

BEFORE THE CITY OF YELM HEARING EXAMINER

IN RE:)	HEARING NO. 2021-0054
)	
CRYSTAL SPRINGS SUBDIVISION,)	FINDINGS OF FACT, ANALYSIS
)	CONCLUSIONS OF LAW
Applicant.)	AND DECISION

APPLICANT: AHBL, Inc.
2215 N. 30th Street #300
Tacoma, Washington 98403

REPRESENTATIVES:

Evan Mann
Scott Kaul

SUMMARY OF REQUEST:

The Applicant requests preliminary approval of a subdivision containing 30 single-family residential lots on 4.89 acres, with associated improvements.

LOCATION OF PROPOSAL:

714 Crystal Springs Road SE, Yelm.

SUMMARY OF DECISION:

The proposed subdivision is **approved** subject to conditions.

BACKGROUND

The Applicant seeks preliminary subdivision approval to subdivide 4.89 acres into thirty residential lots for single-family housing together with connecting streets, stormwater facilities and other site improvements. The project is referred to as the "Crystal Springs Subdivision" or "Crystal Springs".

The proposed subdivision is located at 714 Crystal Springs Road SE. There is currently located on the site a single-family home and several agricultural outbuildings. Existing buildings would be removed for construction of new housing.

*Findings of Fact, Analysis, Conclusions
of Law and Decision - 1*

CITY OF YELM HEARING EXAMINER
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1 The site has a zoning designation of Moderate Density Residential (R-6) which allows for
2 up to six units per acre. Properties to the north and east have similar zoning designations and are
3 developed as single-family neighborhoods. Property to the south is in the Open
4 Space/Institutional District designation and has been developed as the Yelm Community School
5 Bus Barn. Property to the east is owned by the City of Yelm, zoned Industrial, and used by the
6 City's Public Services.

7 The closest major street is Crystal Springs Street N.W. The subdivision proposes to
8 establish two connections to Crystal Springs Street: a new public road from Crystal Spring north
9 to the eastern boundary of the project site ("Road C") as well as a second access from Crystal
10 Spring Street utilizing the existing Woodland Court SE to a point near the southwest corner of
11 the project and connection to a proposed "Road A".

12 Members of the public have expressed concerns, particularly with use of Woodland Court
13 SE as a means of access. Other public concerns include additional traffic, impacts to wildlife,
14 public safety and more intense neighborhood development. City Staff recommends approval of
15 the project subject to the fifteen conditions set forth in the Staff Report. The Applicant concurs
16 with these recommended conditions.

17 **PUBLIC HEARING**

18 The public commenced at 2:00 p.m. on Tuesday, March 8, 2022. Due to the ongoing
19 COVID pandemic the hearing was conducted remotely utilizing the Zoom platform, with the
20 City Planning Staff serving as the hearing host. As the hearing got underway Staff
21 acknowledged that it was having some technical difficulties and that members of the public were
22 having difficulty gaining access. This problem was not fully resolved during the hearing, leading
23 to the record being kept open for another week to provide enhanced opportunity to testify as
24 further discussed below. The City appeared through Sara Williams, Associate Planner. The
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1 Applicant appeared through its representative, Evan Mann, and its engineer, Scott Kaul. Several
2 members of the public were present and two asked to testify. All testimony was taken under
3 oath.

4 In advance of the public hearing, City Staff submitted a Staff Report consisting of its
5 report along with a total of 18 exhibits as listed on the City's website. During the course of the
6 hearing one additional exhibit was referenced and identified as Exhibit 19 (a recent email dated
7 March 8, 2022, from Cindy Marchand-Cecil). The City also provided a fuller set of site plans as
8 part of Exhibit 3.

9 The hearing began with the testimony of Associate Planner, Sara Williams, author of the
10 City's Staff Report. Ms. Williams summarized the findings found in the Staff Report and
11 reiterated the City's position that the subdivision should be approved subject to the conditions
12 found in the Staff Report.

13 Following Ms. Williams' testimony, Evan Mann and Scott Kaul jointly testified on behalf
14 of the Applicant. Mr. Mann suggested an additional condition confirming that permits would not
15 be issued until the City's water rights have been clarified (as may be found in other subdivision
16 approvals). The Hearing Examiner posed this issue to the City Staff and asked if it concurred.
17 Ms. Williams acknowledged that a similar condition may have been imposed in earlier
18 subdivisions and that she would review prior projects for a proposed condition.

19 Mr. Mann and Mr. Kaul also clarified that the project will rely upon public roads (Roads
20 A, B and C) as identified on the plat map, together with one short private road (Tract B) also as
21 shown on the face of the plat. The public roads will allow connectivity if/when additional
22 development takes place nearby.

23 Mr. Mann and Mr. Kaul spoke at length regarding the project's proposed connection to
24 the existing Woodland Court SE, noting that several neighbors have expressed concerns about
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1 this connection. They testified that Woodland Court SE was designed for this connection; that it
2 can easily support the relatively few number of cars that will utilize it; and that its use will not
3 pose undue risk to the residents of the adjoining Crystal Springs Estates neighborhood. Mr.
4 Mann concluded his testimony by asking that the project be approved subject to the conditions
5 proposed by City Staff (plus the added condition relating to water availability).

6 Following the Applicant's presentation two members of the public asked to testify:

7 Daedra Smith testified in opposition to the proposal. She resides on Woodland Court SE
8 and is concerned about the impacts of the subdivision on her neighborhood. She notes that the
9 proposed intensity of development is twice that of the adjoining neighborhood and recommends
10 that the number of allowed lots be significantly reduced. Ms. Smith also believes that the Traffic
11 Analysis does not accurately reflect the true number of vehicles traveling to and from the
12 subdivision and that the true number is perhaps twice as much as suggested by the analysis. She
13 fears that this increased traffic will pose great risk to residents along Woodland Court SE
14 especially as the driveways in the Crystal Springs Estates neighborhood force residents to back
15 out into the roadway, putting them at risk with added traffic. Ms. Smith is also of the belief that
16 the Applicant's Bird Survey was done poorly and during the wrong time of the year. As a result,
17 she believes that it badly miscounts the numbers and types of wildlife utilizing the project site.
18 Somewhat similarly, Ms. Smith is concerned that the project will cause the removal of many
19 trees and that, even though they will be replaced, the replacement trees will not be of similar
20 species or of similar benefit to wildlife. She is also concerned that Yelm's traffic is becoming
21 congested, especially in this neighborhood, and that the proposal will only increase that
22 congestion. Finally, Ms. Smith recommends consideration of calming devices where the existing
23 Woodland Court SE would connect to the project's "Road A" so as to ensure the slowing of
24 traffic into her neighborhood.

1 Following Ms. Smith, Mary Posey also testified in opposition to the project. She began
2 by expressing her support of all of the positions taken by Ms. Smith and added her additional
3 concerns regarding impacts to wildlife, increased traffic and concerns with respect to noise,
4 crime and property values.

5 Following Ms. Posey's testimony the Hearing Examiner inquired of Staff as to whether
6 other members of the public wished to testify. Ms. Williams responded that at least one other
7 member of the public, Savannah Noriega, had expressed an interest but had been unable to log
8 on to the remote hearing.

9 Following public testimony the City was asked if it had any additional responses. It did
10 not, other than it would provide copies of the additional exhibits referenced during the hearing.
11 The Applicant was then allowed to respond to the public testimony. Mr. Mann reiterated the
12 Applicant's belief that the proposed street connection to Woodland Court SE will not pose an
13 undue risk to the adjoining neighbors; that Woodland Court was designed for this connection;
14 and that the project's roads include "chicanes" and other devices to reduce vehicle speeds.

15 Following Mr. Mann's response, the Hearing Examiner announced that additional
16 opportunity would be granted to Mr. Noriega or other interested members of the public to testify
17 so that all who wished to be heard were given the opportunity. To that end, the Hearing
18 Examiner announced that the video of the hearing would be placed on the City's website for
19 viewing and that members of the public would be allowed until the end of the week, Friday,
20 March 11, 2022, at 5:00 p.m. to provide additional written comments. The City and Applicant
21 would then be allowed until 5:00 p.m. the following Tuesday, March 15, 2022, to respond to any
22 additional comments. Their responses would then conclude the public hearing.

23 During the additional time allowed for public testimony City Staff received on additional
24 written comment from Daidra Smith by email dated March 8. Ms. Smith's additional written
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1 comments followed closely her earlier testimony and reiterated concerns regarding protecting all
2 forms of wildlife on the property; protecting the trees that benefit that wildlife; imposing calming
3 devices to reduce traffic speeds; that the proposal is high density development unsuited for the
4 neighborhood; that proposed tree replacement is inadequate; that it is unlikely that neighborhood
5 children will be allowed to use the proposed playground facilities; that the developers are not
6 sufficiently vested in the City to ensure good development; and that Crystal Springs Road is
7 inadequate for the development's added traffic. Apart from Ms. Smith's email, no other public
8 comment was received.

9 As allowed by the Hearing Examiner, the Applicant responded to Ms. Smith's additional
10 comment as well as earlier comments made by Cindy Marchand-Cecil. Mr. Mann reiterated that
11 the Wildlife Habitat Studies were done in compliance with WDFW and federal standards with no
12 findings of endangered or protected species or critical habitat on the site; that the project is
13 unlikely to significantly impact other species that are already urban tolerant; that the Traffic
14 Analysis was properly undertaken and found not to require additional traffic mitigation other
15 than traffic impact fees; that the project is not "high density development" but rather is in
16 accordance with the City's zoning for the site and is consistent with the City's Comprehensive
17 Plan; that final landscaping will be as determined by the City Engineer; that the project's open
18 space areas will be available to all of the public, not just residents of the development; that the
19 developer has a strong interest in appropriate development within the City and that all traffic
20 impacts are being properly mitigated as required by City standards. With respect to Ms.
21 Marchand-Cecil 's comments, Mr. Mann responds that surveys have been performed to confirm
22 all boundary lines and corners; that street trees and landscaping will be determined by the City in
23 final design review; that calming devices in the form of speedbumps are unwarranted; that all
24 intersections with existing streets will be designed in accordance with the City's engineering
25 standards for public safety; and that there will be appropriate buffering with adjoining uses to

1 ensure mutual privacy and with no proposed entrance into the Yelm Community Service
2 property.

3 Mr. Mann did not suggest any language for a proposed new condition relating to the
4 availability of water rights.

5 City Staff also responded to public comment by email dated March 15: As to a possible
6 additional condition relating to the availability of water rights, City Staff responded that it is "the
7 City of Yelm's basic understanding that water rights are not guaranteed until building permit
8 issuance. The City of Yelm is under the expectation that water rights will be awarded, but until
9 that permit is in hand we cannot fully guarantee water rights." City Staff did not believe that an
10 additional condition needed to be added to reflect this fact.

11 After taking all comments into consideration, City Staff concludes that the application
12 has met all City requirements and is consistent with the intent of the Yelm Municipal Code and
13 Comprehensive Plan.

14 ANALYSIS

15 Nearby property owners have understandable concerns about the proposed subdivision's
16 impacts (noise, traffic, wildlife, safety, etc.). Nonetheless, it has not been demonstrated that
17 there are well founded bases for these concerns, or that the application fails to meet the City's
18 subdivision requirements. The following is a more complete discussion of more notable
19 concerns.

20 **Wildlife.** Several neighbors, particularly Ms. Smith, have expressed concerns over the
21 quality of the Applicant's wildlife studies but have not presented any evidence of the project's
22 impacts on threatened or endangered species. Merely questioning the quality of the testing,
23 without providing evidence contradicting the findings, is not sufficient to challenge the results,
24 especially when the testing meets allowed standards. Somewhat similarly, neighbors express
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1 concerns that the conversion of this property to housing will reduce wildlife habitat. While this
2 is true, a less intense development could merely expand new housing across a larger area, thus
3 reducing available habitat even more. Thus, while neighbor's concerns about wildlife are
4 understandable ones they are not sufficient to alter the result.

5 **Traffic.** Opponents have questioned the accuracy of the Traffic Impact Analysis,
6 particularly the number of estimated vehicle trips during peak hours, but the Traffic Impact
7 Analysis was undertaken utilizing standard methodology and well-accepted assumptions as to
8 traffic impacts. Concerns that actual impacts may be greater, without any data to support these
9 concerns, is not a sufficient challenge. Neighbors are also understandably concerned about the
10 project's connection to the existing terminus of Woodland Court SE but, while it is
11 understandable that adjoining properties would prefer to not receive traffic from this
12 development, Woodland Court was designed for such a connection and its use is consistent with
13 the City's traffic planning.

14 During the course of the hearing the Hearing Examiner asked City Staff whether some
15 form of traffic "calming device" might be appropriate where proposed Road A connects to the
16 existing Woodland Court, the intent being that traffic flowing from the development into the
17 Woodland Court cul-de-sac would do so at slow speeds. Staff acknowledged the potential
18 benefit of such devices but recommended that this question be left to the traffic engineer during
19 final design. Members of the public have urged some form of calming device where the the two
20 streets will meet. After careful consideration, I agree that any decision with respect to calming
21 devices should be made by the traffic engineer, not by the Hearing Examiner. I am therefore not
22 imposing any additional conditions relating to such devices.

23 **Other Concerns.** Neighbors express other concerns over noise, possible crime, general
24 traffic congestion, potential impacts to property values, and other issues but, again, none of these
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1 general concerns have been shown to have a clear connection with the proposal. To summarize,
2 it is understandable that neighbors might feel uneasy with any new development but this general
3 unease is not a sufficient basis to deny the application.

4 I conclude that the application meets the City's standards for new subdivisions and
5 accordingly make the following:

6 **FINDINGS OF FACT**

7 1. Any Findings of Fact contained in the foregoing Background, Public Hearing and
8 Analysis Sections are incorporated herein by reference and adopted by the Hearing Examiner as
9 his own Findings of Fact.

10 **General Findings**

11 2. The Applicant seeks preliminary plat approval to subdivide 4.89 acres into thirty
12 residential lots for single-family dwellings with connecting streets, stormwater facilities and
13 other site improvements. Maps identifying the location of the project site and its layout are
14 found in Exhibit 3 of the Staff Report. Additional site photos are provided as attachments to
15 Exhibit 18.

16 3. The project is bounded on the south by the Yelm Community School Bus Barn.
17 To the east is the City of Yelm public services department facilities. To the west and north are
18 residential developments zoned Moderate Density and developed with single-family homes.
19 Immediately west of the project is the "Crystal Springs Estates" subdivision.

20 4. The project site has a zoning designation of Medium Density Residential (R-6),
21 similar to properties to the north and west. The proposed use is a permitted use within this
22 zoning designation subject to subdivision approval.

23 5. The project site is partially developed and currently contains one single-family
24 residence and several outbuildings. Existing structures are intended to be demolished and
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1 removed as part of project development. The project site is generally flat with minimal slopes
2 and, apart from the residence, outbuildings and developed areas, is covered in grasses and brush
3 with some trees.

4 6. The project site is a "flag lot" with a long, narrow, east/west strip connecting the
5 majority of the site to Crystal Springs Street N.W. Proposed vehicle access would be by way of
6 this strip (designated as "Road C") and by a secondary access connecting to the present terminus
7 of Woodland Court SE, all as depicted on the site map (Exhibit 3). This will allow two
8 connections to the City's public road system as required by development regulations.

9 7. The project proposes three streets, Roads A, B and C, all as depicted on Exhibit 3.
10 These roads will be public roads. The project also proposes a short spur road (Tract B) to serve
11 several individual residences. Tract B will remain a private road.

12 8. In addition to associated roadways, the project will include:

- 13 ● Curbs, gutters and sidewalks.
- 14 ● Stormwater facilities.
- 15 ● An open space tract (Tract A) which will provide for stormwater
16 management while also allowing for a public play area.
- 17 ● Street trees and other replacement trees.
- 18 ● Utilities for sewer and water.

19 9. Stormwater generated by the development will be addressed through two
20 methods: (1) on-lot (roof) runoff will be collected and infiltrated in individual dry wells on each
21 lot, while all remaining stormwater will be directed toward two infiltration trenches; Basin A, to
22 be located on Tract A, will have a four-foot deep trench that will be twenty feet wide and sixty-
23 two feet long. Basin B, along Road C, will also have a four-foot deep trench that will be three
24 feet wide and sixty-six feet long.

1 Findings Relating to Public Notice and Meetings

2 10. Notification of the application was mailed to state and local agencies and property
3 owners within 300 feet of the site on October 20, 2021, and published in the Nisqually Valley
4 News on October 28, 2021. This notice generated responses from several neighbors expressing
5 concerns over use of Woodland Court SE, children's safety, the removal of existing trees,
6 increased traffic, wildlife impacts, and other concerns.

7 11. Notice of the public hearing before the Hearing Examiner was posted on the City
8 website, mailed to property owners within 300 feet of the site, and mailed to the recipients of the
9 Notice of Application on February 25, 2022. Notice was also published in the Nisqually Valley
10 News on Thursday, February 24, 2022.

11 Findings Relating to SEPA Compliance

12 12. The City, acting as lead agency, issued a SEPA Determination of Non-
13 Significance (DNS) on November 11, 2021. Comments were received from several agencies as
14 well as from nearby property owners expressing concerns over traffic, loss of wildlife and
15 pedestrian safety. After considering these comments the City retained the DNS. The DNS was
16 not appealed and is final.

17 Findings Relating to Concurrency

18 13. Prior to subdivision approval, the Hearing Examiner must undertake a
19 concurrency evaluation. YMC 18.16.040(A)(1).

20 14. For preliminary subdivisions, the Hearing Examiner must evaluate the project for
21 concurrency with respect to transportation, water and sewer. YMC 18.16.050(C)(1).

22 Transportation.

23 15. The Level of Service at concurrency intersections must not drop below accepted
24 Levels of Service due to new trips associated with the proposed development unless the planned
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1 improvements identified in Six-Year Transportation Programs will maintain Levels of Service.
2 YMC 18.16.050(C)(1)(a).

3 16. The Applicant submitted a Traffic Impact Analysis (Exhibit 8) which estimates
4 that the subdivision will generate thirty new PM peak hour trips. The majority of these trips are
5 expected to travel to and from areas to the south with eventual connection to Yelm Avenue. The
6 expected increase in traffic is not sufficient enough to generate additional mitigation but traffic
7 facility charges will be applied at the time of building permit issuance.

8 17. The traffic-related improvements set forth above, together with these charges, will
9 satisfy the requirement for concurrency with respect to transportation.

10 18. Any decision to impose traffic calming devices will be made by the City's traffic
11 engineer during plan review.

12 19. As set forth in the Staff Report, at page 4, the project proposes frontage
13 improvements along Crystal Springs Road SE in accordance with the City's Neighborhood
14 Collector Standards. Internal streets will also be constructed at adopted Local Access
15 Residential Standards.

16 Water

17 20. At time of preliminary approval, planned infrastructure identified in the Six-Year
18 Improvement Program together with water rights identified in the Water System Plan must be
19 sufficient to provide for the proposed land use decision. YMC 18.16.050(C)(1)(b).

20 21. The Staff Report, at page 2, contains Findings relating to concurrency with water
21 requirements. As noted in the Staff Report, the Level of Service for water infrastructure is the
22 ability to provide potable water to the consumer for use and fire protection in accordance with
23 the adopted health and environmental regulations. YMC 18.16.030(B)

1 22. It must be shown that appropriate provisions are made for potable water as part of
2 the preliminary subdivision approval. Chapter 58.17 RCW.

3 23. The City currently has approximately 147 water connections available for new
4 development.

5 24. As noted in the Staff Report, the City is involved in a pilot project to obtain
6 additional water rights and has been authorized to now allow the approval of preliminary
7 subdivisions based upon anticipated water availability.

8 25. The project site is within the City's water service area and is currently not
9 connected to the City's water system. The development will be required to be connected to and
10 extend the water mains along all new proposed roadways within the subdivision. Specific
11 improvements required to serve the project will be identified during civil plan review.

12 26. City Staff finds that the project, as conditioned, satisfies the requirement for
13 concurrency with respect to water infrastructure.

14 27. The Applicant suggests adding an additional condition recognizing that water
15 rights are not guaranteed until issuance of building permits. The Applicant has not proposed any
16 specific language for this condition. City Staff believes that an additional condition is not
17 necessary, as it is already established that water rights are not guaranteed until building permit
18 issuance. The Hearing Examiner concurs with the City that an additional condition need not be
19 imposed.

20 28. Recognizing that water rights cannot be guaranteed until building permits are
21 issued, the Hearing Examiner concurs with the Staff's Findings with respect to concurrency with
22 water infrastructure.

1 Sewer

2 29. The Applicant must demonstrate that at the time of preliminary approval the
3 planned infrastructure for the City's sewer system identified in the Six-Year Improvement
4 Program is sufficient to provide for the proposed planned subdivision and that it is reasonably
5 anticipated that the treatment plan has sufficient capacity to provide for the proposed land
6 division. YMC 18.16.050(C)(1)(c).

7 30. Concurrency is achieved when the ability to treat and discharge wastewater is in
8 accordance with adopted health and environmental regulations. YMC 18.16.030(C).

9 31. The Staff Report, at page 3, addresses the project's concurrency with sewer
10 requirements.

11 32. The City's Sewer Comprehensive Plan identifies the property as being within the
12 sewer service area but is not currently connected to the City's STEP sewer system. There are
13 sewer mains located in both Woodland Court SE and Crystal Springs Road SE

14 33. The project has been conditioned on requiring connection to and extension of the
15 main along all new proposed roadways within the subdivision. The exact improvements
16 required to serve the project will be identified during civil plan review. City Staff finds that with
17 these conditions the project satisfies the requirement for concurrency with respect to sewer
18 infrastructure. The Hearing Examiner concurs with the City's Findings.

19 Impact Fees

20 34. Concurrency with respect to fire protection and school infrastructure are achieved
21 pursuant to YMC 18.16.090. Concurrency with fire protection is achieved through contribution
22 to the Fire Protection Facilities as identified in the Capital Facilities Plan adopted by the
23 Southeast Thurston Fire Authority and endorsed by the Yelm City Council. This fee will be
24 collected at the time of building permit issuance. Concurrency with school infrastructure is
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1 achieved through a contribution to School Facilities as identified in the most current version of
2 the Capital Facilities Plan adopted by Yelm Community Schools and endorsed by the Yelm City
3 Council. This fee is also subject to change and is collected at the time of building permit
4 issuance. With these two impact fees, concurrency with fire protection and school infrastructure
5 is satisfied.

6 Critical Areas

7 35. The protection of critical areas and resource lands in subdivision approval is
8 addressed through Chapter 18.21 YMC. The project must ensure compliance with the
9 requirements of this chapter in order to be approved. YMC 18.21.030(A).

10 Aquifer Recharge

11 36. As noted in the Staff Report, at page 6, all of Yelm is identified as a Critical
12 Aquifer Recharge Area. Compliance with federal, State and County Water Source Protection
13 Regulations and with the City's adopted Stormwater Regulations is required in order to protect
14 the aquifer. YMC 18.21.070.

15 37. City Staff has conditioned project approval on a Stormwater Plan meeting the
16 most recent (2019) edition of the Stormwater Management Manual for Western Washington
17 (SWMMWW) to be presented with civil plan submission.

18 38. The Applicant has presented a Preliminary Stormwater Report (Exhibit 9) which
19 includes a storm drainage analysis and design, taking into consideration the 30 residential lots,
20 new roadways and sidewalks, sewer, water services, and stormwater facilities. The plan
21 envisions the collection of on-lot runoff by infiltration through individual drywells on each
22 residential lot. Other stormwater will be collected and sent to infiltration trenches, referred to as
23 "Basin A" and "Basin B" as set forth at page 3 of the Stormwater Plan.

1 Frequently Flooded Areas

2 39. Development within frequently flooded areas is regulated by YMC 18.21.080.

3 40. The Staff Report, at page 6, acknowledges that the 2012 National Flood Insurance
4 Rate Map (FIRM) identifies a small portion of the panhandle of the site as being within the 100-
5 year flood plain, with a base flood elevation of 332 feet. Development in this area will be
6 subject to the City's Critical Areas Regulations for frequently flooded areas. YMC 18.21.080.
7 All structures shall be located outside of the floodplain unless there is no buildable site are out of
8 the floodplain.

9 41. As noted in the Staff Report, a proposed access must occur along the panhandle of
10 the site, therefore its improvement is unavoidable. Development in this area shall be constructed
11 using flood resistant materials and methods and practices that minimize flood damage, and fill
12 and grading shall only occur after a determination that the fill or grading will not block side
13 channels, inhibit channel migration, increase the base flood elevation, or be within a channel
14 migration zone. Subject to these conditions, the project shall comply with the requirements for
15 frequently flooded areas.

16 Fish and Wildlife Habitat Conservation Areas

17 Mazama Pocket Gopher

18 42. Fish and wildlife habitat conservation areas are addressed in YMC 18.21.110. As
19 noted in the Staff Report at page 6, the Mazama Pocket Gopher has been listed as a threatened
20 species and the City has protected it through implementation of the Critical Areas Code. If
21 development occurs on property suspected to be occupied by the Mazama Pocket Gopher, the
22 Applicant must prepare a Critical Areas Report. The report must include mitigation measures if
23 it determines that Pocket Gophers would be impacted by the proposed development.

1 43. As part of this subdivision application the Applicant submitted a Mazama Pocket
2 Gopher Reconnaissance Report (Exhibit 7). The report, dated August 24, 2021, concludes that
3 there is no evidence of mounds characteristic of the Mazama Pocket Gopher.

4 Endangered, Threatened and Sensitive Species

5 44. YMC 18.21.110(C) prohibits development within a habitat conservation area or
6 buffer with which State of federally endangered, threatened or sensitive species have a primary
7 association, except that which is provide for by a management plan established by the
8 Washington department of Fish & Wildlife or applicable State or federal agency.

9 45. Nearby property owners have expressed the belief that the project site may be
10 home to endangered, threatened or sensitive species. In response to these concerns City Staff has
11 required the Applicant to undertake an evaluation of potential endangered or threatened birds on
12 the subject property (Exhibit 18). This evaluation, dated January 17, 2022, explains that a Bird
13 Survey was performed December 14, 2021, relying on information received from WDFW for
14 potential occurrences and habitat locations, with the entire subject property evaluated on foot.
15 The WDFW database does not identify any priority habitats or species as being mapped on the
16 subject property. The site evaluation revealed that no birds identified under the Endangered
17 Species Act or State Priority Species have been identified on the property or within the vicinity
18 of the subject property. Further, there is no federally-designated Critical Habitat or endangered
19 bird species on the subject property or within the vicinity of it. There were no federally
20 designated Primary Constituent Elements (PCE's) of endangered species habitat identified on the
21 subject property or within the vicinity of it. The report concludes that although bird activity was
22 observed onsite, no federally endangered or threatened or State priority species were identified
23 on the subject property, and no protected bird species were identified on the site or in the vicinity
24 of the site by the WDFW PHS Database.

1 46. Nearby property owners have objected to the Bird Study on the belief that it was
2 conducted in the wrong manner (by foot) and/or during the wrong time of the year (winter rather
3 than spring). But opponents have not presented any evidence of threatened or endangered
4 species on or in the vicinity of the property. As a result, opponents have not provided a
5 sufficient basis for requiring the study to be undertaken in a different manner or at a different
6 time. The Applicant's Bird Study is therefore sufficient to satisfy the requirements of YMC
7 18.21.110.

8 Other Critical Areas Regulated by Chapter 18.21

9 47. No evidence has been presented that the proposed subdivision implicates the
10 City's wetlands regulations (YMC 18.21.060); flood damage protection provisions (YMC
11 18.21.090); or geographically hazardous areas (YMC 18.21.100).

12 48. Staff finds that the project, as conditioned, satisfies all City requirements for
13 critical areas protection. The Hearing Examiner agrees with this Finding.

14 Design Standards

15 49. The Staff Report, commencing at page 8, addresses the proposed subdivision's
16 compliance with the City's design standards.

17 Water

18 50. The site is not currently connected to City water service. Connection to City
19 water service is required.

20 51. There is a well located on the property. It must be decommissioned pursuant to
21 City standards and the water rights dedicated to the City.

22 52. City Staff finds that the project, as conditioned, satisfies all requirements for
23 water pursuant to Chapter 13.04 YMC and Chapter 6 of the Development Guidelines.

1 Sewer

2 53. The property is located in the City's STEP sewer system service area and is
3 currently not connected. Connection to the sewer system will be required.

4 54. Any onsite septic systems must be abandoned as part of project development.

5 55. City Staff finds that the project, as conditioned, satisfies all sewer requirements
6 pursuant to Chapter 13.08 YMC and Chapter 7 of the Development Guidelines.

7 Fire Protection

8 56. Fire protection to the buildings must be provided pursuant to the International Fire
9 Code. Specific requirements will be determined during civil plan review. Fire hydrant locks
10 must be installed as part of the City's water conservation and accountability program. Fire
11 access lanes exceeding 100 feet in length must have appropriate turnaround provisions. City
12 Staff finds that the preliminary site plan meets all of these requirements for fire protection.

13 Stormwater

14 57. Stormwater has been addressed elsewhere in these Findings. As noted earlier, the
15 Applicant has submitted a Preliminary Stormwater Report which includes a conceptual design
16 for the treatment and infiltration of stormwater. Among other things, the plan envisions the
17 collection of rooftop stormwater through individual drywells on the residential lots, with the
18 collection and infiltration of all other stormwater through two basins (Basins A and B) as
19 identified on the civil plans.

20 58. Stormwater facilities must be maintained to ensure they remain in proper working
21 condition. A Stormwater Maintenance Agreement must be recorded at the time of final plat
22 recording. Subject to these conditions, City Staff finds that the project satisfies all subdivision
23 stormwater requirements.

1 Lot Size and Setbacks

2 59. As noted at page 9 of the Staff Report, the City's Development Regulations do not
3 establish minimum or maximum lot sizes but does require standard yard setbacks of 15 feet
4 adjacent to a local access street, 5 feet from the side property line, 15 feet from any flanking
5 yard, and 25 feet from the rear property line, with a minimum 20 foot driveway approach. The
6 project will be required to meet all of these requirements.

7 Transportation

8 60. The Staff Report, at page 9, addresses the transportation requirements for the
9 project.

10 61. Pursuant to the City's development guidelines, and the concurrency requirements
11 of Chapter 18.16 YMC, the project must improve street frontages to current City standards.

12 62. Frontage improvements along Crystal Springs Road SE will be installed to the
13 City's Neighborhood Collector Standards.

14 63. All internal streets will be constructed to adopted local access residential
15 standards.

16 64. The panhandle portion of the site, designated as Road C is only 40 feet wide.
17 Minimum street design standards require 58 feet of right-of-way for a local access street. The
18 City agrees to a modified version of a local access residential street through the panhandle
19 portion of the site. This will remove the 7.5 foot parking lane on each side and will reduce the 6
20 foot planter strip on the non-sidewalk side to 5 feet, thereby bringing the total road width to the
21 required 40 feet.

22 65. All other internal streets, with the exception of the private "Tract B", must meet
23 the minimum street design standards for local access.

1 66. The short spur street, referred to as Tract B on the site map, is proposed as a
2 private street. The City's Development Regulations allow private streets when not connected to
3 two public streets; when its intersection with another street is not signalized; when it cannot be
4 used as a thoroughfare, and when it will be in the best interest of the public. YMC 18.52.070(A).
5 City Staff finds that the proposed private road meets these qualifications.

6 67. In addition, private streets must be used for 9 or fewer units with a 30-foot paved
7 surface and a 4 foot sidewalk; must be accessible at all times for emergency and public vehicle
8 use; and will not landlock present or future parcels. Covenants must be approved, recorded and
9 verified with the City which provide for its maintenance. The Applicant has confirmed that all
10 of these requirements will be met.

11 68. The proposed subdivision has more than 25 housing units and therefore must have
12 more than one vehicular access from an arterial or collector street. Chapter 18.52 YMC. The
13 Applicant and City Staff have agreed upon the required two accesses will consist of: (1) the use
14 of Road A (the panhandle strip) commencing at Crystal Springs Street N.W. and running east to
15 the south boundary of the project site; and (2) a connection to the northerly portion of the
16 property via Woodland Court SE, connecting to Road A, all as depicted on the preliminary plat
17 map.

18 69. Several adjoining property owners have expressed concerns about the second
19 access by way of Woodland Court SE. They are worried that the connection will interfere with
20 the tranquility of their existing cul-de-sac neighborhood; will create unsafe travel conditions as
21 they must backout into the roadway from their residences; and will prevent children from playing
22 in the street as they currently do.

23 70. The Applicant responds to the concerns of the neighbors by noting that: (1) the
24 Woodland Court cul-de-sac was designed and constructed for this eventual connection; (2) the
25

1 amount of vehicles using this connection will be quite small as most vehicles will be heading
2 south and will find it easier to reach southerly points via Road C; and (3) the small amount of
3 traffic should not interfere with children's playing in the cul-de-sac but they will be able to also
4 play in the subdivisions new play area. City Staff concurs with the Applicant that the two
5 proposes accesses are the best options for providing the required access to the development. The
6 Hearing Examiner concurs with the Applicant and Staff.

7 71. As noted in earlier Findings, concurrency with transportation infrastructure is
8 achieved when the Level of Service at concurrency intersections will not drop below accepted
9 Levels of Service due to new trips associated with the project unless the planned improvements
10 identified in the Six-Year Transportation Improvement Program will maintain Levels of Service.

11 72. The Applicant has submitted a Traffic Impact Analysis which projects that
12 development will generate 30 new P.M. peak hour trips and 22 A.M. peak hour trips (Exhibit 9).
13 Trip generation counts are done in accordance with the ITE Trip Generation Manual. The traffic
14 engineer concludes that the project will not require traffic mitigation other than payment of the
15 City's Transportation Facility Charge. The City concurs.

16 73. Nearby property owners have expressed the opinion that the traffic study has
17 undercounted the likely number of A.M. and P.M. peak trips, but this claim is based on intuition,
18 not upon evidence that the engineer's reliance on the Trip Generation Manual is in error. Thus,
19 while there may be an intuitive sense that more traffic may be generated by the project, there is
20 no demonstrated evidence of this. The Hearing Examiner must therefore accept the Findings of
21 the Traffic Impact Analysis.

22 Parking

23 74. Each residential lot must have two parking spaces. YMC 18.54.030(A). This
24 requirement will be met. In addition, on-street parking will be allowed on both sides of local
25 access residential streets.

1 Landscaping

2 75. Landscaping is required for all new subdivisions. YMC 18.55.020. For
3 residential subdivisions, this requires perimeter landscaping by means of a solid wood fence on
4 side and rear yard; streetscape landscaping will be required on street frontage improvements; and
5 the Tract A will be landscaped and offer a children's play area.

6 76. In addition, the developer will be required to provide a Performance Assurance
7 Device in order to provide for maintenance of all required landscaping until the homeowners
8 association assumes responsibly. This shall be in the amount of 150 percent of the anticipated
9 cost of maintenance of landscaping for three years.

10 77. City Staff finds that subject to these conditions the project's requirements for
11 landscaping have been met. The Hearing Examiner concurs.

12 Open Space

13 78. Residential subdivisions must include qualified open space equal to at least 5% of
14 the gross area of the development. YMC 18.56.010.

15 79. The Applicant has proposed a preliminary plan identifying .25 acres as open
16 space in Tract A. This area amounts to 5.11% of the gross project area and therefore satisfies the
17 requirement for open space.

18 80. The final landscaping plan shall identify how recreation and other uses will be
19 made available through Tract A, including the use of play equipment.

20 Trees

21 81. Any trees having a diameter exceeding 8 inches and planned for removal must be
22 replaced on a one-to-one basis. Chapter 18.57 YMC.

23 82. The developer's preliminary landscape plan identifies 51 trees to be removed and
24 replaced.

1 Mailboxes and Street Lighting

2 83. US Postal Service approved mailboxes and adequate street lighting must be
3 provided, all to be reviewed at time of civil plan review.

4 Subdivision Name

5 84. The subdivision name must be reserved with the Thurston County Auditor's
6 Office prior to final subdivision approval. Addresses and street names will be assigned or
7 approved by the City's Public Service Department prior to final subdivision approval.

8 85. City Staff recommends preliminary subdivision approval subject to the fifteen
9 conditions found in the Staff Report.

10 86. Pursuant to RCW 58.17.110, the Hearing Examiner finds that: (a) appropriate
11 provisions are made for the public health, safety and general welfare and for such open spaces,
12 drainage ways, streets or roads, alleys or other public ways, transit stops, potable water supplies,
13 sanitary waste, parks and recreation, playgrounds, schools and schoolgrounds, and all other and
14 relevant facts, including sidewalks and other planning features that assures safe walking
15 conditions for students who only walk to and from school; and (b) the public use and interest will
16 be served by the platting of such subdivision and dedication.

17 Based upon the foregoing Findings of Fact and Analysis, the Hearing Examiner makes
18 the following:

19 **CONCLUSIONS OF LAW**

- 20 1. The Hearing Examiner has jurisdiction over the parties and the subject matter.
- 21 2. Any Conclusions of Law contained in the foregoing Background Section or
22 Findings of Fact Section are incorporated herein by reference and adopted by the Hearing
23 Examiner as his Conclusions of Law.
- 24 3. The requirements of SEPA have been met.

1 4. Appropriate provisions are made for the public health, safety and general welfare,
2 for open spaces, drainage ways, streets, alleys, and other public ways, water supplies, sanitary
3 waste, playgrounds, schools, fire protection and other public facilities.

4 5. After considering all the relevant facts, including the physical characteristics of
5 the site, the public interest would be served by the subdivision.

6 6. As conditioned, all City requirements for concurrency management have been
7 met. Chapter 18.16 YMC.

8 7. The requirements for the dedication of land and/or payment of fees have been
9 satisfied. YMC 18.16.090.

10 8. All other requirements of Chapter 18.16 YMC have been met.

11 9. The project is in compliance with the purposes of the Moderate Density
12 Residential zoning designation.

13 10. The proposed number of residential units complies with the Medium Density
14 Residential zoning designation.

15 11. The project, as conditioned, is in compliance with the City's Residential
16 Development Standards.

17 12. The project, as conditioned, is in compliance with the City's Critical Areas
18 Regulations. Chapter 18.21 YMC.

19 13. The project, as conditioned, is in compliance with the City's design standards for
20 water, sewer, fire protection, stormwater, lot sizes and setbacks, transportation, parking,
21 landscaping, open space, protection of trees, mailboxes, street lighting and subdivision names
22 and addresses.

23 14. The project, as conditioned, is in compliance with all other subdivision
24 requirements found in the City's Development Regulations.

1 15. The project is consistent with the City's Comprehensive Plan.

2 16. The project should be approved subject to the fifteen conditions contained in the
3 Staff Report.

4 **DECISION**

5 The Applicant's request for preliminary approval of subdivision containing thirty lots on
6 a 4.89 acre site, with associated improvements, shall be approved subject to the following
7 conditions:

8 1. A good faith asbestos survey must be conducted on the structure by a certified
9 Asbestos Hazardous Emergency Response Act (AHERA) building inspector, and since the
10 structure is over 120 square feet an ORCAA Demolition Notification must be submitted
11 regardless of the results of the results of the asbestos study.

12 2. Prior to demolition of the existing building potentially dangerous or hazardous
13 materials present must be removed.

14 3. Erosion control measures must be in place prior to any clearing, grading, or
15 construction.

16 4. The onsite well shall be decommissioned pursuant to Washington State
17 Department of Ecology standards, and any associated water rights dedicated to the City.

18 5. Any onsite septic systems shall be abandoned per the Thurston County Health
19 Department standards.

20 6. Stormwater facilities shall be located in separate recorded tracts owned and
21 maintained by the homeowners association. The stormwater system shall be held in common by
22 the Homeowners Association and the homeowner's agreement shall include provisions for the
23
24

1 assessment of fees against individual lots for the maintenance and repair of the stormwater
2 facilities. All roof drain runoff shall be infiltrated on each lot utilizing individual drywells.

3 7. Frontage improvements to City standards are required on Crystal Springs Road
4 SE along the panhandle.

5 8. The private street will meet the conditions of Section 18.52.070(B) YMC
6 including permanent establishment by tract or easement and the recording of approved covenants
7 which provide for the maintenance.

8 9. A final landscape plan must be submitted at civil plan submission showing
9 perimeter, streetscape, and stormwater facility landscaping in compliance with Chapter 18.55
10 YMC.

11 10. The Applicant shall provide a performance assurance device in order to provide
12 for maintenance of the required landscape for this subdivision, until the homeowners association
13 becomes responsible for the landscaping maintenance. The performance assurance device shall
14 be 150 percent of the anticipated cost to maintain the landscaping for three years.

15 11. The final landscape plan shall show recreation/open space uses on Tract A
16 pursuant to Section 18.56.020 YMC.

17 12. Mailboxes for the site shall be cluster box units (CBU) and placed on site [Section
18 18.59.080 YMC]. The civil engineering plans shall include the proposed location and details for
19 mailbox placement.

20 13. Prior to final subdivision application, a subdivision name must be reserved with
21 the Thurston County Auditor's Office.

22 14. The civil engineering plans shall include an addressing map for approval by the
23 Building Official.

15. Prior to construction, civil engineering plans shall be submitted to the Public Services Department for review and approval. Civil plans submission shall be consistent with the requirements of the Yelm Development Guidelines and shall include details on the required infrastructure.

DATED this 21 day of March, 2022.

Mark C. Scheibmeir
City of Yelm Hearing Examiner