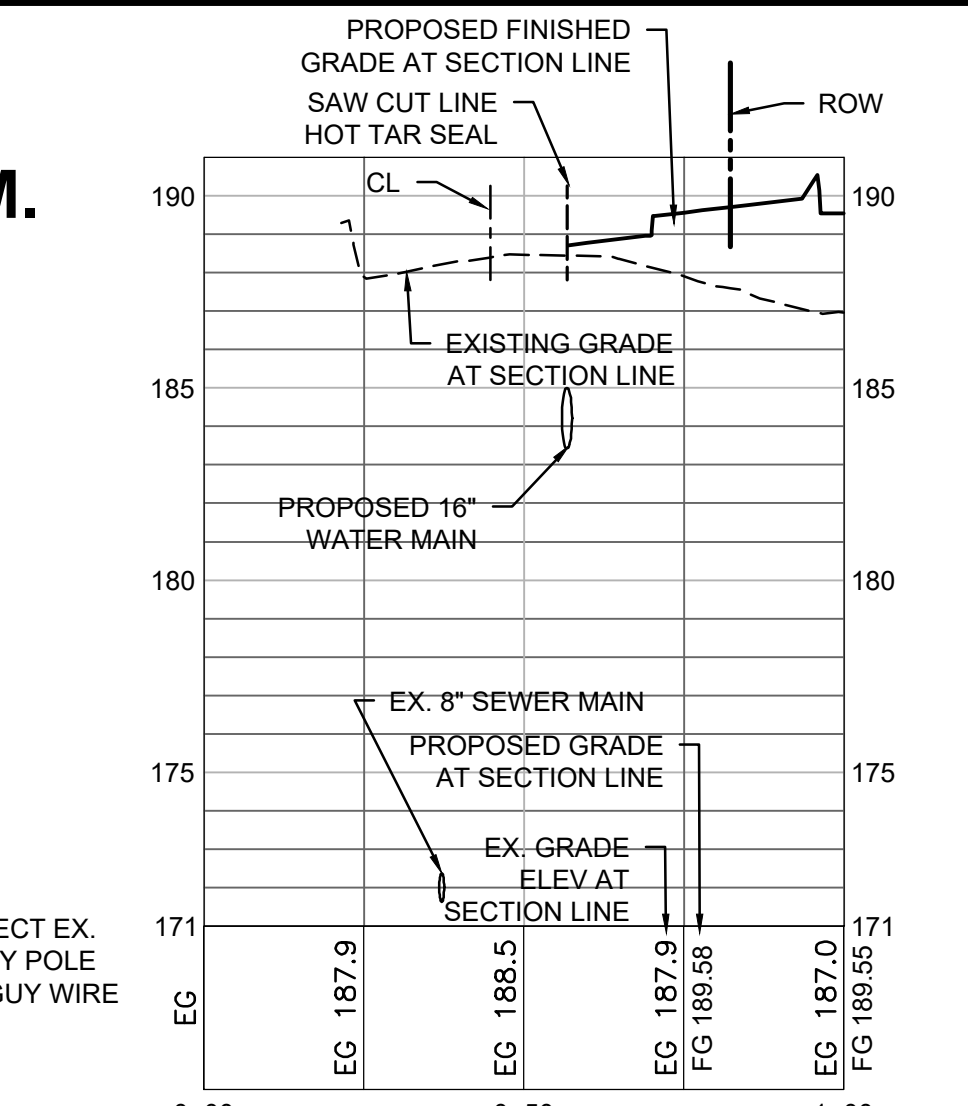
HENDERSON BLVD
SCALE: H:1"=30', V:1"=3'

VERTICAL DATUM
NAVD 1988 VERTICAL DATUM BASED ON THURSTON COUNTY
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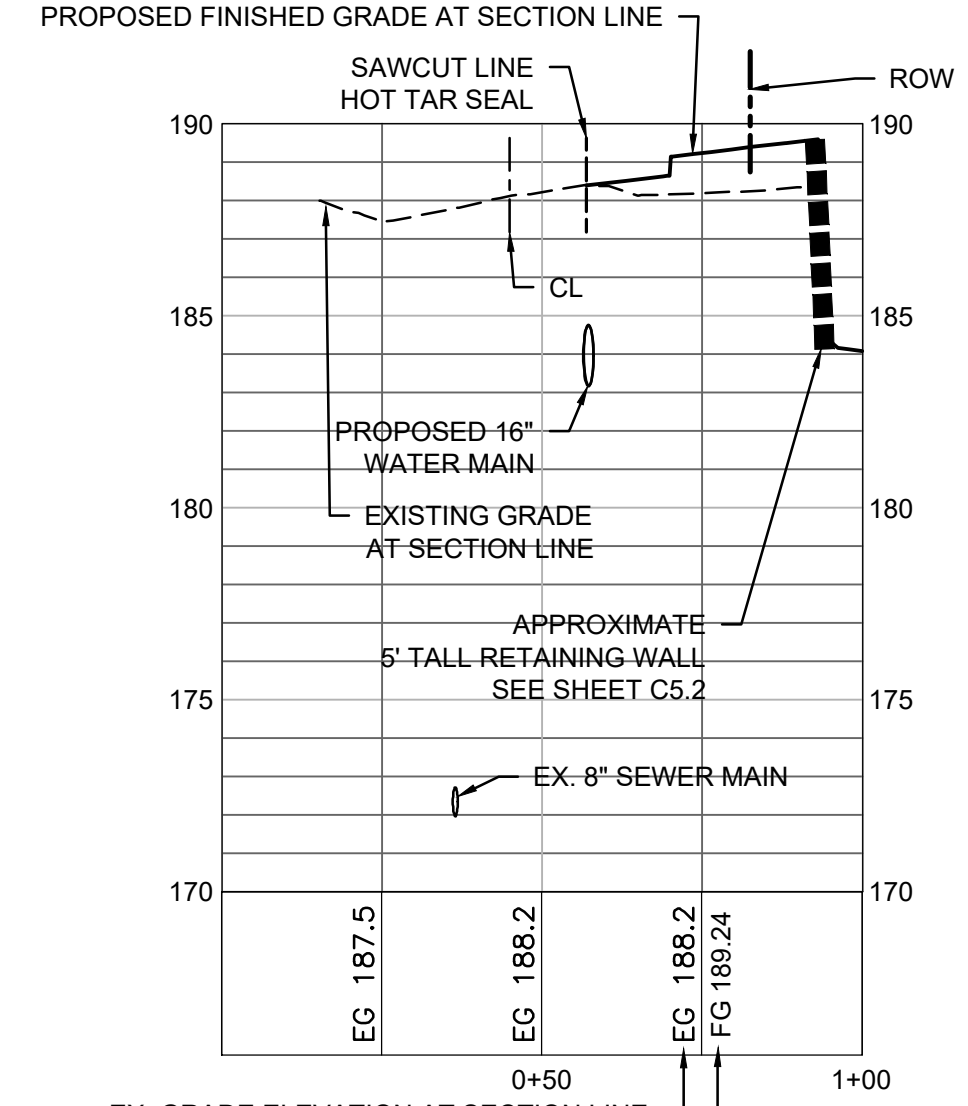
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DISCS CAN BE OBTAINED AT CITY HALL FROM THE WATER
RESOURCES DEPARTMENT

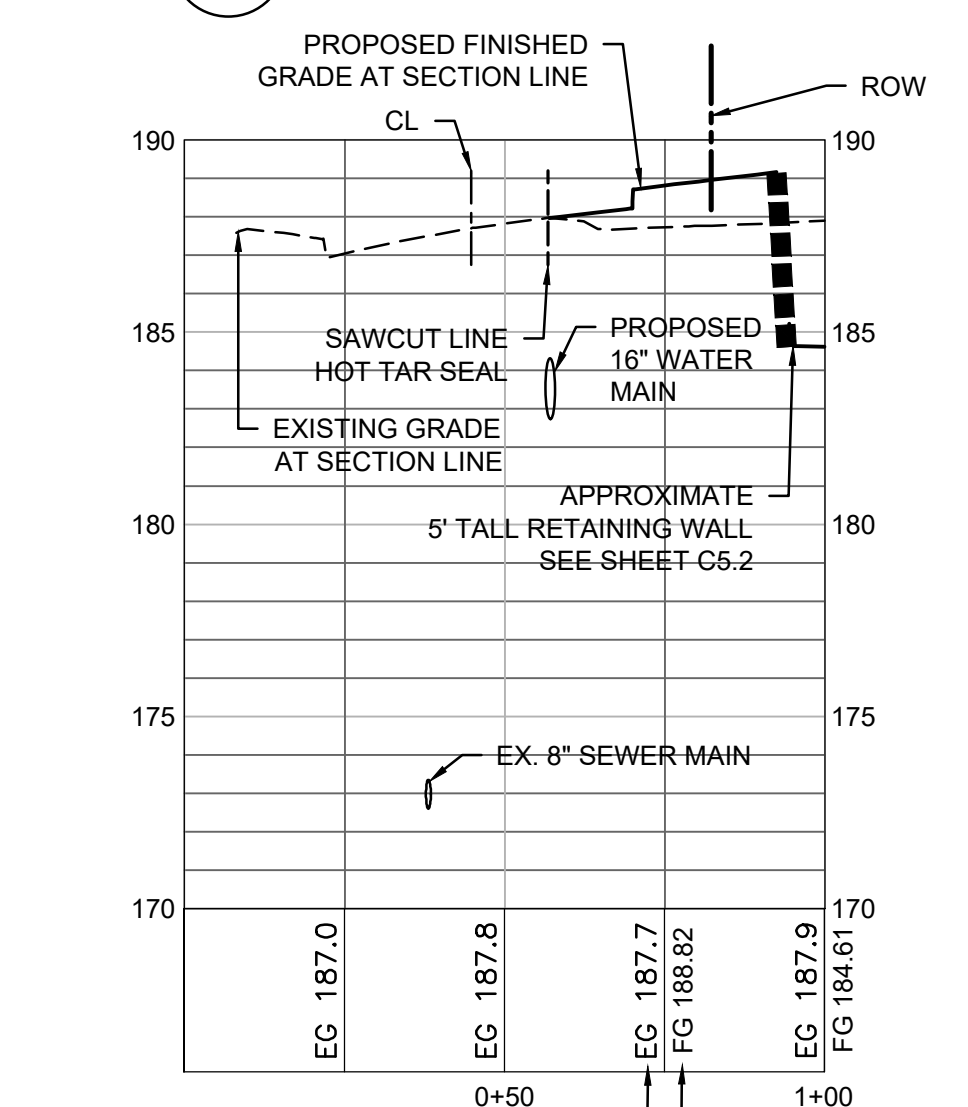
SECTION D
SCALE: H:1"=30', V:1"=3'



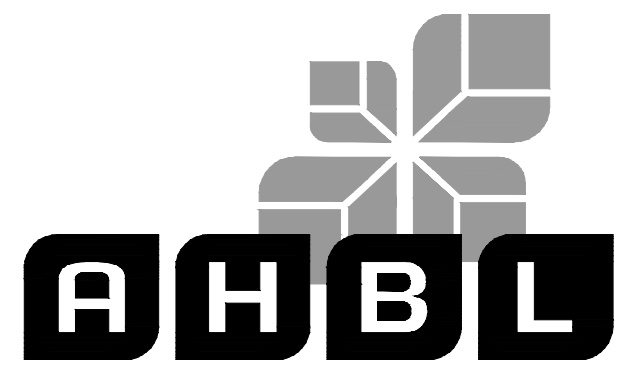
SECTION A
SCALE: H:1"=30', V:1"=6'



SECTION B
SCALE: H:1"=30', V:1"=6'



SECTION C
SCALE: H:1"=30', V:1"=6'



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Revisions:
A
A
A
A
REVISED PER CITY COMMENTS RECEIVED 9/8/22

Sheet Title:
**HENDERSON BLVD
PLAN AND PROFILE**

Designed by: ML
Drawn by: TS
Checked by: MW/SK

Sheet No.
C3.2
11 of 49 Sheets



EXHIBIT 5



City Hall
555 Israel Road SW
Tumwater, WA 98501-6515
Phone: 360-754-5855
Fax: 360-754-4138

September 21, 2022

Evan Mann
Entitlement Manager
Copper Ridge, LLC
PO Box 73790
Puyallup, WA 98373

RE: Three Lakes Crossing Permit #TUM-22-1101 Response to Request for Clarification

Dear Evan:

Please consider this letter as the formal response to your request for administrative decision as it relates to the undergrounding of existing overhead utilities along the frontage of Henderson Blvd.

In which the City is requiring the installation of existing overhead utilities underground with the proposed project improvements.

Where you testified that the applicable code and guidelines relate to “new” utilities rather than “existing” utilities.

The Administrative Decision is as follows:

After reviewing the applicable codes and guidelines as they relate to the project, the City of Tumwater has decided the requirement to install the existing overhead utilities underground stands.

Justification:

Chapter 3, section 3.14 Utility Locations, sub-section B states new and existing facilities shall comply with provisions as set for in Tumwater Municipal Code 17.12.200, Land Division.

The provision from Tumwater Municipal Code 17.12.200, Land Division states that electrical power, telephone, cable television, fiber optics and other transmission line shall be installed underground.

The City of Tumwater finds that the Three Lakes Crossing project is subject to the above codes and guidelines and is required to install the existing overhead utilities underground.

If you have any questions, please don't hesitate to call me at 360-754-4140 or email me at jcrews@ci.tumwater.wa.us.

Sincerely,

Jared Crews
Engineer II
City of Tumwater
Transportation & Engineering Department