

BEFORE THE CITY OF GIG HARBOR HEARING EXAMINER

IN RE: ) HEARING NOS. PL-PLAT-22-0001,  
 ) PL-DR-22-0005, PL-ALP-22-0001, AND  
 ) PL-SEPA-22-0004  
THE RESERVE PRELIMINARY PLAT. ) FINDINGS OF FACT AND  
 ) CONCLUSIONS OF LAW AND  
 ) DECISION

**APPLICANT/OWNER:** Resource Properties, LLC  
108 West Stewart Avenue  
Puyallup, Washington 98371

**AGENT:** Darton Riely-Gibbons

**PLANNER:** Roxanne Robles

**SUMMARY OF REQUEST:**

On November 3, 2017, the Applicant, Resource Properties, LLC, was granted Preliminary Plat approval for a project known as "The Reserve" located along Peacock Hill Avenue near its intersection with 100th Street Court. The Preliminary Plat was not acted on and became stale.

The same Applicant seeks renewed Preliminary Plat approval for The Reserve. The present application is nearly identical to the one approved in 2017. It again seeks approval for the development of two contiguous, undeveloped parcels containing 9.88 acres into fourteen single-family residential lots along with three tracts. Two of these tracts are for access, utilities, stormwater and recreation, while the third, open space tract, encompasses the 4+ acres in the eastern half of the property wherein a Category III wetland, stream, steep slopes and associated buffers are located.

The site is located along a slope commencing at Peacock Hill Avenue and descending easterly, first moderately through the area proposed for residential development and then more steeply into the open space area where the wetlands and stream are located.

#### **SUMMARY OF DECISION:**

The requested Preliminary Plat is **approved** subject to the conditions recommended by City Staff.

**DATE OF DECISION:** July 26, 2023.

## PUBLIC HEARING

The public hearing commenced at 1:30 p.m., on Tuesday, July 18, 2023. The hearing took place remotely utilizing on the Zoom platform with the City Staff serving as host. The City appeared through Roxanne Robles, Senior Planner. The Applicant appeared through Darton Riely-Gibbons. Several members of City Staff and the Applicant's representatives were also present along with approximately one dozen members of the public. Testimony was received from the City through Roxanne Robles and from the Applicant through Mr. Riely-Gibbons. Public testimony was received from John McMillan, Tony DeMarco, and Elizabeth Wingren. All testimony was taken under oath and a verbatim recording of the proceedings was maintained. The following exhibits were received in advance of the public hearing or during the public hearing:

Exhibit A	Hearing Examiner Staff Report dated July 18, 2023
Exhibit B	Preliminary Plat Plan Set date January 25, 2023
Exhibit C	Arborist Report dated August 23, 2022, revised September 2, 2022
Exhibit D	DRB Recommendation dated August 11, 2022
Exhibit E	The Reserve Development Project - Third Party Review dated November 22, 2022
Exhibit F	Wetland Assessment Technical Memorandum dated November 7, 2022
Exhibit G	Geotechnical Report Dated December 3, 2015, revised September 2, 2022 and January 12, 2023
Exhibit H	SEPA Determination of Nonsignificance with Engineering Memo dated April 12, 2023
Exhibit I	NOA Comment from the WA Department of Ecology dated February 18, 2022
Exhibit J	NOA Comment from the Squaxin Island Tribe dated February 9, 2022
Exhibit K	NOA Comment from John McMillan dated August 8 and August 15, 2022
Exhibit L	NOPM Comment from Rory Doering dated August 10, 2022
Exhibit M	NOPM Comment from Joe Norberg dated August 11, 2022
Exhibit N	NOPM Comment from John McMillan dated August 31, 2022
Exhibit O	NOPM Comment from Tony DeMarco received August 25, 2022
Exhibit P	SEPA DNS Comment from the WA Department of Ecology received April 27, 2023
Exhibit Q	SEPA DNS Comment from John McMillan dated April 17, 2023
Exhibit R	Staff Response to John McMillan dated May 15, 2023
Exhibit S	SEPA DNS Comment from Rory Doering dated April 26, 2023
Exhibit T	Staff Response to Rory Doering dated May 15, 2023
Exhibit U	Preliminary Drainage Control Plan dated September 28, 2022

1	Exhibit V	EN-23-0010 The Reserve Vault Location Variance Package dated March 22, 2023
2	Exhibit W	EN-22-0014 The Reserve Approach Landing Variance dated January 9, 2023
3	Exhibit X	EN-22-0015 The Reserve Joint Use Driveway Variance dated January 9, 2023
4	Exhibit Y	EN-22-0049 The Reserve Typical Minor Arterial Roadway Section Variance dated April 7, 2023
5	Exhibit Z	EN-22-0050 The Reserve Cul-de-Sac Variance dated January 9, 2023
6	Exhibit AA	EN-23-0011 The Reserve Access Spacing Variance dated April 7, 2023
7	Exhibit BB	Certificate of Water Availability dated March 18, 2022
8	Exhibit CC	Sewer Capacity Reservation Certificate dated June 2, 2016
9	Exhibit DD	Sewer Hydraulic Report dated January 16, 2023
10	Exhibit EE	NOPH Comment from John McMillan dated July 7, 2023
11	Exhibit FF	City's PowerPoint demonstration
12	Exhibit GG	Applicant's PowerPoint demonstration

12 **City's Presentation:**

13 The Hearing commenced with the testimony of Roxanne Robles, Senior Planner for this project. Ms. Robles relied primarily on her Staff Report dated July 11, 2023, together with her 14 PowerPoint presentation (Exhibit FF). As laid out in these materials, the proposed Preliminary 15 Plat known as "The Reserve" consists of two contiguous, undeveloped parcels adjacent to and 16 east of Peacock Hill Avenue near its intersection with 100th Street Court. The Preliminary Plat application is for the subdivision of 9.88 acres into fourteen single-family residential lots along with three tracts for access, utilities and open spaces.

17 All proposed development will take place on the westerly half of the project. The easterly half 18 contains a large Category III wetland along with a Type IV stream, commencing at the southeast 19 corner of the wetland and draining in a southeasterly direction onto adjoining properties. The 20 wetland and its buffers are separated from the more developable property to the west by a steep slope running north/south through the approximate center of the project site. The property to the 21 west of this slope has a moderate (15%) grade while the slope has a much steeper grade leading to the wetland.

22 The project proposes a single road terminating in a cul-de-sac with two spur driveways, one 23 providing access to Lots 1-4 and the other providing access to the proposed stormwater vault, all 24 as shown on plat maps. Ingress/egress will be via Peacock Hill Avenue at a location slightly south of the existing intersection with 100th Street Court on the west side of Peacock Hill Avenue.

1 The project contains 9.88 acres with only the westerly 5.27 acres proposed for development and  
2 the remainder to be held in open space. The site has a zoning designation of Single-Family  
3 Residential (R-1). Surrounding properties to the north, east and south are located within Pierce  
4 County and have zoning designations of Single-Family to the north and south and Rural  
5 Sensitive Resource to the east. Properties to the west of the project site and further south are all  
6 within the City limits and generally have the same R-1 zoning designation as the project site with  
7 the exception of the parcels immediately west of the project (R-2) and additional properties just  
8 south of that area, zoned RB-1. Despite these minor differences in zoning designations, all  
9 nearby properties within the City limits have a common low density residential use.

10  
11 As noted earlier, the westerly half of the project proposed for development contains moderate  
12 slopes. The Applicant is seeking deviation from "balanced grading" requirements to allow the  
13 import of fill in order to improve use of the site. The DRB finds this requested deviance to be in  
14 the public interest and recommends its approval. The site's slopes will also require construction  
15 of fifteen retaining walls including some exceeding six feet, and with the highest having a  
16 maximum height of fifteen feet. Again, the DRB finds that these proposed retaining walls are in  
17 the public's best interest and recommends their approval.

18 Throughout this application, and the prior 2017 plat application, members of the public have  
19 expressed concern about stormwater management. The Applicant proposes to manage  
20 stormwater by having it directed to a detention vault located just east of the residential lots and  
21 west of the toe of the steep slope leading toward the wetlands. The proposed detention vault will  
22 receive all stormwater from the developed portion of the project site, filter it, and then disburse it  
23 toward the wetland in a regulated fashion, mimicking the natural release of stormwaters toward  
24 the wetland. City Staff finds that the stormwater design satisfies all local and State requirements  
25 and recommends its approval.

26 As noted earlier, the site contains a large Category III wetland as well as a Type IV (non-fish-  
27 bearing) stream, both located in the easterly half of the site. All development will take place  
28 well away from either the wetland or the stream and their 150-foot buffers. The site also  
29 contains landslide and erosion hazard areas as demonstrated in the City's PowerPoint  
30 demonstration. These areas have been taken into consideration with all development occurring  
31 westerly of these areas. The Applicant has provided a Geotechnical Report prepared by Terra  
32 Associates which finds that there are no geotechnical conditions precluding the planned  
33 development.

34 Ms. Robles noted that there has been both agency and public response to the project. In  
35 particular, members of the public have repeatedly expressed concerns about the steepness of the  
36 site, the management of stormwater, and the protection of the wetland and creek located at the  
37 lower portion of the property. Ms. Robles acknowledges these concerns but believes that the  
38 Applicant and its experts have adequately demonstrated that the project will comply with all  
39 development regulations including those relating to stormwater. Ms. Robles concluded her

1 testimony by finding that the Preliminary Plat conforms to the general requirements for  
2 subdivision approval and that it is also consistent with the City's Comprehensive Plan. City Staff  
3 also recommends that the Hearing Examiner approve the various Public Works variances  
recommended by the DRB.

4 **Applicant's Presentation:**

5 At the conclusion of the City's presentation the Applicant appeared through Darton Riely-  
6 Gibbons. Mr. Riely-Gibbons relied upon his own PowerPoint demonstration (Exhibit GG) in  
7 further support of the application. Much of Mr. Riely-Gibbons presentation was devoted to  
8 further explanation of the proposed stormwater system which is designed for: (1) collection and  
conveyance of stormwater; (2) flow control; (3) water quality; and (4) wetland protection. He  
explained how stormwater will be collected from the various lots and conveyed to the  
stormwater detention vault. From the vault, stormwater will be filtered and then released  
through a flow control mechanism in order to discharge water at similar to natural conditions as  
possible. Through this process, stormwater will be filtered and pollutants removed. Stormwater  
will then be directed toward the wetland utilizing energy dissipaters and flow spreaders to reduce  
its impacts.

11 **Public Testimony:**

13 At the conclusion of the Applicant's presentation the hearing was opened for public testimony.  
Three members of the public wished to testify.

14 John McMillan testified in a manner similar to his written comments presented several times  
15 during the application process. Mr. McMillan remains concerned that the project will have  
16 significant adverse impacts to the wetland and stream which then flows onto his property. He  
seeks further assurances that the stormwater system will be monitored and properly maintained  
17 as the development reaches full buildout.

18 Tony DeMarco served as representative for the neighborhood west of the project site. Mr.  
DeMarco and his neighbors remain concerned that the project site is simply too steep and should  
not be built upon. They are also concerned about its potential traffic impacts and other impacts  
to the surrounding neighborhood. The adjoining neighborhood asks that the project not be  
20 approved.

21 Elizabeth Wingren expressed similar concerns to those raised by Mr. McMillan. She questions  
22 whether steps will be taken to ensure that the stormwater system will be properly maintained.  
She also wonders what limitations will be imposed upon water use as well as on the use of  
23 fertilizers, etc. on residential lots.

1 At the conclusion of public testimony the concerns expressed by the members of the public,  
2 including the questions asked by both Mr. McMillan and Ms. Wingren, were addressed to both  
3 the Applicant and City Staff for response. Ms. Robles and Mr. Riely-Gibbons collectively  
4 responded that the neighborhood's homeowners association will be legally responsible for  
5 maintaining the stormwater system and that it will be required to enter into a stormwater  
management plan with the City to ensure the proper performance of the system. This plan will  
also address water usage, the use of fertilizers, etc. A similar arrangement is required of every  
new subdivision in the City. Ms. Robles believes that this agreement will adequately address the  
concerns expressed by members of the public and she reiterated her support for the proposed  
Preliminary Plat.

7 **ANALYSIS**

8 It is important to recognize that virtually the same application was presented to the City in 2017  
9 and approved by the Hearing Examiner. While that earlier plat's approval does not guarantee  
10 that a renewed application should be approved, it serves as an important starting point and  
creates a presumption that the renewed application should be approved unless there has been  
11 some notable new discovery about the site; or there have been significant changes to City  
regulations precluding the proposed development; or there has been a significant change in the  
12 Comprehensive Plan such that the proposed plat is no longer consistent with it. While I  
understand the concerns expressed by members of the public and the adjoining neighborhood  
(and perhaps share some of the concerns about the steepness of this site) I conclude that all of  
13 these concerns have been carefully examined and addressed. I also conclude that there have  
been no significant changes in the City's Development Regulations since the earlier Preliminary  
14 Plat was approved, nor has there been any significant change in the City's Comprehensive Plan  
such that the application is no longer consistent with it. In short, I concur with the decision  
15 reached by the Hearing Examiner in 2017 and conclude that the Preliminary Plat, as conditioned,  
16 should be approved. I therefore make the following:

17 **FINDINGS OF FACT**

18 1. Any Findings contained in the foregoing Background, Public Hearing or Analysis  
Sections are incorporated herein by reference and adopted by the Hearing Examiner as his  
19 Findings of Fact.

20 2. The Hearing Examiner has admitted documentary evidence into the record, heard  
testimony, and taken this matter under advisement.

21 3. The City Staff, as responsible official, issued a SEPA Determination of Nonsignificance  
(DNS) on April 12, 2023 (Exhibit H). The SEPA Determination has not been appealed and has  
22 become final.

23

1       4. Notice of the application was posted at the site on February 3, 2022, and also published in  
2 the Tacoma News Tribune, sent to State agencies, and mailed to all property owners within 300  
3 feet of the subject site on February 4, 2022. Notice of Public Meeting for the August 11, 2022,  
4 DRB meeting was posted at the site, published in the Tacoma News Tribune and also mailed to  
5 property owners. The SEPA DNS was mailed to all property owners within 300 feet of the  
6 subject site on April 12, 2023, and submitted to Ecology on April 12, 2023, and published in the  
7 Tacoma News Tribune. Notice of this public hearing was posted at the subject site on June 30,  
8 2023, published in the Tacoma News Tribune on July 3, 2023, and mailed to all property owners  
9 within 300 feet of the subject site on July 3, 2023. All legal notices of the proposed action have  
10 therefore been satisfied.

11      5. The Applicant proposes to develop two contiguous and undeveloped parcels totaling 9.88  
12 acres into fourteen single-family residential lots. The proposed development also includes three  
13 tracts, two of which are for access, utilities, stormwater and recreation, and the third for open  
14 space and critical acres including the onsite wetland and stream. All development will take place  
15 predominantly within the western 5.27 acres of the site closest to Peacock Hill Avenue. The site  
16 slopes down from Peacock Hill Avenue at approximately 15% until it reaches a steeper slope  
17 midway across the property. From this location, the property descends more steeply easterly  
18 toward the Category III wetland and stream. The site is forested with native vegetation including  
19 significant stands of coniferous and deciduous trees. There is a Category III wetland comprising  
20 nearly half of the eastern/southeastern portion of this site. There are steep slopes and potential  
21 erosion hazard areas extending across the site north to south and separating the proposed area of  
22 development from the open space tract/wetland area to the east.

23      6. The parcel is located in the Single-Family Residential (R-1) zone classification. This  
24 zoning designation is intended to provide for low density, single-family residential development.  
25 The abutting property to the north is zoned Single-Family Residential but lies within Pierce  
County jurisdiction. Property to the south is also zoned Single-Family Residential and again lies  
within Pierce County jurisdiction. The property to the west is located within the City and has a  
variety of residential zones but has been developed primarily as single-family residential  
neighborhoods.

26      7. Access to the site will be provided from Peacock Hill Avenue by approximately 500  
27 lineal feet of roadway (Road A) terminating in a cul-de-sac. The Applicant has applied for two  
28 public works variances to permit access to Lots 1-4 with a shared private access and to permit a  
29 reduction in the landing length of the intersection of Road A and Peacock Hill Avenue in order  
30 to reduce the amount of necessary earthmoving.

31      8. Due to the site's relative steepness, the Applicant proposes a significant amount of import  
32 fill as well as terraced retaining walls.

1 9. The Applicant also proposes an Alternative Landscape Plan (ALP) which proposes to  
2 remove twenty-one significant trees within the landscape buffer and replace them with ninety-  
2 seven new trees per the Arborists Report (Exhibit C).

3 10. The project was presented to the Design Review Board (DRB) on August 11, 2022. The  
4 DRB recommended approval of the proposed grading plan to the Hearing Examiner, including  
5 the importing of fill exceeding the cut amount, as well as the proposed retaining walls. The  
5 DRB's recommendations are included in Exhibit D.

6 11. As noted previously, the site contains both wetlands and a stream. Soundview  
7 Consultants conducted a site investigation and confirmed the presence of Category III wetland  
8 along with a non-fish-bearing stream originating from the wetland. Their report underwent third  
8 party review and revisions were made, with a 150-foot buffer established for the wetland and  
stream, as well as a 15-foot building setback.

9 12. In addition to the wetlands and stream, the site contains steep slopes, landslide and  
10 erosion hazard areas, all of which are predominantly in the eastern portion of the site which will  
11 remain undeveloped. A Geotechnical Report finds that there are no geotechnical conditions  
precluding the planned development but recommends the import of free draining granular  
materials for structural fill.

12 13. The project has received considerable public comment at all phases of its review.  
13 Members of the public are concerned about the site's steep slopes; its abilities to properly  
14 manage stormwater; and its potential negative impact upon the wetlands and stream.

15 Finding Relating to the Project's Consistency with the City Comprehensive Plan.

16 14. The site is designated as a Low Density Residential Area in the City's Comprehensive  
17 Plan. The purpose of this land use designation is to provide for low density single-family  
residential uses.

18 15. City Staff finds that the project, as conditioned, is consistent with the Comprehensive  
19 Plan including Goal 2.1 and Policies 2.2.3.A and 2.2.3.K; Goal 2.5 and Policies 2.5.1 and 2.5.2;  
Goal 4.9 and Policy 4.9.3.D; Goal 4.10 and Policies 4.10.1, 4.10.5 and 4.10.7. The Hearing  
Examiner concurs.

20 Findings Relating to Compliance with the Municipal Code.

22 16. Prior to obtaining Preliminary Plat approval the Applicant must show that the request  
23 satisfies the criteria set forth in GHMC 16.05.003. The purpose of these regulations is to  
24 promote public health, safety and general welfare in accordance with standard established by the  
State. Per GHMC 16.05.003 the Hearing Examiner shall make an inquiry into the public use and

1 interest proposed to be served by the establishment of the subdivision and shall make findings as  
2 to each criteria.

3 17. Per GHMC 16.05.003.1, the Preliminary Plat must conform to Chapter 16.08, General  
4 Requirements for Subdivision Approval. Staff finds that the Preliminary Plat conforms to the  
5 General Requirements for Subdivision Approval as set forth more fully below. The Hearing  
6 Examiner concurs.

7 18. Per GHMC 16.05.003.2, it must be demonstrated that appropriate provisions are made  
8 for, but not limited to, public health, safety and general welfare, for open spaces, drainage ways,  
9 streets or roads, alleys, or other public ways, transit stops, potable water supplies, sanitary waste,  
10 parks and recreation, playgrounds, schools and schoolgrounds, and shall consider all relevant  
11 facts, including sidewalks and other planning features that assure safe walking conditions for  
12 students who only walk to and from school.

13 19. The Staff Report, commencing at page 11, examines these criteria and finds that all  
14 requirements have been satisfied:

- 11 • The geotechnical report finds that there is no slope stability issues.
- 12 • The geotechnical report also recommends that stormwater not infiltrate onsite but  
13 that it instead be sent to a stormwater vault to allow suspended solids to settle and be filtered out  
14 before the water is discharged at regular intervals.

15 • A wetland hydroperiod analysis narrative concludes that the detention vault will  
16 discharge stormwater at required levels.

17 • A gabion dispersion system is being utilized to avoid direct flows to the wetland  
18 or the scouring of any slopes.

19 • All development will take place outside of the 150-foot buffer to the Category III  
20 wetland.

21 • The Applicant is providing a required 25-foot landscape buffer as well as a  
22 critical area/open space tract.

23 • The City Engineer has reviewed the proposal and recommends approval subject to  
24 the approval of a final stormwater design complying with both City Public Works Standards and  
the City's Design Manual.

25 • Stormwater will be conveyed by new stormwater drainage pipes to a new  
stormwater vault located within the northeastern portion of the clearing limits. Stormwater will  
be treated prior to discharge to the open space tract where the gabion dissipator to prevent  
erosion.

• The project includes one new public street (Road A) and two private access roads  
(PAT100 and the "vault access road"). The Applicant requests five public works variances  
relating to streets and roads:

1 a. PW Variance EN-22-0014 requests a variance from PWS 2B.140.B to  
2 allow the approach landing to be measured from the nearest travel lane rather than the nearest  
right-of-way line in order to reduce the amount of fill required at the entryway.

3 b. PW Variance EN-22-0015 requests a variance from PWS 2B.072 to allow  
4 for four new single-family residential lots accessed from a single 20-foot wide paved drive  
within a privately maintained joint use access. The purpose of this variance is to avoid  
unnecessary grading and fill.

5 c. PW Variance EN-22-0049 requests a variance from PWS 2B and the  
6 standard requirement for a 5-foot planter between the back of curb and front of walk and street  
light and planter. Strict compliance with this requirement would require the import of  
7 approximately 18,000 cubic yards of fill and additional clearing. In its place, the project  
proposes a revised roadway consistent with other developments along Peacock Hill Avenue. The  
8 Applicant proposes a compensating benefit of a crosswalk and associated ADA curb ramps to  
connect the project's frontage improvements with the nearest existing public sidewalk facilities.

9 d. PW Variance EN-22-0050 requests a variance from PWS 2B.090 to allow  
10 the use of a cul-de-sac within the proposed development. Staff finds that the proposed cul-de-sac  
is preferable to alternatives given the site's steep topography and critical areas, and that it will  
minimize the amount of necessary earthwork.

11 e. PW Variance EN-23-0011 requests a variance from PWS 2B.025 to  
12 reduce the 250-foot minimum local access spacing along a minor arterial roadway to 147 feet.  
13 This variance is intended to create as much space as practical from the intersection with 100th  
Street Court; to maintain the site's entrance within the project; to prevent unnecessary tree  
removal and to prevent unnecessary grading and clearing.

14 • Pierce Transit has determined that no new transit stops are necessary for the  
15 project.  
16 • The Applicant has obtained a Certificate of Water Availability. The project will  
have a new onsite water main connecting to the existing water main in Peacock Hill Avenue.  
17 • A Sewer Concurrency Reservation Certificate Application and Sewer Hydraulic  
Report have been submitted. The City Engineer has determined that the City's sewer system has  
sufficient capacity for the project.  
18 • Parking impact fees will be collected pursuant to GHMC Chapter 19.12.  
19 • The project provides for sidewalks along Peacock Hill Avenue connecting to an  
existing sidewalk on the adjacent property to the south. Internal sidewalks will be constructed  
along both sides of Road A.

20. Based upon all of these Findings, the City Staff concludes that the project, as  
21 conditioned, has made all appropriate provisions as required by GHMC 16.05.003.2. The  
22 Hearing Examiner concurs.

1 21. GHMC 16.05.003.3 requires that the public interest will be served by the subdivision and  
2 dedication. City Staff finds that the project, as conditioned, has been found to be consistent with  
3 the Comprehensive Plan; Title 16 of the GHMC, Title 17 (Zoning) and Title 18 (Environment).  
City Staff therefore finds that the public will be served by this subdivision and dedication. The  
Hearing Examiner concurs.

4 Findings Relating to Chapter 16.08 - General Requirements for Subdivision Approval.

5 22. In addition to the requirements found in GHMC 16.05.003, all subdivisions must also  
6 meet the general requirements for subdivision approval found within GHMC 16.08.001.A-F.  
The Staff Report, at pages 14-17, contains extensive findings relating to each of these  
7 requirements and concludes that the project, as conditioned, satisfies all general requirements for  
subdivision approval as required by GHMC 16.08.001. The Hearing Examiner concurs.

8 Findings Relating to Compliance with Chapter 17.16 GHMC.

9 23. The project is located within the R-1 zoning district. Within this district, a minimum lot  
10 area is 7,500 square feet, minimum lot width is .7% of the lot area in lineal feet, and maximum  
11 density is four units per acre.

12 24. Staff finds that the project will have a net developable area of 4.09 acres. Based upon the  
maximum density of four units per acre, the project is consistent with the land use and density  
13 requirements.

14 25. City Staff also finds that the project, as conditioned, is consistent with all other  
development standards. The Hearing Examiner concurs.

15 Findings Relating to Compliance with Chapter 17.72 GHMC - Off-Street Parking and Loading.

16 26. Each single-family dwelling will require two off-street parking spaces per dwelling unit  
17 per GHMC 17.72.030.

18 27. City Staff finds that the project is required to provide three guest parking spaces but will  
19 actually provide four spaces, all located along the north side of Road A as shown on plat maps  
(Exhibit B). The requirements of Chapter 17.72 for off-street parking have therefore been met.

20 Findings Relating to Compliance with Chapter 17.78 GHMC - Trees, Landscaping and  
Screening.

22 28. The Applicant has provided an Arborist Report (Exhibit C) describing the existing forest,  
23 all trees to be removed, and the proposed Alternative Landscaping Plan.

1 29. The Arborist Report identifies approximately 663 significant trees. 174 of these  
2 significant trees were assessed, with 149 located within the perimeter landscaping area. 29 of the  
3 assessed perimeter trees were identified as non-viable and another 21 will be compromised by  
4 site work and grading. The Applicant proposes to retain 99 viable significant trees within the  
landscape buffer, 25 along the eastern clearing limits, and 324 within the critical area/open space  
tract. In total there will be a 67.5 retention rate of significant trees across the project.

5 30. The Arborist Report proposes to replant the landscape buffer with 97 seedlings of native  
6 tree species to result in a tree density of one tree per 150 square feet. This is in excess of the  
requirements in GHMC 17.78.06.B.2.d for one tree per 200 square feet.

7 31. The project also proposes a 25-foot perimeter landscape areas and a 10-foot no  
8 construction zone per GHMC 17.78.092.A.

9 Findings Relating to the Proposed Alternative Landscape Plan (ALP), GHMC 17.78.100.

10 32. The Planning Director may authorize modification of landscape requirements when  
11 alternative plans comply with the intent of Chapter 17.78 and all requirements of GHMC  
12 17.78.100.A-D have been met. As noted earlier, the Alternative Landscape Plan (ALP) proposes  
13 to remove 29 non-viable significant trees and 21 viable significant trees and replace them with  
14 97 replacement trees. The Staff Report, at pages 20 and 21, contains an analysis of the  
Alternative Landscape Plan and concludes that the proposed ALP meets the intent of Chapter  
17.78 GHMC and the specific requirements of GHMC 17.78.100.A-D. Indeed, City Staff  
concludes that the ALP will have a superior result than that which would be achieved by strict  
adherence with normal standards. The Hearing Examiner concurs.

15 Findings Relating to Compliance with GHMC 17.99.240 - Natural Site Conditions.

16 33. GHMC 17.99.240 encourages site development to be designed to reflect the natural  
17 conditions of the site including topography and existing vegetation. These goals are further  
18 analyzed through Subsections A-G. The Staff Report, commencing at page 21, examines each of  
these requirements and finds that the project, as conditioned:

19 A. Limits clearing to no more than 50% of significant trees and retains  
vegetation in all required buffers and setbacks.  
20 B. Retains natural vegetation on undeveloped portions of site.  
21 C. Maintains natural topography to the extent practicable.  
22 D. Incorporates approximately 25% of significant trees into the project.  
E. Replaces lost trees.  
F. Retains the natural symmetry of trees.  
23 G. Maintains the health and fullness of natural vegetation in buffer areas.

24 The Hearing Examiner concurs.

1    Findings Relating to Chapter 18.08 - Critical Areas.

2    34.    Critical area review is required for all development including subdivisions. GHMC  
3    18.08.0334.A.5.

4    35.    The Applicant has submitted a Wetland and Fish and Wildlife Habitat Assessment dated  
5    January 19, 2022, which evaluates the site and reviews prior wetland assessments prepared for  
6    the previous development in 2015. The Assessment finds one Category IV wetland and one  
7    Type IV stream onsite. This Assessment was reviewed by a third party consultant who found  
8    deficiencies in it and requested revisions. Accordingly, the Assessment was revised on  
9    November 7, 2022, to recognize the wetland as a Category III wetland (Exhibit F) and finally  
10   accepted by the City on January 27, 2023.

11   36.    The revised Assessment recommends a 150-foot buffer and an additional 15-foot  
12   building setback. These requirements will be met.

13   37.    The site also contains steep slopes along the eastern edge of the development area. These  
14   slopes have been designated as a potential landslide and erosion area by DNR. The Applicant  
15   provided a Geotechnical Report dated December 3, 2015, revised September 2, 2022, and  
16   January 12, 2023 (Exhibit G) which concludes that there are no indications of significant active  
17   erosion on site slopes. The Report also concludes that the erosion potential of the site soils in the  
18   planned development area will be adequately mitigated with proper implementation and  
19   maintenance of Best Management Practices for erosion prevention and sedimentation control.  
20   The Report also does not find any susceptibility to landslides/mass movement. The Report  
21   concludes that there are no geotechnical conditions which preclude the planned development and  
22   recommends the import of free draining granular materials for use as structural fill rather than  
23   onsite soils.

24   Other general Findings.

25   38.    The Staff Report, at page 24, contains Findings that the project has undergone extensive  
1    review by operations and engineering staff; that appropriate revisions for potable water supplies  
2    and water supply have been met; that no further mitigation is required under SEPA; that the City  
3    has adequate sewer capacity for the project; that the project has provided an adequate  
4    Preliminary Drainage Control Plan which will provide both water quality control and water  
5    quantity control consistent with the City's Stormwater Management and Site Development  
6    Manual; and that the project will satisfy all traffic requirements. Operations and engineering  
7    staff therefore find that the project satisfies all City requirements.

8    39.    The Fire Marshal/Building Official has also reviewed the proposal and finds that it  
9    satisfies all requirements.

1 40. City Staff recommends approval of the project subject to the conditions set forth in the  
2 Staff Report. The Applicant has no objection to any of the proposed conditions.

3 Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

4 **CONCLUSIONS OF LAW**

5 1. The Hearing Examiner has jurisdiction over the parties and the subject matter.

6 2. Any Conclusions of Law contained in the foregoing Background, Public Hearing,  
7 Analysis, or Findings of Fact are hereby incorporated by reference and adopted by the Hearing  
8 Examiner as his Conclusions of Law.

9 3. All notice requirements have been met.

10 4. All SEPA requirements have been met.

11 5. The project, as conditioned, is consistent with the City's Comprehensive Plan.

12 6. The Preliminary Plat conforms to Chapter 16.08 GHMC, General Requirements for  
13 Subdivision Approval.

14 7. Appropriate provisions have been made for the public health, safety and general welfare,  
15 for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable  
water supplies, sanitary waste, parks and recreation, playgrounds, schools and schoolgrounds,  
and has considered all relevant facts, including sidewalks and other planning features, to assure  
safe walking conditions for students who only walk to and from school.

16 8. The public interest will be served by the subdivision and dedication.

17 9. PW Variance EN-22-0014; PW Variance EN-22-0015; PW Variance EN-22-0049; PW  
18 Variance EN-22-0050; and PW Variance EN-23-0011 are in the public interest and shall be  
19 approved.

20 10. All of the general requirements for subdivision approval found in GHMC 16.08.001.A-F  
have been met.

21 11. All bulk and density requirements set forth in Chapter 17.16, Single-Family Residential  
22 (R-1) have been met.

23 12. All requirements for off-street parking and loading per Chapter 17.72 GHMC have been  
met.

13. All requirements for trees, landscaping and screening per Chapter 17.78 GHMC have been met.

14. The Applicant's Alternative Landscaping Plan (ALP) meets the intent of Chapter 17.78 GHMC and shall be approved.

15. The goals of GHMC 17.99.240 for natural site conditions have been satisfied.

16. All requirements of the Critical Areas Ordinance, Chapter 18.08 GHMC have been met.

17. The proposed Preliminary Plan should be approved subject to the conditions set forth in the Staff Report.

## DECISION

The Preliminary Plat is **approved** subject to the following conditions:

### **Land Use Special Conditions:**

1. All required perimeter landscape and screening buffers shall be vegetated to meet or exceed the requirements for residential plats, as amended through the Alternative Landscape Plan approved by the Hearing Examiner. This requirement shall be met prior to final plat approval.

2. The required 25-foot wide perimeter landscape buffer shall be established as a covenant on the final plat and labeled to identify the nature of the buffer.

3. Final landscape construction plans consistent with the landscape plans approved by the land use permit process shall be submitted with civil permit applications and shall include the required tree protection measures.

4. The owner shall ensure that all recommended requirements of the critical area evaluation prepared by Soundview Consultants dated November 7, 2022, or as otherwise amended by revised reports, are implemented.

5. The tree protection measures as specified in GHMC 17.78.092, and any tree protection measures recommended by the arborist of record, shall be implemented prior to any major excavation with heavy equipment. The applicant shall contact the Planning Division to conduct an inspection of the final tree protection fencing location prior to beginning work.

6. Any trees required to be retained pursuant to this land use approval which are subsequently removed or damaged shall be replaced per the requirements in GHMC 17.99.240.E.

1       7. The owner shall submit a proposed name for Road A and have the name  
2 approved by City Council prior to the filing of the final place application by the City.

3       8. Any dedication, donation, or grant as shown on the face of the plat shall be  
4 considered to all intents and purposes as a quitclaim deed to the said donee(s) or grantee(s) for  
5 their use for the purpose intended by the donor(s) or grantor(s).

6       9. The proposed plat is subject to a dedication therefore, the certificate or a separate  
7 written instrument shall contain the dedication of all streets and other areas to the public, and  
8 individual(s), religious society(ies) or to any corporation, public or private, as shown on the plat  
9 or short plat, and a waiver of all claims for damages against any governmental authority which  
10 may be occasioned to the adjacent land by the established construction, drainage and  
11 maintenance of said road. Said certificate or instrument of dedication shall be signed and  
12 acknowledged before a notary public by all parties having any ownership interest in the lands  
13 subdivided and recorded as part of the final plat.

14     10. Any dedication filed for record must be accompanied by a title report confirming  
15 that the title of the lands as described and shown on said plat is in the name of the owners  
16 signing the certificate or instrument of dedication.

17 **Engineering Conditions:**

18     1. The owner shall pay stormwater mitigation fee prior to the approval of the final  
19 plat.

20     2. The owner shall ensure that all recommended requirements of the geotechnical  
21 evaluation prepared by Terra Associates, Inc. dated January 12, 2023, or as otherwise amended  
22 by revised reports, are implemented.

23     3. School and park impact fees, as required by GHMC 19.12.050.C.11 shall be  
24 collected for all residential development prior to the issuance of a building permit.

25     4. The owner shall execute and record a Sanitary Sewer Maintenance Agreement, as  
26 approved by the City, with the Pierce County Auditor's office. The recording number  
27 (Auditor's File Number [AFN]) shall be noted on the final plat.

28     5. The owner shall execute and record a Stormwater Maintenance Agreement, as  
29 approved by the City, with the Pierce County Auditor's office. The recording number (AFN)  
30 shall be noted on the final plat.

31     6. At the time of civil permit review, the Final Drainage Control Plan shall include a  
32 tabulation of the current and proposed impervious, pollution- generating pervious and  
33 impervious, disturbed pervious, and undisturbed areas.

1        7. At the time of civil permit review, the Final Drainage Control Plan shall include  
2 the current storm drainage configuration.

3        8. The City may remove any traffic control devices placed or constructed within the  
4 City right-of-way not approved by this division. Any liability incurred by the City due to  
5 nonconformance by the applicant shall be transferred to the applicant.

6        9. Permanent survey control monuments shall be placed to establish public street  
7 centerlines, intersections, angle points, curves, subdivision boundaries, and other points of  
8 control. A minimum of two permanent survey control monuments shall be installed at locations  
9 determined by the City in accordance with the City's PWS and recorded with the Pierce County  
10 Survey Control Division prior to final engineering approval of civil improvements.

11        10. The final plan map shall note (where quoted) or delineate the following:

12        a. "WARNING: City of Gig Harbor has no responsibility to build, improve,  
13 maintain or otherwise service private roadways or driveways within, or  
14 providing access to, property described in this plat".

15        b. "Increased stormwater runoff from the private road(s), building(s), driveway(s)  
16 and parking area(s) shall not be directed to City infrastructure. Increased  
17 stormwater runoff shall be retained/detained on site and discharged at the  
18 approved outfalls".

19        c. "Where seasonal drainage crosses subject property, existing natural drainage  
20 pathways and outfalls shall be maintained".

21        d. Stormwater drain connections for runoff from buildings and parking surfaces  
22 shall be shown on individual building lots.

23        e. If private roadways are proposed, then provisions shall be made for the roads and  
24 easements to be open at all times for emergency and public service vehicle use.

25        f. "This plat is subject to a stormwater maintenance agreement recorded under  
AFN (enter AFN here)."

26        g. "Stormwater/drainage easements are hereby granted for the installation,  
27 inspection, and maintenance of utilities and drainage facilities as delineated on  
28 this plat map. No encroachment will be placed within the easements shown on the  
29 plat that may damage or interfere with the installation, inspection, and  
30 maintenance of utilities. Inspection, maintenance, and expense thereof the  
31 utilities and drainage facilities shall be the responsibility of the property  
32 owner(s) or its heirs or assigns, as noted under the stormwater maintenance  
33 agreement for the plat".

h. The private road shall not be gated at the entrance without providing access to all water meters for reading.

DATED this 26th day of July, 2023.

Mark C. Scheibmeir  
City of Gig Harbor Hearing Examiner

## APPEAL OF HEARING EXAMINER'S DECISION

This is the final Decision of the City of Gig Harbor Hearing Examiner and may be appealed in accordance with Chapter 36.70C RCW.