



# City of Yelm

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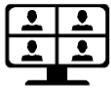
## WASHINGTON

"Pride of the Prairie"

### NOTICE OF PUBLIC HEARING - YELM HEARING EXAMINER

DATE: Monday, October 26, 2020 – 9:00 AM

PLACE: Virtual Meeting Via Zoom



[https://zoom.us/webinar/register/WN\\_Jj9hKlzSRdu0HFBITx3xyQ](https://zoom.us/webinar/register/WN_Jj9hKlzSRdu0HFBITx3xyQ)

PURPOSE: Public Hearing to receive comments regarding the following:

1. Tahoma Terra Phase II Division II Subdivision Amendment Request  
Case Number 20160235 (master use permit # 2019.0052). Request to amend the August 4, 2016 Hearing Examiner approval for the Tahoma Terra Phase II, Division II subdivision in Yelm, WA, Assessor's Tax Parcel Number 78640100019.

The City of Yelm Hearing Examiner will hold a public hearing to receive comments on the application listed above. The Hearing Examiner will make a decision on these matters within 10 working days after the hearing.

Testimony may be given at the hearing or through any written comments. Comments must be received by the close of the public hearing. Such written comments may be submitted to the City of Yelm at the address shown above, mailed to: City of Yelm Community Development Department, 106 2<sup>nd</sup> Street SE, Yelm WA 98597 or emailed to [tamim@yelmwa.gov](mailto:tamim@yelmwa.gov).

Any related documents are available for public review during normal business hours at the City of Yelm, 106 2<sup>nd</sup> Street SE, Yelm WA 98597. For additional information, please contact the Community Development Department at (360) 458-3835.

It is the City of Yelm's policy to provide reasonable accommodations for people with disabilities. If you are a person with a disability in need of accommodations to conduct business or to participate in government processes or activities, please contact Lori Mossman at 360-458-8402 at least five working days prior to the scheduled event. For information on the Americans with Disabilities Act and the Title VI Statement visit our web page at <http://www.yelmwa.gov/human-resources/>.

Lori Mossman, City Clerk

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DO NOT PUBLISH BELOW THIS LINE



# City of Yelm

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## WASHINGTON

"Pride of the Prairie"

Case Number: Tahoma Terra Phase II, Division II Subdivision Amendment

Applicant: Tahoma Terra Holdings, LLC

PO Box 73790

Puyallup, WA 98373

Request: Request to Amend SEPA Mitigation Measure 5 for Tahoma Terra Master Planned Community.

Public Hearing Date: October 26, 2020

Recommendation: Deny amendment language requested and approve amendment as initially proposed by the applicant's attorney

### PROPOSAL

The applicant requests to amend the language of mitigation measure 5 of the May 24, 2005 SEPA Mitigated Determination of Non-Significance (MDNS) for the Tahoma Terra Master Planned Community (MPC), incorporated through Conclusions 4, 6.1, and 6.2 of the August 4, 2016 Hearing Examiner Decision approving Tahoma Terra Phase II, Division II, Phase I & II preliminary subdivision. No other modifications or amendments to the preliminary subdivision approval are requested.

### NOTICE OF APPLICATION AND PUBLIC HEARING

Notice of this application was mailed to state and local agencies and property owners within 300 feet of the site on September 11, 2020, as well as published in the Nisqually Valley News in the legal notice section on September 17, 2020.

Notice of the date and time of the public hearing before the Hearing Examiner was posted on the project site, mailed to property owners within 300 feet of the site, and mailed to the recipients of the Notice of Application on October 16, 2020. Notice of the public hearing was published in the Nisqually Valley News in the legal notice section on October 15, 2020.

No comments were received up to the date of this report.

### PROPERTY CHARACTERISTICS

The property is located within the Tahoma Terra MPC, specifically in the final master plan area west of Thompson Creek, and is identified by Assessor's Tax Parcel Numbers 78640000019, 78640000020, and 78640000033.

## BACKGROUND INFORMATION

The Tahoma Terra MPC is located on 220 acres in southwest Yelm, was annexed into the City as part of the Southwest Yelm Annexation. The approval of the MPC included a MDNS issued May 24, 2005 with specific mitigating measures for the MPC:

The mitigating measures of the MDNS issued in 2005 is supported by the adoption of several environmental documents applicable to the property within the Tahoma Terra Master Planned Community. These included:

- Final Environmental Impact Statement, March 1993, Southwest Yelm Annexation.
- Annexation Agreement, Southwest Yelm Annexation, November 23, 1993.
- Addendum to the Final Environmental Impact Statement for the Southwest Yelm Annexation, July 1994, Thurston Highlands Master Plan Application
- Final Environmental Impact Statement, January 1995, City of Yelm Comprehensive Plan and Joint Plan with Thurston County.
- Critical Areas Study, December 1997, IES Associates.
- Environmental Checklist and Mitigated Determination of Non-Significance, September 1999, Prairie View Master Plan.

These documents describe the need for additional water rights to serve the southwest annexation area, and proposes to acquire water rights to be dedicated to the City for development within the annexation area.

The 2005 MDNS provided the following findings in regards to water rights:

15. The City of Yelm has adopted comprehensive Water and Sewer System Plans and a Reclaimed Water Facilities Plan to guide orderly extension of the City's infrastructure improvements. These system plans anticipated the build out of the southwest Yelm annexation area. Upgrades and extension of these utilities, consistent with the adopted system plans, will be necessary to provide adequate levels of water and sewer service to the subject site.
16. The Environmental Impact Statement for the southwest Yelm annexation indicated that development within the annexation area, including the subject property, would be required to provide water rights to the City sufficient to serve the subsequent development of the properties. The property has recorded water rights that the applicant intends to transfer to the City of Yelm to provide for the development of the property.

The property has been assessed through the City's sewer local improvement district, which includes a commitment by the City to provide water and sewer service for no more than 89 single family residential units prior to any water rights transfer.

If the Washington Department of Ecology does not approve a transfer of water rights, or the transfer does not include sufficient water to serve the proposed

development, final subdivision approval of any phase beyond the 89 lots could not be approved.

18. This threshold determination and adoption of previous environmental documents will be used for all future development permits and approvals within the Conceptual Master Site Plan of Tahoma Terra provided that those permits and approvals are consistent with the application and approval for the Conceptual Master Site Plan.

These findings resulted in Mitigating Condition #5:

5. Prior to the approval of any development permit (including a final subdivision) beyond the 89<sup>th</sup> lot, the applicant shall convey water rights to the City of Yelm sufficient to serve the proposed use within that area of the final master site plan and the first 89 lots. The conveyance shall be made to the City through a water rights agreement between Tahoma Terra, LLC and the City of Yelm. This condition is not applicable if the City obtains water rights through the Department of Ecology which are sufficient to serve the projected density of the City, its urban growth area, and the subject property.

Over the course of the past 15 years, developments within the MPC have proceeded, leading to a preliminary subdivision approval in 2016 for the 198 lots to be constructed in two phases subject to the amendment request.

The Hearing Examiners August 4, 2016 Report and Decision for 20160235 Tahoma Terra Phase II Division II Subdivision includes the following conclusions and conditions.

Conclusion 4. Public facilities impacted by the subdivision are either adequate and available, or the City has a plan to finance the needed public facilities that will assure retention of an adequate level of service. However, the applicant is bound by Mitigating Measure 5 of the MDNS for the overall Tahoma Terra MPC that requires it to convey sufficient water rights to the City for the entire 1,000 plus residential unit development. Said mitigating measure also provides that should the City obtain water rights through the State Department of Ecology sufficient to serve the projected density of the City, its Urban Growth Area, and the subject property, said mitigating measure is not applicable.

Conclusion 6. The proposed two phase subdivision will serve the public use and interest by providing an attractive location for a single-family residential subdivision within a master planned community that has and will provide significant amenities, and therefore should be approved subject to the following conditions:

1. The conditions of the Mitigated Determination of Non-Significance are hereby referenced and are considered conditions of this approval.
2. In accordance with the requirements of Mitigating Measure 5 of the MDNS issued for the Tahoma Terra master planned community, the construction of Phase II of this subdivision shall not be allowed until the applicant



provides water rights sufficient to serve the remaining Master Plan, or the City obtains water rights through the Department of Ecology which are sufficient to serve the projected density of the City, its urban growth area, and the subject property.

(conditions 3-14 are not subject to this amendment request)

In July 2019, the Hearing Examiner approved a preliminary subdivision, "The Hutch", for 118 lots. City staff, citing the lack of concurrency with water infrastructure, recommended denial of the subdivision, however provided conditions of approval if the examiner found that concurrency could be met. The condition placed on this subdivision was that construction could not occur unless the City made application to Ecology for water rights. The Hutch is not located within a MPC and was not subject to the terms and conditions of the Tahoma Terra MPC, or the SEPA MDNS issued for the Tahoma Terra MPC.

July 2019, Soundbuilt Homes contacted the City to submit its civil construction plans and requested determination that construction could move forward based on the Decision of the Hutch subdivision. The City replied that plans could be submitted but would not be approved for construction until the City had received its water rights pursuant to the Tahoma Terra MPC Conceptual and Final master plan approval, including its Environmental Determination.

August 2019, Soundbuilt Homes submitted civil construction plans for the 2<sup>nd</sup> phase of the Tahoma Terra PH II DIV II subdivision with the understanding that the City would not issue approved for construction plans based on Hearing Examiners Condition #2 for the subdivision.

November, 2019, Soundbuilt Homes contacted the City and requested clarification on when they could move forward with civil construction, final plat, and building permits.

The City replied that the Hearing Examiners findings and conditions were clear that no construction (including final plat) could occur until the City received water rights sufficient to serve the projected density of the City, its urban growth area, and the subject property.

Soundbuilt Homes responded that "it is our expectation that once the application has been submitted, the condition from the Tahoma Terra SEPA determination is being met." They requested an administrative decision that could be appealed to the Hearing Examiner.

December 2019, Attorney Aaron Laing contacted City Attorney Brent Dille on behalf of Soundbuilt Homes, requesting that Condition #2 be amended as follows:

#### PROPOSED CONDITION

The City is in the process of submitting an application for additional water rights to the Washington State Department of Ecology to provide sufficient water to serve the City, it's Urban Growth Area, and the subject property. Upon submittal of such application, construction is authorized under this approval, if the Community Development Department Administrator determines that water will be available at the time there will be demand for water from subdivision (i.e., at issuance of building permit). The Administrator's decision

may be reviewed by the Hearing Examiner at the request of the applicant, provide the applicant shall be responsible for any costs of the Examiner's review. Upon approval of the City's application for additional water rights, or receipt of such rights from applicant, Mitigating Measure 5 of the MDNS for the overall Tahoma Terra MPC is no longer applicable.

Note that this proposal was not to revisit and amend the MDNS conditions, but rather to allow construction of the required subdivision improvements after the City submits its water mitigation plan but prior to issuance of new water rights consistent with the Examiners decision in the Hutch.

Mr. Dille responded that the process to amend the condition was to apply for a subdivision alteration, as had been previously noted by City staff.

With the present application, Soundbuilt has changed the initial request from allowing construction prior to issuance of new water rights to approval of a final subdivision prior to issuance of new water rights.

### CURRENT SITUATION

Soundbuilt requests to amend the specific environmental conclusions and conditions above with a new condition:

No construction is authorized under this approval unless the City has made application for additional water rights with the Washington State Department of Ecology and the Community Development Department Administrator determines that water will be available at the time there will be demand for water from homes within the subdivision. The Administrators decision may be reviewed by the Hearing Examiner at the request of the applicant, provided the applicant shall be responsible for any costs of the Examiners review.

Soundbuilt seeks relief from the original SEPA conditions in order to avoid potential delays and increased cost of development for the rest of development in the Tahoma Terra Master Planned Community.

### FINDINGS AND CONCLUSIONS

#### Findings:

Tahoma Terra, through the 2005 Water Right Conveyance and Right-of-Entry Agreement, and First Amendment successfully conveyed 155.66 acre feet of water rights, which, pursuant to the agreement equals ERU's equivalent to 3.3 times the number of acre feet. The total transfer equaled 513 ERU's. With the final subdivision and building permits issued for Tahoma Terra Phase II, Division II, Phase I, all 513 1ERU's have been used.

215	Tahoma Terra Phase I, Divisions I & II
36	Fairway Oaks Multi-Family
200	Tahoma Terra Phase II, Division I
62	Tahoma Terra Phase II, Division II, Phase I
513	Total ERU used

The State Subdivision Act, Chapter 58.17 RCW, requires that the City of Yelm make a written determination that appropriate provisions are made for potable water supplies as part of the preliminary land division process. State and local code requires that water be available at the time of final subdivision and again at building permit issuance.

Recent legislation provides that there will be 5 municipal water rights pilot projects, one of which is the City of Yelm water rights package. The project must be approved, and report back to a task force. While this gives us a path forward, the process has yet to be determined.

The City submitted its water rights package under the new legislation on Monday, September 21, 2020. When approved, the City will be provided with a Report of Examination describing the amount of water rights provided to the City. At this time, we do not have a projected timeline to expect the Report of Examination.

### Conclusion:

The applicant has used all conveyed water rights for the development. The environmental and MPC approvals have been consistent in that until additional water rights are conveyed, the applicant may not receive approval of any further development permit until the City obtains water rights sufficient to serve the projected density of the City, its urban growth area, and the subject property.

The 2005 MDNS provided extended review, findings, and conclusions in regards to the mitigation measure #5 in regards to water rights.

The SEPA condition is clear that *“Prior to the approval of any development permit (including a final subdivision) beyond the 89<sup>th</sup> lot, the applicant shall convey water rights to the City of Yelm sufficient to serve the proposed use within that area of the final master site plan and the first 89 lots.”*

The requested amendment as written would remove condition #1 “The conditions of the Mitigated Determination of Non-Significance are hereby referenced and are considered conditions of approval.”

The requested amendment as written would remove condition #2 “In accordance with the requirements of Mitigating Measure 5 of the MDNS issued for the Tahoma Terra master planned community, the construction of Phase II of this subdivision shall not be allowed until the applicant provides water rights sufficient to serve the remaining Master Plan, or the City

obtains water rights through the Department of Ecology which are sufficient to serve the projected density of the City, its urban growth area, and the subject property.

### STAFF RECOMMENDATION

Section 18.14.050 YMC requires written findings prior to a decision on a preliminary subdivision.

The applicant has not provided adequate information to change the mitigating measures of the MDNS, and wishes to remove the MDNS conditions from this subdivision approval.

The Community Development Department recommends that the subdivision amendment be denied as proposed through the subdivision alteration process, but that the initial proposal by Aaron Laing on behalf of Soundbuilt to the City Attorney be approved, as follows:

The City is in the process of submitting an application for additional water rights to the Washington State Department of Ecology to provide sufficient water to serve the City, its Urban Growth Area, and the subject property. Upon submittal of such application, construction is authorized under this approval, if the Community Development Department Administrator determines that water will be available at the time there will be demand for water from subdivision (i.e., at issuance of building permit). The Administrator's decision may be reviewed by the Hearing Examiner at the request of the applicant, provide the applicant shall be responsible for any costs of the Examiner's review. Upon approval of the City's application for additional water rights, or receipt of such rights from applicant, Mitigating Measure 5 of the MDNS for the overall Tahoma Terra MPC is no longer applicable.

#### Exhibits:

Exhibit A: Soundbuilt Homes Amendment Request

Exhibit B: September 11, 2020 Notice of Application

Exhibit C: October 15, 2020 Notice of Public Hearing

Exhibit D: May 24, 2005 SEPA Mitigated Determination of Non-Significance

Exhibit E: August 4, 2016 Hearing Examiner Decision Tahoma Terra Phase II, Division II

Exhibit F: December 23, 2019 Laing to Dille Email

TAHOMA TERRA HOLDINGS, LLC

PO Box 73790

Puyallup, WA 98373

Phone: 253.848.0820

August 21, 2019

Tami Merriman  
Associate Planner  
City of Yelm  
106 Second St SE  
Yelm, WA 98597

**RE: Request to Amend SEPA Mitigating Measure 5 in Condition in Conclusions 4, 6.1. and 6.2. of the August 4, 2016 Hearing Examiner Decision Approving Tahoma Terra Phase II, Division II, Phase 2 (Tahoma Terra 5 & 6) Preliminary Plat**

Dear Tami:

This letter along with the City's accompanying application form serves as a formal request to amend the language of Mitigating Measure 5 of the May 24, 2005 SEPA Mitigated Determination of Non-Significance (MDNS) for the Tahoma Terra Master Planned Community (MPC) incorporated through Conclusions 4, 6.1. and 6.2. of the August 4, 2016 Hearing Examiner Decision approving Tahoma Terra Phase II, Division II, Phase 2 (Tahoma Terra 5 & 6) preliminary plat. No other modifications or amendments to the Preliminary Plat are sought through this request.

Mitigation Measure 5 of the SEPA MDNS for the Tahoma Terra Master Plan states:

*Mitigation Measure 5: Prior to the approval of any development permit (including a final subdivision) beyond the 89th lot, the applicant shall convey water rights to the City of Yelm sufficient to serve the proposed use within that area of the final master site plan and the first 89 lots. The conveyance shall be made to the City through a water rights agreement between Tahoma Terra, LLC and the City of Yelm. This condition is not applicable if the City obtains water rights through the Department of Ecology which are sufficient to serve the projected density of the City, its urban growth area, and the subject property.*

Conclusions 4, 6.1. and 6.2. of the Hearing Examiner's August 4, 2016 Decision approving the Tahoma Terra 5 & 6 Preliminary Plat read as follows:

*Conclusion 4: Public facilities impacted by the subdivision are either adequate and available, or the City has a plan to finance the needed public facilities that will assure retention of an adequate level of service. However, the applicant is bound by Mitigating Measure 5 of the MDNS for the overall Tahoma Terra MPC that requires it to convey sufficient water rights to the City for the entire 1,000 plus residential unit development. Said mitigating measure also provides that should the*

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*City obtain water rights through the State Department of Ecology sufficient to serve the projected density of the City, its Urban Growth Area, and the subject property, said mitigating measure is not applicable.*

*Conclusion 6.1.: The conditions of the Mitigated Determination of Non-significance are hereby referenced and considered conditions of this approval.*

*Conclusion 6.2.: In accordance with the requirements of Mitigating Measure 5 of the MDNS issued for the Tahoma Terra master planned community, the construction of Phase II of this subdivision shall not be allowed until the applicant provides water rights sufficient to serve the remaining Master Plan, or the City obtains water rights through the Department of Ecology which are sufficient to serve the projected density of the City, its urban growth area, and the subject property.*

In approving the current Tahoma Terra Phase II, Division II, Phase 2 (Tahoma Terra 5 & 6) preliminary plat, the Hearing Examiner approved an amendment to the initial October 9, 2007 preliminary plat decision in order to allow for phased development due to water availability issues. At that time, we sought but were not granted relief from Mitigating Measure 5; however, the Hearing Examiner noted in Finding 8.E. that “the applicant and City [could] amend the MPC agreement/conditions and the mitigating measures set forth in the MDNS that cover the MPC.” We now respectfully request that the City join us in our request to do just that.

Specifically, we respectfully request that the above conditions be amended and replaced with the following condition of the Hearing Examiner’s July 18, 2019 Decision to approve The Hutch preliminary plat:

*No construction is authorized under this approval unless the City has made application for additional water rights with the Washington State Department of Ecology and the Community Development Department Administrator determines that water will be available at the time there will be demand for water from homes within the subdivision. The Administrator’s decision may be reviewed by the Hearing Examiner at the request of the applicant, provided the applicant shall be responsible for any costs of the Examiner’s review.*

We understand that the City is preparing an application for water rights with the Washington Department of Ecology to bring additional water resources into their system sufficient to serve its entire Urban Growth Area, including the projected density of the City, its urban growth area, and the subject property, per the language in Mitigating Measure 5. The application may be submitted as early as September 2020. The City has approved our construction plans for the remaining portion (second phase) of Tahoma Terra Phase II, Division II, Phase 2 (Tahoma Terra 5 & 6) preliminary plat. However, we cannot commence construction, due to the above-referenced conditions.

In order to continue to work on the site and avoid potential delays, losses, increased costs and other negative aspects of ceasing site work / de-mobilizing and then trying to re-mobilize at some future

date, we seek immediate relief from the conditions incorporating Mitigating Measure 5 into the preliminary plat. Yelm Municipal Code (YMC) 18.15.050, Final master planned development, subsection D. Term. states that “A final master planned development approval is effective for five years after approval by the city council; provided, that the approval shall be extended three years from the date of approval of every project approval within the final master planned development.” The Tahoma Terra MPC remains in effect. We thus submit this application to amend Conclusions 4, 6.1. and 6.2. of the August 4, 2016 Hearing Examiner Decision approving Tahoma Terra Phase II, Division II, Phase 2 (Tahoma Terra 5 & 6) preliminary plat with the understanding that this application—*just as the prior application to amend the same preliminary plat to allow for phased development*—will in no way affect the vesting of the Tahoma Terra MPC or the approved preliminary plat.

Finally, in the spirit of the Hearing Examiner’s above-quoted comment in Finding 8.E., we ask that the City join us in our request and recommend this amendment for approval to the Hearing Examiner.

We very much look forward to working with the City to process this application. For quick reference, we have enclosed copies of the Hearing Examiner’s August 4, 2016 Decision approving Tahoma Terra Phase II, Division II, Phase 2 (Tahoma Terra 5 & 6) and July 18, 2019 Decision approving The Hutch preliminary plat. If there are any questions, comments or need for additional information needed to process this request, please feel free to reach out to me directly. Thank you for your thoughtful consideration.

Sincerely,

Evan Mann  
Entitlement Manager  
Tahoma Terra Holdings, LLC  
[evan@soundbuilthomes.com](mailto:evan@soundbuilthomes.com)

Enclosures





# City of Yelm

EST. 1924

## WASHINGTON

“Proudly Serving Our Community”

### NOTICE OF APPLICATION

**Mailed on: September 11, 2020**

PROJECT NAME: Subdivision Amendment for Tahoma Terra Phase II, Division II  
 PROJECT LOCATION: Northwest end of Tahoma Boulevard, Adjacent to Tahoma Terra Subdivision, Phase II, Division I, Yelm, WA 98597  
 PROJECT PARCEL NUMBER: 78640100019  
 LAND USE CASE NUMBER: 2020.0052

An application submitted by Tahoma Terra Holdings, LLC, PO Box 73790, Puyallup, WA 98373, for the above referenced project was received by the City of Yelm on August 25, 2020. The City has determined the application to be complete on September 11, 2020. The application and any related documents are available for public review during normal business hours at the City of Yelm, 106 2<sup>nd</sup> Street SE, Yelm WA. For additional information, please contact the Community Development Department at (360) 458-3835.

PROJECT DESCRIPTION: The applicant requests to amend the Hearing Examiner's Conditions of Approval, numbers 1 & 2, for the Tahoma Terra Phase II, Division II, subdivision, issued August 4, 2016.

ENVIRONMENTAL and OTHER DOCUMENTS SUBMITTED WITH THE APPLICATION: The application package included a letter with the specific request.

Additional Information or Project Studies Requested by the City: N/A

No preliminary determination of consistency with City development regulations has been made. At minimum, this project will be subject to the following plans and regulations: City of Yelm Comprehensive Plan, Unified Development Code Title 18 YMC, and the Stormwater Management Manual for Western Washington.

The City of Yelm invites your comments early in the review of this proposal. Comments should be directed to Tami Merriman, Community Development Department, 106 2<sup>nd</sup> Street SE, Yelm WA 98597, (360) 458-8496, or via email at [tamim@yelmwa.gov](mailto:tamim@yelmwa.gov).

### THE 15-DAY PUBLIC COMMENT PERIOD ENDS AT 5:00 PM ON September 28, 2020

This notice has been provided to appropriate local and state agencies, and property owners within 300 feet of the project site. These recipients will also receive the following items when available or if applicable: Environmental Threshold Determination, Notice of Public Hearing and Notice of Final Decision. If the proposed project requires a City Council decision, it will be mailed to all those who participate in the public hearing and to anyone else requesting the decision in writing. Additionally, there will be a 14-day public comment period if an environmental determination is issued. Opportunities for appeal occur within twenty one (21) days after the date the notice of decision is issued. City Council decision can be appealed through Superior Court.



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### NOTICE OF PUBLIC HEARING - YELM HEARING EXAMINER

DATE: Monday, October 26, 2020 – 9:00 AM

PLACE: Virtual Meeting Via Zoom

PURPOSE: Public Hearing to receive comments regarding the following:

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Testimony may be given at the hearing or through any written comments. Comments must be received by the close of the public hearing. Such written comments may be submitted to the City of Yelm at the address shown above, mailed to: City of Yelm Community Development Department, 106 2<sup>nd</sup> Street SE, Yelm WA 98597 or emailed to [tamim@yelmwa.gov](mailto:tamim@yelmwa.gov).

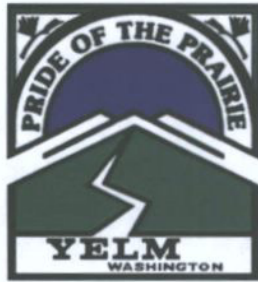
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It is the City of Yelm's policy to provide reasonable accommodations for people with disabilities. If you are a person with a disability in need of accommodations to conduct business or to participate in government processes or activities, please contact Lori Mossman at 360-458-8402 at least five working days prior to the scheduled event. For information on the Americans with Disabilities Act and the Title VI Statement visit our web page at <http://www.yelmwa.gov/human-resources/>.

Lori Mossman, City Clerk

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# MEMORANDUM

## *City of Yelm* *Community Development Department*

To: Washington Department of Ecology  
Nisqually Tribal Council  
Agencies with Jurisdiction  
Affected Agencies

From: Grant Beck, Director of Community Development

Date: May 24, 2005

Subj: SEPA Threshold determination – Tahoma Terra

Attached please find a mitigated determination of non-significance regarding Tahoma Terra, a proposed 220 acre Master Planned Community located in Yelm. The proposal includes between 880 and 1,200 dwelling units, a neighborhood commercial area, and parks and open space.

In addition to the environmental checklist, the following environmental information was included in the threshold determination:

- ✓ Expanded Environmental Checklist, March 2005, SCA Consulting Group
- ✓ Updated Wetlands Analysis, March 2005, The Coot Company
- ✓ Preliminary Drainage and Erosion Control Report, March 2005, SCA Consulting Group
- ✓ Transportation Impact Analysis, February 2005, Transportation Engineering NW

The City has adopted the following environmental documents as part of the threshold determination:

- ✓ Final Environmental Impact Statement, January 1995, City of Yelm Comprehensive Plan and Joint Plan with Thurston County.
- ✓ Final Environmental Impact Statement, March 1993, Southwest Yelm Annexation.
- ✓ Addendum to the Final Environmental Impact Statement for the Southwest Yelm Annexation, July 1994, Thurston Highlands Master Plan Application.
- ✓ Environmental Checklist and Mitigated Determination of Non-Significance, September 1999, Prairie View Master Plan.
- ✓ Critical Areas Study, December 1997, IES Associates

The referenced and adopted environmental documents may be viewed on the City of Yelm web site at [www.ci.yelm.wa.us](http://www.ci.yelm.wa.us). From the home page, go to the Community Development Department home and choose Tahoma Terra from the Agendas/Permits menu.



**Mitigated Determination of Non-Significance**  
**File Number MPD-05-0067-YL**

**Proponent:** Tahoma Terra, LLC

**Description of Proposal:** The development of a Master Planned Community on 220 acres located in southwest Yelm. The application includes:

- Conceptual Master Site Plan approval for the 220 acre parcel to include a range of housing types of between 880 and 1,200 residential units, a neighborhood commercial center, and a network of open space/recreation improvements.
- Final Master Site Plan approval for the portion of the site east of Thompson Creek. The Final Master Site Plan includes approximately 216 residential lots, 18 townhouse units, a neighborhood commercial center with approximately 100,000 square feet of gross floor area, and a portion of the community park.
- Preliminary subdivision of 89 residential lots within the Final Master Site Plan area.

**Location of the Proposal:** The Tahoma Terra Master Plan is located in the western portion of the City of Yelm, near the Nisqually Valley Golf Course and in an area known as the Southwest Yelm Annexation area.

**Section/Township/Range:** The Southwest ¼ of Section 24, and the East ½ of the Southeast ¼ of Section 23, Township 17 North, Range 2 East, W.M.

**Threshold Determination:** The City of Yelm as lead agency for this action has determined that this proposal does not have a probable significant adverse impact on the environment. Therefore, an Environmental Impact Statement (EIS) will not be required under Section 43.21C.030 (2)(c) RCW. This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request.

**Conditions/Mitigating Measures:** See Attachment A

**Lead agency:** City of Yelm

**Responsible Official:** Grant Beck, Community Development Director

**Date of Issue:** May 24, 2005

**Comment Deadline:** June 10, 2005

**Appeal Deadline:** June 17, 2005



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Grant Beck, Community Development Director

This Mitigated Determination of Non-Significance (MDNS) is issued pursuant to Section 197-11-340 (2) WAC. Comments must be submitted to Grant Beck, Community Development Department, at City of Yelm, 105 Yelm Avenue West, P.O. Box 479, Yelm, WA 98597, by June 10, 2005, at 5:00 P.M. The City of Yelm will not act on this proposal prior to June 17, 2005, at 5:00 P.M.

You may appeal this determination to the Yelm Hearing Examiner, at above address, by submitting a written appeal no later than June 17, 2005 at 5:00 P.M. You should be prepared to make specific factual objections. Contact Grant Beck, Community Development Director, to learn more about the procedures for SEPA appeals. This MDNS is not a permit and does not by itself constitute project approval. The applicant must comply with all applicable requirements of the City of Yelm prior to receiving construction permits which may include but are not limited to the City of Yelm Comprehensive Plan, Zoning Code (Title 17 YMC), Critical Areas Code (Chapter 14.08 YMC), Stormwater Drainage Design and Erosion Control Manual, International Building Code, Critical Areas Regulations (Title 14 YMC), Road Design Standards, Platting and Subdivision Code (Title 16 YMC), and the Shoreline Master Program.

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DO NOT PUBLISH BELOW THIS LINE

Published:	Nisqually Valley News, May 27, 2005
Posted in public areas:	May 24, 2005
Copies to:	All agencies/citizens on SEPA mailing list and adjacent property owners Dept. of Ecology w/checklist



**Attachment A**  
**Mitigated Determination of Non-Significance**  
**MPD-05-0067-YL**

**Findings of Fact**

1. This Mitigated Determination of Non-Significance is based on the project as proposed and the impacts and potential mitigation measures reflected in the applicant's environmental documents. In addition, per WAC 197-11-754, the following documents are directly applicable to the subject proposal and are hereby adopted by reference:

- ✓ Final Environmental Impact Statement, January 1995, City of Yelm Comprehensive Plan and Joint Plan with Thurston County.
- ✓ Final Environmental Impact Statement, March 1993, Southwest Yelm Annexation.
- ✓ Addendum to the Final Environmental Impact Statement for the Southwest Yelm Annexation, July 1994, Thurston Highlands Master Plan Application.
- ✓ Environmental Checklist and Mitigated Determination of Non-Significance, September 1999, Prairie View Master Plan.
- ✓ Critical Areas Study, December 1997, IES Associates

Environmental documents submitted as part of the application include:

- ✓ Expanded Environmental Checklist, March 2005, SCA Consulting Group
- ✓ Updated Wetlands Analysis, March 2005, The Coot Company
- ✓ Preliminary Drainage and Erosion Control Report, March 2005, SCA Consulting Group
- ✓ Transportation Impact Analysis, February 2005, Transportation Engineering NW

2. The environmental documents indicate that the property is composed of soils and substrates that are suitable for building and for stormwater infiltration. These soils will be managed on-site to provide a source of base material needed for roadway and building construction. Approximately 250,000 cubic yards of material has been identified that will be screened and processed to balance the earthwork needs on the site. Potential geologic hazard areas located on the site will be protected through the requirement of a geotechnical report prior to final Master Site Plan approval which only allows activities which: will not increase the threat of the geological hazard to adjacent properties beyond pre-development conditions; will not adversely impact other critical areas; and are designed so that the hazard to the project is eliminated or mitigated to a level equal to or less than pre-development conditions; and are certified as safe as designed by a qualified engineer or geologist.
3. There is no indication in any of the environmental documents that there will be



any potential long term significant impacts to air quality from the proposed development. Short term impacts will be related to heavy equipment exhaust and dust generated from grading and rock processing activities. The use of best management practices for air control will be required.

4. The City of Yelm's Critical Areas Code requires the identification and protection of surface and ground waters. The project proposal is on the site of the former Dragt Family Dairy that was an active dairy farm for many years and which ceased operation in 1993. The environmental documents indicate that surface waters have been identified on the site and include Thompson Creek, a seasonal Type 5 stream, and wetlands associated with this stream. The former and ongoing agricultural activities have caused degradation to the site's surface water systems and an enhancement plan has been prepared to improve the described surface waters and the wetland functions and values.
5. The City of Yelm is identified as a Critical Aquifer Recharge Area, a designated environmentally sensitive area. Potential impacts to groundwater quality and quantity will be mitigated through the implementation of standards that are technically equivalent to the Department of Ecology stormwater manual as adopted by the City of Yelm.

The City has adopted the Department of Ecology Drainage Design Manual, which requires that stormwater generated from roadways and parking facilities be treated for oils, sediments, and heavy metals before infiltration.

The neighborhood commercial element of the Master Plan allows uses that could potentially generate hazardous materials and/or fats, oil, and greases. Existing regulations require grease interceptors and hazardous material containment facilities where appropriate.

6. The environmental documents indicate that there are some plant/animal priority species and habitats in the vicinity of the project site. The predominant Oak Woodland and Shore Pine plant communities are located along the Thompson Creek corridor and associated wetlands, which are areas being enhanced for open space preservation. The animal species have been determined to only frequent the area for occasional feeding and do not use the site for breeding or nesting. The project proposal is not expected to have a significant impact on priority plant or animal species and habitats.
7. The environmental documents do not identify any potential significant impact related to the use of energy or natural resources not typical of an urban development.
8. The environmental checklist indicates temporary noise and dust would be generated from construction vehicles throughout the construction phases of this project. Construction related activity shall comply with all current State and local statutes and best management practices.



9. The environmental checklist indicates that roadways and pedestrian paths will be lit to provide safe driving and walking conditions. The expected light is not anticipated to exceed typical urban standards and therefore, is not expected to have a significant impact on surrounding areas.
10. The addition of up to 1,200 new residential units will create additional demand on the City's parks and recreational amenities. The proposed master plan will be required to provide recreational opportunities for the residents of the City of Yelm. Improvements generally include but are not limited to soccer fields, play structures, seating areas, picnic tables, restroom facilities, rock wall, bike paths, foot paths and an open water boardwalk.
11. The environmental documents have not identified any areas of historical or cultural significance. Research of the City's historic resources (1935 aerial photograph, 1918 map of the Yelm Irrigation District and Thurston County's map of Historic places, and the database of historic properties maintained by the Thurston Regional Planning Council) did not reveal any structures or locations on the subject site that have any historic or cultural significance.
12. The traffic impact analysis (TIA) submitted as part of the application indicates that upon full build out, the project could potentially generate between 13,300 – 15,300 vehicle trips per day, with a minimum PM peak of 1,400 vehicles per hour. The TIA indicates that, with average growth:

The proposal will have a significant adverse impact on specific road corridors and traffic movements at various intersections in the City, including Longmire Street and Berry Valley Road.

The proposal will lower the level of service and increase wait times at the intersection of 1st Avenue (SR-507) and Mosman Avenue, 1st Avenue (SR-507) and Yelm Avenue (SR-510) and other intersections along Yelm Avenue.

The TIA proposed specific mitigation measures for many of the identified impacts and has outlined the necessary improvements tied to specific development phases of the project.
13. The environmental checklist indicates that the proposal will require police and fire protection. The Yelm Police Department provides police services to all City residents and businesses. The construction of Tahoma Terra will create additional demand on the Yelm Police Department. The Yelm Police Department is currently located in a facility that is substandard and beyond its useful life. The Yelm Capital Facilities Plan identifies a need to replace this facility.

SE Thurston Fire/EMS provides Fire and Basic Life Support services to City of Yelm residents and businesses. The Tahoma Terra project will create additional demand on the Yelm Fire District.
14. Impacts to fire protection services will be mitigated through the provision of fire



flow and emergency vehicle access, and structures which will be built to current building and fire codes.

15. The City of Yelm has adopted comprehensive Water and Sewer System Plans and a Reclaimed Water Facilities Plan to guide orderly extension of the City's infrastructure improvements. These system plans anticipated the build out of the southwest Yelm annexation area. Upgrades and extension of these utilities, consistent with the adopted system plans, will be necessary to provide adequate levels of water and sewer service to the subject site.
16. The Environmental Impact Statement for the southwest Yelm annexation indicated that development within the annexation area, including the subject property, would be required to provide water rights to the City sufficient to serve the subsequent development of the properties. The property has recorded water rights that the applicant intends to transfer to the City of Yelm to provide for the development of the property.

The property has been assessed through the City's sewer local improvement district, which includes a commitment by the City to provide water and sewer service for no more than 89 single family residential units prior to any water rights transfer.

If the Washington Department of Ecology does not approve a transfer of water rights, or the transfer does not include sufficient water to serve the proposed development, final subdivision approval of any phase beyond the 89 lots could not be approved.

17. The City of Yelm has adopted a concurrency management system as required by the Growth Management Act. Chapter 15.40 YMC (Concurrency Management) is designed to ensure that the improvements required to support development are available at the time of development. A concurrency determination may be issued for a proposal as it relates to transportation issues when: the development provides on-site frontage improvements; the project makes off-site improvements as necessary to provide for the safe movement of traffic; and the project makes a contribution to projects identified in the six year transportation improvement program in the form of a Transportation Facilities Charge.

The Growth Management Act at Section 36.70.070 (6)(b) RCW states that a finding of concurrency can be issued when required improvements are in place at the time of development or that a financial commitment is in place to complete the improvements or strategies within six years.

18. This threshold determination and adoption of previous environmental documents will be used for all future development permits and approvals within the Conceptual Master Site Plan of Tahoma Terra provided that those permits and approvals are consistent with the application and approval for the Conceptual Master Site Plan.



### **Mitigation Measures**

1. The developer shall mitigate transportation impacts through the payment of a transportation facility charge (TFC) pursuant to Chapter 15.40 YMC. The fee shall be paid at the time of building permit issuance.
2. The applicant shall be responsible for the following transportation improvements:
  - ✓ Prior to the final subdivision approval of any lots the applicant shall reconstruct Longmire Street to a modified collector standard from the project entry to Yelm Avenue West (SR 510).
  - ✓ Prior to the approval of any development permit (including a final subdivision) which includes the 90th peak P.M. trip generated from the project, the applicant shall construct a center left-turn lane on Yelm Avenue West (SR-510) at the Longmire Street intersection with sufficient storage to serve the anticipated traffic volumes generated by the project.
  - ✓ Prior to the approval of any development permit (including a final subdivision) which includes the 513th peak P.M. trip generated from the project, construction of the Killion Road Boulevard extension from the property to Yelm Avenue West (SR-510) along with the realignment of Killion Road, a traffic signal, and left turn lanes on all four legs of the intersection with sufficient storage to serve the anticipated traffic volumes generated by the project.
  - ✓ Prior to the approval of any development permit (including a final subdivision) which includes the 1,100th peak P.M. trip generated from the project, reconstruct Mosman Avenue to modified collector standards from Longmire Street to 1st Avenue (SR-507) and the Mosman Avenue/1st Avenue intersection to include realignment and a center left-turn lane on 1st Avenue (SR-507) with sufficient storage to serve the anticipated traffic volumes generated by the project.
  - ✓ Prior to the approval of any development permit (including a final subdivision) which includes the 1,301st peak P.M. trip generated from the project, define and construct the Mosman Avenue connector between Longmire Street and Solberg Street OR; continue the Boulevard to SR 507 through the Thurston Highlands property.

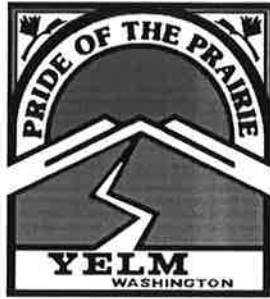
Plans for approval of all transportation improvements associated with Yelm Avenue (SR 510) and 1st Avenue (SR 507) shall be submitted to the Washington Department of Transportation and the City of Yelm for review and approval and all required improvements shall be constructed by the applicant pursuant to approved plans, and inspected and approved by the City of Yelm and Washington Department of Transportation.

3. To mitigate previous impacts from agricultural activities to surface waters, plant

communities and animal communities along the Thompson Creek corridor and its associated wetlands, the applicant has prepared a mitigation and enhancement plan to improve the surface water features of the site for both habitat and recreation purposes. Each Final Master Site Plan shall include a schedule for implementing improvements tied to the number of dwelling units of each subdivision within the Master Planned Community.

4. The developer shall enter into an agreement with Yelm Community Schools to mitigate project impacts to the School District.
5. Prior to the approval of any development permit (including a final subdivision) beyond the 89th lot, the applicant shall convey water rights to the City of Yelm sufficient to serve the proposed use within that area of the final master site plan and the first 89 lots. The conveyance shall be made to the City through a water rights agreement between Tahoma Terra, LLC and the City of Yelm. This condition is not applicable if the City obtains water rights through the Department of Ecology which are sufficient to serve the projected density of the City, its urban growth area, and the subject property.
6. Prior to disturbance of any identified geologic hazard area, the applicant shall submit to the City of Yelm Community Development Department a geotechnical report that identifies established best management practices for all activity within the geologic hazard areas and only allows activities which:
  - ✓ will not increase the threat of the geological hazard to adjacent properties beyond pre-development conditions;
  - ✓ will not adversely impact other critical areas;
  - ✓ are designed so that the hazard to the project is eliminated or mitigated to a level equal to or less than pre-development conditions;
  - ✓ are certified as safe as designed by a qualified engineer or geologist.
7. Prior to building permit issuance, the applicant shall enter into a mitigation agreement with the City of Yelm which includes a mitigation fee toward the replacement of a police station required to be expanded in order to serve the proposed development. The mitigation fee shall be based on the applicant's aliquot impact on the need for replacement police station, which is \$310 per housing unit.





# City of Yelm

## Community Development Department

105 Yelm Avenue West

P.O. Box 479

Yelm, WA 98597

August 4, 2016


Tahoma Terra Holdings, LLC  
P.O. Box 73790  
Puyallup, WA 98373

**RE: Tahoma Terra Phase II, Division II Subdivision**

Dear Applicant:

Transmitted herewith is the Report and Decision of the City of Yelm Hearing Examiner relating to the above-entitled matter.

Very truly yours,

  
**STEPHEN K. CAUSSEAU, JR.**  
Hearing Examiner

SKC/kmh

cc: Parties of Record

**OFFICE OF THE HEARING EXAMINER**

**CITY OF YELM**

**REPORT AND DECISION**

**CASE NO.:**           **20160235**  
                              **Tahoma Terra Phase II, Division II Subdivision**

**APPLICANT:**        Tahoma Terra Holdings, LLC  
                              P.O. Box 73790  
                              Puyallup, WA 98373

**AGENT:**             KPFF Consulting Engineers  
                              612 Woodland Square Loop S.E., Suite 100  
                              Lacey, WA 98503

**SUMMARY OF REQUEST:**

Preliminary subdivision approval to allow creation of 198 parcels in two phases at a site located at the west end of Tahoma Boulevard, adjacent to Tacoma Terra Phase II, Division I. Tax Parcel numbers 786440000019, 786400000020 and 786400000033.

**SUMMARY OF DECISION:**                   Request granted, subject to conditions

**DATE OF DECISION:**                   August 4, 2016

**PUBLIC HEARING:**

After reviewing Community Development Department Staff Report and examining available information on file with the application, the Examiner conducted a public hearing on the request as follows:

The hearing was opened on July 25, 2016, at 9:00 a.m.

Parties wishing to testify were sworn in by the Examiner.

The following exhibits were submitted and made a part of the record as follows:

- EXHIBIT "1"**    -   **Community Development Department Staff Report with Attachments**  
**EXHIBIT "2"**    -   **Emails between Grant Beck and Ron Harding**

- EXHIBIT “3” - Email from Tami Merriman to John Harkness dated July 21, 2016**
- EXHIBIT “4” - Photographs and Aerial View**
- EXHIBIT “5” - Report and Decision dated January 12, 2016**
- EXHIBIT “6” - David Lockyer Comments**
- EXHIBIT “7” - Letter from Stephen R. Klein**

**The Minutes of the Public Hearing set forth below are not the official record and are provided for the convenience of the parties. The official record is the recording of the hearing that can be transcribed for purposes of appeal.**

TAMI MERRIMAN appeared, presented the Community Development Department Staff Report, and testified that the applicant proposes to phase the development into 62 lots now and 136 lots later. The original preliminary subdivision decision was issued in 2007 and remains valid until October, 2017. The applicant reapplied for a phased development that will change the project from the full 198 lots to 62 now and 136 later. The density will range between four and six dwelling units per acre, and she referred to the differences in setbacks as shown on Page 2 of the Staff Report. The City provided public notice and posted the site in several locations. The overall Tahoma Terra development contains 200 acres and the City performed a SEPA evaluation for the entire project. The conditions and mitigating measures become applicable as the project develops. The City reviewed the traffic impacts for the entire project and the applicant has constructed most of the road. They also contributed to an LID for other improvements. The applicant originally proposed to provide sufficient water for a total of 513 connections to the City's water system. However, the applicant has only 62 connections, which is the reason for the phasing. All development matches the Final Master Plan approval. The City desires an emergency vehicle access consisting of a gravel road from Road "A" on the subdivision map. Concerning stormwater, no change to the project will occur even though the City has adopted new regulations. The City and the applicant met and executed a memorandum of understanding to allow some changes to the regulations. She then discussed concurrency and noted that no evidence exists of gophers or moles on the site, but that the mailboxes will change. Staff recommends approval subject to the conditions from the previous approval. She then introduced Exhibit 2, comments regarding water, traffic, and schools.

AARON LAING, attorney at law, appeared on behalf of the applicant and testified that he agrees with the Staff Report recommendations. He then questioned Ms. Merriman, who responded that the letter of understanding is dated May 24, 2016, that the parties reached agreement of their dispute, and that all stormwater issues are resolved. Mr. Laing testified that because the City has no preliminary plat amendment process is the effect of the application an amendment or is a new application, and what is the expiration date of the plat.

MS. MERRIMAN responded that the present subdivision application is under the five year limitation. Concerning the water issue, the applicant cannot obtain final plat



approval until it has provided the water. Ms. Merriman also responded that the MDNS requires the transfer of water rights, but only 62 lots are left. She has included a condition that the other lots cannot be connected until the applicant provides water. This does not affect the number of lots approved, but affects when they can be built.

MR. LAING then stated that the issues concern water rights, the type of EVA, the replacement of landscaping along Longmire Street and clarification thereof, and finally, a clarification of the stormwater facilities in separate tracts.

JOHN HARKNESS appeared and introduced Exhibit 3, a July 21, 2016, email from Ms. Merriman to himself and Exhibit 4, photographs of the planter strip. He questioned the necessity of removal of about 3,000 linear feet of landscaping. A lot of the landscaping is in good condition as shown on the photograph. They have performed the work, they installed the planter strips, and installed the street trees in 2005. They will enter into a maintenance agreement. The streets are now under City control. The condition seems to require that they must tear everything out and remove all of the landscape plants. The condition is not clear. The City is responsible for maintaining the street. He then introduced Exhibit 5, an Examiner Decision dated January 12, 2016, for another plat that addresses water provision.

DOUG BLOOM appeared and testified that his company did transfer water rights to the City for Tahoma Terra. He also bought and owned the golf course but could not complete the water rights transfer due to the economic downturn. However, the City did complete the transfer. Concerning Longmire Street, he felt that when he built the street and installed the landscaping, he was finished. The City took responsibility for the street to include the street trees. He investigated other water rights but nothing was available. If he had completed the transfer of the golf course water rights, he could have completed the project.

MR. LAING then reappeared and testified that he agrees with the City on the process, that the subdivision is within the master plan, and is a two phase plat. They have clarified the stormwater issues and they agree with the City's request for EVA. They should not be required to provide a separate tract for the stormwater facilities until the project is completed and they know the storm location for sure. A major issue is the landscaping along Longmire. The condition was previously met per Mr. Bloom's testimony and the photographs substantiate their position. This application that merely phases a previously approved project does not create the nexus for the landscaping. They are not impacting the landscape strip one way or the other. If the Hearing Examiner feels that the condition is either carried forward or not met then they need clarification regarding the trigger. The landscaping should not be required prior to the development of all of Phase II. They need some clarification of what to do. The proposed condition regarding water service is a problem. Phase II can't go forward unless the applicant provides water. The applicant contemplated the golf course rights to serve the entire development, but the applicant does not have the authority to transfer water rights. The condition could be considered met as the applicant could

have transferred the golf course rights. Concerning Condition 2, the City has obtained the projected density under UGA. However, they can't go forward until they have a 20 year growth projection. This project is within the City's water service area. Municipal water or sewer can be denied only if there is no capacity. He referred to the Yakima Fire Protection District No. 12 Supreme Court Decision and two Court of Appeals Decisions. He also encouraged the Examiner to review his own January 12, 2016, Decision. Ms. Merriman testified in January that the City had 475 connections. If the City only had 198 connections, it would have sufficient water for both phases. The issue is whether water is available at the time Phase II comes on. The City now has sufficient water to serve Phase II. The conditions should reflect the City's duty to serve per the Supreme Court and Court of Appeals. If they are ready to develop Phase II, they want to make sure they can apply if water is available. When Mr. Bloom completed the water transfers for Tahoma Terra an ERU equaled 300 gallons per day. In 2014, the City redefined ERU to 275 gallons per day. This amount is in the Comprehensive Plan and reflects conservation. The amount that Tahoma Terra transferred initially was under the old water rights standard and the new standard yields 40 percent more connections. The City has subsequently determined that the actual ERU is 188 gallons per day. The City may revise its projections in the future, and they do not want to be locked in. The decision should be clear regarding whether they can seek approval of the subdivision and the capacity of the water.

CLINT PIERPOINT, professional engineer, appeared and testified that staff has done a thorough job describing the plat. They already have approval for 198 lots and all conditions of approval are acceptable. They are just asking for a reallocation of lots. The conditions should remain the same, more or less, to include Longmire Street. The City assured them it was complete ten years ago. The stormwater ponds will be relocated. They don't want a required tract on the plat now as they may have to move it. The ultimate goal is to provide a permanent tract dedicated to the homeowner's association and that is not appropriate now. They have reached agreement with the City regarding the stormwater requirements. They will use a combination of the 1992 Manual and the current manual. The permanent stormwater tract decision should be deferred to the end of Phase II.

KURT WILSON appeared and testified that he had discussions with the City regarding the water. Over time the water volume for an ERU has been reduced. The City is using the 2005 calculations. What transferred originally created 40 percent more connections using today's calculations. 62 units are tied to the original water rights volume. If we use the current code, Tahoma Terra would have more ERUs.

PAUL SASSE appeared and testified that the applicant has developed the project in a very professional manner and that traffic control has been done well. The applicant installed a water tower in a park area. They should provide additional park area to replace the amount lost. He told that they have adequate playgrounds, and that the new builder will build more parks. He questioned who is responsible for parks, the owner or the City? There is no place for the children to play and construction vehicles

will be in the area consistently. The developer has done a good job but the question is access. He is also concerned about empty pockets of lots that have not been developed. The builder has been nice and has maintained contact with him, but he remains concerned about the area parks. Someone should install a playground area. Exhibit 6, a letter from David Lockyer, also urging completion of empty lots before approving more, was introduced into the record.

ANGELA CID appeared and testified that she has concerns regarding the issues of stormwater. The area floods during every rainy season and military families are buying homes where builders have cut corners and did low quality work. More development will create more concerns and her big issue is the streets. We must look at the impacts on the people who live there. Very little space on the streets exist and what has been put in place is not of good quality.

STEPHEN KLEIN appeared and read his statement into the record. He supports development that invests in the community. He wants to see the City ensure that such occurs. He then read from 2011 and 2015 Washington Supreme Court cases. The question is raised once again as to whether the City has sufficient water rights. He believes the City only has 72 connections for water. The City is approving 100 building permits per year in addition to Tahoma Terra, and therefore lacks the volume of water to support this project. Once again, the City cannot impair senior water rights. A key omission in the evaluation is whether the water for 62 lots will impair senior water rights of existing users.

PHAEDIA KELLEHER appeared and testified that she is an 18 year resident and has no concerns with water pressure, but does have concerns regarding schools. Citizens have not passed bonds for Yelm Public Schools for years and they are overcrowded. A four lane road provides access into the subdivision, but the bypass doesn't help traffic traveling through Yelm. The schools have cut their services and the number of bus drivers. Water bills continue to increase. The applicants were supposed to provide parks, but they are not there. Nothing in the area provides activities for children who may live here. There are not enough parks now for children. Where will the new children go when the homes are built?

AL CHINN appeared and testified that his concerns are traffic flow and the time it takes to get through town. The new project will add more traffic.

KATIE WIKTONSKI from Roy appeared and testified that we are building more residential homes while it now takes a half hour to 45 minutes to get to Yelm. Something needs to be done. People will no longer come to Yelm to shop as they can't get in and out of town. Concerning schools, she worked for the school district in 2012 and at that time no room existed on the buses and children were required to sit three per seat. These new houses will make things worse. She recommended holding the subdivision until the infrastructure catches up.

MR. SASSE then reappeared and discussed the problem with business as opposed to people.

MS. MERRIMAN reappeared and testified that she has no problem with the applicants' request regarding the stormwater pond location. They can locate it in a permanent tract when the final location is decided. Concerning water rights, the agreement with the applicant was 3.3 dwelling units per acre foot for a total of 513. That agreement has to be changed in another forum. Concerning the golf course, the City did transfer the water rights, paid for them, and put the water into its water rights bank. The City Council will not annex a property without the corresponding water rights to serve it. The water rights are available within the City limits for the City's customers. The MDNS issued for the original Tahoma Terra project required that the applicants secure water rights themselves or wait for the City to provide them. Traffic problems are regional in nature. The City is working with the Department of Transportation to complete the bypass and, funding is available. The applicant will pay significant mitigation fees to the school district. The City is keeping close track of water connections. The City records show 420 connections available in June, 2016.

MR. LAING then recalled Mr. Harkness as a witness who testified that the applicant will build parks pursuant to the requirements of the master plan. They will also complete pocket parks and are addressing the active recreation requirements. Concerning the lots, the reason we are here today is because we are running out of lots. By the time Phase I is ready they will have sold all lots and none will be available. Impact fees address traffic and schools and they also have significant requirements per the MDNS. He is aware of the flooding and they know the cause, which was a plugged culvert. They have addressed the issue.

MR. WILSON reappeared and testified that stormwater issues occurred during the construction of the water tank. Stormwater flowed west from the construction area and plugged a catch basin. Water backed up into a subdivision as it could not get to the pond. They have remedied the situation. They did sell lots to a certain builder who did not construct the foundations correctly. The builder did not evaluate the soils and did not provide proper infiltration trenches for the roofs that had to be at depth. This applicant has helped mitigate those issues to include retrofitting the homes so that the roof runoff can tightline to the drainage system. It is unfortunate that the builder did not do quality work.

MR. LAING reappeared and testified that the City has the water rights contemplated for the development. The City acquired water rights for all residents of the City. He has no argument that the applicant waived its rights to ask for the connections, and 62 connections remain per the agreement. Mr. Klein's testimony did not reflect that the Supreme Court focused on a plat condition that used the term "and/or". The Supreme Court liked what the Examiner said about water availability at final plat approval. He does not want to see a condition that prohibits the property owners from requesting water service.

No one spoke further in this matter and so the Examiner took the request under advisement and the hearing was concluded at 11:15 a.m.

**NOTE:** A complete record of this hearing is available in the City of Yelm Community Development Department.

## **FINDINGS, CONCLUSIONS AND DECISION:**

### **FINDINGS:**

1. The Hearing Examiner has admitted documentary evidence into the record, previously viewed the property, heard testimony, and taken this matter under advisement.
2. The City of Yelm responsible official issued a Mitigated Determination of Non-significance (MDNS) following review pursuant to the State Environmental Policy Act (SEPA) in accordance with Section 197-11-158 WAC on May 24, 2005.
3. Notice of this application was mailed to state and local agencies and property owners within 300 feet of the site on June 13, 2016 as well as published in the Nisqually Valley News in the legal notice section on June 17, 2016. Notice of the date and time of the public hearing before the Hearing Examiner was posted on the project site, mailed to property owners within 300 feet of the site, and mailed to the recipients of the Notice of Application on July 13, 2016. Notice of the public hearing was published in the Nisqually Valley News in the legal notice section on Friday, July 15, 2016. Comments were received from the Washington Department of Ecology, which noted that the project is subject to existing regulations regarding toxics and waste cleanup and water quality.
4. The Tahoma Terra Master Planned Community (MPC) consists of a generally rectangular, 220 acre parcel of property located south of SR-510 and west of SR-507 in the southwestern area of the City of Yelm. The MPC is a portion of the 1993 southwest Yelm annexation that also included the 1,300 acre Thurston Highlands property, the golf course, and 150 additional acres. As part of the annexation process the City prepared an Environmental Impact Statement (EIS) that assessed the impacts of up to 5,000 dwelling units to include several potential master planned communities to include the Tahoma Terra MPC. A previous owner submitted an application for approval of a conceptual site plan for the Tahoma Terra MPC on March 25, 2005.
5. A conceptual master site plan is initially reviewed by the Hearing Examiner for consistency with the City of Yelm Comprehensive Plan and other adopted plans and policies. The Examiner then makes a recommendation to the Yelm City Council for final action. In the present case the Examiner conducted a public

hearing on the Tahoma Terra conceptual master site plan on July 11, 2005, and issued a recommendation of approval to the City Council on August 2, 2005. The City Council conducted its own public hearing on August 10, 2005, and subsequently approved the Tahoma Terra conceptual master site plan. The Examiner then conducts a public hearing to consider the final master site plan. The Examiner determines whether the final master site plan is consistent with the conceptual site plan and whether it complies with the policies of the Comprehensive Plan and the purposes of Section 17.62.020 of the Yelm Municipal Code (YMC). Following a public hearing, the Examiner approved the Tahoma Terra final master site plan. The Examiner then conducted a public hearing to consider Phase II of Tahoma Terra on May 15, 2006, and issued a Decision approving the final master site plan for Phase II on June 6, 2006. Individual development applications within Phase II such as the present phased preliminary plat application are reviewed for consistency with the conceptual and final master site plans. In the present case, the Examiner conducted a public hearing on July 23, 2007, to consider Divisions 5 and 6 of Tahoma Terra Phase II that together proposed a subdivision of approximately 32 acres west of Thompson Creek (the present site) into 198 single-family residential lots. The Examiner issued a decision approving the preliminary plat on October 9, 2007.

6. The conceptual Tahoma Terra master site plan application shows that 33 percent of the 220 acre site will remain in open space to include 24 acres of wetlands and creek, and 38 additional acres. The net developable area of 147 acres will result in a minimum of 880 and a maximum of 1,200 dwelling units. The conceptual plan shows 1,092 dwelling units consisting of 872 single-family dwellings, 80 townhouses, and 140 apartments. The plan also shows between one and ten acres of commercial uses.
7. The Examiner's approval of Tahoma Terra Phase II, Divisions 5 and 6 remains effective until October 9, 2017, in accordance with RCW 58.17.140, a portion of the State Subdivision Act. Thus, the applicant could proceed with construction of the 198 lots as previously approved. However, due to water availability issues, the applicant has submitted a new application to subdivide the same 32 acres tract into the same 198 lots, but this time in two phases. Phase I will consist of 62 lots, for which the City asserts the applicant has provided potable water connections. Phase II consists of 136 lots that the applicant proposes to develop at a later date. The applicant asserts that the City has sufficient water connections for Phase II, but the City disagrees. Residents speaking in opposition to the project assert that the applicant may not have adequate water connections for all of the 62 lots proposed in Phase I.
8. The following findings are hereby made on the water availability issues:
  - A. The applicant requests approval of a 62 lot, preliminary plat (Phase I). The applicant must show water availability at the time of final plat

approval. Both the City and the applicant agree that the Tahoma Terra MPC transferred sufficient water rights to provide water for the 62 lots in Phase I. However, others with standing may challenge the availability of water at final plat approval.

- B. The original applicant for the Tahoma Terra MPC proposed to provide water for the entire Tahoma Terra project by acquiring and transferring water rights from the Draght farm and golf course. The original applicant did transfer water rights from the Draght farm, but due to financial issues, was unable to complete the transfer of water rights from the golf course. However, the City completed the transfer, paid the costs of the transfer, and subsequently gained approval of the transfer from the State Department of Ecology (ECY). Since the City completed and paid for the transfer, the City placed the water rights within its citywide water bank and did not credit Tahoma Terra for said rights. Therefore, the City asserts that Tahoma Terra must provide its own water rights for its remaining 132 lots.
- C. Tahoma Terra argues that either:
  - (1) It was responsible for the transfer of the golf course water rights; or
  - (2) The City should allow it to apply for water rights the same as other preliminary plat applicants such as Mountain Terrace Builders, LLC, in accordance with the Examiner's Decision dated January 12, 2016.
- D. Based upon the above, the original Tahoma Terra applicant did not fulfill the requirements of the MDNS to provide a sufficient water supply for the overall development. When the City perfected and paid for the transfer, it properly placed the water within the overall City water bank. Therefore, the golf course water rights cannot be credited to Tahoma Terra.
- E. As found above, the 132 lot Phase II is part of a much larger 1,000 plus dwelling unit project that was part of an even larger annexation by the City of Yelm. From the beginning of the overall master plan development, both parties understood and agreed that the MPC had to provide its own water supply. The applicant could easily have done so except for the financial issues caused by the recession. Transfer of the farm and golf course water rights would have easily covered all of the contemplated Tahoma Terra development. However, such did not occur. Therefore, this applicant and applicants for other developments in Tahoma Terra will need to provide their own water supply as contemplated by MPC approval and as required by the MDNS. It is not proper or possible to consider Phase II, Divisions 5 and 6 separate from all other future development in



Tahoma Terra approved by the overall development plan. The applicant and Tahoma Terra may agree to allow the applicant to apply for water connections from the overall City water bank. Such would require the applicant and the City to amend the MPC agreement/conditions and the mitigating measures set forth in the MDNS that cover the MPC. Such is beyond the scope of this hearing. Until such change is made, the applicant has water available for 62 lots.

9. The applicant objects to language in proposed Condition 8 that reads:

The final landscape plan shall also include the restoration of the planter strips on Longmire Street between the Tahoma Terra Master Planned Community and SR 507 with drought tolerant shrubs, a weed barrier, and landscape material.

The applicant asserts that such condition would require it to rip-out 3,000 linear feet of planter strips, some of which are attractively planted with street trees and grass (See Exhibit 4). The applicant further asserts that it installed the landscaping pursuant to MPC requirements and that the City accepted Longmire Street when the improvements were installed in 2005. The Examiner agrees that the above quoted language of Condition 8 could be interpreted as the applicant suggests. It does not appear logical to replace street landscaping that is attractive and well-maintained. However, subdivision traffic will utilize Longmire Street for access. Therefore, where necessary to provide an attractive entrance into Tahoma Terra, the applicant should install landscaping in accordance with Condition 8. A modified condition requires the applicant and staff to evaluate the landscaping and decide on which areas of the landscaping need restoration. Should the parties not reach agreement, the matter may be returned to the Examiner for resolution.

10. The applicant has agreed to provide an Emergency Vehicle Access (EVA), consisting of a gravel road at the location described in Condition 3. Furthermore, the City has agreed to a modification regarding the final location of the stormwater facility tract.
11. Pages 3-7 of the Staff Report set forth applicable mitigating measures of the MDNS and applicable conditions of approval of the conceptual master site plan and final master site plan. The Examiner adopts staff's findings on said criteria as his own as if set forth in full.
12. Concerning concurrency requirements, findings of water availability were made hereinabove. Concerning sanitary sewer service, the project site is within the City's Sewer Comprehensive Plan, and the applicant must comply with all criteria to connect the Phase I preliminary plat to the City's S.T.E.P. sewer system. The applicant will need to comply with a fire impact fee ordinance if adopted by the

Yelm City Council. Such fee would be collected at the time of building permit issuance.

13. Concerns raised by residents include the overcrowding of Yelm Community Schools, the inability of the school district to provide adequate bus service (seating students three per chair), and the significant, additional overcrowding that will occur upon approval of the subdivision. However, in accordance with YMC 18.16.090(B), the developer of Tahoma Terra entered into a mitigation agreement with Yelm Community Schools and makes a per lot payment to the school district prior to the issuance of building permits. Such ensures that the subdivision, in addition to taxes paid by individual homeowners, makes appropriate provision for schools and school grounds.
14. Residents raise significant concerns regarding existing traffic problems within the City of Yelm and the exacerbation of said problems by approval of the proposed subdivision. Residents correctly assert that the City presently has significant traffic congestion problems and has had such problems for years. The congestion is primarily caused by the intersection of two State highways in the downtown area. One of said highways, SR-510, provides access to Yelm from unincorporated Thurston County and the cities of Lacey, Olympia, and Tumwater. SR-510 traverses a portion of the City in an east-west direction and is known as Yelm Avenue. The second highway, SR-507, provides access to Yelm from unincorporated areas and from the cities of Rainier, Tenino, Centralia, and Chehalis to the south. SR-507 also provides access from unincorporated Pierce County, McKenna, Roy, Joint Base Lewis-McChord, and the Spanaway area south of Tacoma. Thus, the traffic issues are regional in nature and placing a moratorium on development will not reduce present congestion nor will it ensure that future congestion will not occur. Legislative bodies of cities and counties whose citizens use said State highways will not declare moratoriums. The City continues to work with the Washington State Department of Transportation (DOT) to construct a bypass around the City that should relieve the downtown area of through traffic. The Yelm City Council has the authority to declare a moratorium and not the Examiner. Furthermore, this applicant has provided significant traffic improvements as required by the MDNS (page 3 of the Staff Report) and will continue to make improvements as development continues (see pages 3 and 4 of the Staff Report).
15. In 2008, the Washington Department of Fish and Wildlife designated the Mazama Pocket Gopher as a threatened species. The City has protected this species through the implementation of its critical areas code set forth in Chapter 18.21 YMC. The code requires that when a development is proposed on property that could be used as habitat by the gopher, the proponent must prepare a critical areas report that includes mitigating measures. In the present case, City Community Development Department staff reviewed soil maps in the area of the preliminary plat and determined the area to be of low habitat

suitability for the pocket gopher. The City therefore did not require preparation of a critical areas report.

16. Concerns raised by residents address the lack of parks and recreation for children residing in the subdivision. Residents specifically refer to the elimination of a three acre community park and replacement with a water tower. The overall Tahoma Terra MPC provides approximately 60 acres of open space land that includes Thompson Creek and its associated flood plain and wetland system. The applicant must also provide pocket parks at the ratio of one acre for every 50 lots pursuant to Conditions 11 and 12 of the conceptual master plan approval. The proposed preliminary plat along with the overall master site plan ensures appropriate provision for parks and recreation and playgrounds.
17. The City and the Tahoma Terra Holding, LLC, (developer) initially disputed the stormwater permitting requirements for the subdivision. The parties reached agreement regarding stormwater quality and quantity controls for the subdivision and memorialized them in a letter of understanding dated May 24, 2016. Compliance with said letter of understanding will assure that the plat makes appropriate provision for drainage ways and other stormwater facilities.

#### **CONCLUSIONS:**

1. The Hearing Examiner has jurisdiction to consider and decide the issues presented by this request.
2. The applicant has shown that the request for phasing development of Tahoma Terra Phase II, Division II, into 62 single-family residential lots in Phase I and 136 lots at a later date makes appropriate provision for the public health, safety, and general welfare for open spaces, drainage ways, streets, roads, alleys, other public ways, transit stops, potable water supplies, sanitary waste, parks and recreation, playgrounds, schools and school grounds, sidewalks, and safe walking conditions.
3. The proposed subdivision conforms with the R4-6 zone classification applicable in the Tahoma Terra MPC as well as other development regulations adopted specifically therefor and for the City overall.
4. Public facilities impacted by the subdivision are either adequate and available, or the City has a plan to finance the needed public facilities that will assure retention of an adequate level of service. However, the applicant is bound by Mitigating Measure 5 of the MDNS for the overall Tahoma Terra MPC that requires it to convey sufficient water rights to the City for the entire 1,000 plus residential unit development. Said mitigating measure also provides that should the City obtain water rights through the State Department of Ecology sufficient to serve the

projected density of the City, its Urban Growth Area, and the subject property, said mitigating measure is not applicable.

5. The project is within the City's sewer service area which has capacity to serve all lots.
6. The proposed two phase subdivision will serve the public use and interest by providing an attractive location for a single-family residential subdivision within a master planned community that has and will provide significant amenities, and therefore should be approved subject to the following conditions:
  1. The conditions of the Mitigated Determination of Non-Significance are hereby referenced and are considered conditions of this approval.
  2. In accordance with the requirements of Mitigating Measure 5 of the MDNS issued for the Tahoma Terra master planned community, the construction of Phase II of this subdivision shall not be allowed until the applicant provides water rights sufficient to serve the remaining Master Plan, or the City obtains water rights through the Department of Ecology which are sufficient to serve the projected density of the City, its urban growth area, and the subject property.
  3. A temporary emergency fire lane meeting the International Fire Code requirements shall be provided at the south end of Road "A", connecting to the City temporary access on Tahoma Boulevard.
  4. Each dwelling unit within the subdivision shall connect to the City water system, pursuant to the terms of the water right conveyances, including the terms for issuance of building permits and water connection fees.
  5. All conditions for cross connection control shall be met as required in Section 246-290-490 WAC.
  6. Each dwelling within the subdivision shall connect to the City S.T.E.P. sewer system. The connection and inspection fees will be established at the time of building permit issuance.
  7. Any irrigation systems for planting strips in the Boulevard and collector streets, any large open spaces, and stormwater tracts shall be served by an irrigation system utilizing reclaimed water where available and approved through a reclaimed water user's agreement. Civil engineering plans shall identify proposed reclaimed water lines, meters, and valves pursuant to adopted City standards.

8. The final landscape plan submitted as part of the civil plan review shall include details of the active recreation component of each pocket park. The final landscape plans shall meet the standards of Chapter 18.55 YMC as amended in the final master site plan approval. All landscaping within City right-of-way, including all planter strips in the Boulevard and internal streets, shall include drought tolerant shrubs, a weed barrier, landscaping material, and drip irrigation. The applicant and City staff shall review the condition of the planter strips on Longmire Street between the Tahoma Terra master planned community and SR-507. Where necessary the applicant will restore the planter strips by planting draught tolerant shrubs, installing a weed barrier, and other landscape material. If the parties cannot reach agreement on which areas of the planter strips need restoration or how restoration will occur the matter may be returned to the Examiner for resolution.
9. The final stormwater plan shall be consistent with the 1992 DOE Stormwater Manual and amended pursuant to the Letter of Understanding between the Tahoma Terra Master Planned Community and the City, dated May 24, 2016. Stormwater facilities shall be located in separate recorded tracts owned and maintained by the homeowners association. The stormwater system shall be held in common by the Homeowners Association and the homeowner's agreement shall include provisions for the assessment of fees against individual lots of the maintenance and repair of the stormwater facilities. All roof drain runoff shall be infiltrated on each lot utilizing individual drywells, unless the need for conveyance to the stormwater system is needed.
10. The civil engineering plans shall include the location of fire hydrants consistent with the Yelm Development Guidelines and applicable fire codes. The plan shall include fire flow calculations for all existing and proposed hydrants and the installation of hydrant locks on all fire hydrants required and installed as part of development.
11. The civil engineering plans shall include street lighting consistent with the final master site plan approval.
12. The civil engineering plans shall include an addressing map for approval by the Building Official.
13. The civil engineering plans shall include the proposed location and details for mailbox placement.
14. The applicant shall provide a performance assurance device in order to provide for maintenance of the required landscape for this subdivision, until the homeowners association becomes responsible for the

landscaping maintenance. The performance assurance drive shall be 150 percent of the anticipated cost to maintain the landscaping for three years.

**DECISION:**

The request for preliminary plat approval for a 32 acre parcel within the Tahoma Terra master planned community into 198 single-family residential lots in a two phase development with the first phase consisting of 62 lots and the second phase 136 lots constructed at a later date is hereby granted, subject to the conditions contained in the conclusions above.

**ORDERED** this 4th day of August, 2016.

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**STEPHEN K. CAUSSEAU, JR.**  
Hearing Examiner

**TRANSMITTED** this 4th day of August, 2016, to the following:

**APPLICANT:** Tahoma Terra Holdings, LLC  
P.O. Box 73790  
Puyallup, WA 98373

**AGENT:** KPFF Consulting Engineers  
612 Woodland Square Loop S.E., Suite 100  
Lacey, WA 98503

**OTHERS:**

Doug Bloom  
P.O. Box 627  
Rainier, WA 98576

Phaedia Kelleher  
15323 Carter Court S.E.  
Yelm, WA 98597

Angela Cid  
14053-95<sup>th</sup> Way S.E.  
Yelm, WA 98597

Darlene Baker  
P.O. Box 727  
Yelm, WA 98597

Thad Nelson  
14442-98<sup>th</sup> Way S.E.  
Yelm, WA 98597

Kim Muir  
P.O. Box 1941  
Yelm, WA 98597

Beth Harris      [elaharris@live.com](mailto:elaharris@live.com)  
Pete Arbeia      [nwce@comcast.net](mailto:nwce@comcast.net)  
Terri Arbeia      [nwceterri@comcast.net](mailto:nwceterri@comcast.net)  
Steve Klein      [info@yelm.com](mailto:info@yelm.com)

Bill Piland  
15323 Carter Court S.E.  
Yelm, WA 98597

Paul Sasse  
9901 Dotson Street S.E.  
Yelm, WA 98597

Franklyn and Kristin Ramos  
15350-104<sup>th</sup> Way S.E.  
Yelm, WA 98597

David Lockyer  
14410-99<sup>th</sup> Way S.E.  
Yelm, WA 98597

Al Chinn  
P.O. Box 984  
McKenna, WA

Katie Wiktonski  
P.O. Box 37  
McKenna, WA 98558

CITY OF YELM

**CASE NO.: 20160235**  
**Tahoma Terra Phase II, Division II Subdivision**

**NOTICE**

All final decisions of the hearing Examiner may be appealed to the City Council at a closed record appeal hearing, initiated by a person who has standing to appeal. All appeals must be filed within 21 days from the date of the decision being appealed in accordance with Section 18.10.100 Yelm Municipal Code.



**Tami Merriman**

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**From:** Brent Dille <brent@dillelaw.com>  
**Sent:** Monday, December 23, 2019 9:04 AM  
**To:** Tami Merriman; Grant Beck  
**Subject:** [External]FW: The Hutch -- Follow Up Request re Tahoma Terra  
**Attachments:** 20180280 HE Decision 07182019.pdf; 20160235 HE Decision 08042016r.pdf; TT SEPA Condition-Water Rights.pdf

**Importance:** High

Good morning!

I received the below email from Kurt's attorney after reviewing the conditions of the Hutch decision with him. Look forward to your thoughts.

Best,

Brent

Brent F. Dille, Esq.  
DILLE LAW, PLLC  
2010 Caton Way SW, Suite 101  
Olympia, Washington 98502  
Office: 360-350-0270  
Direct: 360-489-0727  
Facsimile: 844-210-4503  
Email: [brent@dillelaw.com](mailto:brent@dillelaw.com)

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**From:** Laing, Aaron M. <ALaing@SCHWABE.com>  
**Sent:** Friday, December 20, 2019 5:05 PM  
**To:** Brent Dille <brent@dillelaw.com>  
**Cc:** Heimbuch, Emily E. <EHeimbuch@SCHWABE.com>  
**Subject:** FW: The Hutch -- Follow Up Request re Tahoma Terra  
**Importance:** High

Dear Brent,

I hope this finds you well! Thank you again for your time on the phone and for sending along the attached Hearing Examiner's July 18, 2019 decision to grant preliminary plat approval for The Hutch project (Case No. 20180280) to allow development of 118 single family residential lots.

As noted by the Hearing Examiner in The Hutch decision Findings No. 15-17 (pages 9-10), the City is in the process of submitting a water rights application to Ecology under a new pilot program that (along with the City's current 240 water connections) should provide for sufficient water for The Hutch and other development. Based on City staff testimony and applicable law, the Hearing Examiner conditionally approved The Hutch in relevant part with the following condition:

*2. No construction is authorized under this approval unless the City has made application for additional water rights with the Washington State Department of Ecology and the Community Development Department Administrator determines that water will be available at the time there will be demand for water from subdivision. The Administrator's decision may be reviewed by the Hearing Examiner at the request of the applicant, provide the applicant shall be responsible for any costs of the Examiner's review.*

Per our call, you clarified that the phrase "No construction is authorized" in Condition 2 (above) means that The Hutch developer cannot undertake any ground-disturbing or other development activity (as opposed to not building homes), until the water rights application has been submitted and the determination regarding water availability has been made.

As you know, my client Tahoma Terra Holdings LLC is in the process of seeking final plat approval for the remaining ~136 lots that were approved in the preliminary plat approval. On August 4, 2016, the Hearing Examiner approved an amendment to the original Tahoma Terra master plan approval to allow the phased review / final approval of 62 lots for which water rights were transferred to the City, per the original development approvals (see attached decision, Case No. 20160235). In approving the phasing plan, the Hearing Examiner conditioned approval of the remaining 136 lots as follows:

*4. Public facilities impacted by the subdivision are either adequate and available, or the City has a plan to finance the needed public facilities that will assure retention of an adequate level of service. However, the applicant is bound by Mitigating Measure 5 of the MDNS for the overall Tahoma Terra MPC that requires it to convey sufficient water rights to the City for the entire 1,000 plus residential unit development. Said mitigating measure also provides that should the City obtain water rights through the State Department of Ecology sufficient to serve the projected density of the City, it's Urban Growth Area, and the subject property, said mitigating measure is not applicable.*

(Underlining added.) I've attached a PDF copy of the original condition, too, for reference.

Based on sworn testimony of City staff, we understand that the City will submit the state-approved water rights pilot project application by month's-end. We understand that the application, once approved, will provide sufficient water for the City's projected density, it's Urban Growth Area, and the Tahoma Terra property (which is within the City's boundaries and in its Urban Growth Area). Thus, we believe that the condition will be resolved / met upon submittal of the application, at least to the same degree as the Hearing Examiner found in The Hutch decision. Accordingly, we respectfully request that the City confirm the date of the submittal of the water rights application and confirm that Mitigating Measure 5 of the MDNS for the overall Tahoma Terra master plan has been met at such time and is no longer applicable.

For the record, we also reiterate that, but for the unprecedented economic downturn, all water rights contemplated in the original approvals would have been transferred, making this moot. Unfortunately, as you know the downturn devastated the original developer, and the City essentially condemned the golf course water rights instead of allowing the for the contemplated transfer to occur. We do not believe this obviates the City's statutory duty to provide water within its water service area on a "first come, first serve" basis. Having litigated several significant water services cases, I am not aware of a single case, statute, code or other law that would allow for the City to deny service on a "first come, first serve" basis subject only to availability. I humbly ask that the City provide such authority, if it exists.

Regardless, we appreciate the City's willingness to continue to review and approve engineered plans for the remaining ~136 lots as such approval does not constitute approval to "move dirt" (i.e., engage in construction). In a good faith effort to continue working with the City, we request that the City agree to amend Mitigating Measure 5 of the MDNS for the overall Tahoma Terra master plan to acknowledge the imminent submittal of the water rights application and conform it to Condition 2 of The Hutch decision as follows:

#### **PROPOSED CONDITION**

The City is in the process of submitting an application for additional water rights to the Washington State Department of Ecology to provide sufficient water to serve the City, its Urban Growth Area, and the subject property. Upon submittal of such application, construction is authorized under this approval, if the Community Development Department Administrator determines that water will be available at the time there will be demand for water from subdivision (*i.e.*, at issuance of building permit). The Administrator's decision may be reviewed by the Hearing Examiner at the request of the applicant, provide the applicant shall be responsible for any costs of the Examiner's review. Upon approval of the City's application for additional water rights, or receipt of such rights from applicant, Mitigating Measure 5 of the MDNS for the overall Tahoma Terra MPC is no longer applicable.

No pride of authorship and I hope you and your client read this as a good faith effort to find a workable solution that will allow the City's to comply with state law requirements related to water service and allow my client to be treated the same as every other property owner in the City. As always, I look forward to discussing this with you at your convenience.

Best regards,

**Schwabe Williamson & Wyatt**

**Aaron M. Laing**

Shareholder

Direct: 206-407-1553

[alaing@schwabe.com](mailto:alaing@schwabe.com)

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**From:** Brent Dille <[brent@dillelaw.com](mailto:brent@dillelaw.com)>

**Sent:** Tuesday, December 17, 2019 3:45 PM

**To:** Laing, Aaron M. <[ALaing@SCHWABE.com](mailto:ALaing@SCHWABE.com)>

**Subject:** FW: The Hutch

For our phone conference See Condition #2

Best regards,

Brent

Brent F. Dille, Esq.

DILLE LAW, PLLC

2010 Caton Way SW, Suite 101

Olympia, Washington 98502

Office: 360-350-0270

Direct: 360-489-0727

Facsimile: 844-210-4503

Email: [brent@dillelaw.com](mailto:brent@dillelaw.com)

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