



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

**FINDINGS, CONCLUSIONS AND DECISION
APPROVING
THE “PLATEAU AT LIBERTY BAY”
PLANNED RESIDENTIAL DEVELOPMENT AND
PRELIMINARY PLAT APPLICATIONS**

APPLICANT: ENTITLE FUND TWO, LLC
OWNER: JNJ HOLDINGS, LLC
AGENT: GEOFFREY SHERWIN, PE, WITH JK MONARCH
P.O. BOX 188
PUYALLUP, WA 98370

LOCATION/TAX PARCEL NUMBERS: THE PROPOSED PLAT WILL BE LOCATED ON 5 (FIVE) TAX PARCELS, MOSTLY UPHILL AND WEST OF VIKING AVENUE, FROM WHICH THE PLAT WILL RECEIVE ACCESS, AND SOUTH OF NW LIBERTY ROAD, WITH ACCESS IMPROVEMENTS ON SEVERAL OTHER PARCELS, ALL IN THE CITY OF POULSBO AND POULSBO URBAN GROWTH AREA, ADDRESSED AND NUMBERED AS FOLLOWS:

PROJECT PROPERTIES ADDRESS / PARCEL NUMBERS	ACCESS IMPROVEMENT PROPERTIES ADDRESS / PARCEL NUMBERS
19313 VIKING AVENUE / 152601-3-023-2005	1161 LIBERTY ROAD / 152601-3-002-2000
19521 LAURENE LANE / 152601-3-040-2004	19431 VIKING AVENUE / 152601-3-027-2001
19179 VIKING AVENUE / 152601-3-033-2003	NO ADDRESS / 152601-3-036-2000
19321 VIKING AVENUE / 152601-3-025-2003	NO ADDRESS / 152601-3-055-2006
NO ADDRESS / 152601-3-090-2102	

APPLICATIONS: DEVELOP PROPERTY TOTALING ABOUT 26-ACRES INTO A 63-LOT PLANNED RESIDENTIAL DEVELOPMENT AND PRELIMINARY PLAT, WITH ALMOST HALF THE PROJECT AREA COMPRISED OF CRITICAL AREAS AND THEIR BUFFERS THAT WILL REMAIN NATURALLY VEGETATED WITH EXISTING TREES AND MITIGATION PLANTINGS IN GRASS AREAS, AND WITH ASSOCIATED IMPROVEMENTS, OPEN SPACE, RECREATIONAL AMENITIES, TREE RETENTION, ROAD AND SIDEWALK IMPROVEMENTS, UTILITY CONNECTIONS AND EXTENSIONS, AND STORMWATER FACILITIES. APPLICATIONS FOR PLANNED RESIDENTIAL DEVELOPMENT AND PRELIMINARY PLAT ARE REVIEWED UNDER APPLICABLE CITY CODES, INCLUDING WITHOUT LIMITATION CH. 18.260 PMC (FOR PLANNED RESIDENTIAL DEVELOPMENT), TITLE 17 PMC (FOR PRELIMINARY PLAT), AND ZONING PROVISIONS IN TITLE 18 PMC.

SUMMARY OF DECISION: *APPROVED*, SUBJECT TO CONDITIONS

DATE OF DECISION: MAY 29, 2024

CONTENTS OF RECORD

Exhibits entered into evidence as part of the record, and an audio recording of the public hearing, are maintained by the City of Poulsbo, in accord with applicable law.

Exhibits:

City of Poulsbo “Staff Report” and recommendation (of APPROVAL), dated April 2, 2024, provided to the Hearing Examiner regarding the “Plateau at Liberty Bay Planned Residential Development & Preliminary Plat,” including two Addendums to the Staff Report, dated April 4th and May 1st of this year, with attachments;

For the reader’s convenience, the following chart, prepared by Staff and transmitted to the Examiner on May 13th, lists most, if not all, Exhibits entered into the record for this matter:

1	STAFF REPORT, for Plateau at Liberty Bay PRD and Preliminary Plat, dated April 2, 2024	
	<i>Application Materials</i>	A
2	PRD, Subdivision Application forms	A1
3	Consent to Exceed Review Period form	A2
4	SEPA Checklist (not commented)	A3
	<i>Project Drawings</i>	B
5	KPFF1 Project Drawing, dated February 12, 2024	B1
6	NDLA1 Preliminary Landscape Plan, dated January 30, 2023	B2
7	KPFF2 Alternative Entry Feasibility Drawing, dated January 4, 2023	B3
8	KPFF3 Open Space Drawing, dated December 29, 2023 – Appendix E, Attachment B of Drainage Report P (pdf page 106)	B4
	<i>Critical Area Information</i>	C
9	WRI1 21199 Viking Avenue Delineation Report, May 25, 2022	C1
10	Grette1 Viking Ave. PRD Third Party Review, July 19, 2022	C2
11	Grette2 The Plateau at Liberty Bay: Third-Party Review, August 9, 2023	C3
12	WRI2 Stormwater Outfall – Off-site Wetland Hydroperiod Protection, December 15, 2023 - Appendix E, Attachment A of Drainage Report (pdf page 86)	C4
13	KPFF4 Minimum Requirement 8, dated January 3, 2024 – Appendix E of Drainage Report (pdf page 79)	C5
14	KPFF5 Minimum Requirement 8, dated January 15, 2024 – Appendix E, Attachment E of Drainage Report (pdf page 148)	C6
15	Grette 3 MR-8 Third-Party Review, dated February 20, 20	C7
16	WRI3 Critical Area Study and Mitigation Plan, dated March 1, 2024	C8
17	Grette4 MR-8 Third-Party final review email, dated March 13, 2024	C9
	<i>Tree Retention</i>	D

*Findings, Conclusions and Decision Approving
PLATEAU AT LIBERTY BAY PRD and Preliminary Plat Applications –
File No. P-12-06-22-02*

18	WCFI1 Tree Protection Plan, dated September 8, 2022	D1
19	SUF1 Tree Retention Review, dated February 28, 2023	D2
20	WFCI2 Critical Area Review, dated September 17, 2023	D3
	Technical Reports	E
21	KPFF6 Drainage Report, dated February 2024	E1
22	ESNW1 Geotechnical Engineering Study, dated June 6, 2023	E2
23	ESNW2 Response to Comments, dated June 1, 2023	E3
24	H&A1 Traffic Impact Analysis, dated June 12, 2023	E4
25	Home siting “lot fit”	F
	Staff Review Memos	G
26	Engineering Department Staff Report Memo, dated March 28, 2024	G1
27	Engineering Department SEPA Memo, dated March 28, 2024	G2
28	Figure TR-2, Land Use Comprehensive Plan, Transportation Element	G3
29	Figure TR-3, Land Use Comprehensive Plan, Transportation Element	G4
30	Public Comment	H
	Noticing	I
31	Neighborhood Meeting Notice (applicant requirement)	I1
32	Notice of Application	I2
33	Revised Notice of Application	I3
34	Public Meeting Notice	I4
35	Staff Report Addendum 1, Memorandum from PED Department, dated April 4, 2024 - Text revision	
	EXHIBITS generated after Staff Report was issued	
	Staff Report Addendum 2, Memorandum from PED Department, dated May 1, 2024	
36	Text revision at request of Planning Commission	
37	Planning Commission Findings of Fact, Conclusion and Recommendation	
38	Planning Commission Meeting Minutes	
39	Public Meeting Sign-In Sheet	
40	Public comment received prior to and at Planning Commission - Craig Salt - Molly Lee - Jan Wold	
	SEPA Mitigated Determination of Nonsignificance	
41	- Threshold Determination, Mitigations	
42	- Environmental Checklist, Commented	
43	- SEPA Notice – Affidavits of mailing, publishing, and posting	
44	Public Notice Hearing Examiner hearing notice, affidavits of mailing, publishing, and posting	

45	City of Poulsbo letter to Jan Wold dated April 24, 2024, rejecting her appeal of the SEPA Mitigated Determination of Nonsignificance.	
	<i>EXHIBITS ADDED AT HEARING, and post-hearing items transmitted to the Examiner in response to questions or issues raised during the hearing</i>	
46	Written Public Comments Received at hearing: <ul style="list-style-type: none"> - Jan Wold - Suquamish Tribe - Ken Priddis - Jan Wold - Molly Lee 	
47	Staff Presentation slides used during public hearing	
48	Letter submitted by Applicant's Attorney	
49	Post-hearing memo from Michael Bateman, PE, City of Poulsbo, Transportation Engineer, transmitted to the Examiner on May 13, 2024, responding to Examiner's question during public hearing regarding fire and emergency escape routes for future residents.	

Testimony/Comments:

During the duly noticed public hearing held in Council Chambers at Poulsbo City Hall on May 9, 2024, all witnesses were sworn in by the Examiner and provided testimony under oath, including the following City Staff members, applicant representatives, and members of the public:

1. Edie Berghoff, Senior Planner for the City of Poulsbo, and the primary staff representative at the public hearing;
2. Michael Bateman, PE, Transportation Engineer, with the City's Public Works Department;
3. Geoff Sherwin, the applicant's agent and hearing representative, who accepted the Staff Report analysis and recommended conditions without objection or requests for changes;
4. Molly Lee, submitted written comments included in the record as part of Ex. 46, expressed concerns about soils, possible airborne contamination during grading work;
5. Sandra Weems (sp?), lives on Liberty Bay Road, asked general questions about emergency access along Liberty Bay Road, trees;
6. Quentin Benson, local property owner, noted how narrow Liberty Bay Road is, believes a light is needed at bottom of road;
7. Jan Wald, submitted written comments, including materials now included as part of Ex. 46, local property owner, expressed concerns about possible contamination on site from prior activities on site,

including lead; concerns about wildlife corridor; cumulative impacts; noted that she attempted to appeal the SEPA threshold determination, but did not pay the \$4,900 appeal fee;

8. Heather Wright, the City's Planning and Economic Development Director, also serves as the City's SEPA official, responded to public comments regarding possible contamination on the site, summarized attempts to obtain additional information and details from individuals expressing concerns, noted that County and State agencies have not added any additional conditions based on anecdotal information provided in public comments, but City staff added several conditions or materials to address potential contamination concerns, particularly Conditions S2, S3, and S4.

The Examiner conducted site visits to the project location and surrounding area on the day of the public hearing.

Throughout the review and hearing process, there was no evidence or testimony provided in this record that would serve as a basis to deny the pending applications. As the staff report, applicant and staff testimony at the public hearing explain(ed), conditions of approval and compliance with relevant development regulations are intended to allow for appropriate, well-planned urban development in the zoning district where the proposed project is located.

APPLICABLE LAW

Jurisdiction.

There is no dispute that relevant provisions of the Poulsbo Municipal Code expressly provide the hearing examiner with jurisdiction and authority to review most Type III land use matters, which includes Preliminary Plat and Planned Residential Development applications. See PMC 19.20.010(C) and Table 19.20.020.

Criteria for Approval of the pending Preliminary Plat Application.

The City's approval criteria for a preliminary subdivision (which means the same thing as a preliminary plat) is found at PMC 17.60.040. As mandated by state law, the provisions of city codes addressing preliminary plat review for this project are substantially similar to state subdivision mandates found in RCW 58.17.110(2).

Findings required to approve Planned Residential Development.

The City's code mandates that in approving a Planned Residential Development, the review authority must make specific findings, as set forth in PMC 18.260.140.

Burden of Proof.

The applicant bears the burden of proof to establish by a preponderance of the evidence that their preliminary plat application is consistent with state law, city codes and standards. *Rule 3.9, HEx Rules of Procedure.* Any decision to approve or deny a Preliminary Plat must be supported by evidence that is substantial when viewed in light of the whole record. *See RCW 36.70C.130(1)(c).*

ISSUE PRESENTED

Whether a preponderance of evidence demonstrates that the applicant has satisfied its burden of proof to satisfy the criteria for Planned Residential Development and Preliminary Plat approval?

Short Answer: Yes, subject to conditions of approval.

FINDINGS OF FACT

Upon consideration of all the evidence, testimony, codes, policies, regulations, and other information contained in the file, the undersigned Examiner issues the following findings, conclusions and Decision approving the Plateau at Liberty Bay preliminary plat and planned residential development as set forth below.

1. Any statements in previous or following sections of this document that are deemed findings of fact are hereby adopted as such and incorporated by this reference.
2. The applicant in this matter is an entity known as Entitle Fund Two, LLC, with Geoff Sherwin, PE, the Director of Acquisition and Entitlement for JK Monarch of Puyallup, Washington as the applicant's agent and hearing representative. (*Staff Report, page 5, General Information; Application materials, Exs. 2, 3 and 4*). The application materials include signatures required from owners of parcels included as part of this proposed plat. (*Ex. 2, Application forms, signatures of property owners*).
3. The project site is about 26-acres, with critical areas on about 13 acres, and another .42-acre area encumbered by a limited development easement, located mostly uphill and to the west of Viking Avenue, in the southwestern part of the Poulsbo City limits. As noted above, the proposed plat development will occur on parts of 5 tax parcels, with access improvements connecting the plat to adjacent roadways and the like on parts of 4 parcels, all as addressed and

numbered on page 5 of the Staff Report. (*Staff Report, page 5, Location of properties, providing assigned addressed and tax parcel numbers; Site visits by the Examiner*).

4. The applicant’s proposal would create 63 single-family lots. (*Staff Report, page 5; Ex. 2, Application materials and site plans*).

5. There is no dispute that the project site area is zoned RL, Residential Low density, which allows Single Family Residential uses like that proposed in the pending application, and that the proposal satisfies the City’s maximum and minimum density requirements for the zone, and PRD requirements. (*See Staff Report, page 24, which provides the following formula:*

Minimum and maximum density requirements are met by the proposal.

<i>Maximum Density (5 Units/Gross Acres)</i>	<i>63 Units Proposed / 26.04 gross acres = 2.4</i>	<i>OK</i>
<i>Minimum Density (4 Units/Net Acres)</i>	<i>63 Units Proposed / 8.44 net acres = 7.5</i>	<i>OK</i>

Also see Staff Report, on page 27, table showing combined development standards under standard RL zoning and PRD modifications allowed.

6. The pending application is for approval of a Planned Residential Development (PRD) and Preliminary Plat application to authorize the subdivision and development of an approximately 26-acre site into 63 single-family residential lots, with associated improvements and amenities, including new internal roads, utility extensions/connections, stormwater facilities, recreational amenities, significant open space, significant tree retention, and sidewalks. (*Staff Report; Exhibits A (Application materials), B (Project Drawings), C (Critical Areas Information), and D (Tree Retention information)*).

7. The Planning and Economic Development Department’s Staff Report and Recommendation of Approval, shared with the Examiner in the week before the hearing, (*the “Staff Report”*), includes a number of specific findings and conditions that credibly establish how the underlying PRD/plat application satisfies provisions of applicable law, is consistent with the city’s Comprehensive Plan, and is designed or conditioned to comply with applicable development standards and guidelines.

Procedural background.

8. In late 2022, the applicant team submitted initial application materials for a proposed PRD and Preliminary Plat, with multiple requests for additional information made by staff and additional information submitted by the applicant, with requests for extensions of time, all during the thorough review process for this proposal (*Exhibit A, application materials; Staff Report, pages 35-37, application timeline summary*). For any Preliminary Plat application, a neighborhood meeting is required before formal application submittal. For this project, the neighborhood

meeting occurred in December of 2022. (*Staff Report, page 36*). After receiving modified application materials from the applicant with information from the neighborhood meeting, Staff deemed the application materials complete and issued a formal Notice of Application soliciting public comments on or about February 9, 2023, which was re-issued using a larger notification area on March 9, 2023. (*Staff Report, page 36; Exs. 32, 33*). Comments received are included in *Ex. H (also numbered as Ex. 30)* and are also addressed in the Staff Report, on pages 38-41.

9. After reviewing the SEPA Checklist, application materials, design features, reports prepared by qualified experts, SEPA comments received and applicant feedback, if any, and other relevant environmental information regarding the proposal and its potential impacts on the surrounding area, the City issued its SEPA threshold determination for this project, which was a Mitigated Determination of Non-Significance (MDNS) issued on April 4, 2024. (*Ex. 41*).

10. The MDNS included 8 specific mitigation measures, including without limitation provisions addressing compliance with Endangered Species Act/salmon habitat protection requirements (Mitigation Measure No. S1); Environmental Health, including inspection and soil sampling before grading and ground disturbance work based on comments expressing concerns about possible contaminants on the project site (Mitigation Measures S2-S4); historic and cultural preservation (S5 and S6); traffic (S7); and school mitigation fees to address impacts on the North Kitsap School District (S8). Notices related to the SEPA MDNS were issued in accord with applicable law. (*Ex. 43, SEPA notice confirmation materials*). All mitigation measures imposed by the MDNS are also included as specific Conditions of Approval for this project. (*See Conditions S-1 through S-8*).

11. By operation of WAC 197-11-545 (re: Effect of no comment), if a consulted agency does not respond with written comments within the time periods for commenting on environmental documents, the lead agency may assume that the consulted agency has no information relating to the potential impact of the proposal as it relates to the consulted agency's jurisdiction or special expertise; further, *lack of comment by other agencies or members of the public* on environmental documents within the applicable time period *shall be construed as lack of objection to the city's environmental analysis*. The record establishes that the no one submitted timely comments regarding the MDNS with information sufficient to rebut reports from qualified professionals and the like that would serve as a basis to reject to City's threshold determination. (*see SEPA checklist, Ex. 42, staff's SEPA memo and report, and list of 23 environmental documents reviewed during the SEPA review process, on page 37 of the Staff Report*)

12. The MDNS notice expressly provides: "*APPEAL: Any agency or person may appeal this SEPA determination by filing a written appeal to the responsible official no later than 10 working days from the date of this determination (PMC 16.04.250.B)*." (*Ex. 41, MDNS*).

13. While one individual submitted written materials on or about April 18, 2024 seeking to appeal the SEPA MDNS issued for this project, the submittal was rejected by the Director because it was not accompanied by the applicable appeal fee and deposit, citing controlling provisions of the City's code including PMC 16.04.250(B), PMC 19.70.010(B)(3), and the City's Planning Fee Schedule adopted by reference under PMC 3.12.030(A). (*Ex. 45, letter from Heather Wright to Jan Wold, rejecting Ms. Wold's appeal and request to waive appeal fee and deposit requirements, dated April 24, 2024*).

14. The Hearing Examiner is without authority to ignore City code requirements, particularly those that set forth requirements to initiate an appeal. In any event, no one submitted comments, documentation, or legal authority that would serve as a basis to reopen the SEPA process. There have been no changes to the project that are likely to have any significant adverse environmental impacts, and there has been no showing that the applicant misrepresented any pertinent facts or failed to make any material disclosures that would have relevance in the SEPA review process. The City's SEPA threshold determination (the MDNS) stands unchallenged for purposes of concluding the public hearing process and issuing this Decision approving the requested preliminary plat and PRD.

15. Some local property owners expressed general concerns that prior gun range use and garbage dumped on the site may have contaminated soils, without many details. Staff took the comments seriously, and crafted specific inspection and sampling requirements, to determine if soils are actually contaminated before grading and ground disturbing work begins. The MDNS includes mitigation measures that should help to avoid impacts or properly address clean up or remediation requirements that might be needed if site inspections and soil sampling results mandated by Mitigation Measures S2, S3, and S4 find that contamination actually exists on the site. (*Testimony of Ms. Wright*).

16. A copy of the Staff Report and a Notice of Public Meeting was issued at least 7 days prior to a Poulsbo Planning Commission meeting that occurred on April 9, 2024. The Staff Report confirms that all notices were published, posted and mailed in accord with applicable requirements. (*See Staff Report, page 37*). Following their meeting, the Planning Commission voted to recommend approval of the pending PRD and Preliminary Plat project, subject to conditions of approval recommended in the Staff Report. (*See Staff Report, Addendum 2, dated May 1, 2024, and Exhibits 36-40*).

17. Soon thereafter, on May 9, 2024, the undersigned Hearing Examiner conducted a duly-noticed public hearing regarding this PRD and preliminary plat application, with the Examiner, applicant representatives, project-review staff, and interested members of the public able to participate in-person at Poulsbo City Hall in the Council chambers, or an online hearing platform coordinated by Staff. (*Ex. 42, Notice and confirmation records, for public hearing before the City's Hearing Examiner*). All persons who offered testimony or comments during the hearing were

placed under oath. Several additional written comments and exhibits were submitted into the record during the public hearing, now numbered and included as Exhibits 46, 47, and 48. In response to questions from the Examiner during the public hearing, Staff transmitted final copies of hearing exhibits and a short memo from the Transportation Engineer addressing fire access and emergency exit issues, received by the Examiner on May 13, 2024. Upon receipt of such materials, the record was closed, and this Decision is in order.

Public hearing, key issues.

18. During the public hearing, Ms. Berghoff summarized key portions of the Staff Report and how the pending application, with conditions, satisfies all relevant approval criteria, and that the Planning Commission recommended approval without substantive changes. Ms. Berghoff directed attention to proposed condition P11, requiring a project-wide home design packet to satisfy PMC 18.260.060, and subsequent reviews of building permits to determine compliance with special design and architectural considerations required for all PRD developments. She noted that staff consulted with the Department of Ecology and other interested agencies, presumably due to the project's on site and adjacent critical areas. Mr. Bateman summarized engineering and transportation system design issues, and other Public Works considerations, noting that the plat might be developed in two phases, but bonding will be required if final looping for water service is not completed until Phase 2 is developed. Mr. Bateman noted a correction to proposed Condition E39, which has been modified by the Examiner to prohibit use of Liberty Road for truck construction traffic. Staff's detailed slide presentation from the public hearing is now included as part of the record. (*Ex. 47*).

19. The applicant's agent and hearing representative, Mr. Sherwin, accepted the analysis and recommendations provided in the Staff Report, as summarized during their hearing testimony, including all proposed conditions, without requests for any changes. Several local residents submitted additional written comments and public testimony during the public hearing. All written public comments are included as part of the record. Several speakers raised concerns about possibly contaminated soils on the site. No one submitted reports from qualified professionals to support their concerns. No one offered credible testimony showing how the SEPA mitigation measures requiring site inspections and soil sampling, with possible 3rd party reviews, would be inadequate to address concerns expressed by several speakers and in several written comments.

20. None of the written public comments raised questions or presented credible evidence that would serve as a basis to deny this application, or to add additional conditions of approval. There was no showing that environmental review should be reopened. The Staff review confirms that the project has been designed or can be conditioned to comply with all applicable approval criteria. All mitigation conditions included in the MDNS are also included as Conditions of Approval for the requested PRD and Preliminary Plat.

As designed and conditioned, the Plateau at Liberty Bay PRD and Preliminary Plat application satisfies applicable approval criteria.

21. The Staff Report and Engineering Department Memos (*Exs. 26 and 27*) fully details how the project is designed or can be conditioned to comply with applicable codes, including without limitation: critical area protections, density, concurrency, tree retention, amenities, stormwater management, utility infrastructure, payment of impact fees, and requirements for projects in the RL zone. (*Staff Report; Engineering Memos, Exs. 26-27*).

22. State subdivision statutes mandate that appropriate provisions be made for the public health, safety, and general welfare including sidewalks and other planning features that assure safe walking conditions for students who walk to and from school. *See RCW 58.17.110(2)*. As noted in the Staff Report, the new plat will be served by the North Kitsap School District; North Kitsap High School, Poulsbo Middle School and two elementary schools serve the site; schools are located approximately 2 miles northwest and similar distance east; sidewalks are provided on project roads and major city streets in the vicinity; the plat site will likely be included on a school bus route; and the School District has purchased land to construct a new elementary school 0.75 miles north of the site.

23. As noted above, the SEPA Mitigated Determination of Non-Significance (MDNS) issued for this project included specific mitigation measures. No one submitted a proper appeal challenging the SEPA threshold determination for this project, i.e. the MDNS. As a matter of law, the mitigation measures imposed in the MDNS stand unchallenged and shall also be included as conditions of approval issued as part of this Decision.

24. A preponderance of evidence in the record, including without limitation the summary of relevant reports and analyses provided in the unchallenged Staff Report and Engineering Memos, the Examiner's site visits to the area, and credible testimony by Staff, fully supports a finding that the proposed plat has been designed or can be conditioned to satisfy applicable approval criteria for the proposed preliminary plat, including without limitation the state subdivision statute found at RCW 58.17.110(2), and the City's approval criteria for a preliminary plat, found at PMC 17.60.040(A)(1-3)¹, as explained in the unrebutted Staff Report and Engineering Memos, and summarized below:

1. The proposed preliminary subdivision conforms to the requirements of this title. *As designed and conditioned, the proposed preliminary subdivision conforms to the requirements of Title 17, Land Division. The City Engineer has reviewed the project for consistency with Chapter 12.02 PMC and supports approval of the preliminary plat subject to all conditions of approval. See Exhibit G, Engineering Department Staff Report Memo.*

¹ See Staff Report, Sec. IV, pages 7-11).

2. The proposed preliminary subdivision conforms to the site requirements for the zoning district in which the property is located and/or other applicable zoning provisions. *As designed and conditioned, the proposed preliminary subdivision conforms to the requirements of Title 18 Zoning and will comply with the Comprehensive Plan. The site is designated “Residential Low” in the comprehensive plan and “Residential Low” on the Zoning Map and is being platted consistent with these designations. The project meets the Comprehensive Plan’s goals of providing single-family housing according to established zoned densities in order to meet the City’s population allocation under the Countywide Planning Policies and Growth Management Act. See Staff Report, pages 23-26 for additional explanation for how the project is consistent with or implements provisions of the City’s Zoning Ordinance, PMC Title 18).*

3. The proposed preliminary subdivision:

- a. Makes adequate provision for streets, roads, alleys, other public ways, and transit stops as required; and the proposed street system provides for the safe, orderly and efficient circulation of traffic. *See Exhibit G, Engineering Department Staff Report Memo; Staff Report, analysis and summary on pages 20-21..*
- b. Will be adequately served with water, sewer, storm drainage, and other utilities appropriate to the nature of the subdivision and meets all current and applicable standards. *See Exhibit G, Engineering Department Staff Report Memo; Staff Report, analysis on page 21.*
- c. Makes adequate provision for parks, recreation, and playgrounds, as required. *Onsite recreation amenities are summarized in the Staff Report, on pages 21-22. The City has a Park Impact Fee Ordinance which requires the project developer to mitigate for their project’s park impacts through payment of an impact fee. The developer is responsible for paying impact fees at rates in effect on the date of building permit issuance (Condition P18); and for satisfying SEPA Mitigation Measure S6, re: commemorative sign/plaque recognizing the Raab family contributions to the City of Poulsbo.*
- d. Makes adequate provision for schools and school grounds, as required. *The North Kitsap School District receives a school impact fee from the project developer, as determined by the school district to help offset impacts from the new development’s residents. Payment of the applicable school impact fee is a specific mitigation measure imposed using the City’s SEPA authority, under the MDNS issued for the project and is also a Condition of Approval for this project. See summary of school facilities and plans to serve the plat, on page 22 of the Staff Report.*
- e. Makes adequate provisions for sidewalks and other planning features that provide safe walking conditions for students who walk to and from school. *See Exhibit G, Engineering Department Staff Report Memo, previous findings above; Staff Report on page 22.*
- f. Makes adequate provisions for critical area protection pursuant to Chapter 16.20. *See section IV of the Staff Report, re: Critical Areas, and summary on page 22. The project makes adequate provisions for critical area protection. Almost half of the site will be preserved in its natural condition.*

- g. Makes adequate provisions for fire and emergency access and protection. *See Exhibit G, Engineering Department Staff Report Memo. A second emergency access only connection with Liberty Road will be required for more than 30 homes, and the second emergency access must be completed before construction of homes in Phase 2 of the proposed plat can commence. Staff Report, page 22.*
- h. Serves the public interest and makes appropriate provisions for the public health, safety, and welfare. *The proposed project has been mitigated and conditioned based on applicable city development regulations and SEPA authority, to prevent and address potential adverse impacts so the new PRD and preliminary plat will not be detrimental to the public health, safety and welfare of the city and its residents. Staff determined that the project will be compatible with neighboring properties and adjacent uses. Tree retention and stormwater management measures are included in this project design and conditions. Through the SEPA mitigation measures included in the MDNS, and conditions of approval, this project will be in the public interest and will make appropriate provisions for the public health, safety and welfare. See Ex. G, Engineering Dept. analysis, and Staff Report, on page 23.*

25. A preponderance of evidence in the record, including without limitation the summary of relevant reports and analyses provided in the unchallenged Staff Report, Engineering Memos, the Examiner’s Site Visits to the area, and credible staff testimony, fully supports a finding that the proposed Planned Residential Development has been designed or can be conditioned to satisfy applicable approval criteria for the proposed PRD, including without limitation all required findings that must be made by the reviewing authority in approving such application, as provided in PMC 18.260.140(a)-(1)², as set forth below:

- a. The proposal, through its design and submitted supporting documents, has clearly demonstrated it meets the stated purposes of this chapter.

The purpose of the PRD Ordinance is to encourage creative and superior site design in residential zones which also promotes the preservation of open space in such development by permitting greater flexibility in zoning requirements than is permitted by other chapters of the Poulsbo Zoning Ordinance, while ensuring compliance with the goals and policies of the Poulsbo Comprehensive Plan. The flexibility afforded by the PRD ordinance has allowed the Plateau at Liberty Bay PRD to be designed with smaller lot sizes and reduced setbacks, enabling inclusion of accessible open space, reduced width of specific road improvement and provision of future access to adjacent properties consistent with Poulsbo Transportation Plan. The proposed design provides efficient street, utility, and public improvement layout through double loading streets and access drive.
- b. The proposal complies with all of the applicable provisions of this title, except those provisions from which deviation has been allowed under this chapter.

² See Staff Report discussion, analysis, and recommended findings on pages 12-22.

The proposal as designed, reviewed, and conditioned in the staff report meets all applicable provisions of the Zoning Ordinance with specific deviations as identified for planned residential developments. The proposal meets use, density and street tree requirements and is in compliance with additional standards and provisions of residential zoning districts, parking, and signage as reviewed and conditioned.

- c. The proposal provides overall site design features through its conceptual architectural renderings for the entire project, and has included open space areas, pedestrian walkways and connections, recreational amenities, and outdoor features.

The proposal includes information on the overall site design features, identified on the project drawing set (Exhibit B, KPFF1) as well as on the conceptual landscape plan (Exhibit B, NDLA1), and draft home “lot fit” plan (Exhibit F). Home siting (“lot fit”) and design are required to be submitted and approved prior to model home permit issuance and Final Plat review and approval (Condition P11). Conditions require substantial compliance with the house designs submitted, which will be reviewed for compliance at the time of building permit application (refer to Condition P11). Also, additional information on the site’s landscaping and recreational amenities shall be submitted, consistent with application materials, with the final landscape plan at the time of tree cutting and clearing and grading permits (condition P13.d).

- d. The proposal would not impair the integrity and character of the zoning district in which it is to be located.

The proposal will not impair the integrity and character of the Residential Low zoning district, because it has been designed and conditioned to meet the minimum PRD development standards and design criteria as discussed throughout the Staff Report.

- e. The site is physically suited for the type and intensity of land use being proposed.

The site is physically suited for the type and intensity of land use being proposed. The site’s critical areas and their buffers are protected and preserved as open space with mitigation and conditions imposed as part of this Decision. Lot configuration, streets, stormwater facilities, open space, and amenities are a continuation of the existing development of the neighborhoods throughout the City.

- f. The proposal would be compatible with existing and future land uses within the general area in which the proposal is to be located by providing screening or buffering between parcels and providing consistency between any existing single-family subdivisions and the proposal.

The surrounding properties are zoned Residential Low, same as the project site, with Commercial uses to the east. Adequate screening and buffering is proposed for the site via tree retention and fencing, and critical area protections imposed through Mitigation Measures and Conditions of Approval.

- g. The proposal would preserve natural features and critical areas and would preserve and incorporate existing significant stands of trees within the project design as much as possible.

Tree retention is appropriate for the project as proposed, as reviewed and verified by the City Arborist. Critical areas and buffers will be preserved as required in Mitigation Measures and Conditions of Approval for this project.

- h. There are adequate provisions for water, sanitary sewer, and public utilities (electric, gas, phone) and services to ensure that the proposal would not be detrimental to public health and safety.

The applicant has made adequate provisions for water, sanitary sewer and public utilities and services to ensure that the proposal will not be detrimental to the public health and safety. Water will be provided by the City with a loop connection between Viking Ave NW and NW Liberty Road. The City Engineer has determined there is adequate provision for sanitary sewer. Other public utilities including electric and phone are available. See also Exhibit G, Engineering Department Staff Report Memo.

- i. There will be adequate provisions for public access to serve the subject proposal, as well as providing for neighborhood connectivity as appropriate and as required by the city.

The proposal provides adequate provisions for public access to serve the subject site, with primary access via Viking Avenue NW, and a secondary emergency access route via NW Liberty Road. Future neighborhood connections are identified in the project design. See Exhibit G, Engineering Dept Staff Report Memo.

- j. The proposal is consistent with the comprehensive plan and the city's adopted development standards.

The proposed PRD is consistent with the City's Comprehensive Plan and adopted development standards, with an approved width reduction narrowing lane width from 11 to 10 feet while providing sidewalks on one side. The subject development is located in the Residential Low zoning district and as conditioned, is consistent with the City's development standards, infrastructure standards, and Comprehensive Plan. See Ex. G, Engineering Memo.

- k. There will not be significant unmitigated harmful effects upon environmental quality and natural resources.

There will not be any significant harmful effects upon environmental quality and natural resources with the proposed development. The applicant will mitigate impacts to the City's park and transportation systems by paying mitigation fees. The MDNS issued for the project stands unchallenged and includes a mitigation requirement for payment of school impact fees; soil testing; and other appropriate measures. The applicant will provide mitigation for fill of Wetland F and modification of Wetland B, C, E, F, and G buffers, and enhancement of stream buffer. Onsite critical areas and their buffers are located in protected open space.

- l. The proposed location, size and design of the proposal would not be detrimental to the public interests, health, safety or welfare of the city.

The proposed site meets the PRD requirements for size and location. The design has been reviewed against the City's development standards and, as conditioned, meets the City's adopted ordinances for stormwater, transportation, subdivision, and zoning. The MDNS for the project stands unchallenged.

26. As noted above, the Staff Report and Staff Review Memos (*Exs. G1 and G2, also numbered Exs. 26 and 27*) include a number of specific findings and proposed conditions that establish how

the proposed PRD and Preliminary Plat application satisfies provisions of applicable law, is consistent with the city's Comprehensive Plan, and is designed or can be conditioned to comply with applicable development standards and guidelines. Except as modified in this Decision, all Findings, recommended findings, and statements of fact contained in the Staff Report and its 2 addendums, and those in the Staff Review Memos (included as part of Ex. G), are incorporated herein by reference as Findings of the undersigned hearing examiner.³

27. Based on all evidence, exhibits and testimony in the record, the undersigned Examiner specifically finds that the proposed Plateau at Liberty Bay PRD and Preliminary Plat, as conditioned below, makes appropriate provision for the considerations detailed in applicable law, and that the public use and interest will be served by the preliminary plat and associated improvements.

28. The Conditions of Approval included as part of this Decision are reasonable, consistent with applicable law, supported by the evidence, and capable of accomplishment.

CONCLUSIONS OF LAW

1. Based on the Findings as summarized above, the undersigned examiner concludes that the proposed Plateau at Liberty Bay Planned Residential Development and Preliminary Plat, as conditioned below, conforms to all applicable zoning and land use requirements and appropriately mitigates potential adverse environmental impacts. Upon reaching such findings and conclusions as noted above, the application meets the standards necessary to obtain approval by the City.

2. Any Finding or other statements in previous or following sections of this document that are deemed Conclusions of Law are hereby adopted as such and incorporate herein by reference.

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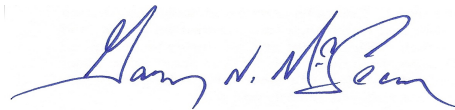
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³ For purposes of brevity, only certain Findings from the Staff Report and recommendation of approval, and Engineering Memos, are highlighted for discussion in this Decision, and others are summarized, but any mention or omission of particular findings should not be viewed to diminish their full meaning and effect, except as modified herein.

DECISION

Based upon the preceding Findings of Fact and Conclusions of Law, evidence presented through the course of the open record hearing, all materials contained in the contents of the record, and site visits to the affected area, the undersigned Examiner APPROVES the Plateau at Liberty Bay Planned Residential Development and Preliminary Plat, subject to the attached Conditions of Approval.

Decision issued: May 29, 2024.

A handwritten signature in blue ink, appearing to read "Gary N. McLean". The signature is fluid and cursive, with a large initial "G" and "M".

Gary N. McLean
Hearing Examiner for the City of Poulsbo

CONDITIONS OF APPROVAL

Plateau at Liberty Bay Planned Residential Development and Preliminary Plat

File No. P-12-06-22-02

[NOTE: For convenience of the parties, these conditions are generally organized and numbered as they were presented with the Staff Report. The use of captions, numbering, or sections has no substantive effect regarding the full scope or applicability of any condition to various aspects of the project].

General Conditions added by the Examiner.

- A. Preliminary Plat approval shall be null and void if any condition enumerated herein is not satisfied.
- B. No construction or site development activities related to the plat may be undertaken until required land-use and engineering approvals become effective, and the City and other regulatory authorities with jurisdiction issue applicable permits.
- C. The applicant shall comply with all professional report conclusions and recommendations submitted in connection with the preliminary plat and engineering reviews, as approved and or amended by the City.
- D. Applicant shall be responsible for consulting with state and federal agencies, and tribal entities with jurisdiction (if any) for applicable permit or other regulatory requirements. Approval of a preliminary plat does not limit the applicant's responsibility to obtain any required permit, license or approval from a state, federal, or other regulatory body. Any conditions of regulatory agency permits/licenses/approvals shall be considered conditions for this project.
- E. The final engineering plans and submittals necessary to obtain final approval of the plat shall conform to all applicable provisions of the Poulsbo Municipal Code and the Conditions of Approval herein.

MDNS Mitigation Measures included as Conditions of Approval.

(The following conditions are a restatement of mitigation measures imposed on the project as part of the SEPA MDNS issued for this project (*Ex. 41*). Each mitigation measure is also included as a condition of approval for the preliminary plat).

Animals.

S1. It shall be the responsibility of the applicant to take all necessary steps to prevent the incidental taking

*Findings, Conclusions and Decision Approving
PLATEAU AT LIBERTY BAY PRD and Preliminary Plat Applications –
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of protected species under the Endangered Species Act through habitat modification or degradation during the life of the project or development authorized by this permit or approval. The applicant shall notify the City through its Public Works Superintendent and the Federal agencies with responsibility for enforcement of the Endangered Species Act immediately, in the event of any damage or degradation to salmon habitat by or from the project or the development subject to this permit or approval. In any such case, the applicant shall, at its sole cost and expense, take all actions necessary to prevent the furtherance of the damage or degradation and to restore the salmon habitat as required by the Federal, State, and local agencies with jurisdiction.

Environmental Health.

S2. An inspection report for debris in southwest corner is required with grading permit submittal for the areas that are subject to grading. If contamination is found, staff and the applicant shall coordinate with Health Department to determine if removal and remediation is needed. Any removal and remediation shall be subject to the critical areas ordinance requirements and replanting may be required. City consultant peer review of inspection and or replanting report(s) shall be at the discretion of the PED Director and at expense of the applicant/developer.

S3. An inspection and sampling report for lead in a debris area in the center of property toward the west is required with grading permit submittal for the areas that are subject to grading. If contamination is found, staff and the applicant shall coordinate with Health Department to determine if removal and remediation is needed. Any removal and remediation shall be subject to the critical areas ordinance requirements and replanting may be required. City consultant peer review of inspection and or replanting report(s) shall be at the discretion of the PED Director and at expense of the applicant/developer.

S4. If contamination and or debris is found during mitigation planting in the stream buffer, staff and the applicant shall coordinate with Health Department to determine if removal and remediation is needed. Any removal and remediation shall be subject to the critical areas ordinance requirements and replanting may be required. City consultant peer review of report(s) shall be at the discretion of the PED Director and at expense of the applicant/developer.

Historic and Cultural Preservation

S5. While there are no known archaeological resources on this site, in the event archaeological artifacts are uncovered during construction, activity shall be halted immediately, and the State Historic Preservation Office and Tribes will be contacted.

S6. The applicant shall coordinate with city staff to provide a sign and/or plaque on-site and in the open space to commemorate the contributions of the Raab family to the City of Poulsbo. The sign and/or plaque shall be installed prior to final of the plat. The applicant is encouraged to coordinate with the Poulsbo Historical Society for preferred wording and/or images.

Traffic.

S7. The developer shall construct improvements to the existing pedestrian crossing of Viking Avenue NW near Bovela Lane. These improvements shall include the installation of pedestrian refuge island, Rectangular Rapid Flashing Beacon, associated MUTCD complaint signage and striping, and sidewalk/curb ramp improvements to bring the crossing to full compliance with current ADA/City Construction standards.

Public Services.

S8. School mitigation fees are required for this project. Fees shall be paid prior to building permit issuance. The North Kitsap School District must be contacted directly for the amount and confirmation provided prior to building permit issuance for each structure.

Planning and Economic Development Department Conditions of Approval.

See Conditions P1-P21, on pages 43-48 of Staff Report, incorporated herein by reference.

Engineering Department Conditions of Approval.

See Conditions E1-E49, on pages 48-52 of Staff Report, incorporated herein by reference; provided that Condition E39 is revised to read as follows:

E39. A temporary truck route has been established in accord with PMC 10.24. The project's construction truck traffic shall use Viking Avenue NW to the South and/or Viking Avenue NW to SR 305 to the north. The project's construction truck traffic shall not use NW Liberty Road.

Public Works Conditions of Approval.

See Conditions W1-W31 on pages 52-54 of the Staff Report, incorporated herein by reference.

In the event of a need for clarification regarding the application or interpretation of any term or condition of approval set forth above, either the applicant or the city can invoke the jurisdiction of the Hearing Examiner to issue a written clarification of a particular term or condition, through a written request detailing the matter, and the basis for such request. Such request shall be made as a Request for Reconsideration, submitted within ten (10) calendar days of the date this Decision is issued.

NOTICE OF RIGHTS TO REQUEST RECONSIDERATION OR APPEAL THIS DECISION

Reconsideration –

Sec. 2.22 of the Poulsbo Hearing Examiner Rules of Procedure reads as follows:

“Reconsideration –

(a) The Hearing Examiner may reconsider a decision on an application, if it is filed in writing within 14 calendar days of the date of issuance. Designated parties to the appeal who participated in the hearing may have standing to seek reconsideration. Any request for reconsideration shall be served on all parties of record and to any party’s designated representative or legal counsel on the same day as the request is delivered to the Hearing Examiner. The Examiner will seek to accept or reject any request for reconsideration within 3 business days of receipt. If the Examiner decides to reconsider a decision, the appeal period will be tolled (placed on hold) until the reconsideration process is complete and a new decision is issued. If the Examiner decides to reconsider a decision or recommendation, all parties of record shall be notified. The Examiner shall set a schedule for other parties to respond in writing to the reconsideration request and shall issue a decision no later than 14 calendar days following the submittal of written responses. A new appeal period shall run from the date of the Hearing Examiner’s Order on Reconsideration.”

Appeal –

PMC 19.70.020 explains that all decisions of the hearing examiner on Type I and II appeals, and all decisions of the hearing examiner on Type III permits may be appealed to the city council. (See definition of “permit application” in PMC 19.10.030, and Table 19.20.020, where “preliminary subdivision/plat” is listed as a permit type). The city council will make a final decision on such matters in a closed record appeal proceeding in which no new evidence may be submitted. The deadline and filing requirements for appeals are detailed in the city’s code, including without limitation PMC 19.70.020.

NOTE: The Notice provided on this page is only a short summary, and is not a complete explanation of fees, deadlines, and other filing requirements applicable reconsideration or appeals. Individuals should confer with advisors of their choosing and review all relevant codes, including without limitation the city code provisions referenced above and the Land Use Petition Act (Chapter 36.70C RCW) for additional information and details that may apply.