

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF GIG HARBOR**

In the Matter of the Application of)	Nos. PL-SPP-18-0001; PL-CUP-17-0001;
)	PL-DR-17-0184; PL-ALP-18-0008
Contour Engineering, LLC, on behalf of)	
Paul Conan)	Burnham Drive Apartments
)	
For Approval of a Preliminary Short Plat,)	
Conditional Use Permit, Design Review,)	FINDINGS, CONCLUSIONS,
<u>and Alternative Landscape Plan</u>)	AND DECISION

SUMMARY OF DECISION

The request for a preliminary short plat to subdivide an approximately 4.4-acre property into two lots, and for a conditional use permit, design review approval, and approval of an alternative landscape plan to allow for the development of a mixed-use, multifamily complex consisting of 78 apartment units, a recreation building, and professional offices for lease, in six structures, with associated parking and utility infrastructure, at 9411 Burnham Drive, approximately 650 feet north of the intersection of Burnham Drive and Harborview Drive, is **APPROVED**. Conditions are necessary to mitigate specific impacts of the proposal.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held an open record hearing on the request on May 17, 2022, using remote access technology.

Testimony:

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

Carl De Simas, City Principal Planner
Stephen Bridgeford, Applicant Representative
Jeremy Haug, Project Engineer
Aaron Hulst, Interim City Engineer
Karen Mashburn

Attorney William Lynn represented the Applicant at the hearing.

Exhibits:

The following exhibits were admitted into the record:

A. Staff Report, dated May 10, 2022

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- B. Architectural Plan Set (10 Sheets) and Civil Plan Set (23 Sheets), received October 29, 2021
- C. Project Narrative and Conditional Use Permit Justification, revised October 29, 2021
- D. Design Review Board (DRB) Notice of Recommendation, dated July 23, 2021
- E. DRB Notice of Public Meeting Materials:
 - a. Notice of Public Meeting Transmittal Form, dated April 29, 2021
 - b. Declaration of Mailing, dated April 29, 2021
 - c. Notice of Public Meeting, dated April 29, 2021
 - d. Interested Party Roster
 - e. Mailing Labels
 - f. Vicinity Map
 - g. Declaration of Posting, dated May 5, 2021, with Posted Notice Photographs
 - h. Declaration of Publishing, dated April 27, 2021, with Order Confirmation and Ad Preview, for publication in *The News Tribune* on May 6, 2021
- F. DRB Notice of Public Meeting Comments:
 - a. Comment from Jeff Job, dated May 12, 2021
- G. Notice of Application Materials:
 - a. Declaration of Mailing, dated September 28, 2017
 - b. Notice of Application Transmittal Form, dated September 28, 2017
 - c. Notice of Application, dated September 28, 2017, with Mailing Labels and Vicinity Map
 - d. Declaration of Mailing, dated February 15, 2018
 - e. Transmittal Form, dated February 15, 2018
 - f. Notice of Application, dated February 15, 2018, with Mailing Labels and Vicinity Map
 - g. Declaration of Publishing, dated February 12, 2018; Transmittal Form, dated February 12, 2018; Affidavit of Publishing, with ad copy, for publication in *The News Tribune* on February 15, 2018
- H. Interested Party Roster
- I. Landscape Plans (8 Sheets), revised September 30, 2021
- J. Preliminary Short Plat Map (2 Sheets), revised March 9, 2021
- K. Former Chapter 17.36 Gig Harbor Municipal Code; Ordinance No. 1389, effective June 12, 2018
- L. Tree Protection Plan, Washington Forestry Consultants, Inc., dated October 23, 2018
- M. Wetland and Fish and Wildlife Habitat Assessment Report – Third Party Review, Grette Associates, LLC, dated October 20, 2017; Wetland and Fish and Wildlife Habitat Assessment Report, Soundview Consultants, dated October 10, 2018
- N. Geotechnical Engineering Report, GeoResources, LLC, dated February 16, 2017
- O. Client Assistance Memorandum – Critical Area Sign Installation Detail
- P. Determination of Nonsignificance, dated March 4, 2022
- Q. SEPA Public Comments:

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- a. Comment from Troy Atwell, dated March 9, 2022
- b. Comment from Jeff Job, dated March 9, 2022
- c. Comment from Karen Mashburn, dated March 9, 2022
- d. Comment from Squaxin Island Tribe, dated March 14, 2022
- e. Comment from Washington State Department of Ecology, dated March 23, 2022
- f. Comment from John McLaren, on behalf of Sun Communities, Inc., dated March 23, 2022

R. Notice of Public Hearing Materials:

- a. Declaration of Mailing, dated May 3, 2022
- b. Transmittal Form, dated May 3, 2022
- c. Notice of Public Hearing, dated May 3, 2022
- d. Notice of Public Hearing Email, dated May 3, 2022
- e. Interested Party Roster
- f. Mailing Labels
- g. Vicinity Map
- h. Declaration of Posting, dated May 3, 2022
- i. Declaration of Publishing, dated April 27, 2022; Affidavit of Publication, with ad copy, for publication in *The News Tribune* on May 3, 2022

S. Engineers Cost Estimate Worksheet, dated January 26, 2022

T. Comments:

- a. Comment from Jenna Torquato, on behalf of Sun Communities and Gig Harbor RV Resort, dated May 16, 2022
- b. Comment from Gig Harbor Fire & Medic One, dated May 16, 2022
- c. Comment from Shaun McMillen, on behalf of Gig Harbor Eagles 2809, dated May 16, 2022

U. City Planning Division Memorandum, dated May 17, 2022

V. Additional Notice of Application Materials:

- a. Declaration of Mailing, dated August 17, 2017
- b. Transmittal Form, dated August 17, 2017
- c. Notice of Application, dated August 17, 2017, with Mailing Labels and Vicinity Map
- d. Declaration of Posting, dated August 16, 2017
- e. Declaration of Publishing, dated August 9, 2017; Order Confirmation, with ad copy, for publication in *The News Tribune* on August 17, 2017

W. Additional Comments:

- a. Comment from Jeni WOOCK, dated August 19, 2017
- b. Comments from Troy Atwell, dated August 25 and 31, 2017
- c. Comment from Jacqueline Kelly, dated August 30, 2017
- d. Comment from Washington State Department of Ecology, dated August 31, 2017
- e. Comment from John Helget, dated August 30, 2017
- f. Comment from Roderick and Young Spaulding, dated August 31, 2017

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- g. Comments from Pierce Transit, dated September 7 and October 9, 2017
- h. Comment from Washington State Department of Ecology, dated October 12, 2017
- i. Comment from Washington State Department of Ecology, dated March 1, 2018

The Hearing Examiner enters the following findings and conclusions based upon the testimony and exhibits admitted at the open record hearing:

FINDINGS

Application and Notice

1. Contour Engineering, LCC, on behalf of Paul Conan (Applicant), requests a preliminary short plat to subdivide an approximately 4.4-acre property into two lots, as well as a conditional use permit, design review approval, and approval of an alternative landscape plan to allow for the development of a mixed-use, multifamily complex. The proposed development would consist of 78 apartment units, a recreation building, and professional offices for lease, in six structures. Associated improvements would include landscaping, utility infrastructure, stormwater management features, internal drive lanes, and 153 off-street parking stalls. The property is located at 9411 Burnham Drive.¹ *Exhibit A, Staff Report, pages 1 and 2; Exhibits B through D; Exhibit I; Exhibit J; Exhibit L; Exhibit U.*
2. The Applicant submitted an application for a conditional use permit, design review, and site plan review² for an earlier iteration of the proposal, which the City of Gig Harbor (City) deemed complete on August 8, 2017. Notice of the application was posted on the subject property on August 16, 2017. The next day, the City provided notice of the application by publishing notice in *The News Tribune* and by mailing or emailing notice to property owners within 300 feet of the site and to reviewing departments and agencies. On September 28, 2017, the City provided corrected notice of the application by mailing or emailing notice to property owners within 300 feet of the site and to reviewing departments and agencies. The Applicant later modified the proposal to include a request for a preliminary short plat to subdivide the property into two parcels, which the City deemed complete on February 6, 2018. On February 15, 2018, the City provided notice of the preliminary short plat application by publishing notice in *The News Tribune* and by mailing or emailing notice to property owners within 300 feet of the site and to reviewing departments and agencies, with a comment deadline of March 1, 2018. The City provided notice of the open record hearing associated with the application by publishing notice in *The News Tribune*, mailing or emailing notice to property owners within 300 feet of the site and to interested parties, and posting notice on-site. The City's hearing

¹ The property is identified by Pierce County Assessor No. 0221061028. *Exhibit A, Staff Report, page 1.* A legal description of the property is provided in the Civil Plan Set. *Exhibit B.*

² The Applicant withdrew the application for site plan review on November 16, 2020. *Exhibit A, Staff Report, page 4.*

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notice materials stated that written comments on the proposal could be submitted until May 16, 2022. The City received several comments on the proposal from members of the public and from reviewing departments and agencies, which are discussed in detail later in this decision. *Exhibit A, Staff Report, pages 5 and 6; Exhibit G; Exhibit H; Exhibit R; Exhibits T through W.*

State Environmental Policy Act

3. 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 reviewed the Applicant's Environmental Checklist and other information on file and determined that the project would not have a probable significant adverse impact on the environment. Accordingly, the City issued a Determination of Nonsignificance (DNS) on March 4, 2022, with a comment deadline of March 23, 2022, and an appeal deadline of March 30, 2022. The City published notice of the DNS in *The News Tribune* on March 9, 2022. The City received the following comments on the DNS:
 - Troy Atwell raised concerns about additional growth on Burnham Drive generally but did not raise any specific concerns about the environmental impacts of the proposal.
 - Jeff Job raised concerns about the proposal's traffic impacts to Burnham Drive.
 - Karen Mashburn stated that she suffers from a chemical sensitivity that is affected by chemicals in laundry products. She raised concerns about impacts to her health from dryer outputs and requested that the development either provide ventless dryers or provide carbon filters on dryer outputs. She also raised concerns about impacts to her health from automobile exhaust, which she stated would be exacerbated by the additional traffic generated by the proposed development.
 - John McLaren, on behalf of Sun Communities, noted that the project site is located adjacent to an RV resort purchased by Sun Communities. He stated that Sun Communities generally supports the proposal but requests that the Applicant provide a landscape barrier on the north property line between the proposed apartments and the RV resort to prevent trespass.
 - The Squaxin Island Tribe noted that it did not have any specific cultural resource concerns about the proposed development.
 - The Washington State Department of Ecology (DOE) commented that the project would be located on a suspected contaminated site that could potentially require site cleanup in accordance with the Model Toxics Control Act. DOE also provided general comments about appropriate solid waste management, erosion control measures, and the potential need for a Construction Stormwater General Permit.

The DNS was not appealed. *Exhibit A, Staff Report, page 5; Exhibit P; Exhibit Q.*

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Comprehensive Plan and Zoning

4. The property is designated "Mixed Use" under the City Comprehensive Plan. The Mixed Use designation encompasses an area of commercial, employment, office, and multifamily residential uses located along principle collector routes that link the downtown area with SR-16. *Comprehensive Plan, page 2-10.*

Commercial/employment activity within a Mixed Use area caters to a customer base beyond the immediate surrounding neighborhoods due to its location along the collector routes. The individual commercial/employment activities or developments in these areas are not of a size or character to be considered "major" activity or traffic generating uses. Multifamily and office uses are allowed within the Mixed Use area to provide economic diversity and housing opportunities near transit routes and business activities.

Comprehensive Plan, page 2-11.

The proposed development is subject to the community design element of the Comprehensive Plan, and City staff identified the following community design goal as relevant to the proposal:

Incorporate existing vegetation into new residential developments. Roads, lot layout and building sites in new residential developments should be designed to preserve high quality existing vegetation by clustering open space and native trees in order to protect not only the trees, but the micro-climates which support them. [Residential Development Design Goal 4.10.1].

Exhibit A, Staff Report, pages 6 and 7.

5. City staff reviewed the proposal and determined that it would be consistent with the Comprehensive Plan, noting:

- The proposed design of the project would support the intent of the Mixed Use land use designation by combining professional office and multifamily residential uses in a manner that would provide economic diversity and housing options near transit routes.
- The site has been thoughtfully designed to create a diverse housing opportunity in the community while preserving and incorporating a considerable amount of the site's existing vegetation.
- The Applicant would retain nearly 30 percent of the existing significant vegetation on-site, much of which would be located in the vicinity of an on-site Type 4 stream and its associated buffer.

Exhibit A, Staff Report, page 7.

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6. The property is zoned “General Business District” (B-2) and is within the Mixed-Use District Overlay (MUD). The purpose of the B-2 zone is to “provide areas that offer a wide range of consumer goods and services. It is further intended to group buildings and business establishments in a manner that creates convenient, attractive and safe development.” *Gig Harbor Municipal Code (GHMC) 17.36.010*. The MUD overlay provides “flexibility in promoting the development of an integrated multi-use district which permits a variety of residential types and compatible businesses in close proximity to each other.” *POMC 17.91.010*. City Principal Planner Carl De Simas testified at the hearing, however, that the Applicant has elected to not utilize the flexible development standards for the MUD overlay. Professional office uses are permitted outright in the B-2 zone, and multifamily residential uses are permitted in the B-2 zone with a conditional use permit. *GHMC 17.14.020*. The proposal’s consistency with the requirements for a conditional use permit is discussed in detail later in this decision. *Exhibit A, Staff Report, pages 3, 8, and 9; Testimony of Mr. De Simas*.
7. The proposed development vests to the development regulations in effect when the City deemed the preliminary short plat application complete on February 6, 2018. Under the prior development regulations to which the project vests, there are no maximum residential density requirements for the B-2 zoning district. *Former Chapter 17.36 GHMC*. The current code requires a maximum density of six dwelling units per acre in the B-2 zone. Other development standards applicable to the B-2 zoning district remain unchanged. City staff reviewed the Applicant’s site plans and architectural plans and determined that the proposed development would comply with these applicable standards, including standards related to minimum building setbacks, maximum building height, maximum gross floor area, and maximum impermeable and hard surface coverage. As discussed further, later in this decision, the Applicant requests approval of an alternative landscaping plan to allow for a deviation from landscaping standards applicable to development in the B-2 zone. *GHMC 17.36.120.B; GHMC 17.78.100. Exhibit A, Staff Report, pages 3, 8, and 9; Exhibit B; Exhibit I*.

Existing Site, Critical Areas, and Surrounding Development

8. The approximately 4.4-acre subject property was annexed into the city on February 9, 1997, as part of the Gig Harbor North Annexation. The property is irregularly shaped, abuts Burnham Drive to the west, and is undeveloped apart from a dilapidated farm utility building that was constructed in 1935, which would be removed as part of the proposed development. The western portion of the site slopes moderately downward to the west toward Burnham Drive, and the eastern portion of the site slopes steeply toward a ravine that crosses the site, with slopes as steep as 45 percent. An intermittent Type 4 stream (Stream Z) flows from north to south through the ravine. *Exhibit A, Staff Report, pages 4 and 14; Exhibit M; Exhibit N*.

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9. GeoResources, LLC, prepared a Geotechnical Engineering Report (GER) for the proposal, dated February 16, 2017. The GER determined that the property does not contain any landslide hazard areas. The GER further determined that the proposed development would comply with critical areas requirements applicable to the on-site ravine by providing an undisturbed buffer of natural vegetation extending 20 feet from the top of the ravine slope and an additional 10-foot building setback from the buffer edge. *GHMC 18.08.190*. In addition, the GER determined that the site would not support infiltration of stormwater due to soil conditions and that the proposed development would be feasible from a geotechnical perspective. The GER provided recommendations related to seismic design, foundation support, slab-on-grade floors, subgrade walls, temporary excavations, site drainage, structural fill, erosion control, and wet weather work. *Exhibit N*.
10. Soundview Consultants, LLC, prepared a Wetland and Fish and Wildlife Habitat Assessment Report for the proposal, dated October 10, 2018. The report identified Stream Z as a Type 4 stream that requires a standard 25-foot buffer and an additional 15-foot building setback from the buffer edge. *GHMC 18.08.184.B.7*. All proposed development would occur outside of the required stream buffer and setback, and the Applicant would install a split-rail fence and appropriate signage along the stream buffer to ensure protection of the critical area. The report also identified a potentially regulated offsite wetland (Wetland A) to the west of Burnham Drive. The report determined that the offsite wetland would likely be classified as a Category III wetland with a standard 150-foot buffer from high-impact land uses. *GHMC 18.08.100.F*. The report further determined, however, that the buffer associated with offsite Wetland A would not extend onto the subject property because Burnham Drive constitutes a buffer interruption under *GHMC 18.08.100.I*. The report did not identify any critical fish and wildlife habitat area on or within 300 feet of the site. Grette Associates, LLC, conducted a third-party review of the Wetland and Fish and Wildlife Habitat Assessment Report and agreed with its determinations. *Exhibit A, Staff Report, page 14; Exhibit B; Exhibit M; Exhibit O*.
11. Adjacent property to the north is zoned Residential and Business District and is developed with the Gig Harbor RV Resort. Properties to the east are zoned Planned Residential Development and are developed with single-family residences. Property to the south is zoned B-2 and is developed with a Fraternal Order of the Eagles facility. Properties to the west, across Burnham Drive, are zoned Medium Density Residential District and are developed with single-family residences. *Exhibit A, Staff Report, page 3*.

Traffic, Access, and Parking

12. Access to the buildings would be provided from a new drive aisle connecting to Burnham Drive. The Applicant would be required to construct half-street improvements along the

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property's frontage with Burnham Drive consistent with City Public Works standards, which would include installation of a separated nonmotorized shared-use path. The City is currently designing a capital improvement project for Burnham Drive that would include these required half-street improvements and, therefore, if the City's Burnham Drive improvement project commences prior to the Applicant receiving engineering permit approval, the Applicant would be required to pay a pro-rata share contribution in lieu of constructing the required half-street frontage improvements. The proposed development would include an ADA-accessible nonmotorized pathway that would provide access from the property to the planned nonmotorized shared-use path on Burnham Drive, ensuring safe conditions for students walking to area schools or school bus stops. The Applicant submitted a traffic impact analysis (TIA) for the proposal, which determined that the project would generate 50 new PM peak-hour trips. Interim City Engineer Aaron Hulst testified at the hearing that the City's transportation consultant reviewed the TIA and determined that the traffic generated by the proposal would not cause any affected intersections or street segments to operate below an acceptable level of service and that the proposal would meet the City's concurrency standards. The Applicant would mitigate for the impacts to the City's transportation network through the payment of traffic impact fees. *Exhibit A, Staff Report, pages 11, 12, and 15; Exhibit B; Exhibit C; Exhibit I; Exhibit J; Testimony of Mr. Hulst.*

13. The proposed mix-use development would be required to provide one off-street parking space for every 300 feet of gross floor space, one off-street parking space for each studio unit, 1.5 off-street parking spaces for each one-bedroom unit, and two off-street parking spaces for every unit with two or more bedrooms. *GHMC 17.72.030.* Current off-street parking standards also require guest parking for residential developments consisting of 10 or more dwelling units, but this requirement does not apply to the proposal because it vested prior to the code being amended to include this requirement. Based on the gross floor area of the proposed professional office space and based on the number of proposed one- and two-bedroom dwelling units, the Applicant would be required to provide a total of 153 off-street parking spaces. The Applicant would meet this requirement by providing 153 off-street parking stalls. *Exhibit A, Staff Report, pages 12 and 13; Exhibit B.*

Stormwater

14. As noted above, a geotechnical engineering report submitted for the proposal determined that the site would not support infiltration of stormwater due to soil conditions. Project Engineer Jeremy Haug testified at the hearing that stormwater runoff would be conveyed to two separate underground detention systems for water quality treatment before being discharged to the City's existing stormwater system within Burnham Drive. He noted that, although the proposed stormwater management system was designed according to the stormwater manual in place during the project's earlier design phase, the Applicant

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would ensure that the requirements of the most current stormwater manual adopted by the City would be met during the civil permitting phase of the project. *Exhibit A, Staff Report, page 11; Exhibit B; Testimony of Mr. Haug.*

Trees, Open Space, and Landscaping

15. Chapter 17.78 GHMC provides tree, landscaping, and screening requirements for development projects within the B-2 zoning district. *GHMC 17.36.120.B.* GHMC 17.78.070.A.2.a requires the retention of all significant trees on-site. The Applicant seeks approval of an alternative landscape plan to deviate from this requirement. Specifically, the Applicant proposes to remove 22 significant trees within the site's perimeter due largely to the poor health of the trees or interruptions of the trees' critical root zones that would result from grading and development of the site. The Applicant does not seek any other deviation from applicable tree, landscaping, and screening requirements. GHMC 17.78.100.A allows for a modification of landscape requirements when an alternative landscape plan would meet the intent of the City's trees, landscaping, and screening code and when the proposed alternative would provide a superior result. The Applicant's alternative landscape plan includes installation of 212 new trees on-site, which equates to 78 more trees than would otherwise be required to be planted under the code. City staff reviewed the Applicant's alternative landscape plan and determined that it would achieve a superior result than what would be achieved through strict compliance with the City's trees, landscaping, and screening code. The Applicant would retain nearly 30 percent of the existing vegetation on-site, largely within the eastern portion of the site, which would be preserved and protected through the application of a critical areas buffer associated with the on-site Type 4 stream and additional building setback. *Exhibit A, Staff Report, pages 2, 7 through 10, and 14; Exhibit I; Exhibit L.*

Utilities and Services

16. The proposed development would be served by public water and sanitary sewer. City staff reviewed the proposal and determined that it would meet City Public Works standards for required utilities and impacts to public infrastructure. *Exhibit A, Staff Report, pages 3 and 6.*

Conditional Use Permit

17. As noted above, multifamily residential uses are allowed in the B-2 zoning district with a conditional use permit. The Applicant submitted a project narrative addressing the specific criteria for a conditional use permit under GHMC 17.64.040, which asserts:

- The subject property is designated Mixed Use by the Comprehensive Plan and is zoned B-2. Multifamily housing is a conditional use in the B-2 zone. The proposed mixed-use multifamily and professional office development would be consistent with the intent of the zoning district and the Comprehensive Plan.

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- The proposed use would not be detrimental to the public health, safety, comfort, convenience, and general welfare. The proposed development has been designed to comply with the municipal code and would be served by public water, sewer, and a stormwater detention and treatment facility. The proposed development would improve pedestrian access on Burnham Drive.
- The development would not adversely affect the established character of the surrounding neighborhood or be injurious to the property or improvements in the vicinity. The proposed multifamily housing project would fit with the scale of the surrounding properties that already consist of a mix of uses including commercial, business services, general warehousing/industrial, mini warehousing, an outdoor gun club, restaurants, and single-family residences. Where adjacent to existing single-family residential uses and to Burnham Drive, the proposed development would provide increased landscape buffer and/or building setbacks to mitigate any visual impacts. The on-site ravine would also serve as a significant natural buffer from the residential development to the east. Building heights would not exceed the maximum of 35-feet allowed in the B-2 zone. Existing development appears to be a combination of single-story and multi-story buildings, with warehouses in the Northarbor Business Park being the tallest existing buildings in the area. A multi-family development near jobs, entertainment, and other services would be a benefit to the Burnham Drive Corridor.
- The proposed development would be located adjacent to a mix of zoning districts and uses. The property to the north is zoned RB-2 and contains a commercial use (RV Park). The property to the south is zoned B-2 and contains a commercial use (Private Club). The properties to the west across Burnham Drive are zoned B-2 and R-2 and contain single-family residences. The property to the west is zoned PRD. The development would comply with all applicable building setbacks and transition buffers. Compliance with the setbacks and buffers would ensure that the development is properly located in relation to adjacent land uses. The property fronts Burnham Drive, an arterial road with connection to the city and the greater region. As indicated by the Traffic Impact Analysis submitted with this application, the proposed development would not place an undue burden on the existing infrastructure, and any impacts would be mitigated through the payment of the City's traffic impact fees. The property would be served by public sanitary sewer and public water, which are currently available and located in the Burnham Drive right-of-way. The site would include a stormwater dentition facility and would comply with all relevant stormwater regulations.
- The development has been designed to comply with all applicable requirements of the municipal code related to site design. The B-2 zoning regulations vested to the proposal do not address density for multifamily projects. The project would comply with all applicable building setbacks and would provide a 40-foot transition buffer along the eastern property line and the western property line

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adjacent to Burnham Drive. The proposal would comply with applicable hard surface coverage and building height requirements.

Exhibit A, Staff Report, pages 2 and 10; Exhibit C.

18. City staff reviewed the CUP request and determined that, with conditions, the specific criteria under GHMC 17.64.040 would be met, noting:
 - Multiple-family dwellings uses are conditionally allowed in the B-2 zone. The proposal for mixed-use multifamily residential and professional office development would be consistent with the intent of the B-2 zoning district.
 - The proposed development has been designed in a manner that is not detrimental to the public health, safety, comfort, convenience, or general welfare, as ensured through the project's consistency with applicable Public Works Standards and Gig Harbor Municipal Code provisions, or as otherwise conditionally recommended in a manner that would ensure consistency with this provision. City staff's review of the proposed development has been found to require no mitigation for impacts to the City's water, wastewater, stormwater, and transportation infrastructure. With conditions, the proposal would be consistent with relevant ordinances and regulations.
 - With conditions, the proposed development would be adequately served by public facilities and street capacities without placing an undue burden on such facilities and street capacities. The City Public Works Department provided a written memorandum accompanying the City's DNS, which addressed the sufficiency of the proposal's ability to be served by street capacities and public facilities and determined that no mitigation measures would be required. The mix of residential and commercial uses on the site would be properly located in relation to other land uses in the vicinity, particularly in light of the developed residential and business zone to the north and the mix of residential and commercial uses that otherwise surround the site.
 - The site is of sufficient size to accommodate the proposed use and all proposed yards, walls, fences, parking, loading, landscaping, and other features required by the municipal code. In the limited instances where the Applicant's proposed landscaping deviates from strict adherence with relevant code provisions, the Applicant has appropriately applied for an alternative landscape plan (ALP) and has demonstrated consistency with the ALP approval criteria set forth in GHMC 17.78.100.A.

Exhibit A, Staff Report, pages 11 and 12.

Design Review

19. The City Design Manual, Chapter 17.99 GHMC, applies to all subdivision proposals and to all proposals to:

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build, locate, construct, remodel, alter or modify any façade on any structure or building or other visible element of the façade of the structure or building or site, including, but not limited to: landscaping, parking lot layout, signs, outdoor furniture in public or commercial locations, outdoor lighting fixtures, fences, walls and roofing materials.

GHMC 17.98.030.A.

Under GHMC 17.98.055, the proponent of a project subject to the City Design Manual, may request review by the Design Review Board (DRB) of an application, or portions thereof, that do not strictly conform to the specific requirements of the manual. The DRB may recommend approval of alternative design solutions only if the alternative design “represents an equivalent or superior design solution to what would otherwise be achieved by rigidly applying specific requirements” and if the “alternative design meets the intent of the general requirements of” the City Design Manual. *GHMC 17.98.055.* The Applicant proposed the following alternative design solutions for consideration by the DRB:

- To grade the site in excess of a balanced site typically achieved when cut and fill quantities are within 10 percent of each other. *GHMC 17.99.240.C; GHMC 17.99.370.A.* A 40 percent difference in proposed cut and fill quantities would be necessary for the proposed development.
- To incorporate retaining walls exceeding six feet in height. *GHMC 17.99.240.C.* Seven retaining walls exceeding six feet in height would be necessary to install an ADA-compliant walkway connecting the site to the fronting public right-of-way.
- To install two additional pedestrian benches along the site’s primary walkway in lieu of providing a minimum 5-foot landscape width along certain areas of the walkway. The design of the site would not facilitate a 5-foot-wide landscape area adjacent to the primary walkway at two locations, and the Applicant would incorporate a vertical trellis planting adjacent to the portion of the walkway’s landscape area that is less than five feet wide, as well as provide landscaping in other areas of the site in excess of that required under the City Design Manual.
- To construct a parking garage that would enclose 20 or more cars. The Applicant would incorporate landscaping and architectural embellishments to screen the parking garage.

Exhibit A, Staff Report, page 13; Exhibit D.

20. The Applicant proposed several design alternatives to the DRB, which the DRB reviewed and considered at three public meetings held on May 13, 2021, June 10, 2021, and July 22, 2021. The City provided notice of the DRB public meetings by mailing notice to property owners within 300 feet of the subject property, posting notice on-site, and publishing notice in *The News Tribune*. The City received one comment from a member of the public in response to its notice materials. Jeff Job raised concerns about the

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proposal's traffic impacts, as well as impacts to public services, but did not raise any specific concerns about the design elements of the proposed development. Following the three public meetings, the DRB recommended approval of the proposed design alternatives, with conditions that have been incorporated into City's staff recommended conditions of design review approval. *Exhibit A, Staff Report, pages 4, 13, 14, 16, and 17; Exhibit B; Exhibits D through F; Exhibit I.*

Written Comments

21. As noted above, the City received several comments on the proposal from members of the public and reviewing agencies in response to the City's notice materials, specifically:

- Jeni WOOCK requested to be notified of all meetings related to the application but did not raise any specific concerns about the proposed project.
- Troy Atwell raised concerns about the proposal's traffic impacts to Burnham Drive, noting that Burnham Drive has had increased traffic due to other new development projects in the area. He also inquired about whether the proposal would include affordable housing units and raised concerns about the potential crime impacts of the proposal.
- Jacqueline Kelly raised concerns that the city lacks adequate infrastructure to support the proposed development in light of other development projects being constructed in the area. She also raised concerns about the proposed density of the project and about the project's traffic impacts.
- John Helget raised concerns about the proposal's impacts to traffic and area schools. He suggested that the proposal should not be approved until the City can analyze impacts from several other development projects being constructed in the area.
- Roderick and Young Spaulding raised concerns about the traffic impacts of the proposal, particularly in light of other development projects in the area.
- Jenna Torquato manages Gig Harbor RV Resort, which is located directly to the north of the subject site on property purchased by Sun Communities, Inc. She raised concerns about noise and visual impacts from buildings that would be located close to the shared property line, and she requested that the project provide a landscape buffer sufficient to ensure privacy for RV resort guests.
- Gig Harbor Eagles 2809 President Shaun McMillen raised concerns about stormwater runoff adversely impacting the Gig Harbor Eagles Club building located to the south of the subject property. He also raised concerns that events held at the club building during summer months could disturb future residents of the apartment complex.
- Pierce Transit commented that it does not have any concerns about the proposal, noting that it does not provide service to the area in the vicinity of the subject property.

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- DOE noted that the site is located within a quarter mile of a contaminated site and that testing of potentially contaminated media would be required if contamination is suspected, discovered, or occurs during construction activities. DOE also noted that the Applicant would be responsible for inspecting the site to determine the location of all existing wells, which would be required to be properly decommissioned in accordance with DOE standards. In addition, DOE provided general comments regarding the potential need for a Construction Stormwater General Permit.
- Gig Harbor Fire and Medic One raised concerns that the layout of some of the proposed buildings would not provide adequate access for firefighters to access upper floors from ladders in the event of an emergency. It requested that the Applicant provide building setbacks beyond that required by code and to ensure that the setback areas remain unobstructed by landscaping, fences, light poles, and carports.

Exhibit T; Exhibit U; Exhibit W.

Testimony

22. City Principal Planner Carl De Simas testified generally about the proposal and about how, with conditions, it would meet the criteria for a short plat, conditional use permit, design review approval, and approval of an alternative landscape plan. He stated that the subject property is within the B-2 zone, which allows professional service uses outright and allows multifamily residential uses with a conditional use permit. Mr. De Simas noted that the City's Design Review Board reviewed several proposed alternatives to the design manual at three public meetings and recommends approval of the Applicant's proposed design alternatives. Mr. De Simas noted in response to comments on the proposal from adjacent property owners to the north and south that the Applicant's proposed alternative landscape plan includes additional boundary landscaping. He explained that the comments from Gig Harbor Fire and Medic One regarding fire emergency building setback distances are merely recommendations and are not code requirements of the International Building Code or International Fire Code. Mr. De Simas further explained that the City's building official and fire marshal reviewed the comments and did not provide any further recommendations for the proposal in response. He stated that imposing a condition requiring the recommended fire emergency setbacks would likely impact the overall site design. Mr. De Simas noted that the project would retain a portion of the site in its natural condition to protect an on-site, non-fish-bearing stream and its associated buffer. *Testimony of Mr. De Simas.*
23. Attorney William Lynn introduce the Applicant team and stated that he has been working with the Applicant team on the project since 2017 and has been impressed with the their efforts to respond to City staff's concerns. He noted that the current iteration of the proposal is the result of these efforts to work with City staff to ensure the project would

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be consistent with the Comprehensive Plan, zoning code, and the specific requirements for a short plat, conditional use permit, design review approval, and approval of an alternative landscape plan. Attorney Lynn explained that the Applicant submitted the application for a short plat to ensure that the project would vest to the zoning code in effect at that time, noting that the Applicant had anticipated the City's amendment of the zoning code to include a maximum density requirement for the B-2 zoning district. Mr. Lynn stressed, however, that the Applicant submitted detailed plans at that time, not just basic information related to the proposed short plat. He stated that he agrees with City staff's determination that the recommendations from Gig Harbor Fire and Medic One regarding increased emergency fire setback distances are not required by code, stressing that the City building official and fire marshal is charged with enforcing applicable fire requirements for development projects and did not express concerns about the proposal. Mr. Lynn noted, too, that Gig Harbor Fire and Medic One had several years to comment on the proposal and it is unfortunate that they waited until shortly before the hearing to express any concerns. *Statements of Attorney Lynn.*

24. Applicant Representative Stephen Bridgeford, of Contour Engineering, LLC, testified that he has been working on the project for several years, noting that it was delayed in part due to the discovery of an encroachment from property to the north and the resulting boundary line adjustment necessary to resolve the encroachment. He stated that extensive efforts were made to design the project to comply with the City's design manual but that alternative designs were required due to unique site conditions, particularly with respect to the topography of the property. Mr. Bridgeford stressed that, despite the natural topography of the site, the Applicant has designed an ADA accessible non-motorized pathway that would provide access to Burnham Drive. *Testimony of Mr. Bridgeford.*
25. Project Engineer Jeremy Haug testified about how stormwater would be managed on-site. He explained that stormwater runoff would be conveyed to two separate underground detention systems for water quality treatment before discharging to the City's existing stormwater system within Burnham Drive. Mr. Haug explained that, although the proposed stormwater management system was designed to comply with the applicable stormwater manual that was in place during the project's earlier design phase, any requirements of a more current manual adopted by the City would be addressed at the civil permitting phase. *Testimony of Mr. Haug.*
26. Interim City Engineer Aaron Hulst testified that the Applicant submitted a traffic impact analysis (TIA) for the proposed development, which showed that the project would generate 50 new PM peak-hour trips. He explained that City staff agreed with the TIA's trip generation estimate and forwarded the TIA to the City's transportation consultant. Mr. Hulst stated that the City's transportation consultant then analyzed the new PM peak-

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hour trips against the City's transportation model and determined that the trips would not cause any affected intersections or street segments to operate below an acceptable level of service and, therefore, the proposed development would meet the City's concurrency standards. He explained that the Applicant would be required to submit a traffic control plan to address temporary construction impacts of the proposal. *Testimony of Mr. Hulst.*

27. Karen Mashburn testified that she lives across the street and downhill from the project site and that there are existing stormwater runoff issues affecting her property. She also raised concerns about the traffic impacts of the proposal, noting that traffic often diverts to Burnham Drive whenever there is an accident on SR-16. Ms. Mashburn also raised concerns about exhaust fumes from additional traffic that would be generated by the proposed development. She inquired about potential road improvements to Burnham Drive. *Testimony of Ms. Mashburn.*
28. Mr. Haug testified in response to concerns raised by Ms. Mashburn. He noted that the project's compliance with the City's currently adopted stormwater manual would ensure that adjacent properties would not be adversely impacted by runoff from the site, stressing that the manual would require stormwater runoff to be released at predeveloped conditions and that runoff from the developed site would be collected, detained, and treated before being discharged to the City's stormwater system. *Testimony of Mr. Haug.*
29. Mr. Hulst also testified in response to Ms. Mashburn's concerns, noting that road widening would not be required as part of the frontage improvements to Burnham Drive. He explained that Burnham Drive would be improved with a separated nonmotorized shared-use path, which would be constructed as part of a City project and/or in conjunction with half-street frontage improvements required for the project. *Testimony of Mr. Hulst.*

Staff Recommendation

30. Mr. De Simas testified that City staff recommends approval of the applications, with conditions. Attorney Lynn stated that the Applicant understands and would comply with City staff's recommended conditions. *Testimony of Mr. De Simas; Statement of Attorney Lynn; Exhibit A, Staff Report, pages 16 through 18.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner is granted authority to hear and decide applications for a conditional use permit and, through the City's optional consolidated permit process, applications for a preliminary short plat and for alternative design review approval. *GHMC 2.25.070; GHMC 16.04.002; GHMC 17.64.010; GHMC 17.64.040; GHMC 17.78.100; GHMC 17.98.055; GHMC 17.98.070; GHMC 19.01.002; GHMC 19.01.003*

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Criteria for Review
Preliminary Short Plat

The Hearing Examiner shall not approve a short plat and short subdivision unless written findings are made that:

- A. The application complies with [the requirements for subdivision approval under] Chapter 16.08 GHMC[, which generally requires that a proposed subdivision conform with the Comprehensive Plan, zoning ordinances, and other existing land use controls];
- B. Appropriate provisions are made for the public health, safety and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who walk to and from school; and
- C. The public use and interest will be served by the platting of such subdivision and dedication.

GHMC 16.04.004.

The criteria set forth in the Gig Harbor Municipal Code are similar to the state subdivision criteria codified at Chapter 58.17 RCW, which must also be met by the application before a decision of approval can be made. Specifically, RCW 58.17.110(2) provides:

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

Conditional Use Permit

To approve a request for a conditional use permit, the Hearing Examiner must enter written findings of fact showing that all of the following conditions are met:

- A. That the use which the conditional use permit is applied for is specified by this title as being conditionally permitted within, and is consistent with the description and purpose of the zone district in which the property is located;

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- B. That the granting of such conditional use permit will not be detrimental to the public health, safety, comfort, convenience and general welfare, will not adversely affect the established character of the surrounding neighborhood, and will not be injurious to the property or improvements in such vicinity and/or zone in which the property is located;
- C. That the proposed use is properly located in relation to the other land uses and to transportation and service facilities in the vicinity; and further, that the use can be adequately served by such public facilities and street capacities without placing an undue burden on such facilities and streets; [and]
- D. That the site is of sufficient size to accommodate the proposed use and all yards, open spaces, walls and fences, parking, loading, landscaping and other such features as are required by this title or as needed in the opinion of the examiner.

GHMC 17.64.040.

Duration of Permit Approval. A land use permit [e.g. conditional use permit] shall expire three years from the date a permit is approved, except as specified in subsection C of this section.

GHMC.190.02.008.A.

Design Review

An applicant may request review by the design review board (DRB) of an application or portions thereof which do not strictly conform to the specific requirements of Chapter 17.99 GHMC, Design Manual. *GHMC 17.98.055.* The DRB may recommend approval of alternative design solutions only if all of the following criteria are met:

1. The alternative design represents an equivalent or superior design solution to what would otherwise be achieved by rigidly applying specific requirements; and
2. The alternative design meets the intent of the general requirements of Chapter 17.99 GHMC, Design Manual.

GHMC 17.98.055.A.

Following a public meeting, the DRB shall make findings and a recommendation on the application. *GHMC 17.98.055.C.* The Hearing Examiner, through the City's optional permit process, shall consider the recommendation and make a decision on the design review application. *GHMC 17.98.055.A.; GHMC 19.01.002.B; GHMC 19.01.003.*

Alternative Landscape Plan

The Hearing Examiner, through the City's optional permit process, may authorize modification of the landscape requirements when alternative plans comply with the intent of the City's trees, landscaping, and screening code and:

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- A. The proposed landscaping represents a superior result than that which would be achieved by strictly following requirements of this chapter; or
- B. Incorporates the increased retention of significant trees and naturally occurring undergrowth; or
- C. Incorporates unique, historic or architectural features such as fountains, sculptures, structures and the like; or
- D. The proposed landscaping provides additional waterview and/or harbor access opportunities in a waterfront commercial zone.

GHMC 17.78.100.

The criteria for review adopted by the Gig Harbor 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

1. **With conditions, the preliminary subdivision would be consistent with the criteria for short plat approval under GHMC 16.04.004 and the requirements for a land division under RCW 58.17.110(2).** The City provided reasonable notice and opportunity to comment the proposal. The City received several comments on the proposal from members of the public in response to its notice materials, which generally raised concerns about the density of the proposed development, the proposal's traffic and stormwater impacts, and screening the proposed development from adjacent uses. The subject property is zoned General Business District (B-2). Professional office uses are permitted outright in the B-2 zone, and multifamily residential uses are permitted in the B-2 zone with a conditional use permit. As addressed in Conclusion 2 below, the proposal would meet the specific criteria for approval of a conditional use permit. The version of the zoning code in effect when the preliminary plat application was deemed complete does not provide any maximum density requirement for development in the B-2 zone. The proposal would comply with all other development regulations for the B-2 zone related to minimum building setbacks, maximum building height, maximum gross floor area, and maximum impermeable and hard surface coverage. A traffic impact analysis (TIA) submitted for the proposed development determined that it would generate 50 new PM peak-hour trips. The City's transportation consultant reviewed the TIA and determined that the traffic generated by the proposed development would not cause any affected intersection or street segment to operate below an acceptable level of service. Accordingly, City staff determined that the proposal would meet concurrency standards. The Applicant would mitigate for the proposal's impacts to the City's transportation network through the payment of traffic impact fees.

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Stormwater runoff from the new development would be conveyed to two separate underground detention systems for water quality treatment before discharging to the City's existing stormwater system within Burnham Drive. The proposed stormwater management system would be reviewed for compliance with the requirements of the City's currently adopted stormwater manual at the civil permitting phase. The Applicant would provide extensive landscape screening along the property's northern and southern property lines, as well as along the property's frontage along Burnham Drive to the west. In addition, natural vegetation in the eastern portion of the property would be maintained and protected within the required buffer and setback associated with an on-site Type 4 stream. As addressed further below, the Applicant has submitted an alternative landscape plan to allow for the removal of 22 significant trees on-site, which proposes to plant 78 more trees within the property's perimeter than would be required under the municipal code. The retention of existing vegetation on the eastern portion of the property and the proposed landscape screening along the remaining areas of the property's perimeter would adequately screen the proposed development from surrounding uses.

The City analyzed the environmental impacts of the proposal and determined that it would not have a probable significant adverse impact on the environment. Accordingly, the City issued a DNS, which was not appealed. A Geotechnical Engineering Report (GER) prepared for the proposal determined that the subject property contains steep slopes associated with an on-site ravine. The GER determined that the proposed development would comply with critical areas requirements applicable to the on-site ravine by providing an undisturbed buffer of natural vegetation extending 20 feet from the top of the ravine slope and an additional 10-foot building setback from the buffer edge. A Wetland and Fish and Wildlife Habitat Assessment Report prepared for the proposal identified an on-site Type 4 stream with a required 25-foot protective buffer and an additional 15-foot building setback from the buffer edge. All proposed development would occur outside of the buffer and setback, and the Applicant would ensure protection of the critical area by installing a split-rail fence and appropriate signage. The Wetland and Fish and Wildlife Habitat Assessment Report also identified an offsite wetland to the west, which would not have a protective buffer extending onto the property because it would be interrupted by Burnham Drive. The report did not identify any critical fish and wildlife habitat areas on or in the vicinity of the site.

Access to the property would be provided by a new drive aisle connecting to Burnham Drive. The Applicant would either be required to construct new half-street frontage improvements that would include the installation of a separated shared-use pathway or pay the City a pro-rata share for constructing the required improvements as part of its planned capital improvement project for Burnham Drive. The Applicant would install an ADA accessible nonmotorized pathway that would provide access from the property to the planned nonmotorized shared-use path on Burnham Drive, which would ensure safe

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conditions for students walking to area schools or school bus stops. The proposed development would provide 153 off-street parking spaces, in accordance with the off-street parking requirements vested to the proposal. The proposed development would be served by public water and sanitary sewer. City staff reviewed the proposal and determined that it would meet City Public Works standards for required utilities and impacts to public infrastructure.

The subject property is designated Mixed Use under the City Comprehensive Plan. The proposed development would be consistent with the Mixed Use land use designation by providing a mix of professional office and multifamily residential uses promoting economic diversity and housing opportunities near transit routes and business activities. The Hearing Examiner concludes that, as proposed and conditioned herein, the proposal would not adversely impact the public health, safety, and general welfare and that the public interest would be served by the proposed subdivision. Conditions, as detailed below, are necessary to ensure that the proposal satisfies all local and state requirements for preliminary short plat approval. *Findings 1 – 16, 21 – 30.*

2. **With conditions, the proposal would meet the specific criteria for a conditional use permit under GHMC 17.64.040.** As discussed above in Conclusion 1, the proposal would be consistent with Comprehensive Plan by providing a mix of professional office and multifamily residential uses promoting economic diversity and housing opportunities. The subject property is located in the B-2 zoning district, which is intended to “provide areas that offer a wide range of consumer goods and services. It is further intended to group buildings and business establishments in a manner that creates convenient, attractive and safe development.” *GHMC 17.36.010.* Professional office uses are permitted outright in the B-2 zone, and multifamily residential uses are allowed in the B-2 zone with a conditional use permit. The City issued a DNS for the proposal, which was not appealed. Compliance with applicable development regulations related to stormwater management, landscape screening, transportation infrastructure, critical areas, and off-street parking (as discussed above in Conclusion 1) would ensure that the proposed use would not be detrimental to the public health, safety, comfort, convenience, and general welfare; would not adversely affect the established character of the surrounding neighborhood; and would not be injurious to property or improvement in the vicinity. In addition, the Applicant would either be required to make half-street improvements to Burnham Drive, which would include the installation of a separated shared-use path, or pay the City for the construction of these improvements. The Applicant would also install a pedestrian path connecting the proposed apartment units with the planned shared-use path. The proposed use would be adequately served by public water and sanitary sewer. The proposed development would meet applicable concurrency requirements, and the Applicant would be required to pay traffic impact fees for the proposal’s impacts to the City’s transportation network. The approximately 4.4-acre

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property is of a sufficient size to accommodate the proposed use. Conditions are necessary to ensure that the proposal meets the requirements for approval of a conditional use permit and complies with all other applicable local and state requirements. *Findings 1, 3 – 30.*

- 3. With conditions, the proposal would meet the requirements for approval of an alternative landscape plan under GHMC 17.78.100.** GHMC 17.78.070.A.2.a requires the retention of all significant trees on-site. The Applicant seeks approval of an alternative landscape plan to deviate from this requirement to allow for the removal of 22 significant trees within the site's perimeter. The Applicant indicates that the removal of these trees is necessary because of the poor health of the trees or because grading and development of the site would disturb the trees' critical root zones. The Applicant's alternative landscape plan includes installation of 212 new trees on-site, which equates to 78 more trees than would otherwise be required to be planted under the code. The Hearing Examiner concludes that the Applicant's alternative landscape plan would achieve a superior result than what would be achieved through strict compliance with the City's trees, landscaping, and screening code by planting more trees than would otherwise be required. Conditions are necessary to ensure that the Applicant landscapes the site consistent with the submitted landscape plan and, if deemed necessary by the City Planning Division, to ensure that the landscape plan is revised to include additional plantings to achieve a dense vegetative buffer in the eastern zone transition buffer. *Finding 15.*
- 4. With conditions, the proposal would meet the requirements for design review approval of an alternative design solution.** The Applicant proposed several design alternatives from the requirements of the City Design Manual to the Design Review Board (DRB), which the DRB reviewed and considered at three public meetings. Following its consideration of the Applicant's proposed design alternatives, the DRB determined that, with conditions, the alternatives would meet the intent of the general requirements of the Design Manual and would represent an equivalent or superior design solution to what would otherwise be achieved through strict compliance with the Design Manual. The Hearing Examiner concurs with the DRB's determination and accepts its recommendation to approve the alternative design solutions. Deviations from design requirements related to grading and retaining wall height is necessary due to site conditions and to provide an ADA-compliant walkway providing nonmotorized access to the planned separated multi-use pathway along Burnham Drive. Deviation from primary walkway standards is necessary to allow certain portions of the primary walkway serving the development to not have 5-foot-wide landscaped areas in portions of the site that would not support such landscaped areas, and the Applicant would provide two additional pedestrian benches along the walkway and vertical trellis plantings in the areas along the pathway containing less than the required landscaped areas. Finally, deviations

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from the parking garage standards is required to allow the Applicant to construct a parking garage with 20 or more parking spaces, and the Applicant would incorporate landscaping elements to screen the oversized garage. Conditions are necessary to ensure that the Applicant complies with DRB's recommendations. *Findings 19 and 20.*

DECISION

Based on the preceding findings and conclusions, the request for a preliminary short plat to subdivide an approximately 4.4-acre property into two lots, and for a conditional use permit, design review approval, and approval of an alternative landscape plan to allow for the development of a mixed-use, multifamily complex consisting of 78 apartment units, a recreation building, and professional offices for lease, in six structures, with associated parking and utility infrastructure, at 9411 Burnham Drive, is **APPROVED**, with the following conditions:³

1. The Applicant shall obtain all necessary land use, civil, and building permits from the City prior to commencing construction on the site.
2. The Applicant shall adhere to all recommendations provided in the Geotechnical Engineering Report prepared by GeoResources, LLC, dated February 16, 2017.
3. The Applicant shall develop the site consistent with the submitted site plan, renderings, exterior elevations, and preliminary civil plan set, or as otherwise revised in City staff's processing of subsequent civil and building permits. The Applicant shall also design the site consistent with the Notice of Recommendation issued by the Design Review Board, except that, to conform with GHMC 17.99.390.C, the Applicant shall revise its color palette for the Recreation Building, a multi-tenant structure, currently depicted in the project's architectural renderings. The Recreation Building shall incorporate all colors used on Buildings A, B, C, D, and E. Conformance with this condition shall be determined by the Planning Division staff prior to issuance of a building permit application. Minor alterations to the submitted plans may be allowed, at the discretion of Planning Division staff, to allow the Applicant to accommodate the concerns raised by Gig Harbor Fire and Medic One; accommodating such concerns, however, is not mandatory.
4. The Applicant shall landscape the site consistent with the submitted landscape plan. All landscaping shall be installed prior to the issuance of certificate of occupancy or final inspection, unless the property owner submits a performance assurance equal to not less than 110 percent of a contractor's bid and which commits to install the landscaping within one year.

³ Conditions include both legal requirements applicable to all developments and requirements to mitigate the specific impacts of this development.

5. The zone transition buffer located on the eastern perimeter of the site shall be reviewed by Planning Division staff in the field after the site's clearing activity. The Planning Division shall inspect the eastern zone transition buffer for its sufficiency as a "dense vegetative buffer." If additional plantings are necessary to achieve a "dense vegetative buffer," the property owner shall indicate additional plantings on a revised landscape plan to the satisfaction of the Planning Division prior to approval of the final landscape plan.
6. Prior to issuance of a building permit for the proposed development, the Applicant shall convey how exterior mechanical devices will be screened. The screening shall be in a manner consistent with GHMC 17.36.120.A.
7. Prior to recording of final short plat, the Applicant shall record a parking agreement that provides for the shared use of all off-street parking stalls among all tenants on Lots 1 and 2 of the subject site.
8. The leasable professional office spaces located in the site's Recreational Building shall remain leasable to the general public in perpetuity.
9. For proper tree removal to occur, the contractor shall implement the following steps for clearing activities:
 - i. Surveyor shall stake the clearing limits;
 - ii. A rubber-tracked backhoe removes the understory and brush to allow visual and physical access for the review of trees to be removed and/or tree protection alternatives by owner and city planning staff.
 - iii. Owner representative, owner's arborist, and City Planner to review trees scheduled for removal or protection within tree retention areas;
 - iv. Contractor shall place tree protection fencing as directed by planning staff;
 - v. Planning staff shall inspect fence prior to commencement of clearing activity; and,
 - vi. Prior to Planning Division approval of Occupancy Permits for the development, the owner's arborist shall revisit the site to inspect all retained trees to assess any impacts to them from the development.
10. The Applicant shall comply with the comments provided in response to the Notice of Determination of Nonsignificance by the Department of Ecology and the Squaxin Island Tribe.
11. Permanent directional signage that clearly delineates the accessible route from the right of way to each building on the site shall be reviewed and approved by the Building Official. This signage shall be installed along the route and inspected and approved prior to any occupancy. This signage shall be maintained for the life of the structures.

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12. The Applicant shall provide frontage improvements consistent with description provided in the staff report or, as applicable, shall pay a pro-rata share consistent with the description provided in the staff report.
13. The Applicant shall install signage consistent with the Critical Area Sign Installation Detail every 50 lineal feet along the 4-foot 0-inch split-rail wood fence bordering the stream buffer. The fence and the critical area signage shall span the length of the stream buffer on the subject site.

DECIDED this 1st day of June 2022.



ANDREW M. REEVES
Hearing Examiner
Sound Law Center

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