

**BEFORE THE LAND USE HEARING EXAMINER
FOR THE CITY OF LA CENTER, WASHINGTON**

Regarding a request by Brezee Creek Trails, LLC for)	<u>FINAL ORDER</u>
preliminary plat approval to divide 4.87 acres into 15)	File No. 2024-012-
single-family lots east of E. 2 nd Way, south of La Center)	SUB/SEPA/VAR/CAR/TRE
Elementary, in the City of La Center, Washington)	(Breeze Creek Trails)

A. SUMMARY

1. Brezee Creek Trails, LLC (the “applicant”) requests approval of a preliminary plat to divide 4.87 acres into 15 lots for single-family detached homes. The land proposed for development is located east of E. 2nd Way, south of La Center Elementary School; known as Assessor Parcel No. 986044822. The applicant proposed to utilize the City’s density transfer ordinance to reduce the size of proposed Lots 2, 3, and 10 to less than 7,500 square feet.

a. The site and properties to the east are zoned LDR-7.5 (Low Density Residential, 7,500 square foot minimum lot size). Properties to the north are zoned UP (Urban Public). Properties to the west and south are located in unincorporated Clark County, zoned P/OS (Park/Open Space), and subject to the UH-10 (Urban Holding, 10-acre minimum lot size) overlay zone.

b. The site is currently vacant. There is an unnamed fish bearing stream located offsite to the north of the site, with the riparian buffer extending onto the northern portion of the site. There is a Category IV Depressional wetland located on the southern portion of the project site. There are steep slopes in the southeast corner of the site. One Oregon White Oak tree is located on the southern edge of the site. The applicant proposed to preserve the riparian buffer, steep slopes, and oak tree in open space tracts. The applicant proposed to fill the wetland and mitigate for the wetland impacts by purchasing credits at a wetland bank. The applicant proposed to construct a small portion of E. 2nd Way and a stormwater detention facility and flow spreader within the riparian buffer on the site and mitigate impacts to the riparian buffer by enhancing the buffer with native vegetation.

c. The applicant proposed to extend E. 2nd Way into the site from the existing terminus at the northeast corner of the site, terminating in a cul-de-sac turnaround in the southern portion of the site. NE Ivy Avenue, a private street, abuts the north boundary of the site and continues in an easement across the site to provide access to the property south of the site. No site access is proposed to NE Ivy Avenue to the north and the applicant will retain access to the south via the shared driveway serving proposed Lots 14 and 15. The residents of the property south of the site will retain their existing easement access via NE Ivy Avenue.

d. Clark Public Utilities will provide domestic water and the City of La Center will provide sanitary sewer service to the site.

e. The applicant will collect storm water from all impervious areas on the site and convey it to the proposed on-site storm water facility in the northwest portion of the site for treatment and detention. The applicant will discharge treated stormwater from the on-site detention pond via a flow spreader at less than predevelopment rates.

f. The applicant proposed to remove 72 jurisdictional trees, trees greater than ten-inches in diameter, on the site. The applicant will mitigate the loss of these trees by planting 29 street trees and 43 native trees planted in the open space tract(s) and rear yards.

2. The applicant also requests approval of a Type I variance to reduce the lot width for proposed lots 7-9 from 60 to 58 feet.

3. The City of La Center issued a Mitigated Determination of Nonsignificance ("MDNS") for the subdivision pursuant to the State Environmental Policy Act ("SEPA"). Hearing Examiner Joe Turner (the "examiner") conducted a public hearing to receive testimony and evidence about the application. City staff and consultants recommended that the examiner approve the preliminary plat subject to conditions. See the Staff Report & Recommendations dated October 7, 2024 (the "Staff Report"), as amended at the hearing. The applicant accepted those findings and conditions, as amended, without exceptions. Four persons testified orally with questions and concerns about the proposed development. Other persons testified in writing. Disputed issues or concerns in the case include the following:

a. Whether the City provided adequate notice of the proposed development and public hearing;

b. Whether traffic generated by this development will exceed the capacity of area streets or otherwise create a hazard;

c. Whether the applicant can be required to improve the offsite section of NE Ivy Avenue for vehicle and/or pedestrian traffic;

d. Whether the proposed development will interfere with existing easement access to adjacent properties;

e. Whether the applicant can be required to install additional gates on NE Ivy Avenue;

f. Whether the applicant can be required to address illegal parking on the offsite section of NE Ivy Avenue north of the site;

g. Whether construction traffic and activity will have prohibited adverse impacts on adjacent properties.

h. Whether the applicant can provide stormwater facilities and roads within the riparian buffer on the site and whether the applicant will adequately mitigate for the riparian and wetland impacts;

- i. Whether the proposed tree removal is allowed by the Code;
 - j. Whether the existing offsite force main sewer in the Holley Park subdivision has sufficient capacity to accommodate additional effluent from this site;
 - k. Whether the applicant can be required to fence the site; and
 - l. Whether the proposed development will have prohibited impacts on the privacy of adjacent properties.
4. Based on the findings provided or incorporated herein, the examiner approves the application subject to the conditions at the end of this final order.

B. HEARING AND RECORD HIGHLIGHTS

1. Hearing Examiner Joe Turner (the "examiner") received testimony at the public hearing about this application on October 22, 2024. That testimony and evidence, including a recording of the public hearing and the casefile maintained by the City, are included herein as exhibits, and they are filed at City Hall. The following is a summary by the examiner of selected testimony and evidence offered at the hearing.

2. La Center city planner Angie Merrill summarized the Staff Report and the proposed development.

a. She noted that the applicant proposed to divide the 4.87-acre site into 15 lots for single-family residences ranging in size from 6,025 to 9,897 square feet. The applicant is proposing to utilize the City's density transfer ordinance to reduce the size of proposed Lots 2, 3, and 10 to less than 7,500 square feet. Proposed Lots 14 and 15 are flag lots. The applicant is also seeking approval of a Type I variance to reduce the width of proposed lots 7-9 from 60 to 58 feet.

b. The site contains critical areas consisting of a riparian buffer in the northwest portion of the site, steep slopes in the southeast corner, and a single Oregon white oak tree. The applicant will retain all of the critical areas in proposed open space tracts.

c. She requested the examiner adopt the following corrections to the Staff Report:

- i. Delete planning condition 9 or 10 as they are duplicative.
- ii. The citation to LCMS 16.160 on page 14 of the Staff Report should be corrected to LCMC 18.190, which is the correct citation for the City's Urban Holding overlay zone.
- d. Proposed Tract H on the south boundary of the site is located in unincorporated Clark County. No development is proposed within Tract H.

e. The applicant has submitted a mitigation plan for the critical area impacts of the development. Exhibit 21.

3. City engineer Tony Cooper summarized the engineering issues for the proposed development.

a. He noted that the applicant will extend E. 2nd Way into the site from the existing terminus at the northeast corner of the site, terminating in a cul-de-sac turnaround in the southern portion of the site. No access is proposed to NE Ivy Avenue, which abuts the north boundary of the site, as the section of this road between the site and the Elementary School to the north is a private road that is not improved for public use. The applicant will install a gate at the north boundary of the site to prevent public use of this section of NE Ivy Avenue but allow the owners of the property south of the site to continue to use this private road, consistent with their existing easement. The applicant should be required to install the gate prior to beginning construction in order to ensure that construction vehicles do not use this road to access the site.

b. The applicant will collect, treat, and detain stormwater runoff from all new impervious areas on the site. The applicant will release treated stormwater via a dispersion trench to disperse runoff towards the offsite stream located north of the site.

c. The applicant will remove 72 regulated trees on the site. The applicant will plant street trees and additional trees in the proposed open space tracts to mitigate for the loss of the removed trees.

d. The developer of the Holley Park subdivision east of the site installed a two-inch diameter force main sewer line to serve 23 of the lots in that development. The applicant will extend that existing sewer line to serve the lots on this site.

e. He requested the examiner delete proposed planning condition 14, as it repeats planning condition 7, planning condition 25, as it repeats planning condition 17, planning condition 45 and engineering condition 6, as these were carry inadvertently carried over from a prior Staff Report.

4. Planner Scott Taylor appeared on behalf of the applicant, Brezee Creek Trails, LLC and responded to neighbors' concerns and issues raised in the Staff Report.

a. He testified that the construction schedule for the development is unknown at this time. The applicant's goal is to begin construction in the summer of 2015 and complete it as soon as possible. Construction of roads and utilities typically takes four to six months and construction of homes may occur over the course of one to two years.

b. The applicant is required to install erosion control measures on the site prior to undertaking any ground disturbing activities, including construction entrances, and is prohibited from tracking dirt and sediment offsite. The City and the state will monitor compliance with erosion control requirements and can impose fines for

violations and offsite tracking, giving the applicant a strong incentive to ensure that no offsite tracking occurs.

c. Based on GIS mapping, the site and the majority of the City is mapped as non-riparian habitat. The applicant's biologist reviewed the site and did not observe any non-riparian habitat on the site. The non-riparian habitat mapping may relate to habitat for brown bats, cranes, or other species.

d. The applicant proposed to fill the wetland on the site and mitigate that impact by purchasing credits at a wetland bank. The applicant will mitigate impacts from the stormwater detention facility and outfall and the small portion of E. 2nd Way located in the riparian buffer by planting the buffer with 320 plants, including 75 trees. Stormwater facilities and roads are allowed in this buffer as there are no alternative locations for these facilities on the site. These improvements are proposed in a portion of the buffer that is currently a grassy field. The proposed mitigation plantings will enhance the habitat value of the riparian area.

e. The sidewalks on the site will connect with the existing sidewalks on the offsite section of E. 2nd Way, providing a safe walking route for children who walk to school.

f. NE Ivy Avenue is a private street located in an easement over the site and the school property to the north of the site. The section of NE Ivy Avenue south of the school provides access through the site to the property south of the site. The applicant will pave the onsite section of NE Ivy Avenue to the south edge of proposed Lot 15, which will reduce the amount of dust generated on the existing gravel surfaced road.

g. The local access roads on and near the site are subject to a 25 mph speed limit. Drivers exceeding the speed limit are subject to police enforcement.

h. Construction activities on the site are subject to City's noise standards which prohibit construction and other noise generating activities during certain hours. Construction equipment will not travel back and forth to the site. Equipment will remain on the site until construction is completed. The existing roads in the area are designed to accommodate all types of traffic. The applicant must restore any road damage caused by construction vehicles and activities.

i. The applicant will install signage to demarcate the edge of the habitat buffer on the rear of proposed Lots 1 through 9. The applicant or future residents are likely to install fences as well, but that is not required by the Code.

j. The applicant will install a gate on NE Ivy Avenue near the north boundary of the site to prevent public access to this offsite road. The Fire District does not want to use NE Ivy Avenue to access the site as the offsite section of this road is narrow and not improved to support emergency vehicles. Emergency vehicles will access the site via E. 2nd Way within the Holley Park subdivision. However, the applicant will equip the gate on Ivy Avenue with a Knox Box that will allow the gate to be opened in the event of an emergency. No construction vehicles will utilize NE Ivy Avenue to access

the site. The gate will be designed to allow pedestrian access on NE Ivy Avenue, allowing students to use this route to walk to school. The fire district will likely require that homes on the site be equipped with emergency fire sprinklers, given the single road access to the site.

k. He requested the examiner modify engineering condition 4 to delete the reference to Holley Park subdivision and SEPA condition 6 to correct list the correct name and date for the traffic analysis report.

l. The proposed development will not alter the existing 20-foot wide easement serving the Kleins' property south of the site. The proposed shared driveway will not reduce the width of their existing driveway. Based on the site survey, the existing gravel driveway is 12 feet wide and the applicant is required to provide a 20-foot wide paved driveway serving proposed Lots 14 and 15. The applicant will not alter the existing driveway south of the access to Lot 15. The applicant can modify the intersection of NE Ivy Avenue and E. 2nd Way if needed for farm equipment access. If the Minihan family have an access easement over the site the applicant will retain that easement access.

m. There are, or should be, "private road" and "dead end" signs on NE Ivy Avenue north of the site. The applicant is willing to construct a hammerhead turnaround north of the proposed gate, but that would require cooperation with the School District, which owns the property north of the gate.

5. Gerald T. Minihan expressed concern that the proposed development will conflict with his easement rights and limit access to his property located southeast of the site.

6. Stephanie Klein testified that her property located south of the site has legal access on NE Ivy Avenue and across the site. NE Ivy Avenue is a single lane road/driveway. But drivers assume it is a public street and drive down this road. Drivers must turn around on her property because the road is too narrow to turn around. She argued that a gate on the north boundary of the site will create a hazard, as there is no turnaround; drivers who come down NE Ivy Avenue will reach the gate and be forced to back up on the narrow roadway. She expressed concern that the proposed shared driveway over Lots 14 and 15 will reduce the width of her existing access. Her farm uses semi-trucks that require a wider roadway.

a. The applicant should be required to fence the site to prevent her livestock and other animals from wandering onto the site.

b. The proposed development will reduce the privacy of her home, as residents of the homes on proposed Lots 9 and 10 will be able to look into her home. The applicant should be required to plant landscaping along the south boundary of these lots to screen views of her home.

c. Vehicle traffic on NE Ivy Avenue may create a hazard for children walking to school on that road.

7. Courtney DePorto questioned whether the existing pump station and force main sewer have sufficient capacity to serve this development. She argued that the lot numbers used in the pump station capacity analysis in Exhibit 1.M are incorrect.

8. Paul Wemhoener questioned whether his written testimony was included in the record.

9. At the end of the hearing the examiner held open the public record for one week, until October 29, 2024, to allow the public an opportunity to submit additional written testimony and evidence regarding the issues raised at the hearing. The examiner held the record open for a second week until November 5, 2024, to allow all parties the opportunity to respond to anything submitted during the first week, and for a third week, until November 12, 2024, for the applicant to submit a closing argument. The record closed at 5 PM on November 12, 2024. The following exhibits were submitted during the open record period:

- a. A letter from Margaret and John Luccio (Exhibit 23);
- b. A copy of the hearing sign in sheet (Exhibit 24);
- c. A letter from Paul and Sandra Wemhoener (Exhibit 25);
- d. emails regarding sanitary sewer service (Exhibit 26);
- e. An email from Ms. Klein dated October 23, 2024, and a copy of the Kleins' easement (Exhibit 27);
- f. emails regarding the critical area mitigation plan (Exhibit 28);
- g. A memorandum from Ms. Merrill dated October 28, 2024 (Exhibit 30);
- h. A letter from Angela and Gerald Minihan dated October 29, 2024 (Exhibit 31);
- i. A letter from listed Homeowners of the Holley Park Subdivision dated October 29, 2024 (Exhibit 31); and
- j. The applicant's final argument dated November 12, 2024 (Exhibit 32)

C. DISCUSSION

1. City staff recommended approval of the application based on the affirmative findings and subject to conditions of approval in the Staff Report, as amended at the hearing. The applicant accepted those findings and conditions, as amended, without exception.

2. The examiner finds that the Staff Report, as amended, accurately identifies the applicable approval criteria for the preliminary plat and contains affirmative findings that

the proposed preliminary plat does or can comply with the applicable standards of the LCMC (including cited plans and codes) and the Revised Code of Washington, provided the applicant complies with recommended conditions of approval as amended herein. The examiner adopts the affirmative findings in the Staff Report, as amended, as his own, except to the extent that those findings are inconsistent with the findings in this Final Order.

3. The examiner finds that the City provided adequate notice of the application and likely SEPA determination and the public hearing.

a. The City mailed notice of the application and likely SEPA MDNS on August 22, 2024, as required by LCMC 18.31.170(2). (Exhibits 3 and 4). The City mailed notice of the hearing to the applicant and owners of properties within 300 feet of the site on October 7, 2024, as required by LCMC 18.30.100 and 18.30.120(5)(b). (Exhibit 16). The City also published notice of the hearing in the Columbian newspaper on October 7, 2024, as required by LCMC 18.30.120(8). (Exhibit 16). Multiple forms of notice are required, in part, to provide a measure of overlap, so that if notice in one form is not effective (e.g., when a mailed notice is not received or an interested party is located outside of the notice radius), another form of notice will be effective (e.g., published notice).

b. The examiner finds that the public had an adequate opportunity to review and respond to the proposed development, consistent with the limitations of the Code. The neighborhood was well represented at the hearing and in the written record. Residents of the neighborhood testified clearly and succinctly regarding issues of concern to them. The examiner held the record open for one week after the hearing to allow all parties the opportunity to submit additional written testimony and evidence and for an additional week to allow all parties the opportunity to respond to anything submitted during the first week.

4. This development will increase the volume of traffic on streets in the area, including the section of E. 2nd Way within the Holley Park subdivision east of the site. That increased traffic will be perceptible to area residents. However, City engineering staff determined that it will not exceed the capacity of streets nor create a hazard, based on the applicant's traffic analysis (Exhibit 1.k). There is no substantial evidence to the contrary. Neighbor's unsupported concerns about increased traffic are not substantial evidence sufficient to overcome the expert testimony of the traffic engineers for the City and the applicant.

a. The applicant is required to extend E. 2nd Way into the site to provide access to the site. The extension of this street was foreseeable. The very nature of the existing design of this street --- as a public right of way stubbed to the boundary of the site, terminating in a traffic barricade without a turnaround --- evidenced an intention that the street would be extended. For people who have lived along what has heretofore been a dead-end street, the change created by the extension of this street will be more significant. They have enjoyed a relatively low level of traffic given their location in an otherwise urbanized area. But it is time to extend the street to accommodate development on this site and fulfill the City's connectivity and cross circulation goals.

b. The applicant cannot improve NE Ivy Avenue to provide access to the site. NE Ivy Avenue is a private street and the applicant does not own or control the offsite section, located on the School District property north of the site. In addition, improvements to offsite NE Ivy Avenue would result in significant impacts to the offsite stream and associated riparian buffer.

i. The Fire District noted that residential developments with more than 30 dwelling units require a secondary access. (Exhibit 19). The Fire District has exclusive discretion to determine whether NE Ivy Avenue is adequate to provide the required secondary access. If the Fire District requires improvements to Ivy Avenue, that would likely require additional City review and approval. The Fire District may waive the secondary access requirement if the homes on the site are provided with emergency sprinklers or other mitigation measures. The applicant must obtain Fire District approval of the development prior to final approval. See condition D.1.

c. The additional traffic generated by this subdivision may pose an increased risk for drivers, cyclists, and pedestrians in the area. Higher vehicular traffic volume creates a marginally higher risk for pedestrians and bicyclists. It may well warrant a heightened degree of attentiveness to traffic when driving, cycling or walking in the neighborhood. However, those risks are consistent with the location of the site in the urban area where City plans call for the sort of development being proposed. Reasonably prudent drivers will observe the posted speed limit and other applicable traffic regulations. Unfortunately, not all drivers are prudent. However, there is no evidence that the development proposed in this application will contribute a disproportionate share of imprudent drivers. If necessary, the City can address issues of speeding by providing increased enforcement of traffic laws on all streets in the area, or installing traffic controls on area roads, if warranted based on actual traffic conditions. Area residents can petition the City to install traffic calming measures on area streets. However, speeding is an existing problem, which the applicant cannot be required to remedy. The applicant will construct sidewalks on both sides of E. 2nd Way within the site, which will connect with the existing sidewalks on the offsite section of this street and provide a safe walking route for pedestrians.

i. The applicant cannot be required to improve pedestrian access on NE Ivy Avenue as the need for such improvements is generated by all of the development in the area, not just the lots being created with this development. In addition, the cost of such improvements would exceed the roughly proportional impact of this development on the need for such improvements; the proposed development will generate a small proportion of the pedestrian traffic on NE Ivy Avenue and it will not generate any additional vehicle traffic on this road.

d. The extension of E. 2nd Way will provide an alternate access route to the Kleins' farm property south of the site; all traffic to the Kleins' property currently uses NE Ivy Avenue for access. However, E. 2nd Way is a public street which the Kleins and their delivery vehicles have the right to use. Based on the applicant's traffic analysis (Exhibit 1.K) intersections in the immediate area will operate at Level Of Service (LOS) D or better, well above the City's minimum requirement of LOS E. Therefore, the small

volume of traffic generated by this ten-acre farm will not exceed the capacity of E. 2nd Way.

5. As noted above, NE Ivy Avenue is a private street located in easements on the site and the abutting School District property to the north. The owners of the properties subject to the easement have the right to use the land beneath the easement in any way that does not interfere with the terms of the easements. The examiner has no authority to review and interpret the terms of the easements to determine if the proposed development conflicts with the easement. That is an issue for the superior court. However, the applicant has agreed to work with the Kleins regarding the design of the proposed gates, the intersection of the shared driveway/Ivy Avenue extension and E. 2nd Way, and other issues related to the easement.

a. The applicant will install a gate on NE Ivy Avenue near the north boundary of the site to prevent unauthorized vehicles from using NE Ivy Avenue. The applicant has no authority to install a second gate on the School District property, as the applicant does not own or control that property.

i. The applicant proposed to design the gate to ensure access for students who walk to school on NE Ivy Avenue. A condition of approval is warranted to that effect.

ii. The examiner finds that the applicant should be required to install the gate on NE Ivy Avenue prior to beginning construction activities in order to ensure that construction traffic does not utilize NE Ivy Avenue. A condition of approval is warranted to that effect.

iii. There is no need for an additional gate at the south boundary of Lot 15. The shared driveway serving proposed Lots 14 and 15 and the Kleins' property will be constructed as a private driveway that is clearly different from a public road intersection and is unlikely to attract drivers who do not intend to access one of these parcels. The Kleins' have adequate remedy in the event that trespass occurs on their property.

b. As discussed in Exhibit 33, there is no evidence in the record of any easement or other access rights serving the Minihan properties located southeast of the site. There is no evidence to the contrary. As the applicant noted (Exhibit 33), there is an existing gated access to the Minihan properties from the private driveway at the south end of E. Minihan Court. Therefore, this development will not cause the Minihan properties to become landlocked.

c. The applicant notes that there is a gated access from the on-site section of NE Ivy Avenue to the Holley Park Subdivision open space tract, parcel # 986053997. However, there is no existing easement for that access. "The applicant is willing to work with the HOA for Holley Park to memorialize their access to their existing gate and open space tract at the south end of their neighborhood from Ivy Avenue." (Exhibit 33). The examiner encourages the applicant to do so, but the examiner has no authority to impose a condition of approval to that effect.

d. The applicant is not required to address illegal parking on the offsite section of NE Ivy Avenue north of the site, as this is an existing problem that is not created or significantly increased by the proposed development. The City and/or the School District can address this issue through enforcement. Residents can raise this issue with the City Council and/or the School Board if they believe existing enforcement is inadequate.

6. Construction on this site will temporarily cause increased noise, dust, traffic, and other impacts on adjacent roads and properties. The City Code and state law regulate construction activities, including requirements for dust and erosion control, construction vehicle access, road closures etc., which will limit impacts on surrounding residents. The City will inspect the site during construction to ensure ongoing compliance with applicable requirements. Compliance with these regulations will not eliminate all potential impacts. However, the examiner finds that, while such impacts may occur, they are not significant enough to require specific limitations on construction other than those imposed by State law and the City Code. This is one of the results of living in an urban area where County plans call for the type of development being proposed. The examiner encourages residents to contact the City if they believe excessive impacts occur.

a. Construction noise is regulated by LCMC 8.55.050 and the examiner has no authority to impose further restrictions.

b. All construction traffic must utilize E. 2nd Way to access the site. Existing E. 2nd Way is a public street which the applicant's contractors have a right to use. The applicant or their contractors will be required to restore any impacts to offsite streets caused by construction activities, vehicles, or equipment. As the applicant noted, construction equipment will not travel back and forth to the site on a daily basis. Most construction equipment will remain on the site until construction is completed. Construction workers may travel back and forth to the site with the personal vehicles, but there is no evidence that construction worker traffic will pose a greater hazard than other types of traffic.

c. The proposed development will not generate significant amounts of offsite sediment. The applicant will be required to comply with the City of La Center Stormwater ordinance to prevent offsite erosion and sediment leaving the site. The applicant will also be required to obtain a Department of Ecology Construction Stormwater Permit to prevent erosion and soil from leaving the site and impacting the waters of the state. The applicant will be required to install erosion control measures, including an engineered construction entrance, prior to beginning construction on the site. The City will inspect the site during construction to ensure ongoing compliance and local residents can report any violations they observe. The City and/or the state can impose fines for erosion control violations, creating an incentive for the applicant to ensure ongoing compliance.

7. The proposed stormwater detention facilities and outfall and a small portion of the E. 2nd Way extension will impact the riparian buffer on the site. such critical area

impacts are allowed when they are unavoidable. LCMC 18.300.090(4)(c)(2)(A). The examiner finds that the impacts are unavoidable in this case.

a. The applicant cannot extend E. 2nd Way into the site without impacting the riparian area. The applicant will immediately turn the roadway south, away from the riparian area in order to minimize the impact of this roadway.

b. The applicant must locate the stormwater detention and outfall facilities at the low point of the site near the stream in order to discharge treated water towards the offsite stream.

8. The applicant will mitigate these impacts as outlined in the Supplemental Critical Areas Report and Mitigation Plan (Exhibit 21), by densely planting the riparian buffer with native trees and shrubs to enhance the habitat value provided by the existing mowed pasture on this portion of the site.

a. Neighbors noted (Exhibit 32) that the mitigation plan states “No trees will be removed” for construction of the stormwater facility. (Exhibit 21 at 6/.pdf p. 10). However, Sheet PRE5.0 of the applicant’s preliminary plan set shows three trees removed to accommodate the stormwater detention facility. Neighbors further note that the mitigation plan and the prior Critical Areas Report list the size of the on-site wetland at 0.08-acres. (Exhibit 21 at 2/.pdf p. 6 and Exhibit 1.T at 3/.pdf p. 7). However, the mitigation plan lists the wetland impact area as 0.065 acres. (Exhibit 21 at 5/.pdf p. 9). The applicant must obtain City approval of the mitigation plan prior to “approval of any development activities on critical areas.” LCMC 18.300.120(1). Therefore, the City will have the opportunity to review the plan and resolve any discrepancies before the applicant undertakes any development in these critical areas. The applicant is not required to obtain such approval prior to preliminary plat approval.

9. There is no dispute that the existing trees on the site provide numerous benefits, including oxygen, water absorption, shade, wildlife habitat, etc. However, some tree removal is necessary in order to develop the site consistent with the current zoning. The City only regulates the removal of trees larger than ten inches in diameter and requires mitigation for the removal of such trees by planting a two-inch deciduous trees or a six to eight -foot evergreen tree for every tree removed. LCMC 18.350.050. The applicant proposed to remove 72 regulated trees on the site. The applicant will mitigate for this impact by planting 29 street trees and 43 native trees planted in the open space tract(s) and rear yards.

10. The applicant will provide sanitary sewer service to the site by extending the existing force main sewer in the Holley Park subdivision into the site. As discussed in Exhibit 26, there are two separate force mains in the Holley Park subdivision: one in E. 2nd Way and one on Miniham Court. The force main in E. 2nd Way currently serves 15 homes in Holley Park and will serve a total of 30 homes (15 from Holley Park and 15 from Brezee Creek) with this development. The City engineer determined that there is enough capacity in the existing force main from Holley Park Subdivision to serve the new homes from Brezee Creek Trails Subdivision. There is no substantial evidence to the contrary.

11. It was argued that the applicant should be required to fence the site to separate the proposed development from adjacent properties. LCMC 18.245.060 establishes standards for landscaping and screening. Based on the Table in this Code section, no screening or buffering is required where land zoned for single-family detached residential development adjoins other land zoned for single-family detached residential or rural development. There is no basis for concluding residents of the proposed subdivision will pose a hazard to the use of abutting properties or will be reasonably likely to trespass on abutting properties. The owners of abutting properties have adequate legal (civil) recourse to address any trespass problems that may arise. The owners of most surrounding properties are free to install a fence along on their properties to reduce the potential for trespass and enhance privacy. The owners of adjacent properties have a duty to keep their livestock and other animals confined to their property. The applicant is not required to install a fence to exclude neighbors' animals.

12. There is no dispute that the proposed development will impact existing the privacy of adjacent residences. What is now largely an open field will be developed with 15 new homes. But the Code does not prohibit development from having an impact on privacy. The intensity of the proposed development is consistent with the current zoning of the site.

13. LCMC 18.190.070 requires a 20-foot-wide natural vegetated buffer along all property lines of developments in the UH-10 zone. However, as noted in Exhibit 30, approval of this development will remove the UH-10 overlay zone. Therefore, this standard is not applicable and proposed planning condition of approval 28 should be deleted.

14. Neighbors noted that SEPA condition 3 requires that the applicant comply with the recommendations of the Preliminary Technical Information Report dated March 2024. However, planning condition 4 requires the applicant to revise the preliminary stormwater plans. The examiner notes that condition 4 requires the applicant to revise the *plans* to show the stormwater facility on one tract. This revision will not alter the recommendations of the Preliminary Technical Information Report or the design and function of the detention facilities. Therefore, no changes to SEPA condition 3 are warranted.

D. CONCLUSION

The examiner concludes that the applicant sustained the burden of proof that the proposed development does or can comply with the applicable provisions of the La Center Municipal Code and Revised Code of Washington, provided it is subject to reasonable conditions of approval warranted to assure compliance in fact with those provisions.

E. DECISION

In recognition of the findings and conclusions contained herein, and incorporating the reports of affected agencies and exhibits received in this matter, the examiner hereby

approves the remainder of the application, File No. 2024-012-SUB/SEPA/VAR/CAR/TRE (Breeze Creek Trails Subdivision) in general conformance with the applicant' preliminary plat, subject to the following conditions:

A. Planning Conditions

1. The applicant shall apply for and receive approval of a sign permit and building permit (if applicable) for a subdivision entrance sign prior to sign construction in accordance with LCMC 8.60.
2. The applicant shall demonstrate that building height requirements are met prior to issuance of a building permit for each lot. The building height shall not exceed 35 feet in height.
3. The applicant shall demonstrate that the maximum building lot coverage and maximum impervious surface area requirements per lot are met prior to issuance of a building permits.
4. The preliminary plat and stormwater plans will need to be revised to show the stormwater facility on one tract.
5. The applicant shall avoid work within the boundary of the archaeological site. If avoidance is not possible then an archaeological permit is required.
6. Lots 1 – 6 on the final plat must exclude the full riparian buffer width of 200 feet prior to final plat approval.
7. The applicant shall provide a revised Critical Areas Report that includes mitigation in accordance with LCMC 18.300.090(2)(i), LCMC 18.300.020, and LCMC 18.300.120 for the affected riparian areas and implement such mitigation measures prior to final engineering approval. The revised mitigation plan shall include mitigation for the trees removed for the stormwater detention facility and accurate mitigation consistent with the size of the onsite wetland.
8. The applicant shall stake, flag, and fence the riparian area buffer prior to any site improvements prior to and through the duration of site construction.
9. The applicant shall permanently mark the outer extent of the riparian buffer in accordance with LCMC 18.300.090(2)(n)(ii) prior to final plat approval.
10. The applicant shall place the riparian buffer in a conservation covenant and record this covenant in a form approved by the City attorney and reference this recording on the face of the final plat for final plat approval.
11. The applicant shall show the dripline of the preserved OWO on the approved engineering plans to demonstrate that there will not be improvements including grading within these areas.

12. The applicant shall place the OWO dripline in a conservation covenant and record this covenant in a form approved by the City attorney and reference this recording on the face of the final plat for final plat approval.
13. The applicant shall provide a revised geotechnical report that addresses each criteria as outlined in LCMC 18.300.090(4)(c)(ii)(A through G) prior to final engineering approval.
14. The applicant shall follow all recommendations of the Geotechnical Engineering Evaluation by True North Geotechnical dated February 8, 2024, and subsequent revisions as conditioned in this Staff Report.
15. The setbacks on the northwest corner and western portions of the shall be increased to no less than 25 feet prior to final engineering approval.
16. The applicant shall revise the plat and engineering plans to adjust to the minimum required landslide and erosion hazards prior to final engineering approval.
17. Prior to any site construction activities, the landslide hazard area buffer as established by the revised geotechnical report shall be clearly staked before and during any construction or clearing.
18. The applicant shall adhere to all seismic design recommendations contained in the geotechnical report by True North Geotechnical, dated February 8, 2023.
19. The applicant shall comply with LCMC Title 15, Buildings and Construction, and the International Building Code for constructing structures in the seismic hazard area.
20. Prior to final engineering approval the applicant shall provide a revised Critical Areas report that:
 - a. Responds to the 'Wetland Development Standards' as outlined in LCMC 18.300.090(5)(k), including the mitigation sequencing preference, prior to final engineering approval;
 - b. Includes the mitigation plan at the East Fork Lewis Mitigation Bank in accordance with LCMC 18.300.090(5)(p), LCMC 18.300.090(5)(q), and LCMC 18.300.120.
21. Prior to engineering approval, the applicant shall provide a final landscape plan prepared by a registered landscape architect with street trees spaced no greater than 30 feet on center.
22. Prior to final Plat approval, it must be verified that all capital facilities are adequate for the removal of the UH-10 overlay.

23. The applicant shall submit engineering, construction, final plat, and building permit documents in compliance with the preliminary plat documents unless otherwise modified by conditions of approval in this Final Order or as approved by the City through subsequent approvals.
24. The applicant shall obtain building permits in compliance with Chapter LCMC 15.05 prior to construction for each dwelling unit.
25. Prior to the issuance of occupancy, the applicant shall pay all system development fees, park, school, and traffic impact fees in effect at the time.
26. The applicant shall provide improved surface plans for all flag lots in accordance with LCMC 18.210.040(3)(b) in the final engineering plans.
27. The preliminary plat shall expire five years from the date of approval by the hearing examiner unless an application for final plat is submitted or an extension is approved per LCMC 18.210.050(2) and (3).
28. The applicant shall comply with all provisions regarding monumentation outlined in Chapter 18.230 prior to final plat approval.
29. As outlined in LCMC 18.230.090, the final plat shall be drawn with ink upon three-millimeter Mylar film, or equivalent; said sheets are to be 30 inches by 21 inches, with a one-inch border on each side or as otherwise directed by the Clark County recording agency.
30. The applicant shall coordinate with the fire marshal's office to meet all fire code requirements prior to final engineering.
31. Prior to final plat, demonstrate that a safe walking path to school is provided for all children walking to school.
32. As a condition of approval, if any fences or hedges are proposed prior to the final plat, the applicant must provide information demonstrating that the fences or hedges comply with LCMC 18.245.020.
33. The applicant shall provide a photometric plan prior to final engineering plan approval showing how the proposed lights will not cause more than a one foot-candle measure at any property line in conformance with 18.245.040 and LCMC 18.282.
34. Ground-level exterior equipment such as air condition units, must be screened from view to an F2 or L3 standard prior to issuance of final inspection for each dwelling unit.
35. The applicant shall install all landscaping prior to issuance of final inspection for each dwelling unit or no more than six months after final inspection if it will

increase plant survival. Installation after occupancy requires City notification and approval.

36. The applicant's final landscape plan shall comply with the requirements of LCMC 18.245.060(11-16) for plant size and spacing prior to issuance of final inspection for each dwelling unit.
37. All required landscape areas including within the planter strip along public roadways must meet the City's irrigation requirements in LCMC 18.245.060(18). The applicant shall provide irrigation plans prior to final engineering approval.
38. The applicant shall demonstrate that each dwelling unit has at least two (2) off-street parking spaces and one (1) guest parking space per LCMC Table 18.280.010 prior to building permit approval. Parking spaces shall be within the 20-foot required garage setback.
39. The applicant shall comply with LCMC Title 15, Buildings and Construction, and the International Building Code for constructing structures in the seismic hazard area.
40. The final Landscape Plan, once submitted, shall use plants on the native plants list per Table 18.340.040(2) and avoid the use of plants from the nuisance plant list and the prohibited plants list per Table 18.340.040(3) and Table 18.340.040(4).
41. Any trees proposed for removal shall be identified on the plan and shall be flagged in the field consistent with LCMC 18.350.060 so that the City can verify trees to be removed and preserved consistent with 18.350.070(3).
42. Each tree greater than ten-inches dbh proposed to be removed shall be mitigated by one two-inch deciduous or a six-foot tall conifer tree consistent with LCMC 18.350.050.
43. Trees planted in the public right of way shall be installed by the developer or builder prior to final plat.
44. Trees on individual lots shall be installed by the developer or builder prior to issuing final occupancy.
45. A note shall be placed on the final plat noting, the trees shall be watered and maintained in a healthy condition year-round by the HOA.
46. A note shall be placed on the face of the plat noting, if any cultural resources and/or human remains are discovered in the course of undertaking the development activity, the Department of Archeology and Historic Preservation in Olympia and the City of La Center shall be notified. Failure to comply with these state requirements may constitute a class C Felony subject to imprisonment and/or fines.

47. Prior to beginning construction, the applicant shall install a gate at the intersection of NE Ivy Avenue and the northern edge of E. 2nd Way with a locking mechanism approved by the Fire District in order to ensure that construction vehicles do not use NE Ivy Avenue to access the site.

B. Public Works and Engineering Conditions

Public and Private Road Standards City of La Center Engineering Standards for Construction shall apply to all public road improvements unless modified by the director. LCMC 12.10.040.

1. The applicant will implement all recommendations from the traffic study by Kelly Engineering dated January of 2024.
2. The applicant shall submit final grading and erosion control permit, as part of the subdivision plans, showing the proposed contours on the plans.
3. The applicant shall provide full street improvements per standard ST-15 Local Access.
4. LCMC 18.212.050. Chapter 13.10 - Sewer System Rules and Regulations
Connection to public sewer is required. LCMC 13.10. All work is to be performed by a duly licensed contractor in the City of La Center. LCMC 13.10.230. Work will be performed using an open trench method unless otherwise approved. LCMC 13.10.200. All costs associated with installing the side sewer shall be borne by the applicant. LCMC 13.10.110.
5. The applicant shall provide a two-inch public force main in E. 2nd Way public right of way to serve the new houses in the Brezee Creek Trails Subdivision. The force main shall be designed and constructed per city standards. The City Erosion Control Standards require that any activity disturbance over 500 square feet must comply with the city standards. As part of these standards a construction stormwater permit is required from the Department of Ecology and an SWPPP will be necessary as part of the plan submittal to the city. All erosion control measures shall be designed, approved, installed, and maintained consistent with Chapter 18.320 LCMC and the applicant's Construction Stormwater Permit. Per the City Erosion Control Manual, from October 1 through April 30th, no soils shall remain exposed for more than two (2) days. From May 1st through September 30th, no soils shall remain exposed more than seven (7) days.
5. The applicant shall follow all recommendations by the report prepared by True North Geotechnical dated February 8, 2023. The applicant will need to comply with the following, per the report.
6. Chapter 18.320 (Stormwater and Erosion Control) Section 18.320.120 (1) LCMC states that ground-disturbing activities of more than 500 square feet are subject to the requirements of City of La Center Erosion Control Guidelines. Section 18.320.120 (2)(a) LCMC states that the creation of more than 2,000 square feet of impervious surface is subject to stormwater regulation. The applicant proposes to

create new impervious interior streets in the subdivision. Per LCMC 18.320.210, treatment BMPs shall be sized to treat the water quality design storm, defined as the six-month, 24-hour storm runoff volume. A Technical Information Report (TIR) will need to be submitted by the applicant and must comply with LCMC 18.320. The LCMC section 18.320.220 states that if surface water leaves the site, stormwater must be detained per LCMC. The design must meet the LCMC 18.320 and the 1992 Puget Sound Manual for the design of the system.

7. The storm system in public right of way shall meet the requirements of the City Engineering Standards.
8. The storm outfall from to the northeast corner of the site shall be designed to reduce erosion of the adjacent property. The applicants' Engineer will need to design and provide adequate dispersion and protection of the steep slope.
9. Downspouts connections from the houses must connect directly into the site stormwater system. Laterals from the storm main in the street must be shown to serve each lot. Maintenance of Stormwater Facility The applicant shall be responsible for maintenance of the stormwater facility until an HOA is established to maintain the facility. When the HOA assumes responsibility of the facility, they will establish monetary funding of a reserve fund, for maintenance of the stormwater facility, when at least 50% of development of the housing units has occurred or at minimum 2-years after completion and acceptance of the subdivision by the City, whichever is more. The applicant and future owners will be responsible for maintaining the stormwater facility. An operations manual must be submitted for City review approval for the maintenance of the facility in all cases. Adequate bonding is required to guarantee maintenance of the facility for a period of two years following final plat. Stormwater facilities must be located in a separate tract. Prior to initiation of any construction or final plat approval, the developer shall demonstrate to the City's satisfaction that:
 - a. The developer shall establish a homeowner's association (HOA) and Articles of Incorporation, By-laws and CC&Rs of the HOA shall reflect that the HOA's operation and maintenance costs for stormwater facilities shall be borne by the HOA. The applicant will provide a "Stormwater Covenant" that shall describe the scope of maintenance of the stormwater facility and it shall be recorded and incorporated in the CC&Rs.
 - b. The HOA shall be empowered to assess its members' fees to be reserved and used to reimburse the City for the operation and maintenance of the facilities, if enforcement becomes necessary.
 - c. The City shall have the right of a third-party enforcement to ensure that the HOA remains intact and collects the fees and the City shall have the right to recapture any fees and costs associated with enforcement actions. Further, the following language is to be placed on the face of the plat: The City shall be granted the right, but not the duty, to access and maintain the stormwater facility consistent with 18.320.230 LCMC.

10. Street light design and installation is reviewed and approved by the City of La Center. Street lighting on local streets shall be Acorn full cutoff single fixture on a black decorative fiberglass pole and the frontage improvements will need to have Cobra Head LED light per the Engineering Standards. The applicant shall submit a Photometric analysis along with the street light design to verify compliance with the Engineering Standards.

C. SEPA (MDNS) Mitigation Conditions

1. Air: The applicant is required to apply best management practices to reduce dust during construction.
2. Air: Construction equipment shall not be permitted to idle and is required to be shut off while not in use.
3. Water: The applicant must comply with the recommendations of the Preliminary Technical Information Report dated March 2024, as modified .
4. Environmental Health: The lot is a vacant lot and does not contain a septic system.
5. Historic and cultural preservation: In the event any archaeological or historic materials are encountered during project activity, work in the immediate area (initially allowing for a 100-foot buffer; this number may vary by circumstance) must stop and the following actions taken:
 - (a) Implement reasonable measures to protect the discovery site, including any appropriate stabilization or covering;
 - (b) Take reasonable steps to ensure confidentiality of the discovery site; and,
 - (c) Take reasonable steps to restrict access to the site of discovery.

The applicant shall notify the concerned Tribes and all appropriate county, city, state, and federal agencies, including the Washington Department of Archaeology and Historic Preservation and the City of La Center. The agencies and Tribe(s) will discuss possible measures to remove or avoid cultural material and will reach an agreement with the applicant regarding actions to be taken and disposition of material. If human remains are uncovered, appropriate law enforcement agencies shall be notified first, and the above steps followed. If the remains are determined to be Native, consultation with the affected Tribes will take place in order to mitigate the final disposition of said remains.

See the Revised Code of Washington, Chapter 27.53, "Archaeological Sites and Resources," for applicable state laws and statutes. See also Washington State Executive Order 05-05, "Archaeological and Cultural Resources." Additional state and federal law(s) may also apply.

Copies of the above inadvertent discovery language shall be retained on-site while project activity is underway.

Contact	Information
Cowlitz Indian Tribe, Nathan Reynolds, Interim Cultural Resources Manager	Phone: 360-575-6226; email: nreynolds@cowlitz.org
City of La Center, Tracy Coleman, Community Development/Public Works Director	Phone: 360-263-7665; tcoleman@ci.lacenter.wa.us
Office of the Clark County Medical Examiner (for human remains)	Phone: 564-397-8405; email: medical.examiner@clark.wa.gov
Washington DAHP, Dr. Allison Brooks, Ph. D, Director	Phone: 360-586-3066; email: Allyson.Brooks@dahp.wa.gov

6. Transportation: The applicant shall comply with the recommendations of the Traffic Analysis Report (Kelly Engineering dated January 2024).


D. CCFR Fire Conditions

1. Applicant must comply with all applicable requirements and receive approval through Clark-Cowlitz Fire Rescue.

E. CPU Conditions

1. Applicant must comply with all applicable requirements and receive approval through Clark Public Utilities.

DATED this 26 day of November 2024



Joe Turner, AICP
City of La Center Hearing Examiner



EXHIBIT LIST

Project Name: **Breeze Creek Trails Subdivision**

Case Number: **2024-012-SUB/SEPA/VAR/CAR/ TRE**

EXHIBIT NUMBER	DATE	SUBMITTED BY	DESCRIPTION
1	8/1/24	Applicant	Application Package- Cover Sheet, TOC, Master Application, Pre-application Conf Report, Plan Set, GIS Packet, Narrative, Prelim Plats Abutting Site, Prelim Boundary Survey, Legal Lot Determination Deed History, Geotech, Stormwater Report, Storm Statement, Traffic Study, SEPA, Utility Review Letters, Arc Pre-determination & DAHP Info, School Transportation Letter. Road Mod, Site Distance Certification, CC&R's, Type I Variance, Critical Areas Report, Revised Plan Set, Tree Cut Narrative, 300' Mailing Lables
2	8/8/24	COL Land Use	TC Determination
3	8/22/24	COL Land Use	Notice of Application
4	8/22/24	COL Land Use	Affidavit of Mailing
5	9/3/24	Stephanie Klein	Comment Email
6	9/4/24	Holley Park HOA	Comment Email
7	9/4/24	DAHP	Comment Email
8	9/5/24	Home Owners Holley Park Sub	E-mail and Hard Copy Comment Letter
9	9/5/24	Applicant	Response to Email from Stephanie Klein
10	9/16/24	Courtney DePorto	Comment Email
11	10/2/24	COL Land Use	Notice to Columbian to Publish Notice of Public Hearing
12	10/2/24	Applicant	Safe Walking Letter
13	10/3/24	Applicant	Revised Plans Showing Oregon White Oaks
14	10/4/24	COL Land Use	Staff Report
15	10/4/24	WSP/ Alec Egurrola	Critical Areas Comments & Conditions
16	10/7/24	COL Land Use	Notice of Public Hearing
17	10/7/24	COL Land Use	Affidavit of Mailing Notice of Public Hearing

Copies of these exhibits can be viewed at:
 Department of Community Development
 Development Services Division
 1300 Franklin Street
 Vancouver, WA 98666-9810

EXHIBIT NUMBER	DATE	SUBMITTED BY	DESCRIPTION
18	10/7/24	COL Land Use	Affidavit of Mailing Staff Report
19	10/7/24	CCF&R	FM Comments
20	10/17/24	Paul & Sandra Wemhoener	Comment Letter
21	10/21/24	Applicant	Updated CARA Report & Mitigation Plan
22	10/21/24	Courtney DePorto	Comment Letter
23	10/22/24	Margaret & John Luccio	Comment Letter
24	10/22/24	COL Land Use	Sign in Sheet
25	10/25/24	Paul & Sandra Wemhoener	Comment Letter
26	10/25/24	Cheryl Beck & Courtney DePorto	Email Chain Regarding Sewer
27	10/24/24	Stephanie Klein	Easement Docs & Comment Email
28	10/23/24	Paul Wemhoener	Comment Email
29	10/28/24	WSP/ Alec Egurrola	Response to Updated Critical Areas Report & Mitigation Plan and reply to HE question Regarding Condition 11
30	10/28/24	COL Land Use	Staff Hearing Response
31	10/29/24	Angela & Gerald Minihan	Comment Letter
32	10/29/24	Home Owners Holley Park Sub	Comment Letter
33	11/12/24	Applicant	Final Response

Copies of these exhibits can be viewed at:
Department of Community Development
Development Services Division
1300 Franklin Street
Vancouver, WA 98666-9810