

**BEFORE THE HEARINGS EXAMINER
FOR THE CITY OF LACEY**

In the Matter of the Application of)	No. 21-081
)	
Harry Schneider, on behalf of)	Schneider Hicks Lake Proposal
Schneider Homes I, LLC)	
)	
)	
For a Shoreline Substantial Development)	
Permit, Shoreline Conditional Use Permit,)	
Shoreline Variance Permit, Wetland)	
Development Permit, Site Plan Review,)	FINDINGS, CONCLUSIONS,
<u>and Class IV Forest Practices Permit</u>)	AND RECOMMENDATION

SUMMARY OF RECOMMENDATION

The Hearings Examiner recommends that the Lacey City Council **APPROVE** the request for a shoreline substantial development permit, shoreline conditional use permit, shoreline variance, wetland development permit, and Class IV forest practices permit, and for site plan review approval, to allow construction of a 178-unit apartment complex that would include three residential buildings with associated surface and underground parking; recreational facilities including two recreational facility structures, a play area structure, a sports court, and an in-ground pool and spa; a pier and floating dock, with associated pathway from the apartment complex, providing access to Hicks Lake; and other associated appurtenances and improvements, on an approximately 4.98-acre property at 2712 Hazelwood Lane SE. Conditions are necessary to address specific impacts of the proposed project.

SUMMARY OF RECORD

Hearing Date:

The Hearings Examiner held an open record hearing on the request on May 26, 2022, using remote access technology.¹ The record was left open until June 6, 2022, to allow the submission of supplemental comments/arguments by the Deschutes Law Group (who participated in the

¹ This matter was heard simultaneously with another proposal, the “Gayteway Hicks Lake Proposal” (No. 20-190), involving development of a 132-unit multifamily residential development on adjacent property. Although the two proposals are distinct and involve different applicants, the Hearings Examiner determined it would be appropriate to hear both matters together to ensure that members of the public had an opportunity to testify about both proposals and, further, to ensure that the cumulative impacts of the two proposals were adequately considered, given their proximity. Accordingly, all testimony from the public received at the open record hearing has been considered in relation to both proposals. Finally, the recommendations for both proposals are being issued simultaneously to help ensure that the Lacey City Council considers both proposals at the same time (again, however, with the understanding that the two proposals are distinct and that approval or denial of one should not impact the outcome in relation to the other).

hearing on behalf of several area residents), and to allow the Applicant to respond to public testimony and written comments.

Testimony:

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

Ivana Halvorsen, Applicant Representative
Samra Seymour, City Senior Planner
Victoria Byington
Lynne Dearing
Terry Carr
Scott Goddard
Margaret Shannon
Janet Ikeda
Jeffrey McKenzie
Dana Clay
Dane Clay
Robert O’Keefe
Scott Morrison
Ben Cushman, Deschutes Law Group (Attorney for “Save Hicks Lake” and others)
Kate Ayers
Pat Meyers
Alan Baum
Jessica Wilson
Andrew Feyerick
Dakota Diltz
James Galuso
Karen Johnson
Cheryl Settle
Racheal Villa, Soundview Consultants
Ryan Shea, SCJ Appliance
Martin Hoppe, City Transportation Manager
Tom Stiles, City Development Review Manager
Doug Christenson, City Water Resources Engineer

Exhibits:

A list of the exhibits admitted into the record is provided as Attachment A, appended to this recommendation.

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

*Findings, Conclusions, and Recommendation
City of Lacey Hearings Examiner
Schneider Hicks Lake Proposal, No. 21-081*

FINDINGS

Application and Notice

1. Harry Schneider, on behalf of Schneider Homes I, LLC (Applicant), requests approval of several permits to develop a 178-unit apartment complex that would include: three residential buildings with associated surface and underground parking (293 stalls); recreational facilities including two recreational facility structures, a play area structure, a sports court, and an in-ground pool and spa; a pier and floating dock, with associated pathway from the apartment complex, providing access to Hicks Lake; and other associated appurtenances and improvements, on an approximately 4.98-acre property. The Applicant requests site plan review related to development of the apartment buildings and parking areas, recreational structures, and pool and spa. The Applicant requests a Class IV Forest practices permit to clear trees to allow for construction of the proposed development. The Applicant requests a shoreline substantial development permit (SSDP) in order to install the pedestrian pathway from the complex to the proposed pier and floating dock and, also, to construct the pier and dock. The Applicant requests a shoreline conditional use permit (SCUP) and shoreline variance (SVAR) to allow the construction of the dock at a length longer than permitted by City's adopted shoreline regulations. Finally, the Applicant requests a wetland development permit to construct the pedestrian pathway within the buffer of the wetland adjacent to Hicks Lake because a Category III lake-fringe wetland is located across the entire length of the property's shoreline. Access to the site would be provided from Hicks Lake Road and from Hazelwood Lane SE, a private road on the south boundary of the site. The property is located at 2712 Hazelwood Lane SE.² *Exhibit 2, Staff Report, pages 1 through 3; Exhibits 3 through 8; Exhibits 10 through 14.*

2. The City of Lacey (City) determined that the application was complete on June 11, 2021. On June 15, 2021, the City provided notice of the application by routing notice to reviewing City departments and government agencies, publishing notice in *The Olympian*, and posting notice on-site, with a comment deadline of July 15, 2021. On April 26, 2022, the City provided notice of the open record hearing associated with the application by mailing notice to all property owners within 300 feet of the site, publishing notice in *The Olympian*, and posting notice on-site. The City received several comments from reviewing agencies specific to the environmental review of the proposal, which are detailed below. The City also received over 60 comments on the proposal from members of the public in advance of the open record hearing, which are discussed in detail later in this recommendation. *Exhibit 2, Staff Report, page 7; Exhibits 20 through 23; Exhibit 26.*

3. The City received the following comments from reviewing agencies and departments in response to its notice materials:

² The property is identified by Tax Assessor's Parcel Number 11828111100. *Exhibit 2, Staff Report, page 1.*

- Terry McDaniel, City Plans Examiner, commented that a fire hydrant must be installed and approved prior to issuance of building permits, fire-flow for the residential buildings must not be less than 2,750 gallons per minute (gpm) for 4 hours, the buildings would need to be equipped with an automatic sprinkler system, the buildings would require an approved fire alarm system, and an approved 20-foot wide all-weather surface fire apparatus access road would be required within 150 feet of all exterior portions of the residential buildings at ground level.
- Tom Stiles, City Public Works, commented that appropriately sized water mains must be extended throughout the proposed site, domestic water meters would be required, an irrigation meter must be provided for all landscaped areas, the existing 8-inch gravity sanitary sewer main in Hicks Lake Drive must be extended and each building must be connected to the gravity sewer, and treatment and infiltration facilities must be constructed to accommodate stormwater management.
- Doug Christenson, City Stormwater Engineer, commented that the draft stormwater drainage plan sufficiently addresses stormwater management at this stage of permit review.
- Chris Stolberg, City Transportation Engineer, commented that the project would generate 78 new trips during the PM peak hour and that traffic mitigation fees would be calculated on the date of payment for issuance of building permits. He noted that he reviewed the cumulative traffic impacts of the proposed development and the nearby proposed multifamily project, the Gayteway Hicks Lake proposal (No. 20-190) cumulatively and, further, that anticipated impacts to the intersection of Ruddell Road SE and 25th Avenue SE do not meet requirements warranting signal installation.
- Arthur Saint, Thurston County Public Works, commented that the project would result in traffic impacts to the Martin Road Corridor requiring mitigation through the payment of traffic impact fees. He noted that the project's mitigation fees to Thurston County would be \$42,005.
- Mike Burnham, Intercity Transit, noted that the project would require the addition of a bus stop on the proposed development's Hicks Lake Road frontage.

Exhibits 27 through 30; Exhibit 34.

State Environmental Policy Act

4. The City acted as lead agency and analyzed the environmental impacts of the proposal, as required by the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW). The City consolidated notice of the SEPA review and application comment periods under the optional process provided for by Washington Administrative Code (WAC) 197-11-355, with a comment deadline of July 15, 2021. The City's notice materials stated that it expected to issue a Mitigated Determination of Nonsignificance (MDNS) for the proposed development. The City received the following comments specific to SEPA review:

*Findings, Conclusions, and Recommendation
City of Lacey Hearings Examiner
Schneider Hicks Lake Proposal, No. 21-081*

- Rebecca Rothwell, Washington State Department of Ecology (DOE), noted that some proposed recreational amenities would be within 100 feet of the ordinary high-water mark (OHWM) of Hicks Lake and, if such amenities would be open to the general public, parameters around hours of use and mode of access would need to be clearly marked. She also noted that accessory structures must not be located within the 100-foot setback and, if the pier is serving five or more boats, it is considered a marina, which is a prohibited use in the subject zoning district. DOE also provided general comments noting the requirement that the project utilize only clean fill for all grading and filling activity and about the construction activities that would require coverage under the Construction Stormwater General Permit.
- Lauren Whybrew, Olympic Region Clean Air Agency (ORCAA), commented that the agency requires an asbestos survey for all demolition projects.
- Sydney Hanson, Washington State Department of Archaeology and Historic Preservation (DAHP) noted that the statewide predictive model indicated that there is a high probability of encountering cultural resources within the proposed project area. DAHP recommended that that an archaeological survey of the area be conducted prior to ground disturbing activities.
- The Nisqually Indian Tribe noted that three archaeological sites have been documented to the south of Hicks Lake and requested notification of any discovered cultural resources.
- The Squaxin Island Tribe recommended a cultural resources survey be completed for the project.

Exhibit 2, Staff Report, page 3; Exhibit 9; Exhibits 31 through 33; Exhibits 35 through 37.

5. The City reviewed the Applicant’s environmental checklist and other information on file, including the comments submitted by reviewing government agencies described above, and determined that, with mitigation measures, the proposal would not have a probable significant adverse impact on the environment. Accordingly, the City issued an MDNS on April 20, 2022, with an appeal deadline of May 4, 2022. The City provided notice of its determination by publishing the MDNS in *The Olympian* on April 22, 2022. The MDNS was not appealed. *Exhibit 2, Staff Report, pages 3 and 4; Exhibit 9; Exhibit 21; Exhibit 24; Exhibit 25.*
6. The MDNS requires the following mitigation measures:
 - Traffic impact fees mitigating impacts to Thurston County roads in the amount totaling \$42,005 shall be paid prior to building permit issuance to the City of Lacey. The City of Lacey will then forward to Thurston County the collected impact fees.
 - Prior to any ground disturbing activity, an archaeological survey shall be completed, and a report submitted to the Washington State Department of Archaeology and Historic Preservation (DAHP), the Nisqually Indian Tribe, the

Squaxin Island Tribe, and the City of Lacey. If the survey uncovers any archaeological resources, a permit must be obtained from DAHP prior to any ground disturbing activity that removes or alters Native American human remains or archeological resources.

- All buildings or structures (45 years in age or older) shall be evaluated for eligibility for listing in the National Register of Historic Places on Historic Property Inventory (HPI) forms. This evaluation shall be performed by a cultural resource professional meeting the SOI Professional Qualification Standards in Architectural History.

Exhibit 2, Staff Report, pages 3 and 4; Exhibit 9; Exhibit 21; Exhibit 24; Exhibit 25.

Existing Site

7. The project area is located on a 4.98-acre property that slopes downward from west to east, toward the shoreline of Hicks Lake. The eastern portion of the site is currently developed with four mobile homes with associated infrastructure and private septic systems (all of which would be removed). This portion of the property consists primarily of mown grass and invasive, non-native plants found along the banks of Hicks Lake, including bindweed, reed canary grass, yellow flag iris, English ivy and Himalayan blackberry. The western portion of the site is undeveloped and consists of tree cover including Douglas fir, western hemlock, red cedar, big leaf maple, and red alder, and understory of salal, Oregon grape, and sword fern. *Exhibit 2, Staff Report, page 2; Exhibits 3 through 8; Exhibit 19.*

Comprehensive Plan, Zoning, and Surrounding Uses

8. The City and Thurston County prepared a joint planning document, the “City of Lacey and Lacey Urban Growth Area Comprehensive Plan” (Comprehensive Plan) under the Growth Management Act, to account for long-term growth and planning within the community. The subject property is designated “High-Density Residential” under the Comprehensive Plan and is within the Lakes Planning Area, which includes those neighborhoods significantly influenced by Hicks Lake, Long Lake, Pattison Lake, and Southwick Lake and is characterized as the City’s most environmentally sensitive area. *Comprehensive Plan 11-1.* The primary function of the Lakes Planning Area is residential, with only a very small portion of developed land use allocated to commercial uses. *Comprehensive Plan 11-1.* City staff identified the following Comprehensive Plan goals and policies as relevant to the proposal:
 - Residential Goal 1: Ensure sustainable and wise use of land resources to provide an adequate amount and mix of housing types for the anticipated increase in population.
 - Residential Policy 1-A: Assign land use designations that will provide for adequate opportunity for increased densities and a diversity of housing types.
 - Residential Goal 2: Ensure that development regulation meet the current vision outlined in the Comprehensive Plan.

- Residential Policy 2-B: Achieve a level of design with innovative, creative, and efficient concepts for integration of different land use types that will facilitate development of great places that provide increased opportunities to live, work, and play.
- Transportation Goal 2: Support land use policies and plans to allow densities and a mix of uses that reduce the number and length of vehicle trips. Increase the opportunity to use public transportation and non-motorized modes of travel.
- Transportation Policy 2-B: Encourage land development proposals to utilize the full capacity of the existing multimodal transportation system, especially transit and non-motorized modes.
- Transportation Goal 3: Prioritize and encourage bicycle and pedestrian trips by providing a safe, well-connected, and convenient bicycle and pedestrian circulation network throughout the City.
- Parks and Open Spaces Goal 1: The land use policies should complement and help implement requirements of the City of Lacey Comprehensive Plan for Outdoor Recreation, Regional Trail Plan, and land use regulatory requirements for the provision of open space.
- Parks and Open Space Policy 1-A: Continue to require open space for residential and commercial development.
- Parks and Open Space Policy 1-B: Link pedestrian and bicycle pathways with greenways, priority habitat sites, wetlands, and open space between neighborhoods. Open space shall be designed into a project from the outset, with sizable and meaningful pieces set aside. It shall not be left to the end, using only those restricted and small spaces that are left over.
- Parks and Open Space Policy 1-D: Open space shall be designed to define our community, create outdoor spaces, protect wildlife habitat and the natural environment, and create public and civic spaces.
- Parks and Open Space Policy 1-E: Require means to ensure perpetual maintenance of wetlands and priority habitat sites for passive recreational opportunities.
- Utilities and Capital Facilities Goal 1: Ensure that existing utility customers, and future customers, are adequately served by water, sewer, and stormwater utility services that consider both growth demand projections and asset management.
- Utilities and Capital Facilities Policy 1-B: All proposed development should be analyzed for anticipated impact on utilities and services, either as an element of the site plan review, subdivision review, or as part of the environmental impact assessment.
- Utilities and Capital Facilities Policy 1-C: Preference should be given to providing adequate public facilities to the following:
 - Settled areas and existing customers, rather than extending new services to sparsely settled or undeveloped areas.

- Incorporated land before serving un-incorporated areas. Sewer extension shall be encouraged in areas needing ground water protection or surface water protection or in areas with existing residential, commercial, or industrial uses operation with failing systems
- Utilities and Capital Facilities Policy 1-D: The City plans to provide water utility services within its urban growth area (UGA) consistent with planning policies in the City’s Water and Wastewater Comprehensive Plans. As such, the City will support local efforts and facilitate the connection of existing septic systems to City sewer, where feasible.
- Utilities and Capital Facilities Water Resources Goal 1: Ensure the long term protection and preservation of both the quality and quantity of groundwater and surface waters for all uses.
- Health and Human Services Goal 1: Work to achieve a safe, active, and healthy lifestyle for Lacey citizens through community planning and design.
- Health and Human Services Policy 1-A: Provide opportunity for a distribution of land use types located within planning areas and within walking distance at one another to encourage pedestrian activity and minimize the need for automobiles.
- Health and Human Services Policy 1-B: Design neighborhoods to promote bicycling and walking, encouraging these activities and healthy lifestyle choices.
- Health and Human Services Policy 1-C: Prioritize safe routes for capital improvements such as sidewalks, planter strips, street trees, traffic calming, and other pedestrian improvements. Consider incentives for infill development to add off-site traffic calming and other pedestrian amenities for designated safe routes.
- Health and Human Services Goal 2: Work to achieve a community where residents have convenient access to healthy food, clean water, and affordable shelter.
- Health and Human Services Policy 2-A: Provide opportunities for housing development to serve Lacey’s full demographic spectrum, including a full range of housing choices designed to meet life stage needs of those demographics.
- Health and Human Services Policy 2-B: Provide opportunities to integrate housing in to core areas and arterial corridors where services and transportation options can be provided.
- Health and Human Services Policy 2-D: Support environmental measures to protect critical/sensitive and resource areas and provisions for clean air, water, and soil for overall community health.
- Lakes Planning Area Goal 1: Protection of environmental resources in the planning area shall be a priority.
- Lakes Planning Area Policy 1-A: Require development to work around environmentally sensitive areas and take advantage of and promote environmental resources as an amenity.
- Lakes Planning Area Policy 1-B: All development shall be sensitive to protecting environmentally sensitive areas.

- Lakes Planning Area Policy 1-C: In balancing competing goals and interests, the City shall weigh in favor of strict application of environmental regulations and public access requirements.
- Lakes Planning Area Goal 3: Maintain existing moderate and high-density housing opportunities along major arterials with convenient access to transit where no impact to environmentally sensitive areas will occur.
- Lakes Planning Area Goal 4: Improve infrastructure in the planning area particularly related to sewer and transportation.
- Lakes Planning Area Policy 4-A: Consistent with the policies of the Shoreline Master Program, extension of sewer service shall be prioritized around lakes to protect water quality.

Exhibit 2, Staff Report, pages 4 through 6.

9. The property is located within both the City's High-Density Residential (HDR) zoning district and Shoreline Urban Conservancy (URBCON) zoning district. The HDR zoning district permits any residential use with a density of at least 12 units per acre. *Lacey Municipal Code (LMC) 16.18.020*. The property was designated HDR in 1994, concurrent with the City's adoption of its first Comprehensive Plan. According to City staff, the City's goal was to provide lakeside residential housing options beyond the predominately single-family development that is typical of the area surrounding Hicks Lake. While City staff is uncertain of the acreage of the parcel within the HDR zone, the density of the entire parcel can be calculated as approximately 36 units per acre. If the acreage of the parcel were to be reduced to reflect the true acreage of land within the HDR zone, the density would increase. The URBCON zoning district extends 200 feet landward of the ordinary high-water mark (OHWM) of Hicks Lake. The purpose of the URBCON zoning district is to protect and restore ecological functions of open space, flood plain, and other sensitive lands where they exist in urban and developed settings, while allowing a variety of compatible uses. *City Shoreline Master Program (SMP) 17.22.065*. The URBCON designation is applied to shoreline properties where development is compatible with maintaining or restoring the ecological function of the area. *SMP 17.22.066*. A shoreline substantial development permit (SSDP) is required for multifamily development within the URBCON designation. *SMP 17.24.010*. Although the multifamily units would all be located outside of the shoreline jurisdiction, other appurtenant and/or accessory structures associated with the multifamily development, detailed below, are proposed within the URBCON area.

The southeast portion of the site is bordered by three existing single-family lots that also carry dual zoning designations of HDR and URBCON. The property to the south contains one existing single-family residence but is otherwise forested. This parcel is also currently under review with the City for a 132-unit multifamily development. North of the subject property is a public boat launch owned by the Washington Department of Fish and Wildlife (WDFW). Just north of the WDFW boat launch is Wanschers Community Park, which is owned and maintained by the City. Across Hicks Lake Road

SE are two apartment complexes, which are zoned Moderate and Low Density Residential, and a single-family subdivision, which is zoned Moderate Density Residential. *Exhibit 2, Staff Report, pages 3, 8, and 9.*

Critical Areas

10. Soundview Consultants prepared a “Shoreline, Wetland Delineation, and Fish and Wildlife Habitat Assessment Report, with Conceptual Restoration Plan” for the proposed project, dated August 21, 2020.³ After conducting site visits in 2017 and consulting other sources, Soundview Consultants determined that the shoreline of Hicks Lake runs along the subject property’s eastern boundary, and a 0.07-acre Category III lake fringe wetland is located across the entire length of the property’s shoreline within the OHWM of Hicks Lake. The report noted that no other critical habitats have been identified within one mile of the proposed project. The wetland has a habitat score of 3 and has moderate potential to improve water quality due to the surrounding land use and presence of powerboats on the lake. The report noted that the wetland is limited in its ability to filter pollutants due to the lack of dense emergent and herbaceous vegetation within the wetland and has low potential to provide hydrologic function to the watershed due to its location predominantly within the OHWM of Hicks Lake. The wetland also has low species richness, consisting primarily of aquatic bed, and its buffer has been degraded by prior development activities and contains ornamental, non-native invasive vegetation.

The report determined that temporary impacts to the wetland and its buffer during the construction process would be unavoidable. To offset temporary impacts, the Applicant would remove impervious surfaces and restore buffer functions through the removal of non-native invasive vegetation and installation of native riparian and buffer plant species within 3,000 square feet of the shoreline and wetland buffer areas. The Applicant would also restore the property’s shoreline by removing debris, an old wood float, and existing pollutant-generating shoreline stabilization that used creosote-treated timbers, metal spikes, and automotive tires, and by providing natural habitat features and installation of large woody debris along the OHWM of Hicks Lake. Mitigation measures are discussed in further detail below. *Exhibit 2, Staff Report, page 2; Exhibit 7; Exhibit 12; Exhibit 14; Exhibit 15.*

Site Plan Review

Traffic

11. In October 2021, SCJ Alliance prepared a Traffic Impact Analysis (TIA) in accordance with City TIA guidelines. Access to the site is provided from Hicks Lake Road SE and Hazelwood Lane, a private gravel road on the south boundary of the site. SCJ Alliance’s operational analysis, however, assumed that all of the traffic generated by the

³ The report was prepared prior to the adoption of the City’s Shoreline Master Program (SMP) update in March 2021. City staff noted the update was largely a formatting update to streamline and simplify the previous document and the substance and criteria used by the report are consistent with the updated SMP. *Exhibit 2, Staff Report, page 8.*

development would use the primary access on Hicks Lake Road SE, to represent a “worst-case” scenario. The TIA determined that the proposed development would generate 968 new daily trips, with 78 new PM peak-hour trips, but that the resulting increase in traffic would not cause levels of service (LOS) in the vicinity to fall below acceptable/adopted levels. The TIA also analyzed the turning movements several nearby intersections, including the intersection of Ruddell Road SE and 25th Avenue SE. The TIA and City transportation staff determined that the LOS impact to Ruddell Road SE and 25th Avenue SE would not warrant a signal control because 25th Avenue SE has sufficient storage to accommodate the combined queue length from both this project and the adjacent Gayteaway Hicks Lake project (No. 20-190).

Impacts on pedestrian and bicycle volumes were also reviewed cumulatively with the Gayteaway project. Based on the Thurston Regional Planning Council’s 1999 Household Travel Survey, the proposed development is expected to generate 67 daily pedestrian and bicycle trips, and the adjacent Gayteaway proposal is expected to generate 50 daily pedestrian and bicycle trips. There are currently no sidewalks on Hicks Lake Road SE or between the project locations and 25th Avenue SE. The “Pedestrian and Bicycle Plan for the City and the Lacey UGA” identifies Hicks Lake Road as a recommended sidewalk connection. Due to the increased volume of vehicles and pedestrians associated with the projects, City staff recommends that a pedestrian facility that meets ADA requirements be constructed along the east side of Hicks Lake Road SE from the project frontage to 25th Avenue SE. The pedestrian facility would be temporary until the City installs the frontage improvements associated with Wanschers Park.

City transportation staff identified 15 street projects that would be impacted by the traffic generated by the proposal. The project would be assessed for traffic mitigation based on a proportionate share of the total cost of the impacted street projects, consistent with Chapter 14.21 LMC. City staff currently estimates that the project’s proportionate share traffic mitigation fee would be around \$73,630. Thurston County would require an additional \$42,005 in mitigation fees for traffic impacts to Thurston County roads. *Exhibit 2, Staff Report, pages 18 and 19; Exhibit 18; Exhibit 30.a.*

12. Intercity Transit (IT) identified nearby bus stops on 25th Avenue SE and Ruddell Road. The project would not be served directly by fixed-route bus service, but the site would be accessible by IT’s paratransit service, Dial-A-Lift (DAL). *Exhibit 2, Staff Report, page 19; Exhibit 34.*

Parking

13. The Applicant proposes 232 below-grade parking stalls beneath the north and south buildings, and an additional 61 surface-level parking spaces, totaling 293 on-site parking stalls. City Senior Planner Samra Seymour testified that the City recently adopted new parking requirements but that the proposal vests to the prior requirement of a minimum of 1.5 vehicle stalls per unit. The proposal to provide 293 on-site parking stalls would

exceed the minimum 267 parking stalls required for a 178-unit complex, and would provide an average of 1.65 parking stalls per dwelling unit. *Exhibit 2, Staff Report, page 19; Testimony of Ms. Seymour.*

Class IV Forest Practices Permit

14. The Applicant's tree removal plan indicates that the proposal would remove 278 trees and retain 17 trees on the 4.98-acre site, primarily along the eastern portion of the property, mostly within the 100-foot wetland buffer. Sound Urban Forestry prepared a Forester's Report for the subject proposal, dated May 7, 2020. After conducting a site visit and reviewing the Applicant's tree removal plan, the Forester determined that the majority of the existing trees are in poor condition, due to past topping and subsequent inferior structures, and therefore are not appropriate for retention near future structures or high use areas. The Forester identified two areas within the site for potential tree retention, including the southwest corner and long a portion of the southern property boundary. City staff notes that tree retention in these areas, as well as in the 100-foot shoreline setback, should be prioritized and incorporated into the site plan to the greatest extent possible. Prior to grading plan approval, Sound Urban Forestry would review the revised site and grading plans in order to make final tree retention recommendations. The site is required to retain or replant a tree tract or tracts equaling at least five percent of the gross site area. *LMC 14.32.064.A*. The subject parcel would require a minimum tree tract area of 10,847 square feet. Tree tract locations and calculations must be clearly identified on the site plans and landscaping plans. The City Forester would review the Applicant's final landscape plan to ensure that the proposal would meet all applicable requirements of the City's tree and vegetation protection and preservation code. *Exhibit 2, Staff Report, page 17; Exhibit 8; Exhibit 19.*

Shoreline Substantial Development Permit

15. The State Shoreline Management Act (SMA) and the City SMP govern work within 200 feet of the Hicks Lake ordinary high-water line. *SMP 17.15.229; RCW 90.58.030(2)(f)*. All of the proposed apartment units would be located outside of the shoreline jurisdiction, but other structures and uses that are considered accessory to the primary residential development are proposed within this area. Any "substantial development" within the shoreline requires approval of an SSDP. Substantial development is any development in which the total cost or fair market value exceeds \$7,047, or any development that materially interferes with the normal public use of the water or shorelines of the state. *RCW 90.58.030(3)(e)*. The project cost exceeds this threshold and does not qualify for any shoreline permit exemption under WAC 173-27-040. Additionally, an SSDP is required for any residential development associated with a multifamily development within the URBCON shoreline environment designation.⁴ *SMP 17.24.010*. The

⁴ *Residential development* includes single-family dwellings; duplexes; other detached dwellings; floating homes; multi-family development (apartments, townhouses mobile home parks, other similar group housing); condominiums, subdivisions; and short subdivisions, together with accessory appurtenant uses

Applicant has proposed two recreational structures, 12 parking stalls, a play structure, sports court, spa and pool, other recreational facilities, and development of a pier and floating dock within the 200-foot shoreline jurisdiction of Hicks Lake. Accordingly, an SSDP is required. *Exhibit 2, Staff Report, page 9; Exhibit 3; Exhibit 5.*

Setbacks

16. Residential development is subject to a 100-foot setback from the OHWM. *SMP 17.24.015.* In its application, the Applicant proposed to construct portions of the patio, a fire pit, barbecues, a landscape planter, covered shelters, ramps and landings, and picnic areas within the 100-foot setback and identified these uses as “water-related and enjoyment.” Water-related and enjoyment development is subject to a 50-foot setback from the OHWM in URBCON zoning districts. *SMP 17.24.015.* A “water-enjoyment use” is

A recreational use or other use that facilitates public access to the shoreline as a primary characteristic of the use; or a use that provides for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general characteristic of the use and which through location, design, and operation ensures the public's ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the general public and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment.

SMP 17.15.281.

Pursuant to SMP 17.15.281, the Applicant would only be able to build the proposed structures within the 50-foot setback if the facilities would be available for use by the general public. The Applicant’s application materials do not indicate that these facilities are intended to be used by the general public. City staff has indicated that, with the exception of the ramps and pathway to the pier and floating dock, these proposed structures would have to be built outside of the 100-foot setback. At the public hearing, Applicant Representative Ivana Halvorsen testified that the Applicant would remove the patio, fire pit, barbecue, landscape planter, covered shelter, and picnic areas from the 100-foot setback.

Pedestrian trails and shoreline access segments are allowed in the URBCON shoreline environment, with no required setback from the Hicks Lake OHWM. *SMP 17.24.015. Exhibit 2, Staff Report, pages 9 and 10; Exhibit 3; Exhibit 5; Exhibit 10; Exhibit 12; Exhibit 14; Testimony of Ms. Halvorsen.*

and structures normally applicable to residential uses including but not limited to garages, sheds tennis courts, swimming pools, parking areas, fences, cabanas, saunas and guest cottages. *SMP 17.15.208.*

Residential Development Standards

17. SMP 17.26.025 provides standards for residential development within the shoreline jurisdiction. Impervious surface in URBCON shoreline environment is limited to 30 percent. *SMP 17.24.015*. The Applicant proposes to construct approximately 2,200 square feet of impervious patio area within 100 feet of the lake. The proposed patio footprint would replace approximately 2,649 square feet of existing impervious surface areas from manufactured homes and associated driveways currently on the property. Accordingly, the proposal would result in a net reduction in existing impervious surface areas by 449 square feet within 100 feet of the lake. The City would review the Applicant's revised project plans – removing or relocating proposed accessory structures from the 100-foot shoreline setback – to ensure that the total impervious surface coverage within the shoreline jurisdiction does not exceed 30 percent. Accessory buildings in the URBCON zoning district are limited to 16 feet in height. *SMP 17.26.025(14)*. Conformity with this standard would be verified during the multifamily design review process, prior to building permit issuance, when the building plans are submitted for review. *Exhibit 2, Staff Report, page 10; Exhibit 10; Exhibit 12; Exhibit 14; Exhibit 15.*

Vegetation Management

18. SMP 17.41.020 requires the preparation of a Shoreline Vegetation Management Plan for SSDPs, shoreline conditional use permits (SCUPs), and shoreline variances (SVAR). SMP 17.41.020.2.E, however, authorizes projects that improve ecological function of the shoreline to be exempted from this requirement. The existing 100-foot Vegetation Management Area (VMA) and the 80-foot buffer associated with the Category III wetland are currently degraded by the existing mobile home parking area and by the dominance of non-native invasive species and lawn vegetation. The shoreline is also degraded by the presence of pollutant-generating shore stabilization features, including creosote-treated timbers and metal spikes, a wooden float, automotive tires, and other debris. In the “Shoreline, Wetland Delineation, and Fish and Wildlife Habitat Assessment Report, with Conceptual Restoration Plan,” Soundview Consultants indicates that the Applicant would undertake restoration and enhancement measures that would result in a net increase in wetland and shoreline functions and values. Specifically, the Applicant would remove the existing shoreline stabilization treatments, the wooden float, and debris. The Applicant would also remove non-native invasive plants from the riparian areas and would install the following: native vegetation; 470 square feet of clean beach gravels and sand; approximately 1,500 square feet of clean pea gravel below the OHWM, to enhance substrate conditions and fish habitat; and anchored, large woody debris and rocks along the length of the property's shoreline, to maintain the shoreline and limit erosion. Additionally, the Applicant would remove 1,737 square feet of impervious surface within the wetland buffer and 912 square feet of existing driveway and parking area within the 100-foot shoreline setback. *Exhibit 2, Staff Report, pages 11 and 12; Exhibit 14.*

Shoreline Conditional Use Permit

19. Piers and docks serving a single property in the URBCON shoreline environment require approval of a shoreline conditional use permit. *SMP 17.24.020*. The purpose of the shoreline conditional use permit (SCUP) process is to provide a system within the master program that allows flexibility in the application of use regulations in a manner consistent with the policies of RCW 90.58.020. *SMP 17.30.015*. RCW 90.58.020 recognizes the need to protect the public's interest in shoreline protection while also recognizing and protecting private property rights consistent with the public's interest and directs local governments to develop local SMPs consistent with the use preferences listed. The URBCON designation gives priority to water-oriented uses and uses with the potential to restore the ecological functions of the shoreline. *SMP 17.22.067*. Since the property's shoreline does not have a location for launching or accessing watercraft outside of the Category III wetland (as the wetland is located along the entirety of the parcel's lakeside frontage), the Applicant is proposing to construct a pier and floating dock to support water-dependent recreational uses, including swimming and small (non-motorized) craft launching. The dock design would minimize impacts to the wetland by locating the dock's ell float outside of the wetland and by using grated surface materials to allow light transmittal. The moorage function of the dock would be intended only for temporary (or day) use. The dock would minimize impacts to the shoreline of Hicks Lake that would otherwise occur from repeated launching and temporary anchoring of small watercraft along the shoreline. The proposed ell would also be located outside the wetland aquatic bed to minimize impacts. The fetch across Hicks Lake at the proposed dock's location is approximately 1,500 linear feet, and the replacement of the existing solid surface float with a pier and floating dock that extends over 160 linear feet of the wetland is 11 percent of the fetch, permitting use of the lake for neighboring properties. *Exhibit 2, Staff Report, pages 12 through 14; Exhibits 12 through 14.*

20. Approval of shoreline conditional use permits requires consideration of cumulative impacts for additional requests for like actions in the area. *SMP 17.30.015.2*. The proposed dock is intended to provide water-oriented use and access to a significant number of residents of the associated multifamily development. *SMP 17.25.010* prioritizes the use of joint-use or community dock facilities in order to limit the overall number of docks within shorelines. There are multiple existing docks on Hicks Lake serving single-family residences. City staff determined that, if other similar zoned properties in the area were to propose joint-use docks, they would likely replace existing docks and serve multiple residents, as opposed to limiting access to one residence. Accordingly, the cumulative impacts of more joint-use docks would not produce substantial adverse effects within the shoreline. *Exhibit 2, Staff Report, pages 12 through 14; Exhibits 12 through 14.*

Shoreline Variance

21. *SMP 17.25.010* provides criteria for piers and docks, including dimension and design criteria for proposed piers and docks in freshwater. The total freshwater pier/dock

surface coverage for facilities serving three or more residences cannot exceed 1,000 square feet or four feet in width and must be fully grated with at least 60 percent open area. *SMP 17.25.010(16)*. Docks with floats or ells are limited to 6 feet in length and 26 feet in length when grated and providing at least 60 percent open area over the entire ell or float. *SMP 17.25.010(16)(G)(2)*. The surface area of the proposed dock is 832 square feet and is 4 feet wide throughout its length and consists of a 128-foot-long pier, 12-foot-long ramp, and two floats comprising the ell-shape that are 20 and 48 feet long. Since the proposed floating dock and ell would exceed the length standard under *SMP 17.71.020(16)(G)(2)*., the Applicant requests a shoreline variance from this requirement to permit the proposed dock length. The purpose of a variance permit is strictly limited to granting relief from specific bulk, dimensional or performance standards set forth in the applicable master program where there are extraordinary circumstances relating to the physical character or configuration of property such that the strict implementation of the master program will impose unnecessary hardships on the applicant or thwart the policies set forth in *RCW 90.58.020*.

SMP 17.30.020. *Exhibit 2, Staff Report, pages 12 and 14; Exhibit 6; Exhibits 12 through 14.*

22. The Applicant contends that the number of residents intended to be served by the proposed dock makes it infeasible to meet the 26-foot length requirement because, at that length, it would not safely accommodate several people on the pier at a single time. In order to accommodate multiple, simultaneous users, the Applicant requests a variance to extend to the float to up to 55 feet in length. City staff determined that approval of the variance request would be appropriate in light of the City SMP's goal of prioritizing joint-use docks and piers. *SMP 17.25.010.5*.⁵ *Exhibit 2, Staff Report, page 12 through 16.*

Wetland Development Permit

23. The on-site Category III lake fringe wetland is a regulated wetland under *LMC 14.28.030(OO)*. The buffer width associated with a Category III wetland is 80 feet. *LMC 14.28.280.C.2.c*. As discussed above, the Applicant has proposed installing a dock and pedestrian walkway within the 100-foot shoreline buffer and, therefore, within the required 80-foot wetland buffer. Walkways and trails are allowed uses within wetland buffers as long as the pathways are limited to minor crossings and do not have adverse impacts on water quality. *LMC 14.28.120*. City staff supports retaining the proposed walkways in order to provide community access to the shoreline and dock. *Exhibit 2, Staff Report, page 16; Exhibit 6.*

⁵ *SMP 17.25.010.5* provides that “[n]ew residential development of two or more dwellings must provide joint use or community dock facilities, when feasible, rather than allow individual docks for each residence.”

24. LMC 14.28.350 addresses avoidance of wetland impacts. For regulated, water dependent activities, an applicant must demonstrate that “unavoidable and necessary impacts can be demonstrated where there are no practicable alternatives which would not involve a wetland, or which would not have less adverse impact on a wetland and would not have other significant adverse environmental consequences.” *LMC 14.28.350.C.1*. The proposed pier is a water-dependent structure that cannot avoid impacts to the Category III wetland because the wetland spans the entire length of the property’s shoreline. The pier has been designed to minimize impacts. Specifically, the ell is located outside the wetland so that launching and temporary mooring of small watercraft would be directed outside the wetland. The pier would also be constructed following “Green Shoreline Guidelines” to minimize impacts to the wetland aquatic bed. *Exhibit 2, Staff Report, pages 16 and 17; Exhibit 14.*

Written Comments

25. As noted above, the City received a substantial number of public comments on the proposal, mostly from area residents opposed to the project. These comments generally related to the following topics:
- **Traffic Impacts:** Comments on this topic expressed concerns that the proposal would increase traffic impacts on surrounding roads, particularly Hicks Lake Road SE, and would pose safety hazards to pedestrians. Many commentators noted that surrounding roads are already congested and contain blind spots. For example, Alan Baum, Evelyn Carver, Dana and Dane Leigh, Darryl Carver, Scott Goddard, Janet Ikeda, Gary Wilson, Susan Cooksey, Gary Ikeda, Douglas Catey, Norman Mastaski, and Robert and Deanna Krell expressed concerns that Hicks Lake Road SE is inadequate to handle current traffic and would be unable to accommodate increased traffic from the proposed use. Evelyn Carver, Curtis and Diane Leigh, Pamela Pearce Carver, Rebecca McGinnis, Susan Cooksey, Laura Alfani, Margaret Shannon, and Crystal Ashley raised concerns about the lack of sidewalks on roads in the area, particularly on Hicks Lake Road SE. Scott Goddard, Curtis and Diane Leigh, Jamie Schultz, Kate Ayers, Jeffrey McKenzie, John and Pat Meyers, Margaret Shannon, Victoria Byington, and Tom Moore raised concerns about the adequacy of the Traffic Impact Analysis (TIA). These commenters expressed concerns that the TIA did not analyze all roads that would be impacted by the project, inadequately addressed impacts on intersections, and did not account for school traffic and cumulative impacts between this proposal and the Gateway Proposal. Dana and Dane Clay, Darryl Carver, and Robert and Deanna Krell expressed concerns about the adequacy of parking for the complex and that on-street parking would increase on Hicks Lake Road SE. Several commenters also expressed concerns that the proposed development is not within walking distance of commercial facilities or public transit, increasing reliance on use of motor vehicles.
 - **Wildlife Impacts:** Comments on this topic expressed concerns that the proposal would impact wildlife in the surrounding area and in Hicks Lake. For example,

Mitch Becker, Alan Baum, Dana and Dane Clay, Janet Ikeda, Pamela Pearce Carver, Dennis Rhodes, Dean and Wendice Sevier, Savanna Small, Heather Christopher, Laura Alfani, Norman Mastaski, DJ and Dean Lietzau, John and Pat Meyers, and Scott Morrison raised concerns that the proposal would result in habitat loss for wildlife in the area, including bald eagles, bats, owls, deer, ducks, and otters.

- **Tree Loss and Environmental Impacts:** Comments on this topic expressed concerns that the proposal would destroy the old growth trees on the property. For example, Alan Baum, Pamela Pearce Carver, Dana and Dane Clay, Tom Moore, Robert and Deanna Krell, the Hicks Lake Management District Steering Committee, and Mitch Becker raised concerns that tree loss would lead to increased run-off and erosion control, impacting the lake ecosystem and water quality. Lisa Ornstein, Nancy Snyder, and Douglas Catey also raised concerns about the importance of preserving trees for carbon sequestration, in light of climate change. Dean and Wendice Sevier, Deschutes Law Group, and DJ and Dean Lietzau raised concerns about the increase in impermeable surfaces near the lake. Mitch Becker, Susan Cooksey, and Heather Christopher expressed concerns that increased traffic from the proposal would impact air quality in the area. Curtis and Diane Leigh, Jeffrey McKenzie, and the Hicks Lake Management District Steering Committee raised concerns about the adequacy of the proposal's mitigation plans for environmental impacts.
- **Density:** Comments on this topic expressed concerns that the proposal was inconsistent with the density of the surrounding area. For example, Dane and Dana Clay, Robert and Deanna Krell, Patrick Sprout, and Janet Ikeda expressed concerns about the placement of a high-density development near the lake.
- **Lake Traffic:** Comments on this topic expressed concerns that the proposal would increase boat and other water traffic on Hicks Lake. For example, John and Julie Nierenberg, Steven and Ruth Rector, Dean and Wendice Sevier, Curtis and Diane Leigh, Marshall Krier, Robert and Deanna Krell, Margaret Shannon, and Pat Meyers commented that the proposal would exacerbate congestion on Hicks Lake. Several of these commenters also noted that police were no longer able to maintain a presence on Hicks Lake to enforce water traffic safety.
- **School Impacts:** Comments on this topic raised concerns that the proposed use would adversely impact the schools in the area and that access to the schools is limited. For example, Rebecca McGinnis and Marshall Krier raised concerns that the project would increase school enrollment.
- **Adequacy of Impact Analyses:** Comments on this topic expressed concerns that the reports generated for the project did not adequately address the impacts of the proposal. For Example, Gary Ikeda, Douglas Catey, Wendice Sevier, DJ and Dean Lietzau, and Tom Moore raised concerns that the cumulative impacts of the subject proposal and the Gayteway Multifamily Project were not adequately addressed. Scott Goddard commented that the Applicant's site plans inaccurately portrayed the ordinary high-water mark (OHWM).

- **Citizen Participation:** Comments on this topic raised concerns that the proposal was not adequately permitting citizen participation and that the City Council would not be required to hear public testimony on the project.
- **Property Values:** Comments on this topic expressed concerns that the proposal would negatively impact property values.

Exhibit 38; Exhibit 39.

Testimony

26. Applicant Representative Ivana Halvorsen testified generally about the proposal and how the Applicant would comply with the City’s recommended conditions of approval. She noted that the project would comply with both density requirements for the zoning district and with off-street parking requirements. She explained that the proposal would include improvements to both the roads that provide access to the property, including an off-site walkway on Hicks Lake Road SE from the north boundary of the site to 25th Avenue SE. Ms. Halvorsen explained that the proposal would be served by City water and sewer services from existing mains. She gave an overview of the Applicant’s plans for tree retention, wetland restoration, and shoreline improvements. Specifically, she noted that the Applicant would replace the existing dock with a new pier and dock that meets current regulatory requirements and supports fish habitat, and that the Applicant would replant 3,000 square feet of vegetation within the shoreline environment. Ms. Halvorsen also testified that the proposal would meet impervious surface area requirements within the shoreline jurisdiction. Ms. Halvorsen also clarified that the Applicant would remove the proposed improvements (i.e., recreational amenities) from the required 100-foot shoreline setback that concerned the City and that the dock would be only for day use, with no overnight tie-ups. *Testimony of Ms. Halvorsen.*
27. City Senior Planner Samra Seymour testified generally about the project and how, with conditions, it would comply with City code and regulations. She clarified that the pedestrian pathway from the north end of the parcel to 25th Avenue has been identified as a pedestrian corridor in the City’s pedestrian and bike plan and would be built out over time, eventually connecting Wanschers Park to Hicks Lake. Ms. Seymour testified that the City continues to recommend that the Applicant build the pedestrian pathway from the property down to the lake, through the shoreline 100-foot setback. She also clarified that City parking standards have been recently changed but that this project vested under previous standards that required a minimum of 1.5 parking stalls per residence. Ms. Seymour noted that the City’s Shoreline Master Program has also recently been modified, but the update mainly consisted of streamlining rather than qualitative changes. She commented that, if not for the required shoreline permits, the project would have been considered through an administrative review process because the proposed apartment complex is permitted outright in the High-Density Residential (HDR) zoning district. Ms. Seymour also noted that the City’s SEPA determination was not appealed. *Testimony of Ms. Seymour.*

28. Victoria Byington expressed concerns about the dissemination of information regarding the project and the population increase that would result from the proposal. She raised concerns about traffic impacts, including pedestrian safety and particularly for children walking to school, and speeding on side streets. She also expressed concerns that the Traffic Impact Analysis was completed during the winter months, when people were telecommunicating and using the roads less frequently. She inquired into the benefit of the project, noting that the apartment complex would not be used to address homelessness or affordable housing. She requested that the scope of the project be decreased to single-family residences. *Testimony of Ms. Byington.*
29. Lynne Dearing raised concerns about the lack of sidewalks, construction vehicles, and increased traffic, noting the risks to child safety and impacts to air quality. She inquired into whether the two projects (i.e., this proposal and the adjacent Gayteway proposal) would be built concurrently, which could increase the impacts of deforestation. Ms. Dearing also expressed concerns about impacts to wildlife and the importance tree retention for carbon sequestration. *Testimony of Ms. Dearing*
30. Terry Carr raised concerns about the clearcutting of trees, resulting in more sunlight on Hicks Lake contributing to algal blooms. *Testimony of Mr. Carr.*
31. Scott Goddard raised concerns that a study was never done for the zoning change of the twenty acres that includes the subject property. He testified that such a study would have identified necessary infrastructure improvements to accommodate growth. Mr. Goddard expressed concerns that additional traffic would exacerbate current traffic conditions and would lead to increased traffic on neighborhood streets that are not designed to accommodate a high level of traffic. *Testimony of Mr. Goddard.*
32. Margaret Shannon echoed concerns about traffic and environmental impacts. She raised concerns that the Applicant would remove a bulkhead that it has based its development standard assessments on. She also expressed concerns that the proposed pier would jut out into the lake and create safety risks for boat traffic. Ms. Shannon noted that there is no longer any police presence on the lake to enforce safety measures. *Testimony of Ms. Shannon.*
33. Janet Ikeda echoed concerns about traffic, increased accidents, and the necessity of infrastructure improvements. She raised concerns about loss of trees and impacts to wildlife and the lake ecosystem. Ms. Ikeda also expressed concerns about the size and scale of the projects, as well as their proximity to the lake. She testified that people park their cars on Hicks Lake Road where the pedestrian pathway would be located. She noted that there are no nearby amenities or bus stops. *Testimony of Ms. Ikeda.*
34. Jeffrey McKenzie asked whether the leasing office would be within the 200-foot shoreline setback. *Testimony of Mr. McKenzie.*

35. Dana Clay raised concerns that the project would not meet impervious surface requirements. She also expressed concerns that the number of parking stalls proposed would not accommodate the needs of the residents. Ms. Clay noted that pedestrian pathways would need to be ADA accessible. She raised concerns that the traffic impact analysis did not address impacts to Shady Lane. Ms. Clay also raised concerns about the safety of swimmers. *Testimony of Ms. Clay.*
36. Dane Clay testified that, from his experience in construction, he expected to see increased coordination between development of the subject property and the adjacent Gateway proposal to ensure necessary safety measures would be in place. He also echoed concerns about the density of the projects. *Testimony of Mr. Clay.*
37. Robert O’Keefe noted that Lacey is designated “Tree City U.S.A.” He raised concerns about the accuracy of the TIA, noting that 25th Avenue is a one-lane road travelling in both directions. Mr. O’Keefe expressed concerns about the capacity of area roads to accommodate construction vehicles and equipment, child safety, diesel pollution, and noise pollution. *Testimony of Mr. O’Keefe.*
38. Scott Morrison raised concerns that cumulative impacts have not been adequately addressed and that traffic impacts to Shady Lane and Lilac Road were not addressed in TIAs prepared for this project and the Gateway proposal. *Testimony of Mr. Morrison.*
39. Ben Cushman, an attorney representing a community group, raised concerns about the adequacy of the analysis of the impacts of the project, including traffic impacts, effluent control, and environmental impacts. He argued that the TIA prepared for the project was flawed because data was taken during the COVID-19 pandemic and did not include analysis of undeveloped roads that connect to Ruddell Road. Mr. Cushman also noted that it was unclear in the project’s application materials whether the 30 percent impervious surface area limitation would be exceeded. *Argument of Mr. Cushman.*
40. Kate Ayers raised concerns about the proposal’s traffic impacts and inquired about whether the proposed pedestrian pathway would connect to a bus stop. *Testimony of Ms. Ayers.*
41. Pat Meyers inquired about whether the City Council would be listening to the hearing. She also asked how the SEPA information was disseminated and about the reasons for the development. Ms. Meyers raised concerns about increases in wakeboarding, which could impact existing docks and the shoreline environment. She also expressed concerns about noise pollution and increased population in the area. *Testimony of Ms. Meyers.*

42. Alan Baum echoed concerns that the TIA did not accurately account for current traffic demands and about impacts of construction on noise pollution and water quality. *Testimony of Mr. Baum.*
43. Jessica Wilson echoed concerns about loss of trees and wildlife habitat. *Testimony of Ms. Wilson.*
44. Andrew Feyerick reiterated concerns about increased lake traffic. He also asked whether the proposed dock would include boat slips. *Testimony of Mr. Feyerick*
45. Dakota Diltz echoed concerns about safety, temporary construction impacts, loss of wildlife habitat, and environmental impacts. She also raised concerns about increased enrollment at Lacey Elementary. *Testimony of Ms. Diltz.*
46. James Galuso voiced his support for the proposal, noting that the city and Thurston County need more housing and that, if this project were not to be approved, the housing would go elsewhere, potentially outside of the urban growth area, which could lead to more greenhouse gas emissions due to increased vehicle use. *Testimony of Mr. Galuso.*
47. Karen Johnson expressed concerns about loss of wildlife habitat, noise pollution, and the density of the project. She also raised concerns about the consistency of the project with the surrounding area and the development of Wanschers Park. *Testimony of Ms. Johnson.*
48. Cheryl Settle testified that, in her experience, any road widening would require additional environmental review. She commented that road improvements should be finished prior to construction of the proposed development. Ms. Settle raised concerns about migratory and nesting birds on the subject parcel. She also expressed concerns about maintenance of the stormwater filtration system, sewer impacts, and the presence of asbestos in the existing structures. *Testimony of Ms. Settle.*
49. Racheal Villa, of Soundview Consultants, testified on behalf of the Applicant regarding the project's compliance with shoreline regulations and environmental requirements. She stated that, after conducting a site visit to evaluate whether the site currently provides habitat for protected species, she determined that a wetland ran along the shoreline of the property. Ms. Villa discussed the measures the Applicant would take to restore wetland functions and enhance shoreline health. She noted the Applicant would submit an engineered stormwater plan and would not exceed the 30 percent threshold allowed for impervious surfaces. Ms. Villa clarified that the dock would be used only for human-powered watercraft and that the shift from septic systems to sewer hook-ups would create a net benefit for the health of the wetland and lake ecosystems. *Testimony of Ms. Villa.*

50. Ryan Shea, of SCJ Alliance, testified generally about the traffic impact analysis he completed for the project. He clarified that the analysis was based on counts from before the COVID-19 pandemic and then adjusted for 4 percent annual growth, as required by City staff. Mr. Shea noted that estimated impacts to Shady Lane did not trigger specific analysis for traffic impacts and that construction activity typically occurs outside peak traffic flow. He stated that there would be construction impacts at 25th Avenue and Ruddell Road during peak hours but explained that the analysis calculated only seven additional vehicles at the intersection during peak hours. Mr. Shea explained that he performed a signal warrant analysis for the intersection, which did not indicate that the intersection warranted signal installation. He noted that the TIA included a five-year collision assessment at the intersection, which demonstrated that there were about three collisions a year, and that no serious injuries had been reported during the assessment period. Mr. Shea commented that the Applicant would be required to pay proportionate mitigation fees to offset traffic impacts. *Testimony of Mr. Shea.*
51. City Transportation Manager Martin Hoppe echoed Mr. Shea's analysis that traffic impacts at 25th Avenue and Ruddell Road would be minimal, as determined by City traffic guidelines. He clarified that the TIA accounted for cumulative impacts between the subject proposal and the Gayteway proposal, as well as future projects currently undergoing permitting review. Mr. Hoppe noted that plans for construction vehicles would be made during pre-construction meetings and that the surrounding roads are designed to accommodate construction vehicles. *Testimony of Mr. Hoppe.*
52. City Development Review Manager Tom Stiles testified that the Applicant would be required to install a pedestrian pathway either along Hicks Lake Road or through the site. He noted that the projects would utilize City sewer services and that an erosion control inspector would ensure compliance with erosion control measures during construction. Mr. Stiles explained that frontage improvements and utilities would be installed prior to occupancy of the residential structures. *Testimony of Mr. Stiles.*
53. City Water Resources Engineer Doug Christenson clarified that the parcel owner would be responsible for maintaining stormwater facilities and would be issued a manual to assist in that maintenance. *Testimony of Mr. Christenson.*
54. Ms. Seymour testified in response to concerns raised by members of the public during the hearing. In particular, she noted:
- Intercity Transit had submitted comments related to the proposal, noting that the closest bus stop was about 0.25 miles from the project.
 - Olympic Region Clean Air Agency (ORCAA) submitted comments regarding the proposal, noting that the Applicant would need to acquire a permit regarding asbestos prior to demolition of the existing structures on the site.
 - The City Council receives a link to the hearing and has an opportunity to listen to public testimony from the hearing prior to its deliberation.

- There would not be any changes to the Washington Department of Fish and Wildlife (WDFW) boat launch or Wanschers Park in connection to the proposal.
- City staff has included a condition for permit approval that the Applicant submit documentation specifying that the maximum allowable impervious surface standard (30 percent) within the shoreline jurisdiction is not exceeded.

Testimony of Ms. Seymour.

Additional Comments

55. Attorney Ben Cushman, of the Deschutes Law Group, on behalf of the citizens group Save Hicks Lake, submitted a supplemental letter after the hearing, as allowed by the Hearings Examiner. The letter argued:
- Traffic impacts were not adequately addressed. In particular, Hicks Lake Road is a small street without lane markings, sidewalks, or pedestrian shoulders, and cars cannot safely pass each other on the road when pedestrians are present. Hicks Lake Road also experiences overflow parking from Wanschers Park. Visibility at 25th Avenue onto Ruddell Road is obscured, and the City has failed to require conditions to increase safety at the intersection. The traffic route used by the TIA would not be the route used by apartment residents.
 - The high waterline is inaccurately marked, which would impact the location of proposed buildings and parking lots.
 - The subject parcel is heavily forested, and the City has not proposed sufficient conditions on tree cutting.
 - The exact location and the dimensions of the proposed dock are not specified. City staff has not provided information to support the conclusion that the dock would not interfere with public navigation on Hicks Lake.
 - Water quality and construction impacts should be addressed at this stage of the process, rather than at later stages during additional permitting.

Exhibit 40.

56. The Applicant submitted a letter in response to public testimony and the supplemental letter from Attorney Cushman. In particular, the Applicant noted:
- Intersection evaluations are determined by the City during the scoping process.
 - Traffic counts were completed at pre-pandemic levels and adjusted for four percent growth.
 - Existing parking issues on Hicks Lake Road are not anticipated to be exacerbated by the proposed development.
 - Construction traffic would be determined with haul routes to be reviewed with the civil site construction plan and permit process.
 - The pier and dock would be for day use only and would be regulated by apartment management. The new dock is appropriately sized and would not significantly increase safety issues that already exist from boat traffic on the lake.

- The project provides off-street parking spaces in excess of that required by the municipal code.
- Stormwater systems would treat stormwater prior to infiltration. Treatment is required to control for phosphorous and other contaminants. It is not anticipated that there would be any water quality issues from stormwater runoff.
- The project would require a Temporary Sediment and Erosion Control (TESC) Plan and Stormwater Pollution Prevention Plan (SWPPP) to demonstrate compliance with City codes for erosion and to obtain an NPDES permit from the Washington State Department of Ecology.

Exhibit 41; Exhibit 42.

Staff Recommendation

57. City staff recommend approval of the SSDP, SVAR, SCUP, wetland development permit, site plan review, and Class IV Forest Practices Application request, with conditions. *Exhibit 2, Staff Report, page 20.*

CONCLUSIONS

Jurisdiction

The Hearings Examiner has jurisdiction to hear applications for shoreline substantial development permits, shoreline variance permits, shoreline conditional use permits, and wetland development permits and, through the City’s consolidated review process, applications for a Class IV forest practice permit and for site plan review approval, and to issue a recommendation to the City Council to grant, grant with conditions, or deny the applications. *LMC 2.30.090.B.3; LMC 2.30.110; LMC 2.30.140; LMC 14.32.045.E; LMC 14.28.110; City of Lacey Development Guidelines and Public Works Standards Section 1C.050; Chapter 16.84 LMC.*

Criteria for Review - Site Plan Review

Under LMC 16.84.020, the site plan must be approved or approved with conditions to comply with the standards, provisions, and policies of the City as expressed in its various adopted plans and ordinances. Whenever a site plan is disapproved, such disapproval must be set forth in written findings that specify the particular standards, provisions, and policies to which the site plan fails to conform and the reasons why it fails to conform. *LMC 16.84.020.*

Land Clearing/Class IV Forest Practices Permit

The Hearings Examiner reviews applications for a Land Clearing/Class IV Forest Practices Permit for consistency with the regulations and purposes of the City’s tree and vegetation protection and preservation ordinance, Chapter 14.32 LMC, which include the following:

- A. To implement strategies for the management and protection of Lacey’s urban forest resources pursuant to the goals and policies of the Lacey Urban Forest Management Plan;

- B. To implement the purposes of the State Growth Management Act relating to conservation of natural resources, including Lacey's urban forest resources, pursuant to RCW 36.70A.050, 36.70A.060 and 36.70A.080;
- C. To implement the purposes of the State Growth Management Act pursuant to RCW 36.70A.172, considering the many environmental benefits of the urban forest as described in Lacey's Urban Forest Management Plan;
- D. To promote the public health, safety, and general welfare of the citizens of Lacey without preventing the reasonable development of land;
- E. To preserve and enhance the city's physical and aesthetic character by preventing indiscriminate removal or destruction of trees and ground cover and to ensure the protection of trees chosen to remain during construction;
- F. To minimize surface water and ground water runoff and diversion and to prevent erosion and reduce the risk of slides;
- G. To retain and utilize trees to assist in site planning, considering the abatement of noise, visual screening, protection from wind, and other site design issues;
- H. To acknowledge that trees and ground cover have significant environmental and quality of life benefits as identified in Lacey's Urban Forest Management Plan, such as the production of pure oxygen from carbon dioxide, the reduction of air pollution, help in providing clean water, control of soil erosion, use in design for energy efficiency and temperature control, noise attenuation, and wildlife habitat;
- I. To promote building and site planning practices that are consistent with the city's natural topography, soils, and vegetation features. At the same time certain factors may require the removal of certain trees and ground cover for things such as, but not limited to disease, danger of falling, proximity to existing and proposed structures and improvements, interference with utility services, protection of scenic views, protection of solar access and the realization of a reasonable enjoyment of property;
- J. To insure prompt development, restoration, replanting, and effective erosion control of property after land clearing;
- K. To reduce water pollution from siltation in the city's streams and lakes;
- L. To implement the goals and objectives of the Washington State Environmental Policy Act;
- M. To implement and further the City's Comprehensive Land Use Plan and its Environmental Protection and Resource Conservation Element;
- N. To encourage protection of wildlife and/or wildlife habitat whenever possible.

LMC 14.32.020.

Shoreline Substantial Development Permit
Shoreline Management Act

The Shoreline Management Act is codified at Chapter 90.58 RCW. Applicable policies of RCW 90.58.020 include those to foster “all reasonable and appropriate uses”; protect against adverse effects to the public health, the land, and vegetation and wildlife; and give priority to single-family residences and appurtenant structures in authorizing alternations to the natural condition of the shoreline. Nonetheless, “private property rights are ‘secondary to the SMA’s primary purpose, which is to protect the state shorelines as fully as possible.’” *Samson v. City of Bainbridge Island*, 149 Wn. App. 33, 49, 202 P.3d 334 (2009) (internal quotation marks omitted) (quoting *Lund v. Dep’t of Ecology*, 93 Wn. App. 329, 336-37, 969 P.2d 1072 (1998)). Permitted shoreline uses must be designed to “minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public’s use of the water.” *RCW 90.58.020*. See also *Buechel v. Dep’t of Ecology*, 125 Wn.2d 196, 203, 884 P.2d 910 (1994).

In promulgating the Shoreline Management Act of 1971, the legislature recognized that “ever increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development” of the state’s shorelines. *RCW 90.58.020*. The legislature also determined that “unrestricted construction on the privately owned or publicly owned shorelines of the state is not in the best public interest.” *RCW 90.58.020*. Accordingly, the Shoreline Management Act requires local governments to develop a master program to regulate shoreline uses consistent with its guidelines. *RCW 90.58.080(1)*.

Shoreline Management Act Regulations

The Department of Ecology shoreline regulations are located in Chapters 173-26 and 173-27 of the Washington Administrative Code (WAC). Chapter 173-26 WAC sets forth procedures and guidelines for local adoption of shoreline master programs that are not applicable to the Applicant’s permit request. Chapter 173-27 WAC sets forth permitting procedures and permit criteria. The Hearings Examiner reviews the shoreline substantial development permit (SSDP) application under the following criteria:

- (1) A substantial development permit shall be granted only when the development proposed is consistent with:
 - (a) The policies and procedures of the act;
 - (b) The provisions of this regulation; and
 - (c) The applicable master program adopted or approved for the area. Provided that where no master program has been approved for an area, the development shall be reviewed for consistency with the provisions of chapter 173-26 WAC, and to the extent feasible, any draft or approved master program which can be reasonably ascertained as representing the policy of the local government.

- (2) Local governments may attach conditions to the approval of permits as necessary to assure consistency of the project with the act and the local master program.

WAC 173-27-150.

Thus, the Hearings Examiner must review the SSDP application against the City SMP policies and regulations. The City SMP contains policies and regulations related to residential development, impervious surfaces, vegetation management, and piers and docks, as detailed in the findings. Consistent with the requirements under WAC 173-27-150, the City SMP provides that SSDP applications shall be reviewed in accordance with the following criteria:

- A. All regulations of this program appropriate to the shoreline environment designation and the type of use or development proposed shall be met, except those bulk and dimensional standards that have been modified by approval of a shoreline variance under Section 17.30.020;
- B. All general goals and policies of this program, and goals, policies and standards specific to the appropriate shoreline environment designation and the type of use or development activity proposed shall be considered and substantial compliance demonstrated.

City SMP, Section 17.30.010.2

In addition to the above criteria:

Consideration shall be given to the cumulative environmental impact of additional requests for like actions in the shoreline vicinity. For example, if shoreline substantial development permits were granted for other developments in the area where similar circumstances exist, the sum of the permitted actions should also remain consistent with the policy of RCW 90.58.020 and should not produce significant adverse effects to the shoreline ecological functions and processes or other users.

City SMP, Section 17.30.010.3.

Shoreline Conditional Use Permit

As noted above, applicable Department of Ecology shoreline regulations are located in Chapter 173-27 WAC. WAC 173-27-160 sets forth permitting procedures and permit criteria for shoreline conditional use permits. The Hearings Examiner reviews the application under the following criteria:

- (1) Uses which are classified or set forth in the applicable master program as conditional uses may be authorized provided that the applicant demonstrates all of the following:
 - (a) That the proposed use is consistent with the policies of RCW 90.58.020 and the master program;

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- (b) That the proposed use will not interfere with the normal public use of public shorelines;
 - (c) That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program;
 - (d) That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and
 - (e) That the public interest suffers no substantial detrimental effect.
- (2) In granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.
 - (3) Other uses which are not classified or set forth in the applicable master program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the master program.
 - (4) Uses which are specifically prohibited by the master program may not be authorized pursuant to either subsection (1) or (2) of this section.

WAC 173-27-160.

Consistent with the requirements under WAC 173-27-160, the City SMP provides that shoreline conditional use permit applications shall be reviewed in accordance with the following decision criteria:

- 1. Uses which are classified or set forth in the City of Lacey's Shoreline Master Program as conditional uses may be authorized provided that the applicant demonstrates all of the following:
 - A. That the proposed use is consistent with the policies of RCW 90.58.020 and the master program;
 - B. That the proposed use will not interfere with the normal public use of public shorelines;
 - C. That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the Comprehensive Land Use Plan and Shoreline Master Program;
 - D. That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and
 - E. That the public interest suffers no substantial detrimental effect.

2. In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area, for example, if conditional use permits were granted for other developments in the area where similar circumstances exist. The total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.
3. Other uses which are not classified or set forth in Lacey's Master Program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section, and the requirements for conditional uses contained in the Shoreline Master Program, and the intent of provisions of the Comprehensive Land Use Plan.
4. Uses which are specifically prohibited by the Shoreline Master Program may not be authorized.

City SMP, Section 17.30.015

Shoreline Variance

WAC 173-27-170 sets forth permitting procedures and permit criteria for a shoreline variance. The Hearings Examiner reviews the application under the following criteria:

- (1) Variance permits should be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances the applicant must demonstrate that extraordinary circumstances shall be shown, and the public interest shall suffer no substantial detrimental effect.
- (2) Variance permits for development and/or uses that will be located landward of the ordinary high-water mark (OHWM), as defined in RCW 90.58.030 (2)(c), and/or landward of any wetland as defined in RCW 90.58.030 (2)(h), may be authorized provided the applicant can demonstrate all of the following:
 - (a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes, or significantly interferes with, reasonable use of the property;
 - (b) That the hardship described in (a) of this subsection is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions;
 - (c) That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program and will not cause adverse impacts to the shoreline environment;

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- (d) That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;
 - (e) That the variance requested is the minimum necessary to afford relief; and
 - (f) That the public interest will suffer no substantial detrimental effect.
- (3) Variance permits for development and/or uses that will be located waterward of the ordinary high-water mark (OHM), as defined in RCW 90.58.030(2)(c), or within any wetland as defined in RCW 90.58.030(2)(h), may be authorized provided the applicant can demonstrate all of the following:
- (a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes, or significantly interferes with, reasonable use of the property;
 - (b) That the proposal is consistent with the criteria established under subsection (2)(b) through (f) of this section; and
 - (c) That the public rights of navigation and use of the shorelines will not be adversely affected.
- (4) In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example if variances were granted to other developments and/or uses in the area where similar circumstances exist the total of the variances shall also remain consistent with the policies of RCW 90.58.020 and shall not cause substantial adverse effects to the shoreline environment.
- (5) Variances from the use regulations of the master program are prohibited.
- WAC 173-27-170.*

Consistent with the requirements under WAC 173-27-170, the City SMP provides that shoreline variance applications shall be reviewed in accordance with the following decision criteria:

1. Variance permits should be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances the applicant must demonstrate that extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.
2. Variance permits for development and/or uses that will be located landward of the ordinary high water mark (OHWM) and/or landward of any wetland as defined in this Master Program may be authorized provided the applicant can demonstrate all of the following:
 - A. That the strict application of the bulk, dimensional or performance standards set forth in Lacey's Master Program precludes or significantly interferes with reasonable use of the property;
 - B. That the hardship described in (A.) of this subsection is specifically related to the property, and is the result of unique

- conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions;
- C. That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the Comprehensive Land Use Plan and Shoreline Master Program and will not cause adverse impacts to the shoreline environment;
 - D. That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;
 - E. That the variance requested is the minimum necessary to afford relief; and
 - F. That the public interest will suffer no substantial detrimental effect.
3. Variance permits for development and/or uses that will be located waterward of the ordinary high water mark (OHWM) or within any wetland as defined in this Master Program may be authorized provided the applicant can demonstrate all of the following:
 - A. That the strict application of the bulk, dimensional or performance standards set forth in Lacey's Master Program precludes all reasonable use of the property;
 - B. That the proposal is consistent with the criteria established under Section 17.20.030. 2 A-F; and
 - C. That the public rights of navigation and use of the shorelines will not be adversely affected.
 4. In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area, for example, if variances were granted to other developments and/or uses in the area where similar circumstances exist. The total of the variances shall also remain consistent with the policies of RCW 90.58.020 and shall not cause substantial adverse effects to the shoreline environment.
 5. Variances from the use regulations of the Shoreline Master Program are prohibited.
 6. Water-oriented and water-related uses may be located within the required shoreline setback and vegetation management area without a shoreline variance, provided other required permits are obtained and the mitigation sequence is followed. Uses that may locate within the setback and vegetation management area without a variance include the following:
 - A. Boating facilities accessory to a single-family residential development including piers, docks, buoys and floats;
 - B. Pedestrian beach access structures including stairs, with the exception of stair towers;
 - C. Public access trails and paths and structures for public access including but not limited to stairways, piers, docks, or floats.

City SMP, Section 17.30.020.

Wetland Development Permit

A Wetland Development Permit (WDP) is required prior to undertaking grading, filling, clearing, or other listed activities in a regulated wetland or its buffer. *LMC 14.28.110*. Approval of a WDP shall be granted only if, as conditioned, the decision is consistent with the provisions of the City's wetlands protection ordinance, Chapter 14.28 LMC, including the following:

1. A proposed action avoids adverse impacts to regulated wetlands or their buffers or takes affirmative and appropriate measures to minimize and compensate for unavoidable impacts;
2. The proposed activity results in no net loss;
3. Denial of a permit would cause an extraordinary hardship on the applicant.

LMC 14.28.270.A.

The criteria for review adopted by the Lacey 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 County 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

Site Plan Review

1. **With conditions, the proposal would meet the requirements for site plan review under LMC 16.84.020.** The City provided reasonable notice and opportunity to comment on the proposal and to testify at the open record hearing. The City received numerous comments expressing opposition to the proposed development from members of the public in response to its notice materials, and several members of the public raised concerns about the proposal at the open record hearing. Members of the public opposing the project generally raised concerns about the density of the proposed development, the proposal's traffic impacts, impacts to wildlife habitat, tree clearing that would be required to facilitate the development, impacts to schools, increased water traffic on Hicks Lake, the adequacy of the technical reports and studies prepared for the proposal, impacts to surrounding property values, and the cumulative impacts that would occur with development of the current proposal and the adjacent Gayteway Hicks Lake development proposal. At the outset, it must be noted that community displeasure, alone, cannot be the basis of a permit denial. *Kenart & Assocs. v. Skagit Cy.*, 37 Wn. App. 295, 303, 680 P.2d 439, *review denied*, 101 Wn.2d 1021 (1984). Increased density associated with the proposed development (and with the adjacent Gayteway proposal), resulting traffic impacts, and concerns over multi-family and/or high-density residential development significantly altering the character of the existing neighborhood represented a significant portion of the concerns expressed by area residents in both written comments and public testimony, as noted above. Absent inclusion of some appurtenant recreational amenities and the pier and floating dock providing access to Hicks Lake for future residents,

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however, review of the 178-unit complex would have occurred administratively as this type of development is permitted in the HDR zoning district and encouraged by the Comprehensive Plan. Concerns over adopted zoning regulations or Comprehensive Plan designations and policies are beyond the scope of the review authority granted to the Hearings Examiner. Rather, the Hearings Examiner must review the proposal for compliance with governing regulations. In doing so, the Hearings Examiner determines that, as conditioned, the Applicant's site plan conforms to the standards, provisions, and policies of the City as expressed in its various adopted plans and ordinances, as required for site plan review approval.

The proposal to develop the 4.98-acre property with a 178-unit apartment complex and associated infrastructure and amenities would be consistent with several goals and policies of the Comprehensive Plan and the Lakes Planning Area Plan that encourage the provision of an adequate amount and mix of housing types for the anticipated increase in population in appropriate areas with existing or planned public facilities, while ensuring the protection of environmentally sensitive areas. The City reviewed the environmental impacts of the proposal and determined that, with mitigation measures, it would not have a probable significant adverse impact on the environment. Accordingly, the City issued an MDNS for the proposal on April 20, 2022, which was not appealed. The MDNS requires the Applicant to pay traffic impact fees to Thurston County, complete an archaeological survey of the site, and evaluate existing buildings and structures on the site to determine whether they are eligible for listing in the National Register of Historic Places.

The property is located within both the HDR and URBCON zoning districts. The portion of the property located within 200 feet of the Hicks Lake OHWM is within the URBCON zoning district and the remaining portion of the property landward of Hicks Lake is zoned HDR. The proposed multifamily apartment buildings and a majority of the infrastructure supporting the apartment buildings would be located in the HDR zone, which permits any residential use with a density of at least 12 units per acre. The HDR zone does not have a maximum density requirement, and the proposed development would provide a residential density of at least 36 dwelling units per acre (with a higher density calculation when accounting only for the portion of the property within the HDR zone). Accordingly, the proposal would comply with the density requirements for the HDR zoning district. Although several members of the public expressed concerns about the proposed density of the project impacting the existing character of the Hicks Lake area, this area was zoned many years ago for higher density development to encourage lakeside residential housing options beyond the predominately single-family development that is typical of the area surrounding Hicks Lake.

The portion of the property located in the URBCON zone and within the 200-foot shoreline jurisdiction would contain 12 surface parking stalls and accessory recreational amenities, including two recreational facility buildings, a play area, a sports court, an in-

ground spa and pool and a pier with a floating dock. The Applicant would revise site plans to eliminate or relocate all proposed development – apart from the pathway from the apartment complex to the pier and floating dock – outside of the 100-foot shoreline setback required by the SMP. A Category III, lake fringe wetland associated with Hicks Lake is located on the eastern portion of the property along the Hicks Lake shoreline, and, except for the proposed pier and pathway providing access to the pier, as conditioned, all proposed development would be located outside of the required 80-foot wetland buffer area. As detailed in the conclusions below and as conditioned, the proposal would meet all applicable shoreline requirements for development of the proposed parking stalls and accessory recreational facilities and would meet applicable wetland requirements to allow development of the pier and access pathway.

The proposed development would include 293 on-site parking stalls, exceeding the minimum requirement to provide 1.5 stalls per dwelling unit. A Traffic Analysis Impact (TIA) was performed, analyzing the cumulative impacts of the proposed development, the Gayteway multifamily project, and future projects, which demonstrated that the proposal would generate 78 vehicle trips during PM peak hours. The TIA did not identify any intersections that warrant signal installation or any intersections in the vicinity that would experience failing levels of service (LOS) as a result of proposed development. To mitigate traffic impacts, the Applicant would be required to pay transportation impact fees to the City and to Thurston County and install a temporary pedestrian walkway along Hicks Lake Road SE from the northern boundary of the parcel to 25th Avenue SE. The Applicant would be required to submit a final stormwater site plan demonstrating compliance with the requirements of City of Lacey 2016 Stormwater Design Manual for review and approval from the City Public Works Department. The Applicant would be required to pay school impact fees to mitigate for the proposal's impacts to area schools. City Transportation Manager Martin Hoppe testified at the hearing that the roads surrounding the project site have been designed to accommodate construction vehicles and that specific plans for the use of construction vehicles serving the development would be addressed during pre-construction meetings.

Conditions, as detailed below, are necessary to ensure that the proposal complies with applicable standards, provisions, and policies of the City as expressed in its various adopted plans and ordinances. *Findings 1 – 13, 15 – 57.*

Forest Practices Permit

2. **With conditions, the proposal would meet the requirements for a Class IV forest practices permit.** The Applicant's tree removal plan indicates that the proposal would remove 278 trees and retain 17 trees on the 4.98-acre site, primarily along the eastern portion of the property, mostly within the 100-foot wetland buffer. The Forester's Report indicates that most of the existing trees are in poor condition, due to past topping and subsequent inferior structures, and therefore are not appropriate for retention near future structures and high use areas. The proposed development would be required to retain or

replant tree tracts totaling at least five percent of the gross site area, or 10,847 square feet. The Applicant proposes to meet this requirement through designation and development of four separate tree preservation tracts totaling 10,855 square feet. The City Forester would review the Applicant's final landscape plan to ensure that the proposal would meet all applicable requirements of the City's tree and vegetation protection and preservation code. Conditions, as detailed below, are necessary to ensure that the proposed development would satisfy the requirements of the municipal code and would be consistent with the criteria for approval of a Class IV forest practices permit. *Findings 1 and 14.*

Shoreline Permits

3. **With conditions, the proposal would be consistent with the policies of the Shoreline Management Act (SMA), the SMA shoreline regulations, the City of Lacey Shoreline Master Program (City SMP), applicable City SMP regulations, and the specific criteria for approval of an SSDP under WAC 173-27-150 and Section 17.30.010.2 of the City SMP.** The Applicant requests approval of an SSDP for portions of the proposed development that would be located within 200 feet of the Hicks Lake ordinary high water mark (OHWM). As noted above in Conclusion 1, these portions of the proposed development would include 12 surface parking stalls and accessory recreational amenities, including recreational facility buildings, an in-ground spa and pool, sports court, and a pier with a floating dock, and a ramp and pathway providing access to the pier. As conditioned, the proposed development within the shoreline jurisdiction would provide accessory recreational opportunities, including water-oriented recreational opportunities, for multifamily residential development, which is a reasonable and appropriate use of property within the URBCON shoreline environment.

The Department of Ecology shoreline regulations are located in Chapters 173-26 and 173-27 of the Washington Administrative Code (WAC). Chapter 173-26 WAC sets forth procedures and guidelines for local adoption of shoreline master programs that are not applicable to the Applicant's permit request. Chapter 173-27 WAC sets forth permitting procedures and permit criteria. The SSDP request is being reviewed under the criteria set forth in WAC 173-27-150. These criteria are intended to implement the policies of the SMA, which require that all shoreline projects be consistent with an approved local Shoreline Master Program.

The City SMP requires all residential development, including accessory appurtenant uses and structures, be set back a minimum of 100 feet from the Lake Hicks OHWM. The Applicant's preliminary project plans indicated that some recreational amenities would be within the 100-foot shoreline setback. With the exception of the proposed ramp and pathway to the pier, however, these proposed facilities would be relocated outside of the 100-foot shoreline setback. The URBCON shoreline environment designation provides a 30 percent impervious surface limitation. The Applicant would reduce the existing impervious surface coverage within 100 feet of the Lake Hicks OHWM by removing

approximately 2,649 square feet of existing impervious surface areas from manufactured homes and associated driveways currently on the property, and the City would review the Applicant's revised project plans – removing or relocating proposed accessory structures from the 100-foot shoreline setback – to ensure that the total impervious surface coverage within the shoreline jurisdiction does not exceed 30 percent.

The proposed development would improve the ecological functions of the shoreline environment by removing existing pollutant-generating shoreline stabilization features, including creosote-treated timbers and metal spikes, a wooden float, automobile tires, and other debris; removing existing impervious surfaces within 100 feet of the Lake Hicks OHWM; restoring degraded riparian areas through the removal of non-native invasive vegetation and planting of native vegetation; installing 470 square feet of clean beach gravels; installing 1,500 square feet of clean pea gravel below the OHWM to enhance substrate conditions and fish habitat, and installing anchored, large woody debris and rocks along the length of the property's shoreline to maintain the shoreline and limit erosion. Because the proposal would improve the ecological functions of the shoreline environment, the Applicant would not be required to prepare a shoreline vegetation management plan.

As discussed in the conclusions below, the Applicant's proposal to install a pier serving residents of the proposed multifamily development would meet the specific criteria for a shoreline conditional use permit and shoreline variance. Conditions, as detailed below, are necessary to ensure that the proposal meets the criteria for approval of an SSDP and complies with all other local, state, and federal requirements. *Findings 1 – 10, 15 – 57.*

- 4. With conditions, the proposal would meet the requirements for a shoreline conditional use permit.** Piers and docks serving a single property in the URBCON shoreline environment require approval of a shoreline conditional use permit. The proposed pier with a floating dock would support swimming and hand-powered craft launching that would be utilized only for day use. The URBCON shoreline environment designation gives priority to water-oriented uses with the potential to restore the ecological functions of the shoreline and, as detailed above, the Applicant would undertake enhancement measures that would result in a net increase in wetland and shoreline functions and values, consistent with the policies of the SMA and the City SMP. The proposed pier and dock would minimize impacts to the shoreline of Hicks Lake that would otherwise occur from repeated launching and temporary anchoring of small watercraft along the shoreline and would provide access to a significant number of residents of the associated multifamily development, consistent with the SMP's goal of prioritizing the use of joint-use or community dock facilities in order to limit the overall number of docks within shorelines. The proposed pier and dock would not interfere with the normal public use of the Hicks Lake shoreline and would be compatible with uses authorized in the surrounding area. City staff evaluated the cumulative impacts of similar actions in the area and determined that joint-use docks serving multiple residences would

not result in substantial adverse effects to the shoreline because such joint-use docks would likely replace existing docks serving only a single residence. The Hearings Examiner determines that, with conditions, the public interest would suffer no substantial detrimental effect from installation of the proposed pier and dock. Conditions, as detailed below, are necessary to ensure that the proposal meets the criteria for approval of a shoreline conditional use permit and complies with all other local, state, and federal requirements. *Findings 1 – 10, 15 – 57.*

- 5. With conditions, the proposal would meet the requirements for a shoreline variance permit.** The Applicant is requesting a variance from the dimensional requirements of SMP 17.71.020(16)(G)(2) to allow the proposed floating dock and ell to extend to up to 55 feet in length. The proposed floating dock would provide water-oriented recreational opportunities for residents of the 178-unit apartment complex, and the proposed length of the dock is necessary to serve the large number residents of the apartment complex. The unique conditions requiring a dock of sufficient length to serve the large number of residences comprising the multifamily development would be consistent with City SMP goals and policies promoting the use of joint-use docks over docks serving only a single residence, and the hardship imposed by the City SMP's dock length limitation preventing use by a large number of residents is not the result of any actions of the Applicant or previous property owners. City staff reviewed the proposal and determined that it would be compatible with other authorized uses in the area, would not constitute a grant of special privilege, would be the minimum variance necessary to provide adequate dock space for the numerous residents, and would not adversely affect the public rights of navigation and use of the Hicks Lake shoreline. The Hearings Examiner concurs with City staff's assessment and determines that, with conditions, the proposed variance would not result in any substantial detrimental effect to the public interest. Conditions, as detailed below, are necessary to ensure that the proposal meets the criteria for approval of a shoreline variance and complies with all other local, state, and federal requirements. *Findings 1 – 10, 15 – 57.*

Wetland Development Permit

- 6. With conditions, the proposal would meet the requirements for a wetland development permit.** The Applicant is proposing to construct a pier over an on-site Category III wetland located along the Hicks Lake shoreline and to construct a pedestrian walkway providing access to the pier within the wetland's 80-foot buffer. The property's shoreline does not have a location for launching or accessing watercraft outside of the wetland because the wetland is located along the entirety of the parcel's lakeside frontage. To minimize impacts to the wetland, the proposed pier structure would be constructed in accordance with the Green Shoreline Guidelines and the ell would be located in a manner allowing for the launching and temporary mooring of watercraft outside of the wetland. Walkways and trails are allowed in wetlands and wetland buffer areas when limited to minor crossings without an adverse impact on water quality. To minimize impacts to the wetland buffer from the proposed pathway, the Applicant would

be required to construct the pathway with permeable materials, with a maximum 5-foot pathway width. As detailed above, the Applicant would remove or relocate proposed development – apart from the proposed pathway and pier - currently indicated on the site plan to be within the 80-foot wetland buffer area and would undertake various measures to mitigate wetland impacts and enhance wetland functions. City staff has voiced support for the proposed pedestrian walkways in order to provide community access to the shoreline and dock. Conditions are necessary to ensure that the proposal complies with the criteria for approval of a wetland development permit and complies with all other applicable local, state, and federal requirements. *Findings 1 – 10, 15 – 57.*

RECOMMENDATION

Based on the preceding findings and conclusions, the Hearings Examiner recommends that the Lacey City Council **APPROVE** the request for a shoreline substantial development permit, shoreline conditional use permit, shoreline variance, wetland development permit, and Class IV forest practices permit, and for site plan review approval, to allow construction of a 178-unit apartment complex, with associated amenities including a pier with a floating dock, and other improvements, at 2712 Hazelwood Lane SE., with the following conditions:⁶

1. This proposal shall be developed in substantial conformance with the plans submitted on May 14, 2021, except as modified by the conditions below.
2. All requirements of the MDNS issued on April 20, 2022, shall be satisfied.
3. Prior to building permit issuance for individual buildings, the developer shall receive multifamily design review approval for each building. In addition to the typical submittal materials, the design review package shall include an open space plan and analysis.
4. The following note shall be on the building, grading and land clearing permits:
When an unanticipated discovery of protected cultural materials (e.g. bones, shell stone tools, beads, ceramics, old bottles, hearths, etc.) or human remains are discovered, the property owner or contractor will immediately stop all work, completely secure the location, and contact the Washington State Department of Archeology and Historic Preservation and other contacts as identified in the City of Lacey Standard Inadvertent Archeological and Historic Resources Discovery Plan (LMC 16.53.080).
5. Prior to building permit issuance, a revised site plan shall be submitted to the Community and Economic Development Department for review and approval. The site plan shall be revised to include the following items:
 - Tree tract locations and calculations;

⁶ This decision includes conditions designed to mitigate impacts of this proposed project and to meet requirements of the City code.

- Removal of non-authorized uses within the 100-foot shoreline setback.
6. Prior to site disturbing work within the shoreline jurisdiction the Applicant shall submit details for the pedestrian path. The pedestrian pathway leading to the pier/dock shall be limited to five feet in width, and constructed from permeable materials, and should be sited so to avoid tree removal.
 7. No trees shall be removed until a grading permit has been issued. Grading plans shall be designed to consider tree retention on the site. Prior to any site clearing and/or construction activities occurring all tree protection fencing shall be placed around the perimeter or the tree protection and tree tract areas, and around any individual trees selected to be retained. Tree protection fencing shall be shown on the grading plans for the proposed project.
 8. The final landscape plan shall identify and incorporate trees for retention in the designated tree tract area and within required landscaping. Tree replanting shall also be required within the tree tract if existing trees are not sufficient to meet canopy coverage requirements of Chapter 14.32 LMC. The trees to be planted within the tree tracts shall be identified on the landscaping plans prepared for this project and shall be subject to review and approval by the City of Lacey Forester. All evergreen tree species shall be resistant to laminated root rot. Landscape and a separate irrigation plan shall be submitted to the Planning section of the Community and Economic Development Department for review and approval prior to the issuance of the vertical building permits for the project.
 9. The following note shall be shown on the site and landscape plans for the project:
The tree tract is designated in accordance with Chapter 14.32 LMC and shall be dedicated to the growing, protection, and preservation of trees in perpetuity. No tree removal in the tree tract, without the prior written authorization of the City of Lacey, is allowed.
 10. Prior to any site construction activities taking place, a preconstruction meeting shall be held with Sound Urban Forestry to review the location of the tree protection fencing. A note stating that a preconstruction meeting shall be held with Sound Urban Forestry shall be shown on the grading plans for the project. Confirmation from the Forester that the meeting has been held shall be provided to the Community Development Department prior to the start of site construction or grading activity.
 11. Prior to site construction activity the contractor completing any tree removal or logging work shall sign and submit the “Acknowledgement of Responsibilities for Professionals Doing Tree Removal in the City of Lacey.” The form shall be submitted to the Planning Department prior to issuance of the grading permit.

12. One fire hydrant shall be installed, tested, and approved prior to building permit issuance. *LMC 14.07.501.4*. Fire hydrants shall be provided every 330 feet unless the fire flow is greater than 1,500 gallons per minute (gpm) then it shall be every 300 feet in accordance with IFC table C102.1 and Chapter 14.07 LMC for the building. Fire hydrants shall be placed no closer than 40 feet from the building or structure protected unless approved by the Fire Code Official.
13. The required fire-flow for the building shall be no less than 2,750 gpm for 4 hours in accordance with IFC Appendix B. Fire-flow is based on square footage/ building construction type, including a 50 percent credit for the installation of automatic fire sprinkler systems. *IFC section 507.1; LMC 14.07.015*. The initial calculation is based on type 5b wood framed construction as a worst-case scenario for fire flow. Note: The Fire Code Specialist and City of Lacey Water System Engineer shall determine fire flow based on construction type.
14. The proposed buildings shall be equipped with approved automatic sprinkler system and shall be installed in accordance with NFPA 13 (2016 Edition) standards. Additionally, a fire department connection shall be installed in accordance with Chapter 14.07 LMC. A fire department connection shall be located within 40 feet of a fire hydrant. Any building greater than 7,500 Sq. Ft. requires a sprinkler system in accordance with Chapter 14.07 LMC. The buildings shall have their own FDC line with KNOX locking caps or plugs. This Building also requires standpipes based on the building exceeding three stories in height. *IFC Chapter 9*. A fire pump may be required depending on sprinkler demand.
15. A separate building permit shall be required for the installation of fire sprinkler system underground piping. The design shall be in accordance with NFPA 24 Standards (2010 Edition) and City of Lacey Public Works Design Standards. Underground sprinkler piping shall be designed only by a Washington State Level III Certified contractor. Plans and specifications shall be submitted to the City of Lacey Building Department for review and approval prior to installation. Fire sprinkler system underground lead-in piping shall be installed only by a Washington State Level "U" Certified contractor. The submitted plans shall be accompanied by the level "U" certification of the installing contractor installing the underground piping. *LMC 14.07.015; WAC 212-80-030*. Please note: Fire sprinkler underground drawings are required to be submitted prior to above ground sprinkler drawings.
16. An approved addressable fire alarm system with supervised monitoring shall be provided throughout the buildings in accordance with the Chapter LMC 17.07 and NFPA 72 Standards (2016 Edition).
17. An approved 20-foot-wide all-weather surface fire apparatus access roads shall be provided to within 150 feet of all exterior portions of the buildings at ground level. Said

fire apparatus access road shall be located not less than 10 feet from the building. *IFC Section 503.1*. The fire access road shall be able to handle imposed loads of 75,000 lbs.

18. A 26-foot-wide fire access road shall be provided on one entire side of the building if the building is greater than 30 feet at the eave. *IFC Appendix D*. The aerial access road does not include a public right of way. Note: A temporary fire access road shall be provided at time of vertical permit issuance. The fire access road shall be approved by an engineer to handle the loads of fire apparatus. *Chapter 14.07 LMC*.
19. Appropriately sized water mains shall be extended throughout the proposed site to provide domestic water service to each individual building, to meet water quality, and to satisfy Lacey Fire requirements. At a minimum, an adequately water main (minimum of 10-inch) shall be extended through the site and looped back to the existing 8-inch PVC water main in Hicks Lake Road SE. The existing 6-inch and 4- inch PVC water mains in Hazelwood Lane shall be abandoned and existing services transferred to the new 10-inch water main. Additionally, on Hicks Lake Drive, where the newly installed 10-inch main connects to the existing 8-inch main on the south end of the parcel, there is a small portion of 8-inch main (about 20 feet) that shall be upsized to 10-inch main. The section of main shall be connected to the existing 10-inch main currently existing south of the Hazelwood Lane.
20. Domestic water services shall be provided for each proposed building, each water service shall be equipped with a Reduced Pressure Backflow Assembly device. *DG&PWS, sections 6.120 F and Appendix P*.
21. An irrigation meter with a double check valve assembly device is required for all landscaped areas. *DG&PWS, 6.120 F and Appendix P*.
22. The existing 8-inch gravity sanitary sewer main in Hicks Lake Drive shall be extended to the south property line at a minimum slope to allow maximum depth of the main for future extensions.
23. If all residential units cannot be served with gravity sewer, a lift station shall be constructed with this project. The area needed for the lift station improvements shall be 85 feet by 60 feet. In order to size the lift station, the force main and other improvements associated with the lift station, a lift station report will be required. Prior to submitting the report, the Applicant's engineer will need to work with Brandon McAllister of the City of Lacey (360-413-4386) to determine the service area for the lift station and other lift station criteria.
24. Appropriately sized gravity sanitary sewer mains shall be extended throughout the proposed site to provide sewer service to each building. Grinder systems shall only be approved for amenity buildings unable to connect to sewer with a gravity main.

Buildings with multifamily living units will not be permitted to connect to sewer with grinder systems.

25. Appropriately sized gravity mains shall be installed onsite, discharging to the gravity main in Hicks Lake Road or to the lift station. If the lift station is installed, an appropriately sized force main exiting the site and discharging to the existing gravity main on Hicks Lake Road shall be installed.
26. Prior to civil drawing approval, confirmation that the site layout satisfies maintenance vehicle requirements shall be provided. The layout shall allow a 40- foot long vactor truck with an inside turning radius of 45 feet to maneuver through the site. (Auto-turn confirmation is required). Covered parking along the route may be prohibited. Parking may also be prohibited within the vicinity of the lift station to allow for vactor truck movements.
27. Lift station upgrades at the downstream lift station may be required, if capacity issues have not been resolved prior to civil drawing approval.
28. Treatment and infiltration facilities shall be constructed for stormwater associated with the site, adjacent properties currently discharging to the site along with the half street stormwater associated with the frontage along Hicks Lake Road SE and Hazelwood Lane. The project is located in a Category I Critical Aquifer Recharge Area, stormwater treatment shall include basic, metals, and phosphorous treatment.
29. All proposed infiltration facilities shall meet setback requirements, including a minimum 20 ft. setback from the edge of any infiltration facility to any property line or structure. *2016 SDM, Section 7.2.3.*
30. Infiltration galleries shall be designed in conformance with Chapter 7 of the 2016 SDM. Plan details shall illustrate the applicable design criteria (for infiltration galleries, see Section 7.4.8). The constructed infiltration facilities may be subject to testing and/or monitoring for verification of performance. *2016 SDM, Section 7.2.*
31. The developer shall submit a registration form to the Department of Ecology's UIC program, no later than sixty (60) days prior to facility construction. The proposed infiltration galleries (i.e., "Storm Chamber" infiltration structures) are considered "UIC wells" per the Washington State Department of Ecology's Underground Injection Control (UIC) program. *2016 SDM, Section 7.3, and Ecology's UIC Program, 2019 update.*
32. A complete Construction Stormwater Pollution Prevention Plan (SWPPP) consisting of both a narrative document and a temporary erosion & sediment control (TESC) plan is required. The complete SWPPP shall be reviewed, approved, and the site inspected by

- the City of Lacey prior to any site-disturbing activity such as tree removal, clearing, grading, etc.
33. The civil drawing submittal shall describe the proposed provisions for accommodating flow from the existing 24” pipe outfall on the western portion of the project site.
 34. Stormwater runoff from pollution-generating surfaces shall require enhanced treatment due to location within a Category I Critical Aquifer Recharge Area. In addition, phosphorus control is required due to the proximity to the lake. This treatment level is proposed to be met with manufactured runoff water quality treatment systems, which are subject to City approval for use. The developer shall provide Ecology’s “General Use Level Designation” (GULD) documentation for the proposed treatment systems in the drainage report and provide sizing calculations per the GULD conditions. Detail drawings and specifications for the water quality treatment systems shall be included in the civil plan set. *2016 SDM, Chapter 8.*
 35. Prior to civil drawing submittal the drainage report shall be revised to include description of the provisions and flow paths in the event of overflow, blockage or failure of the on-site infiltration facilities; provisions for spill control upstream of each infiltration facility; and a summary of the sizing data and calculations for each infiltration facility. *2016 SDM, Sections 3.3.3 and 7.2.3.*
 36. A maintenance access road for each proposed location of stormwater treatment and infiltration facilities shall be provided.
 37. The following information shall be provided for each proposed infiltration facility location:
 - a detail section including facility top, inflow, and base elevations;
 - seasonal high groundwater elevation and evidence of adequate vertical separation from bottom of each proposed infiltration facility to seasonal high groundwater levels;
 - describe presence of any stratification that may impact the infiltration design;
 - and determination/confirmation of design infiltration rate of soils at each proposed infiltration facility location and depth. *2016 SDM, Section 7.2.2.*
 38. The revised drainage report shall include map sheets of the relevant site drainage plans and details.
 39. Pool maintenance shall conform to state and local requirements for source control of pollutants and prevention of illicit discharges. Include appropriate guidance in the Maintenance and Source Control Manual for the site owner (2016 SDM Chapter 9, Ecology’s 2019 SWMMWW Volume IV, and Chapter 14.29 LMC).

40. Hicks Lake Road SE shall require 27 feet of half-street Right of Way. *Detail 4-4.0 dated 12/15/14 from the City of Lacey 2017 Development Guidelines and Public Works Standards Manual.* Right-of-way dedication may be required if sufficient Right-of-Way is not currently present. Prior to Certificate of Occupancy of any building associated with this project, the installation and approval of half-street frontage improvements is required.
41. Prior to occupancy of the first residential building the developer shall install a pedestrian connection from the northern property boundary on Hicks Lake Road to 25th Avenue SE.
42. Hazelwood Lane SE shall require installation of half-street commercial private road standards. In lieu of a typical 5-foot sidewalk on Hazelwood Lane, the developer may install an internal sidewalk system that provides pedestrian access to Hicks Lake Road through the subject property. If an internal sidewalk is proposed in lieu of a sidewalk along Hazelwood Lane, an access easement shall be provided to allow pedestrians that would typically access the sidewalk required along Hazelwood Lane to access the sidewalks within the Hicks Lake Apartment project. If the Applicant/developer elects to install a sidewalk along Hazelwood Lane as part of required half-street improvements, however, then no access easement through the subject property will be required.
43. The traffic mitigation identified as of March 9, 2022, is \$73,628.69 and will mitigate off site traffic impacts for this project. The actual fee will be determined at the date of payment for issuance of building permits, water meters, or other approval process. The fees increase annually in an amount equal to the increase in the Engineering News Record Construction Cost Index over a date one year earlier. *Chapter 14.21 LMC.*
44. School impact fees shall be collected from the Applicant by the City of Lacey prior to issuance of the building permit for each residential building. Fees shall be forwarded to the North Thurston School District and shall be as generated by the formula for calculating impacts fees as set forth in the Capital Facility Plan for the North Thurston School District, which has been incorporated by reference into the Lacey Municipal Code.
45. A detailed landscaping plan shall be prepared by a licensed landscape architect, nursery person, or landscaper and submitted to the Planning Department for review and approval. The plan shall include the type, number, and location of the vegetative improvements as well as a specific timeline for completion of the improvements. A separate irrigation plan must also be submitted showing the location of all irrigation lines, location of sprinkler heads, and approximate coverage areas. The plans must include a note stating that the property owner is responsible for maintaining all plants in a healthy growing condition for the life of the project. All requirements of Chapter 16.80 of the Zoning Code shall be satisfied. *Chapter 16.80 LMC.*

46. A detailed estimate from a landscape installer must be submitted to the Planning Department. The estimate should include all costs associated with installing landscaping and irrigation as called out on the approved plans, including labor. *Chapter 16.80 LMC.*
47. A letter of credit or assignment of savings must be provided to the Planning Department in the amount of 150 percent of the above-mentioned landscape estimate. The City shall release this financial security once the landscaping for the project is installed and approved by the Planning Department and a financial security is in order to ensure that all plant materials are properly maintained. This security device shall be in the amount of 20 percent of the value of the vegetative improvements and shall be held for a period of one year. *Chapter 16.80 LMC.*
48. A note shall be placed on the face of the landscaping and irrigation plans stating that any irrigation lines placed within tree protection zones established for the project must be installed in such a manner as to not cause damage to the root protection zone, such as by cutting roots, digging trenches, operation of machinery, etc. Special care must be taken (hand digging trenches, designing lines to stay out of these areas where possible, etc.) to ensure damage to the trees does not occur. In the event damage to these areas does occur, the city may require, at their discretion, replacement of the comparable landscape value of the trees damaged or other means to make up that loss. *Chapter 16.80 LMC.*
49. All applicable requirements of the City Zoning Code shall be satisfied. *LMC Title 16.*
50. The Applicant/developer shall be responsible for obtaining all applicable permits required for the project, including National Pollutant Discharge Elimination System Permit (NPDES) and any others. These permits will require additional review time from the appropriate agencies.
51. An approved fire department turnaround may be required if the fire department access road has a dead end in excess of 150 feet. *IFC 503.2.5.*
52. Approved 12” minimum address numbers shall be provided on the building in a location facing the fire apparatus access roadway. The address numbers shall contrast the buildings color. *IFC Section 505.1; LMC 14.07.015.*
53. An approved fire department and Police Department key-box shall be provided on the buildings in accordance with IFC Section 506 and Chapter 14.07 LMC. Fire department key-box shall be installed in a location approved by the City of Lacey Fire Code Official. Key-box shall contain keys necessary for fire department and police department access to the interior of the building and any other location necessary for fire department or police department operations. Go to knoxbox.com for City of Lacey key boxes for Lacey Fire District #3 and Lacey Police Department. Upon completion of the key-box installation,

the City of Lacey Fire C Specialist shall install the necessary keys and cover. *IFC Section 506.*

54. Approved fire lane marking shall be provided where necessary to discourage obstructions by the parking of private vehicles. Upon completion of final road surfaces and curbing construction, the City of Lacey Fire Code Official shall perform a site inspection to determine locations where fire lane marking will be necessary to discourage the parking of private vehicles. Said fire lane marking, where applicable, shall be provided and approved prior to final occupancy approval. *IFC Section D-103.6; LMC 14.07.015.*
55. Fire extinguishers shall be provided every 75 feet in accordance with Chapter 14.07 LMC, and fire extinguishers shall be the 2a10bc type.
56. Access gates shall be in accordance with section 103.5 of the IFC all access gates shall require a KNOX box backup key switch in addition to a strobe activated gate. At his time, it does not appear a fence is proposed but I left the comment if changes need to be made.
57. Emergency responder radio coverage is required for any wood framed building greater than 50,000 sq. ft.
58. The City of Lacey fire code official shall conduct the necessary inspections or witness required tests to ascertain compliance with applicable fire codes. The Applicant shall contact the City of Lacey Building Department, at (360) 491-5642, to schedule the required inspection or to request witness of required tests. At least 24 hours shall be allowed for scheduling. *IFC Section 106.2.*
59. When connection to the public water system is desired by a customer (or required by the City) connected to a well exempt from the provisions of Revised Code of Washington 90.44.050, the “exempt” well must be properly decommissioned per Department of Ecology (DOE) standards prior to making the connection. When connection to the public water system is desired by a customer connected to an existing well that has a water right issued by the DOE, a physical disconnect between the well and the public water system must be made and maintained. This is necessary to assure that an unapproved auxiliary water supply (the customer’s well) will not contaminate the City’s water supply. Provided it is in compliance with DOE setback standards and purpose of use restriction on the customers water right for said well, the customer’s “permitted” well may be kept serviceable for irrigation purposes only. In addition, if a well is to be used for irrigation, a Reduced Pressure Backflow Assembly (RPBA) is required and shall be installed as premise isolation at the public water supply service connection. If an existing well is not to be used for irrigation purposes, it must be decommissioned per DOE standards. No water meter will be installed until the RPBA is installed and cross connection inspection has been completed to the satisfaction of the City. *DG&PWS, Water, 6.120 E.*

60. For Irrigation lines located in the Right-of-Way, the following shall be stated on the irrigation plans and is a condition of approval: “The property owner adjacent to the public Right-of-Way will be responsible for maintaining and locating all irrigation lines located in the public Right-of-Way.” *DG&PWS, Water, Irrigation 6.210.*
61. Water system improvements shall meet the requirements of the City of Lacey, the Coordinated Water System Plan (CWSP), Department of Health (DOH), City of Lacey Water System Plan, AWWA, Department of Ecology, Thurston County Environmental Health and City of Lacey Fire Code Official’s standards. Actual main size, loop closures, and possible off-site improvements including the number and location of fire hydrants, will depend on the fire flows required and available to the site. *DG&PWS, Water 6.010.*
62. Show all adjacent wells within 100 feet of the proposed project with their protective radii (this will assure the proposed development will not impact any wells). *DG&PWS, Subdivisions and Short Plats, Chapter 2 – plat checklist.* If site improvements encroach on existing well radii, provisions shall be made to assure the wells are properly protected.
63. Water mains shall be extended on North or East sides of roadways or drive aisles six feet off the centerline. Mains not currently satisfying this requirement shall be relocated. *DG&PWS, Water 6.020.*
64. To assure adequate water is present for your project. Modeling of the water system shall occur. Please contact Brandon McAllister (360.413.4386) to coordinate the fire flow modeling.
65. If utility extensions are needed for the proposed project for roads that were paved in the last five years and the roads must be “cut”, a disruption fee will be charged in accordance with LMC 12.16.055.
66. The builder/Applicant/owner is required to purchase each water meter prior to the issuance of each building permit. *DG&PWS Water 6.121.*
67. All existing on-site septic tanks and drainfields shall be removed per Department of Ecology and Thurston County Department of Health.
68. All existing (if not removed with the project) and proposed structures shall be connected to sanitary sewer. *DG&PWS, Sewer 7A.010.* Public mains with associated appurtenances shall be installed to serve the proposed project with sewer.
69. Provide sewer stubs to each building connecting to the public main. Sewer main extensions shall be located 6 feet off the centerline of the street/drive area on the South or West side (please relocate mains not currently meeting this standard). Side sewers for

each building shall be connected to a manhole, pipes shall not connect to manholes with an angle less than 90 degrees in relation to the outlet pipe. *DG&PWS, Sewer 7A.010.*

70. Sanitary sewer improvements associated with this project shall meet the requirements of the City of Lacey Comprehensive Sanitary Sewer Plan, Thurston County Health Department, Washington State Department of Health (DOH), the LOTT Clean Water Alliance and Department of Ecology. *DG&PWS, Sewer 7A.010 and Subdivisions and Short Plat 2-21.*
71. This project shall comply with the City of Lacey 2016 Stormwater Design Manual (LMC 14.27). Stormwater drainage and erosion control submittals shall be in conformance with design, formatting and content requirements described in Chapter 3 of the 2016 Stormwater Design Manual.
72. A final Stormwater Site Plan, including a drainage report and drainage plans in conformance with current Stormwater Design Manual standards, shall be provided prior to final Public Works civil approval. Some key elements to be included within the report are: the project engineer's certification; descriptions of how each of the Core Requirements is being addressed; construction SWPPP; basin map and plan drawings; hydrologic modeling inputs and results (including the WWHM 2012 Data files produced with the model); summary data of sub-basin areas, design calculations, and facility sizing; soils report and infiltration analysis; soil management plan; maintenance agreement/covenant; and a stormwater facilities maintenance manual. *SDM 2.2.1.*
73. In conformance with the City of Lacey 2016 Stormwater Design Manual, soil quality and depth design criteria shall be incorporated into the site design and construction.
74. This project shall retain, disperse, and infiltrate stormwater on-site to the maximum extent feasible. Design of infiltration facilities requires site infiltration analysis, to determine wet-season soil and groundwater conditions and to establish a long-term design infiltration rate. *SDM 2.2.5 & 7.2.*
75. The following note shall be shown on the face of the civil engineering drawings and is a condition for approval: Roof downspout infiltration systems shall be placed throughout the lot being developed and shall be sized to accommodate storm runoff per the City of Lacey 2016 Stormwater Design Manual. If site conditions cannot support downspout infiltration or dispersion systems, a note must be included on the civil drawings indicating that roof and foundation drains shall be tied into stormwater system with perforated stub-out connections. *SDM 2.2.5 and 7.4.10.*
76. A Construction Stormwater Pollution Prevention Plan (SWPPP) shall be submitted to and approved by the City prior to beginning site work or construction of the project. A complete SWPPP consists of both a narrative report and a temporary erosion and

sediment control plan drawing. Each of the 13 SWPPP Elements as identified in Chapter 5 of the City of Lacey 2016 Stormwater Design Manual shall be addressed and included in the construction SWPPP. If site conditions render any SWPPP elements unnecessary, exemptions for each element shall be clearly justified in the narrative report.

77. A Stormwater Facility Maintenance Manual per chapter 3 of the City of Lacey 2016 Stormwater Design Manual shall be submitted to and approved by the City of Lacey. The maintenance manual shall be included in the drainage report as part of the stormwater site plan.
78. The maintenance manual shall be prepared as a stand-alone document for the post-development facility owner(s). The maintenance plan shall be submitted to and approved by the City prior to civil drawing approval.
79. In order to provide for long-term maintenance access to the facility, the maximum depth of an infiltration facility is 20 feet below the surrounding finished (developed) ground elevation.
80. From October 1 through April 30, clearing, grading, and other soil disturbing activities shall be prohibited unless shown to the satisfaction of the City of Lacey that sediment-laden runoff will be prevented from leaving the site. *SDM 5.2.3.*
81. Street lighting levels shall satisfy City of Lacey requirements for roadways and intersections. Street lighting is required for all streets fronting this project (Street lighting per City of Lacey spacing Standards). All street light designs shall be prepared by an engineering firm capable of performing such work. *DG&PWS, Transportation, Illumination 4E.010.*
82. As a condition of final Public Works Approval, electrical services associated with street lighting, pump stations, or other applications (for the Public benefit as agreed to by the City) shall be transferred into the City's name. In order to change service, the Applicant/owner must provide a copy of a billing statement to the City. If service has not been established, the Applicant/owner must provide the following information to the City to establish service: Project Name (final subdivision name), service meter's number, address of the service meter, owner's contact number and address, and the type of items are being energized by the service. All fees associated with the installation of the service shall be the responsibility of the developer. Without the information outlined above or a copy of a previous billing statement, the service will remain in the Applicant/owner's name, and they will be responsible for payment of the bills until such time as the information is received by the City.

83. Fiber optic conduit shall be installed and conform to the standards and requirements as set forth in Chapter 4 (Transportation) from the Development Guidelines & Public Works Standards. *DG & PWS, Transportation 4E.035.*
84. Access shall be provided to the property as determined and approved by the City. All access points shall meet minimum access spacing, minimum corner clearance, sight distance and minimum or maximum width requirements as outlined in the Development Guidelines & Public Works standards. *DG & PWS, Transportation 4B.025.*
85. All public streets within the City and the City's UGA boundary will be planted with trees to create a distinct and pleasant character for those roadways. The street trees located in the Development Guidelines shall be required in or along the public Right-of-Way, including medians. *DG&PWS, Transportation 4G.100.*
86. The following is a condition for approval: "The City of Lacey has no responsibility to build, improve, maintain, or otherwise service the private roads within or providing access to this project." *LMC 15.32.190.*
87. The following note is a condition for approval: "The owner shall be responsible for maintaining the private streets (along with associated parking areas) and planter strips (weeding, mowing, pruning of the street trees, etc.). in a healthy and growing manner in perpetuity." *DG&PWS, Transportation 4G.100D.*
88. Utility easements are required for all mains, water, and sewer located on private property. Easements shall include fire hydrants, water meters, sewer improvements, and future extensions of mains to adjacent properties. Easements and stub outs shall be provided to serve adjoining properties as determined by the City. Rather than being designated as water or sewer, all easements shall be identified as "utility" easements on the civil drawings and in the easement document. Specific requirements will be determined at the of plan review. All easements shall be prepared by a licensed land surveyor and submitted prior to release of approved civil drawings. *DG&PWS Chapter 3.110.*
89. The City of Lacey Coordinate System is a ground scale coordinate system derived from the Washington Coordinate System, NAD 83/91. Units are expressed in feet. Data can be obtained from Lacey Public Works Department. Civil drawings shall be submitted utilizing the City of Lacey Coordinate System. *DG&PWS 3.025.*
90. City of Lacey Vertical Datum has elevations referenced to the National Geodetic Vertical Datum of 1929 (NGVD29). Units are expressed in feet. A benchmark listing can be obtained from Lacey Public Works Department. Civil drawings shall be submitted utilizing the City of Lacey Vertical Datum. *DG&PWS 3.025.*

91. Right-of-Way shall be dedicated for a project that requires Site Plan Review or for a conditional use permit approval. The requirement to dedicate Right-of-Way shall be determined by the City or Regional Transportation plans, by a Traffic Impact Analysis, or as determined by Public Works. Dedications shall be determined by a professional Land surveyor. Dedication shall be submitted and approved by the City prior to plan approval. *DG&PWS, Transportation 4B.060.*
92. Immediately adjacent to the public Right of Way a 10-foot joint utility easement area shall be dedicated to accommodate the installation of private and public utilities (2017 Development Guidelines and Public Works Standards Roadway details).
93. All improvements shall satisfy City of Lacey Development Guideline Standards in place at the time complete application is obtained (Complete application is determined by the City of Lacey Community Development Department).
94. If any part of these comments as established by existing plans, guidelines, codes, and the like as established by ordinances shall be found invalid, all other parts shall remain in effect. *DG&PWS 3.035.*
95. All Public Works improvements must be designed by an engineer licensed in the State of Washington and submitted to the City of Lacey Public Works Department for review and approval. *DGPWS 3.040.*
96. All structures associated with this site shall be connected to City of Lacey utilities. *DG&PWS 6.010 and 7A.010.*
97. Prior to civil drawing approval, one paper set of drawings along with a PDF copy of the drainage report and civil drawings shall be submitted for all approved final plans. *DG&PWS Chapter 3.040,B.*
98. Prior to final Public Works Construction approval, “as-built” bonded paper drawings along with the revised civil drawings in AutoCAD and PDF formats shall be submitted for all approved final plans. *DG&PWS Chapter 3.040, J.*
99. Certificate of Occupancy for the building (s) will not be issued until all improvements shown on the approved civil drawings are installed by the Applicant and approved by the City. *DG&PWS 4B.080.*
100. A 20 percent maintenance bond or financial guarantee of the engineer’s estimate or approved bid estimate is required for a period of 24 months upon construction completion and approval of Public Works improvements. The financial guarantee may be released after 18 months if all conditions of approval have been satisfied. The financial guarantee

applies to sewer, stormwater, water, frontage, landscaping/irrigation, roadway and street lighting improvements. *LMC 14.20.025.*

101. Along with the civil review application and the completed, signed and stamped checklist from Chapter 3 of the Development Guidelines, please provide three sets of civil drawings, two drainage reports, and one electronic copy of the civil drawings (PDF format). These drawings shall be submitted directly to the City of Lacey Public Works Department. Drawings submitted to other City departments will not satisfy this requirement. *DG&PWS 3.040, B.*
102. The property owner(s) adjacent to the public Right-of-Way shall be responsible for maintaining the planter strip and street trees (weeding, pruning, irrigating, mowing, etc.) in the public Right-of-Way in a healthy and growing manner in perpetuity. If the planter strip and or trees are being maintained by another group or organization, then a maintenance agreement (or adequate documentation) that verifies the planter strip and/or trees are being (and will continue to be) maintained shall be submitted to the City for review. *DG&PWS, Transportation 4G.100D.*
103. To protect the public interest on private property, utility mains located on private property shall be protected from damage. If on-site settling or other phenomenon occurs causing valve boxes, sewer manholes or other appurtenances to protrude above or settle below the driving surfaces or ground elevations, the owner will be notified, and the problem shall be fixed within 30 days of notification. If the problem is not fixed within the 30-day time period, the City will fix the problem and bill the property owner. This language shall be included on the face of any binding site plan or easement documents submitted to the City.
104. A Bill of Sale for water, sewer, and street lighting improvements being installed with this project is a requirement for approval. Prior to Final Public Works approval of the project, Bill of Sale documents shall be submitted to and approved by the City.
105. If building permits are desired prior to frontage improvements shown on the civil drawings being constructed by the Applicant and approved by the City, a financial guarantee at a rate of 150 percent of the outstanding improvements within the Public Right-of-Way shall be submitted to the City. *DG&PWS 3.090 A.*
106. Prior to building permit issuance, the Applicant shall submit revised shoreline restoration plans that address the following items:
 - All improvements, excepting the proposed ramp/walkway, shall be removed from within the 100-foot setback; OR the Applicant shall submit documentation identifying the parameters for general public access, including hours of use, mode of access, etc.;

- If improvements are removed from the shoreline setback, a revised restoration plan should be submitted addressing restoration of the existing degraded area, that would otherwise lay within the footprint of the improvements shown on the submitted site plan;
- Revised calculation of the development (impervious surface) coverage within the entire shoreline jurisdiction. The City shall review the Applicant's revised shoreline restoration plan to ensure that the proposal does not exceed the maximum impervious surface allowed in the shoreline jurisdiction.

RECOMMENDED this 22nd day of July 2022.



ANDREW M. REEVES
Hearings Examiner
Sound Law Center

Attachment A

The following exhibits were admitted into the record:

1. List of Exhibits
2. Staff Report, dated May 26, 2022
3. General Land Use Application, dated September 21, 2020
4. Site Plan Review Supplemental, undated
5. Shoreline Permit Application, dated March 23, 2020
6. Wetland Development Supplemental, undated
7. Joint Aquatic Resources Permit Application Form, dated October 20, 2020
8. Land Clearing/Class IV Forest Practices Application, undated
9. SEPA Environmental Checklist, dated May 13, 2021
10. Preliminary Civil Drawings (28 Sheets), dated September 22, 2020
11. Project Narrative, Barghausen Consulting Engineers, dated May 12, 2021
12. Shoreline Plans, Soundview Consultants, dated March 4, 2020
13. Proposed Dock Detail, Bradley Charles Smith, dated July 11, 2020
14. Shoreline, Wetland Delineation, and Fish and Wildlife Habitat Assessment Report, with Conceptual Restoration Plan, Soundview Consultants, dated August 21, 2020
15. Preliminary Drainage Report, Barghausen Consulting Engineers, dated February 25, 2020
16. Geotechnical Report, Earth Solutions NW, dated July 27, 2018
17. Geotechnical Engineer's Addendum, Earth Solutions NW, dated October 18, 2021
18. Traffic Impact Analysis, SCJ Alliance, dated October 29, 2021
19. Forester's Report, Sound Urban Forestry, dated May 7, 2020
20. Notice of Complete Application, dated June 11, 2021
21. Notice of Application with Optional DNS Process, undated
22. Notice of Public Hearing, undated
23. Certification of Public Notice, dated May 12, 2022
24. Mitigated Determination of Nonsignificance, dated April 20, 2022 , with Affidavit of Publication in *The Olympian*, dated April 22, 2022
25. Notice of Mitigated Determination of Nonsignificance
26. Agency Routing Sheet, dated June 15, 2021
27. Comment from Terry McDaniel, City Plans Examiner, dated June 25, 2021
28. Comment from Tom Stiles, City Public Works, dated March 14, 2022
29. Comment from Doug Christenson, City Stormwater Engineer, dated October 27, 2021
30. Transportation Comments:
 - a. Comment from Chris Stolberg, City Transportation Engineer, dated March 9, 2022
 - b. Comment from Arthur Saint, Thurston County Public Works, dated June 25, 2021
31. Comment from Sydney Hanson, Washington Department of Archeology and Historic Preservation, dated June 24, 2021
32. Comment from Washington State Department of Ecology, dated June 29, 2021

33. Comment from Rebecca Rothwell, Washington State Department of Ecology, dated July 23, 2021
34. Comment from Mike Burnham, Intercity Transit, dated June 22, 2021
35. Comment from Lauren Whybrew, Olympic Regional Clean Air Authority, dated June 21, 2022
36. Comment from Brad Beach, Nisqually Indian Tribe, dated June 17, 2021
37. Comment from Shaun Dinubilo, Squaxin Island Tribe, dated June 22, 2021
38. Public Comments received through May 17, 2022:
 - a. Comment from Alan Baum, dated July 8, 2021
 - b. Comment from Mitch Becker, dated April 27, 2022
 - c. Comment from Victoria Byington, dated June 23, 2021
 - d. Comment from Evelyn Carver, dated June 19, 2021
 - e. Comment from Dana and Dane Clay, dated July 14, 2021
 - f. Comment from Darryl Carver, dated June 29, 2021
 - g. Comment from Darryl Carver, dated June 29, 2021
 - h. Comment from Vern and Lynne Dearing, dated August 20, 2021
 - i. Comment from Chris Gagnon, dated July 12, 2021
 - j. Comment from Scott Goddard, dated June 8, 2021
 - k. Comment from Scott Goddard, dated June 17, 2021
 - l. Comment from Scott Goddard, dated June 29, 2021
 - m. Comment from Scott Goddard, dated July 25, 2021
 - n. Comment from Janet Ikeda, dated June 28, 2021
 - o. Comment from Curtis and Diane Leigh, dated July 14, 2021
 - p. Comment from Rob Myers, dated April 20, 2022
 - q. Comment from John and Julie Nierenberg, dated August 3, 2021
 - r. Comment from Lisa Ornstein, dated January 31, 2022
 - s. Comment from Pamela Pearce Carver, dated June 19, 2021
 - t. Comment from Steven and Ruth Rector, dated July 8, 2021
 - u. Comment from Dennis Rhodes, dated July 17, 2021
 - v. Comment from Dean and Wendice Sevier, dated June 17, 2021
 - w. Comment from Savanna Small, dated May 14, 2022
 - x. Comment from Nancy Snyder, dated January 31, 2022
 - y. Comment from Patti Logan, dated May 15, 2022
 - z. Comment from "Save Hicks Lake," dated July 12, 2021
 - aa. Comment from Gary Wilson, dated May 14, 2022
39. Public Comments through the close of the public hearing:
 - a. Comment from Rebecca McGinnis, dated May 19, 2022
 - b. Comment from Susan Cooksey, dated May 16, 2022
 - c. Comment from the Hicks Lake Management District Steering Committee, dated May 23, 2022
 - d. Comment from Gary T. Ikeda, dated May 21, 2022
 - e. Comment from Edgar Landazuri, dated May 21, 2022
 - f. Comment from Curtis and Diane Leigh, dated May 20, 2022

- g. Comment from Dana Clay, undated
- h. Comment from Heather Christopher, dated May 25, 2022
- i. Comment from Steve and Ruth Rector, dated May 25, 2022
- j. Comment from Deschutes Law Group, PLLC, dated May 25, 2022, with Technical Memorandum, Skillings, May 20, 2022
- k. Comment from Karen Mussman, dated May 25, 2022
- l. Comment from Laura Alfani, dated May 25, 2022
- m. Comment from Dane Clay, undated
- n. Comment from Douglas Catey, dated May 25, 2022
- o. Comment from Norman Mastaski, dated May 26, 2022
- p. Comment from Jamie Schultz, dated May 26, 2022
- q. Comment from Kate Ayers, dated May 26, 2022
- r. Comment from Wendice Sevier, dated May 26, 2022
- s. Comment from Alan Baum, dated May 26, 2022
- t. Comment from Marshall Krier, dated May 26, 2022
- u. Comment from Jeffrey A. McKenzie, dated May 26, 2022
- v. Comment from DJ and Dean Lietzau, dated May 26, 2022
- w. Comment from Scott Goddard, received May 26, 2022
- x. Comment from Robert and Deanna Krell, dated May 25, 2022
- y. Comment from John and Pat Meyers, dated May 26, 2022
- z. Comment from John and Julie Nierenberg, dated May 26, 2022
- aa. Comment from Margaret Shannon, received May 26, 2022
- bb. Comment from Shirley Topham, dated May 26, 2022
- cc. Comment from Crystal Ashley, dated May 25, 2022
- dd. Comment from Victoria Byington, dated May 26, 2022
- ee. Comment from Victoria Byington, dated May 26, 2022
- ff. Comment from Pat Meyers, dated May 26, 2022
- gg. Comment from Tom Moore, dated May 26, 2022
- hh. Comment from Scott Morrison, dated May 25, 2022
- ii. Comment from Rob Meyers, dated May 26, 2022
- jj. Comment from Cheryl Sharpe, Linda Weible, and Jay Weible, received May 26, 2022
- kk. Comment from Patrick Sprout, dated May 26, 2022
- ll. Comment from Janet Ikeda, Allison Moore, Scott Goddard, Robert O'Keefe, Susan Cooksey, Victoria Byington, dated May 26, 2022
- mm. Comment from Janet Ikeda, dated May 15, 2022
- nn. Comment from Cheryl Settle, dated May 26, 2022
- 40. Supplemental Comment from Ben Cushman, Deschutes Law Group
- 41. Applicant's Response to Public Testimony
- 42. Applicant's Proposed Revision to Condition 42
- 43. Applicant's Response to Deschutes Law Supplemental Comments