

BEFORE THE CITY OF YELM HEARING EXAMINER

IN RE: ) HEARING NO. 2021-0054  
SUMMIT AT THOMPSON CREEK, ) FINDINGS OF FACT,  
AND DECISION ) CONCLUSIONS OF LAW  
AND DECISION )

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

**REPRESENTATIVES:** Evan Mann  
Matt Weber

**SUMMARY OF REQUEST:**

The Applicant requests preliminary approval of a subdivision containing 109 single-family residential lots on 34.57 acres, together with various other tracts, public roads, and associated improvements.

**LOCATION OF PROPOSAL:**

14444 Berry Valley Road SE. Parcel Nos. 21724230100, 2172314000 and 21723140102.

**SUMMARY OF DECISION:**

The proposed subdivision is **approved** subject the amended conditions recommended by City Staff.

**BACKGROUND**

The Applicant seeks preliminary subdivision approval to subdivide 34.57 acres into 109 single-family residential lots, together with new public roads, stormwater facilities, wetland buffers, open spaces and other site improvements. The project is referred to as "Summit at Thompson Creek" or "Summit".

The proposed subdivision is located at 14444 Berry Valley Road SE. The site consists of three existing tax parcels with one existing residence and various outbuildings. The remainder of the acreage is a mix of grass fields and timberlands. Thompson Creek, a Type V intermittent

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

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1 stream, runs north/south through the center of the eastern portion of the project. Three other  
2 wetlands have been delineated onsite.

3 The closest major street is Tahoma Boulevard to the south. The site is connected to  
4 Tahoma Boulevard by Berry Valley Road. The project will require substantial improvement to  
5 Berry Valley Road including a new culvert/crossing over Thompson Creek which, in turn, will  
6 require a hydraulics permit. The project's second means of ingress/egress will be by way of an  
7 extension of Jackson Street, connecting the project to the Tahoma Terra development to the  
8 south.

9 Members of the public have expressed various concerns especially with respect to  
10 stormwater impacts and/or impacts to Thompson Creek and with the project's traffic impacts,  
11 recognizing that several nearby intersections are operating at LOS F. City Staff recommends  
12 approval of the project subject to an amended list of conditions set forth in its revised Staff  
13 Report. The Applicant concurs with these amended conditions.

### 14 **PUBLIC HEARING**

15 The public hearing occurred in person commencing at 9:00 a.m. on Thursday, February  
16 29, 2024. The Staff appeared through Clayton Wiebe, Associate Planner, and Gary Cooper,  
17 Principal Planner. The Applicant appeared through its representative, Evan Mann, and its  
18 engineer, Matt Weber. Members of the public were present and several asked to testify. All  
19 testimony was taken under oath and a verbatim recording of the hearing was maintained.

20 In advance of the public hearing City Staff submitted its Staff Report recommending  
21 project approval subject to thirteen conditions. Just prior to the hearing Staff introduced a  
22 supplemental Report which proposes an amendment to one of the prior conditions and the  
23 addition of three new conditions, for a total of sixteen final conditions. In addition to the Staff  
24 Report and its amendment, the following documents were admitted as exhibits:

25  
*Findings of Fact, Conclusions  
of Law and Decision - 2*

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1. The Summit at Thompson Creek site plan *Page 13*
2. Public comment #1 *Page 14*
3. Public comment #2 *Page 15*
4. MDNS for Summit at Thompson Creek *Page 16*
5. Washington State Department of Ecology comments letter *Page 20*
6. Revised Traffic Impact Analysis (with traffic signal warrant studies) *Page 23*
7. Critical Areas Report *Page 46*
8. Preliminary BLA map *Page 72*
9. Staff Report
10. Amended Staff Report
11. Two public comments received just prior to the hearing
12. Written comments of Debbie Moss, et al.
13. Written comments from Marji Calderon.

Prior to the public hearing I undertook an independent site inspection of the project site and surrounding neighborhoods.

The hearing began with the testimony of Clayton Wiebe, Associate Planner, and author of the City Staff Report. Mr. Wiebe began by acknowledging the receipt of two additional public comments just prior to the hearing (Exhibit 11). He also alerted the Hearing Examiner that there had been a revision to the Staff Report, including a proposed changed to recommended Condition No. 11 and the addition of three more conditions, Condition Nos. 14, 15 and 16. Revised Condition No. 11 and additional Condition Nos. 14-16 are set forth in Exhibit 10.

Mr. Wiebe's direct testimony was relatively brief and relied heavily upon his written Staff Report as amended. He explained that the project proposed a subdivision containing 109 single-family residential lots on 34.57 acres. The project site has a zoning designation of Low Density. Properties to the north, east and west are of a similar Low Density, while property to the south is included in the Tahoma Terra Master Plan Development. A short distance to the northeast of the site is the Yelm High School. The site is generally vacant with the exception of one residence and related outbuildings. The rest of the acreage is a mix of open pasture lands and timberlands. Thompson Creek, a seasonal stream, runs north/south through the eastern portion of the site. In

1 addition to the creek and its buffers, three other wetlands have been identified on the site and  
2 their buffers have been delineated.

3 Mr. Wiebe then briefly went through the process of providing public notice and of  
4 comments received in response. Mr. Wiebe acknowledged that members of the public have  
5 expressed concerns over impacts to the environment, traffic impacts, and wildlife impacts. In  
6 addition, the owner of property to the west (DDD Washington, LLC) has asked that adequate  
7 provision be made for future connection of this project's road system to its adjoining property.

8 Mr. Wiebe then examined the project's environmental review. He explained that the City  
9 issued a SEPA MDNS (Exhibit 4) which imposes five conditions. These conditions have been  
10 incorporated into the conditions of subdivision approval and are intended to assure fish passage  
11 along Thompson Creek and wetland protection.

12 Mr. Wiebe then quickly went through all concurrency requirements and stated that the  
13 project is found to comply with all such requirements, including provision for water, sewer,  
14 stormwater, fire protection, schools, and traffic. Mr. Wiebe acknowledged that traffic is an  
15 important consideration as three nearby intersections: SR 510 and Mountain View Road; SR 510  
16 and Cullens; and SR 510 and Longmire, are at a Level of Service (or soon will be) of LOS F,  
17 meaning that all three intersections have a failing rating. Mr. Wiebe adds, however, that this  
18 project will not cause a worsening of the Levels of Service, and that each of these intersections  
19 would be failing even if the project does not occur. City Staff therefore does not find the  
20 project's traffic impacts to be problematic and that the remedy is in the imposition of traffic  
21 impact fees. Mr. Wiebe adds that the City hopes to resolve traffic congestion along SR 510 in  
22 the relative near future with construction of the bypass highway. The City believes that its  
23 construction will significantly alleviate congestion through this portion of the City. He added  
24 that the Applicant's Traffic Impact Analysis (TIA) (Exhibit 6) has undergone independent third  
25 party review and that the City's independent reviewer agrees with the findings of the TIA.

*Findings of Fact, Conclusions  
of Law and Decision - 4*

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1 Mr. Wiebe added that the TIA also examined the question as to whether the project  
2 warranted any additional traffic signaling along SR 510. The TIA concludes that additional  
3 signaling will not be required. This conclusion is again verified by the City's third party  
4 reviewer.

5 Mr. Wiebe then addressed access to the project. He explained that the project's primary  
6 access will be by way of Berry Valley Road, connecting the project to Tahoma Boulevard. Berry  
7 Valley is currently not built to City standards and will need to be improved its entire length from  
8 Tahoma Boulevard to the project site. The Applicant will be responsible for not only widening  
9 the road but for standard frontage improvements as well. Mr. Wiebe then addressed the various  
10 wetlands on the site. He acknowledged that the site has had three separate wetlands identified  
11 and their buffers delineated. The project proposes no impact to these wetlands or to the buffer of  
12 Thompson Creek. He then explained that stormwater will be managed in accordance with the  
13 City's Stormwater Manual through a variety of stormwater systems onsite intended to  
14 appropriately infiltrate and retain stormwater. He then turned to the issue of the Mazama Pocket  
15 Gopher and noted that the Applicant has presented three separate pocket gopher surveys, all of  
16 which conclude that there is no presence of Mazama Pocket Gophers onsite. The project will  
17 meet all setback and other zoning requirements and will provide a continuous exterior wooden  
18 fence in lieu of other external landscaping. Open spaces have been provided for and at least one  
19 designated open space must provide for recreational facilities. In addition to those facilities, the  
20 project proposes a trail system running north to south through the westerly portion of the project  
21 as shown on site maps. Mr. Wiebe concluded his direct testimony by recommending that the  
22 project be approved subject to the revised sixteen conditions.

23 At the conclusion of Mr. Wiebe's testimony the Hearing Examiner posed a number of  
24 questions to him.

1           ●       The Hearing Examiner questioned whether the Applicant will be required to make  
2 full street or half street improvements to that portion of Berry Valley Road commencing at  
3 Tahoma Boulevard and running to the beginning of the project. Mr. Wiebe explained that the  
4 Applicant will be required to provide half street improvements along this portion of Berry Valley  
5 Road. Those improvements include widening of the road; sidewalk; planter strip; street trees;  
6 and bicycle lane along the westerly portion of the road. To accomplish these things, the  
7 Applicant will be required to acquire additional public right-of-way along the west portion of  
8 Berry Valley Road.

9           ●       Within the project, the Applicant will be required to establish standard street  
10 frontage landscaping and other standard street improvements. No street parking will be allowed  
11 anywhere in the project. The extension of Berry Valley Road SE into the project, as well as the  
12 extension of Jackson Street SE into the project, will be to "neighborhood collector standards"  
13 and will require sidewalks on both sides of the road. Lesser streets, including "Roads 1, 2 and 3"  
14 will be designed to "local access" standards and will only require sidewalks on one side of the  
15 road. All roads will be dedicated to the public.

16          ●       The proposed trail is identified on the site plans and is shown to begin near the  
17 northwest corner of the project and continue southerly through the western portion of the site and  
18 west of all proposed residential lots, terminating near the southwest corner of the project. This  
19 trail will provide recreational opportunities as well as viewing opportunities to adjacent  
20 wetlands.

21          ●       The Hearing Examiner then undertook a review of all proposed tracts. Mr. Wiebe  
22 explained that the various tracts are intended for the following purposes:

- 23               1.       Tracts A and B, located near the beginning of the project at the northeast  
24 corner, are open spaces and a likely location for recreational facilities.

1                   2.       Tracts C and D, located north and south of Berry Valley Road between  
2       Lots 71/72 and 83/82, are utility tracts for overhead powerlines.

3                   3.       Tracts E and F are primarily stormwater detention facilities with each  
4       housing a stormwater pond.

5                   4.       Tract G is located immediately west of Tract E and is intended to provide  
6       protection to the nearby wetland and its buffer.

7                   5.       Tract H is an extension of Road 2, located west of the terminus of said  
8       road, and is intended as an access tract to preserve future access to proposed residential  
9       development on property to the west.

10                  6.       Tract I is a large open space tract intended to protect onsite wetlands and  
11       their buffers in the southwest portion of the site.

12                  7.       Tract J is a large open space tract in the northeast corner of the project and  
13       is intended to protect Thompson Creek and its buffers.

14                  8.       Tract K is located along Berry Valley Road near the northeast corner of  
15       the project and is intended to provide for necessary stormwater facilities relating to Berry  
16       Valley Road.

17       •       The Hearing Examiner inquired as to provisions for safe walking routes for  
18       students and whether any student bus stops were planned. Mr. Wiebe explained that the City  
19       regards the sidewalk system within the project sufficient for safe walking requirements as it will  
20       provide continuous sidewalks all the way to existing sidewalks along Tahoma Boulevard, thus  
21       providing students with uninterrupted safe walking routes. The project has therefore not been  
22       designed for student bus stops.

23       •       Mr. Wiebe was asked about the changes to the proposed conditions regarding the  
24       use of reclaimed water. He explained that the proposed conditions were being changed to not  
25       require connection to the reclaimed water system unless the proposed project on adjoining

1 property went forward. Otherwise, existing reclaimed waterlines are simply too far away from  
2 the project site, and connection to them would be problematic.

3       Following Mr. Wiebe's testimony the Applicant presented its testimony through its  
4 representative, Evan Mann. Mr. Mann's testimony was relatively brief and focused on a few  
5 limited topics. He confirmed that improvements to Berry Valley Road will require a new fish  
6 passage culvert at Thompson Creek which, in turn, will require a hydraulics permit. He also  
7 addressed some of the Hearing Examiner's questions to Mr. Wiebe and explained that Tract K  
8 will be utilized for stormwater facilities relating to Berry Valley Road. He also explained that  
9 the required play structure is likely to be placed in one of three different open spaces, Tracts A, B  
10 or F. It is unclear which of these tracts will be used for the play area but Tract F is the most  
11 likely. Mr. Mann then explained that the proposed stormwater system is a combination of  
12 infiltration systems together with stormwater detention facilities providing water to adjoining  
13 wetlands to maintain their hydrology. All such systems will be designed and constructed in  
14 accordance with the City's Stormwater Manual and are intended to both assure that stormwater is  
15 properly managed onsite while, at the same time, the site's wetlands maintain their hydrology. In  
16 response to issues about use of reclaimed water, Mr. Mann explained that the principal reason  
17 why the project is not being required to connect to the reclaimed water system is that the system  
18 is not looped and lacks the necessary pressure to deliver reclaimed water to the site. The project  
19 is therefore not well served by this system unless it is brought closer to the project by the  
20 development of adjoining property. Mr. Mann concluded his testimony by confirming that the  
21 Applicant has no objection to the requirement that Tract H be dedicated for the extension of  
22 "Road 2" to property to the west, and the extension of water and sewer utilities to the project  
23 boundary, so long as the adjoining property owner understood that it would need to "loop" these  
24 utilities in order for them to work properly.  
25



1 Following Mr. Mann's testimony, the project's civil engineer, Matt Weber, spoke briefly.  
2 Mr. Weber confirmed that sidewalks will be located on both sides of all streets deemed  
3 "neighborhood collectors", that is, the extensions of Berry Valley Road and Jackson Street, but  
4 the side streets (Roads 1, 2 and 3) will be deemed local access roads and have sidewalks on only  
5 one side.

6 At the conclusion of the Applicant's presentation the hearing was opened to public  
7 testimony. Three members of the public asked to testify and one additional individual presented  
8 testimony in writing:

9 **Milton Butler.** Mr. Butler lives along the east side of Berry Valley Road as it runs from  
10 Tahoma Boulevard toward the project site. He notes that the project proposes improvements on  
11 the other, west side of the road, and wondered how the project may affect his side of the road.  
12 In particular, he notes that Berry Valley is very narrow and will require expansion in order to  
13 accomplish its required improvements. He wanted to know whether this meant that some portion  
14 of his property would be taken for those improvements. Mr. Butler separately expressed concern  
15 that the nearby intersections along SR 510 are at failing Levels of Service, that additional  
16 residential development is proposed for the adjoining Tahoma Terra development, and worried  
17 that this project will simply further overwhelm all nearby intersections.

18 **Debbie Moss.** Ms. Moss provided oral testimony but also submitted her comments in  
19 written form (Exhibit 12). Ms. Moss's concerns are primarily related to the project's potential  
20 impacts to Thompson Creek and to stormwater in the neighborhood. She seeks assurance that  
21 the project will not adversely affect the creek and that the project's stormwater will be adequately  
22 managed so as to avoid flooding and other impacts to nearby properties.

23 **Marji Calderon.** Ms. Calderon was unable to remain in attendance and therefore  
24 presented her testimony in written form (Exhibit 13). Like Ms. Moss, Ms. Calderon is concerned  
25 about the project's impacts to Thompson Creek and to stormwater management in the region.

1           **Diane Dacuti.** Ms. Dacuti's concerns were similar to those expressed by Ms. Moss and  
2 Ms. Calderon. She is worried that the project's stormwater will not be properly managed and  
3 will increase the intensity of stormwater running to Thompson Creek and affecting surrounding  
4 properties. She seeks assurance that the stormwater will be well managed and that Thompson  
5 Creek will be unaffected by the development.

6           At the conclusion of all public testimony the Applicant was allowed an opportunity to  
7 respond. Mr. Weber responded to the common concern regarding stormwater management and  
8 explained that the project's stormwater system will be designed to ensure full compliance with all  
9 requirements found in both the State and City Stormwater Manuals. He added that the entire site  
10 has undergone a careful geotechnical analysis to determine how best to manage stormwater on  
11 the site. This analysis confirms that some of the site's stormwater flows down to Thompson  
12 Creek while the majority flows in an opposite direction toward the onsite wetlands. The project's  
13 stormwater design takes these facts into consideration and makes certain that all stormwater  
14 flows to its proper location. This means that stormwater naturally flowing toward Thompson  
15 Creek will be first detained and then released toward the creek in a regulated manner.  
16 Conversely, water which naturally drains toward the wetlands will be managed through a  
17 combination of infiltration and retention to ensure hydrology of the wetlands. Mr. Weber  
18 concluded that the project will not have a negative impact on the flow of water to Thompson  
19 Creek. He added that the culvert changes along Berry Valley Road at Thompson Creek will not  
20 only improve fish passage but should reduce current constraints on water flow and, as a result,  
21 should reduce current upstream flooding problems.

22           Following Mr. Weber's testimony, Mr. Mann briefly testified in response to Mr. Butler's  
23 concerns. He confirmed that Berry Valley Road currently has only 20 feet of right-of-way. The  
24 Applicant will be required to provide an additional 18 feet of right-of-way to the west to  
25 accommodate the necessary road and frontage improvements. The Applicant will work with the

1 adjoining landowner to obtain the necessary right-of-way. This will not impose any burden upon  
2 Mr. Butler and his property. Mr. Mann also responded to concerns about the project's worsening  
3 of traffic in the area and noted that each house will be imposed a traffic mitigation fee  
4 collectively totaling \$175,000 to be used toward necessary traffic improvements. He added that  
5 the Traffic Impact Analysis reveals that the project is unlikely to result in many trips to the  
6 impacted intersections nearby and is therefore unlikely to cause any significant worsening of  
7 their current traffic problems. He concluded his comments by noting that nearly half of the site  
8 will remain undeveloped especially along its western boundary, and will maintain opportunities  
9 for wildlife passage and protect environmentally sensitive areas.

10 While the concerns expressed by members of the public over potential impacts to  
11 stormwater and Thompson Creek are legitimate ones, City Staff has recognized these concerns  
12 and addressed them through conditions of approval. And while traffic continues to interfere with  
13 the City's plans for growth, this project will not noticeably worsen traffic problems. I concur  
14 with City Staff that the project, as conditioned, satisfies the many requirements to subdivision  
15 approval. I therefore make the following:

#### 16 **FINDINGS OF FACT**

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

#### 20 **General Findings**

21 2. The Applicant seeks preliminary plat approval to subdivide 34.57 acres into 109  
22 single-family residential lots with connecting streets, stormwater facilities and other site  
23 improvements. Maps identifying the location of the project site and its layout are found in  
24 Exhibit 1.

1           3.       The site is located 14444 Berry Valley Road SE and encompasses three parcels  
2 west of the northwestern terminus of Berry Valley Road. The site is largely undeveloped with  
3 the exception of one existing residence and associated outbuildings. The remainder of the  
4 acreage is a mix of pasture lands and timberlands. The eastern portion is generally level  
5 pastureland while the western portion includes a steep knoll and timberlands. Thompson Creek,  
6 a Tye V intermittent stream, runs north/south through the center of the eastern portion.

7           4.       Surrounding properties to the north, east and west are primarily low density rural  
8 residential while property to the south lies within the Tahoma Terra subdivision and consists  
9 primarily of single-family residential lots. Olympia High School is a short distance to the  
10 northeast.

11           5.       The site has a zoning designation of Low Density Residential (R-4) which allows  
12 four dwelling units per gross acre of land. The proposed use is a permitted use within the R-4  
13 zoning designation subject to subdivision approval. Properties to the west, north and east have a  
14 similar zoning designation, while property to the south, within Tahoma Terra, have a zoning  
15 designation of Master Planned Community.

16           6.       The property to the north of the site is located in unincorporated Thurston County  
17 but within the Yelm Urban Growth Area and has a future zoning designation of High Density  
18 Residential (R-16).

19           7.       The project site currently has limited road access. Berry Valley Road currently  
20 extends from Tahoma Boulevard north and west to the project site, terminating near the northeast  
21 corner of the site. The project proposes to upgrade Berry Valley Road from its commencement  
22 at Tahoma Boulevard to and into the project site and will be expected to serve as the project's  
23 primary access. A secondary access will be provided via Jackson Street which currently  
24 terminates near the southwest corner of the project site. It will be extended north and then east to  
25

1 connection with Berry Valley Road. Three additional secondary roads (Roads 1, 2 and 3) will  
2 serve as spur roads off of either Berry Valley Road or Jackson Street. The project's proposed  
3 road system can be found on site maps located within Exhibit 1.

4 8. All internal road systems will be dedicated as public roads. The extensions of  
5 Berry Valley Road and Jackson Street will be built to neighborhood collector status and include  
6 sidewalks on both sides of the roads. The secondary roads, Road 1, 2 and 3, will be built to local  
7 access standards and include a sidewalk on one side of the road.

8 9. In addition to associated roadways described above, the project will include curbs,  
9 gutter and sidewalks; stormwater facilities; open space tracts; street trees and utilities for sewer  
10 and water.

11 10. The project will require the improvement of Berry Valley Road from Tahoma  
12 Boulevard north and then west to the project site. Improvement of this road will include  
13 widening of the public right-of-way by 18 feet to the west; "half street" improvements, that is,  
14 installation of curbs, gutters, sidewalks, street landscaping, lighting and bicycle paths along the  
15 westerly/southerly portion of Berry Valley Road to the project site, then full street improvements  
16 thereafter; and improvements to the crossing over Thompson Creek including a new culvert  
17 designed for fish passage.

18 Findings Relating to Critical Areas.

19 11. Stormwater generated by the development will be addressed in a manner  
20 consistent with the City's most recent Stormwater Manual. Stormwater retention facilities will  
21 be located on Tracts E and F as identified on site maps. Stormwater management will be a  
22 combination of retention and disbursal as well as infiltration, taking into consideration the need  
23 to maintain the hydrology of the onsite wetlands.

1           12.     The Applicant has submitted a Critical Areas Report (Exhibit 7) identifying three  
2 separate wetlands within the project site identified as Wetlands A, B and C.

3           13.     Wetland A extends across 3.2 acres fed by steep slopes and precipitation. Wetland  
4 A is located near the west boundary of the project. Wetland A has been categorized as a Type IV  
5 wetland with an overall score of 15; a habitat score of 6; and a required buffer of 50 feet.

6           14.     Wetland B is a relatively small wetland covering 0.264 acres and is associated  
7 with Thompson Creek. Wetland B is categorized as a Type II wetland with an overall score of  
8 20 and a habitat score of 6, resulting in a required buffer of 150 feet.

9           15.     Wetland C is a very small wetland covering only 363 square feet and is a short  
10 distance from Wetland A. Wetland C is categorized as a Type IV wetland within an overall  
11 score of 15, habitat score of 5 and a required buffer of 50 feet.

12          16.     Maps identifying Wetlands A, B and C are included in the Critical Areas Report.

13          17.     In addition to these three wetlands, the site contains a portion of Thompson Creek  
14 running north/south through the easterly portion of the site. Thompson Creek is a Type V stream  
15 with intermittent flow and having a required buffer of 150 feet.

16          18.     The required buffer for Thompson Creek is coextensive with the required buffer  
17 for Wetland B such that the two share the same buffer.

18          19.     The Critical Areas Report concludes that the project will have no impacts to the  
19 wetlands or Thompson Creek. The report recognizes, however, that the final design of  
20 improvements to Berry Valley Road in the area of Thompson Creek have not been finalized and  
21 that final design may have impacts to Wetland B/Thompson Creek riparian zone. If so, these  
22 impacts must be properly mitigated pursuant to a compensatory mitigation plan meeting the  
23 requirements of YMC 18.21.060(G).

24          20.     The Critical Areas Report has undergone independent third party review and the  
25 independent reviewer agrees with the conclusions found in the report.

1           21.     The Critical Areas Report also includes an analysis of wildlife on or near the  
2 project site and concludes that there are no federally listed or priority species on the subject  
3 property; no federally listed salmonoid or salmonid species know to occur onsite; and no wildlife  
4 was observed on the site.

5           22.     The project site has been examined for the possible presence of the Mazama  
6 Pocket Gopher. The Applicant has provided a Mazama Pocket Gopher and Regulated Prairie  
7 Absence Report which finds that there is no evidence of Mazama Pocket Gophers on the subject  
8 property. The City concurs with the findings of this report.

9           23.     All of the City of Yelm, including the project site, is identified as a Critical  
10 Aquifer Recharge Area. The City has adopted stormwater regulations required to protect its  
11 aquifer. The Applicant has submitted a preliminary Stormwater Report consistent with these  
12 requirements. The Stormwater Plan primarily calls for infiltration of onsite stormwater together  
13 with individual roof runoff infiltration systems, a bioretention swale and infiltration ponds  
14 intended to meet the requirements of the most current Stormwater Manual. There is a FEMA  
15 flood zone adjacent to Thompson Creek. No development has been proposed within the flood  
16 zone area.

17           24.     As noted in earlier Findings, there is an established riparian habitat area along  
18 Thompson Creek having a buffer of 150 feet. This buffer is generally coextensive with the buffer  
19 required for Wetland B. Any final design for improvements to Berry Valley Road must  
20 recognize and protect this buffer or provide suitable mitigation through a compensatory  
21 mitigation plan.

22           Findings Relating to Traffic Impacts.

23           25.     The Applicant has submitted a Traffic Impact Analysis (TIA) for the project  
24 (Exhibit 6). The TIA analyzes the effects of the proposed subdivision on nearby intersections.  
25 The TIA identifies three nearby intersections whose Level of Service (LOS) are or soon will be

1 at LOS F, designating a failed intersection. These intersections are SR 510/Mountain View  
2 Road; SR 510/Cullens Road; and SR 510/Longmire Street.

3 26. The TIA concludes that these three intersections will have an LOS of F whether  
4 or not the project is approved, and that any failure at these intersections is not the result of the  
5 project.

6 27. City Staff finds that, as the project will not cause failures at these intersections,  
7 their failure should not be a basis for denying subdivision approval. Instead, City recommends  
8 that the project be approved subject to the condition that the Applicant pay applicable traffic  
9 impact fees.

10 28. The TIA separately examines whether the project warrants traffic signals at any  
11 nearby intersections, including the three whose LOS is or soon will be at LOS F. The TIA  
12 concludes that the project does not warrant traffic signals at any of these intersections.

13 29. The findings of the TIA have undergone independent third party review and the  
14 reviewer has confirmed its findings.

15 30. City Staff notes that design of the proposed bypass route for SR 510 has been  
16 completed and that its construction is likely to commence within the next few years. Once  
17 completed, the bypass route is expected to eliminate much of the current traffic problems along  
18 SR 510, and significantly improve the LOS at the three failed intersections.

19 Findings Relating to Public Notice and Meetings.

20 31. Notification of the application was mailed to state and local agencies and property  
21 owners within 300 feet of the site on December 1, 2022, and published in the Nisqually Valley  
22 News on December 8, 2022.

23 32. Comments were received in response not the notice from nearby residents  
24 including concerns over stormwater impacts, environmental degradation, added traffic, harm to  
25 wildlife, etc. (Exhibits 2 and 3).

*Findings of Fact, Conclusions  
of Law and Decision - 16*

**CITY OF YELM HEARING EXAMINER  
299 N.W. CENTER ST. / P.O. BOX 939  
CHEHALIS, WASHINGTON 98532  
Phone: 360-748-3386/Fax: 748-3387**



1           33.     Notice of the public hearing before the Hearing Examiner was posted on the City  
2 website, mailed to property owners within 300 feet of the site, mailed to the recipients of the  
3 Notice of Application, published in the Nisqually Valley News, and posted onsite. No additional  
4 comments were received until just prior to the public hearing (Exhibits 11 and 12). These  
5 comments expressed similar concerns over stormwater impacts; impacts to Thompson Creek;  
6 traffic; and effects on wildlife.

7           34.     The City, as lead agency, issued a SEPA Mitigated Determination of  
8 Nonsignificance (MDNS) on January 17, 2024. No additional public comments were received in  
9 response. The SEPA MDNS imposes five conditions on project approval. These five conditions  
10 have ben incorporated into the City's recommended conditions of project approval. The MDNS  
11 has not been appealed and is final.

12           Findings Relating to Concurrency.

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

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

17           Transportation.

18           37.     The Level of Service at concurrency intersections must not drop below accepted  
19 Levels of Service due to new trips associated with the proposed development unless the planned  
20 developments identified in Six-Year Transportation Programs will maintain Levels of Service.  
21 YMC 18.16.050(C)(1)(a).

22           38.     As noted in earlier Findings, the Applicant submitted a Traffic Impact Analysis  
23 which estimates that the subdivision will generate 1,091 average weekday daily trips, with 81  
24 trips occurring in the AM peak hour and 108 trips occurring in the PM peak hour. Most of the  
25

1 traffic is anticipated to utilize Tahoma Boulevard East as a means of access to SR 510 but a  
2 small percentage (12.5%) is estimated to rely on Jackson Street SE to Longmire Street SE and  
3 subsequently to SR 510. As noted in earlier Findings, the TIA identifies three nearby  
4 intersections where the Level of Service (LOS) is expected to not meet City standards. These  
5 intersections are SR 510/Mountain View Road, SR 510/Cullens Road, and SR 510/Longmire  
6 Street. All three intersections are projected to operated at LOS F and are thus below the  
7 acceptable standard of LOS D. Nonetheless, these three intersections are projected to drop  
8 below LOS D with or without the subdivision.

9 39. As a result, the project's traffic has been determined to not cause the Level of  
10 Service at concurrency intersections to drop below accepted Levels of Service, as their Level of  
11 Service will drop below LOS D with or without the project.

12 40. The City asks the Applicant to also undertake a Traffic Signal Warrant Study for  
13 the three impacted intersections. This study is included within the TIA. It finds that traffic  
14 signals are not warranted for any of the three impacted intersections. These findings are verified  
15 through third party peer review.

16 41. City Staff therefore finds that the project will satisfy transportation concurrency  
17 requirements through the imposition of traffic impacts fees to be applied at the time of building  
18 permit issuance.

19 42. Staff notes that the construction of the SR 510 bypass during the next few years  
20 will substantially improve LOS along SR 510 and alleviate the current congestion near the  
21 project site.

22 43. As noted in earlier Findings, the project proposes for half street frontage  
23 improvements along Berry Valley Road commencing at Tahoma Boulevard and continuing to  
24 the project site, with full street improvements along Berry Valley Road through the project site.  
25 The project also proposes full street frontage improvements along Jackson Street through the

1 project site as well as along the three side streets (Roads 1, 2 and 3). Improvements along Berry  
2 Valley Road and Jackson Street will be in accordance with the City's neighborhood collector  
3 standards while side streets will be constructed at adopted local access residential standards.

4 Water

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

8 45. The Staff Report finds that, under current forecasting, the City has the capacity to  
9 service the proposed subdivision.

10 46. The development will be required to connect to the water main and extend it  
11 along the new proposed access roads within the subdivision. Exact water improvements will be  
12 identified during civil plan review. This will satisfy the requirements for concurrency with water  
13 infrastructure.

14 47. Subdivision approval has been conditioned upon the requirement that the existing  
15 well on the property be decommissioned and any water rights associated with it shall be  
16 dedicated to the City.

17 Sewer

18 48. The Applicant must demonstrate that at the time of preliminary plat approval the  
19 planned infrastructure for the City's sewer system identified in the Six-Year Improvement  
20 Program is sufficient to provide for the proposed planned subdivision and that it is reasonably  
21 anticipated that the treatment plan has sufficient capacity to provide for the proposed land  
22 division. YMC 18.16.050(C)(1)(c).

23 49. Concurrency is achieved when the ability to treat and discharge wastewater is in  
24 accordance with adopted health and environmental regulations. YMC 18.16.030(C).  
25

1           50.     City Staff finds that under current forecasting the City has the capacity to service  
2 the proposed subdivision.

3           51.     The property is not currently connected to the City's STEP sewer system. The  
4 project will be required to connect to and extend the main along all new proposed roadways  
5 within the subdivision. Exact sewer improvements will be identified during civil plan review.  
6 Cit Staff finds that with these conditions the project satisfies the requirement for concurrency  
7 with respect to sewer infrastructure. The Hearing Examiner concurs.

8           Impact Fees

9           52.     Concurrency with respect to fire protection and school infrastructure are achieved  
10 pursuant to YMC 18.16.090. Concurrency with fire protection is achieved through contribution  
11 to the Fire Protection Facilities as identified in the Capital Facilities Plan adopted by the  
12 Southeast Thurston Fire Authority and endorsed by the Yelm City Council. This fee will be  
13 collected at the time of building permit issuance. Concurrency with school infrastructure is  
14 achieved through a contribution to School Facilities as identified in the most current version of  
15 the Capital Facilities Plan adopted by Yelm Community Schools and endorsed by the Yelm City  
16 Council. This fee is also subject to change and is collected at the time of building permit  
17 issuance. With these two impact fees, concurrency with fire protection and school infrastructure  
18 is satisfied.

19           Findings Relating to Zoning and Design Standards.

20           53.     The Staff Report, commencing at page 7, addressed the proposed subdivision's  
21 compliance with the City's zoning and design standards. The project is located in the R-4 zoning  
22 designation. This zone is intended to provide for single-family residences in a low density  
23 configuration, allowing up to four dwelling units per acre.

24           54.     The proposed density of the subdivision is 3.15 units per acre with an average lot  
25 size of 5,297 square feet. The project therefore satisfies maximum density regulations.

*Findings of Fact, Conclusions  
of Law and Decision - 20*

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1           55.     The subdivision is being processed concurrently with a proposed boundary line  
2 adjustment for Parcels 21724230100, 21723140000 and 21723140102. The proposed BLA is  
3 attached to the Staff Report.

4           56.     Staff finds that the project will satisfy all setback requirements for the R-4 zone.  
5 These include front yard setbacks of 15 feet from a local access street and 25 feet from the  
6 collector street and 35 feet from an arterial street; side yard setbacks of 5 feet; flanking yard  
7 setbacks of 15 feet and rear yard setbacks 25 feet.

8           Street Lighting.

9           57.     The project will be required to provide adequate street lighting necessary to  
10 provide safety, pedestrians, vehicles and homeowners. The Applicant must submit a lighting  
11 plan during civil plan review satisfying the requirements of YMC 18.59.050.

12           Parking.

13           58.     Residential subdivisions require 2 spaces per dwelling unit. It is expected that  
14 this will be achieved with the standard driveway approach. Each lot must demonstrate adequate  
15 parking during building permit application.

16           59.     No parking will be allowed on streets.

17           Water.

18           60.     As noted in earlier Findings, the site is not currently connected to City water  
19 service. Connection to City water service is required. The well currently located on the property  
20 must be decommissioned pursuant to City standards and the rights dedicated to the City.

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

23           Sewer.

24           62.     As earlier noted, the property is located in the City's STEP Sewer System service  
25 area and is currently not connected. Connection to the sewer system will be required.

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

64. City Staff finds that the project, as conditioned, will satisfy all sewer requirements pursuant to Chapter 13.08 YMC and Chapter 5 of the Development Guidelines.

Reclaimed Water.

65. Chapter 6 of the Development Guidelines establish requirements for connection to the City's reclaimed water system. The closest connection to the City's reclaimed water utility line is located on Tahoma Boulevard. Recognizing the substantial distance between this line and the project site, City Staff is requiring connection to the reclaimed water line only if the line is brought closer to the project site as a result of other nearby development. Proposed Condition No. 11 has been revised accordingly and now reads as follows:

"11. If the City of Yelm reclaimed water utility is available to this development when the applicant submits their Civil Plan Review application, the applicant shall be required to extend the reclaimed water utility into the proposed subdivision and through each of the proposed internal roads, and any irrigated open space tracts must use this reclaimed water. For the purposes of this condition, the reclaimed water utility is "available" if it is within 200 feet of the subject property."

Building Design.

66. All proposed buildings must adhere to the allowed materials and colors set forth in YMC 18.61.050. Building design will be subject to review once the Applicant has submitted a building permit application for each proposed residence.

Transit.

67. The Applicant must coordinate with Intercity Transit to establish appropriate transit stops. Intercity Transit will determine the type and location of each new or upgraded stop. YMC 18.59.070. The project does not anticipate school bus stops.

Landscaping.

68. The minimum requirements and standards for landscaping are set forth in Chapter 18.55 YMC. The Applicant has proposed a perimeter solid wood fence in lieu of perimeter

1 landscaping. Streetscape landscaping will be required for all internal roads, with final  
2 landscaping plans conforming to YMC 18.55.020(C). Landscaping plans must also provide  
3 landscaping for stormwater facilities consistent with YMC 18.55.020(E)(2), including Tracts A,  
4 E, F and K. Detailed irrigation plans will be required during civil plan review.

5 Open Space.

6 69. The project must include at least one dedicated open space of at least 5% of total  
7 gross area. Areas set aside for wetland buffers and other environmental protection or  
8 interpretation are suitable for satisfying the open space requirement along with offroad trails.

9 70. The project has been designed to include a trail running north/south through the  
10 westerly portion of the site as depicted on site plans.

11 71. Tracts A, B and F are anticipated to be available to the public and at least one will  
12 be used for playground equipment.

13 72. Staff concludes that the project, as conditioned, will meet all minimum  
14 requirements for open space areas in terms of total acreage allocated as well as suitability for the  
15 intended purpose.

16 73. The developer will be required to provide a performance assurance device in  
17 order to provide for maintenance of all required landscaping until the homeowner's association  
18 assumes responsibility. This shall be in the amount of 150% of the anticipated cost of  
19 maintenance of landscaping for three years.

20 Fire Protection.

21 74. Fire protection to all buildings must be provided pursuant to the International Fire  
22 Code. The specific requirements will be determined during civil plan review. Fire hydrant locks  
23 must be installed as part of the City's Water Conservation and Accountability Program. Fire  
24 access lanes exceeding 100 feet in length must have appropriate turnaround provisions. City  
25 Staff finds that the preliminary site plan meets all of these requirements for fire protection.

1        Mailboxes and Street Lighting.

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

4        Subdivision Name.

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

8        Trees.

9        77.     Any trees having a diameter exceeding eight inches and planned for removal must  
10 be replaced on a 1 to 1 basis. Chapter 18.57 YMC.

11        78.     To more fully comply with all zoning and design standards, City Staff proposes  
12 three additional conditions in addition to the thirteen originally proposed conditions. Those  
13 additional conditions are:

14                "14     When the applicant submits their final plat application, the tract of  
15 land labeled 'Tract H' on the attached site plan shall be dedicated to the public right  
16 of way to provide access for future developments to the west of the subject  
property.

17                15.     The sewer and water utility shall be extended into 'Tract H' to provide  
18 for easier access to these utilities for future developments to the west of the subject  
19 property. These sewer and water utilities shall be of an appropriate size to  
20 accommodate any future development to the west of the subject property. The final  
design of these utility extensions are subject to final review and approval during  
Civil Plan Review.

21                16.     Prior to final plat approval, the existing 60' ingress/egress and  
22 utilities easement depicted on the attached BLA map shall be vacated."

23        79.     Subject to these amended conditions, City Staff recommends approval of the  
24 project. The Applicant does not object to the proposed conditions of approval as amended.  
25





9. All other requirements of Chapter 18.16 YMC have been met.

10. The project is in compliance with the purposes of the R-4 zoning designation.

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

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

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

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

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

16. The project should be **approved** subject to the sixteen conditions contained in the Amended Staff Report.

### DECISION

The Applicant's request for preliminary approval of subdivision containing 109 single family residential lots on 34.57 acres, with associated improvements, shall be approved subject to the following conditions:

1. The conditions of the Mitigated Determination of Nonsignificance associated with this project are hereby referenced and are considered conditions of this approval.

2. A lighting plan shall be submitted during Civil Plan Review.

1           3.       Any proposed irrigation system shall incorporate a backflow prevention device  
2 and conform with the cross-connection and backflow control program as defined in  
3 13.04.220(D) YMC. The final landscape plan shall be submitted during Civil Plan Review and  
4 include a detailed irrigation plan.

5           4.       Plans submitted during Civil Plan Review shall include an addressing map for  
6 approval by the building official.

7           5.       Plans submitted during Civil Plan Review shall include the proposed location  
8 and details for mailbox placement and these plans must conform to 18.59.080 YMC.  
9

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

15          7.       Stormwater facilities shall be located in separate recorded tracts owned and  
16 maintained by the homeowners' association. The stormwater system shall be held in common by  
17 the homeowners' association and the homeowner's agreement shall include provision for the  
18 assessment of fees against individual lots for the maintenance and repair of the stormwater  
19 facilities.  
20

21          8.       SE Thurston Fire Authority has requested two additional fire hydrants: one at the  
22 cul-de-sac at the termination of internal 'Road 2' and one near Thompson Creek. The exact  
23 location and provision of fire hydrants is finalized during Civil Plan Review. The applicant shall  
24 submit a fire hydrant plan that is subject to review and final approval during Civil Plan Review.  
25

1           9.     The applicant shall secure all necessary demolition permits prior to demolition  
2 of the current structures on the property.

3           10.    In order to provide a more complete active recreation component in the  
4 required open space area, the applicant shall install at least one play structure in at least one  
5 of the open space tracts during site development.


6           11.    If the City of Yelm reclaimed water utility is available to this development  
7 when the applicant submits their Civil Plan Review application, the applicant shall be  
8 required to extend the reclaimed water utility into the proposed subdivision and through  
9 each of the proposed internal roads, and any irrigated open space tracts must use this  
10 reclaimed water. For the purposes of this condition, the reclaimed water utility is  
11 "available" if it is within 200 feet of the subject property.

12           12.    During Civil Plan Review, the critical areas report shall be reviewed to  
13 determine if the finalized proposal for improvements to Berry Valley Rd result in impacts to  
14 the wetland around Thompson Creek. If this review of the critical areas report determines  
15 that there are impacts to the wetland, then a Compensatory Mitigation Plan will be required  
16 pursuant to 18.21.060(G) YMC.

17           13.    Prior to final subdivision approval, the BLA associated with parcel  
18 numbers 21724230100, 21723140000, and 21723140102 shall be finalized and recorded  
19 with Thurston County.  
20

21           14.    When the applicant submits their final plat application, the tract of land  
22 labeled 'Tract H' on the attached site plan shall be dedicated to the public right of way to  
23 provide access for future developments to the west of the subject property.  
24  
25

15. The sewer and water utility shall be extended into 'Tract H' to provide for easier access to these utilities for future developments to the west of the subject property. These sewer and water utilities shall be of an appropriate size to accommodate any future development to the west of the subject property. The final design of these utility extensions are subject to final review and approval during Civil Plan Review.

16. Prior to final plat approval, the existing 60' ingress/egress and utilities easement depicted on the attached BLA map shall be vacated. 

DATED this 7 day of March, 2024.

Mark C. Scheibmeir  
City of Yelm Hearing Examiner