



**Notice of Decision**

**Highland Terrace Subdivision: Type II**

**Post-Decision Review, Variance, and SEPA MDNS**

(2020-011-PDR/VAR/SEPA) April 17, 2020

<b>PROPOSAL:</b>	Type II Post-Decision Review (PDR) to review changes made to the Highland Terrace subdivision preliminary plat, originally approved in 2006 (Final Order: 2006-019-SUB). The preliminary plat is vested to the development code that was in place at the time. Along with the PDR, the applicant is requesting variances to the vested code to decrease the side yard setback standard for 37 lots and the rear yard setback standard for one lot. The changes made to the preliminary plat will result in greater wetland impacts on site than what was originally approved. The applicant has voluntarily chosen to comply with the current critical areas code to address wetland impacts, which is more stringent than the past critical areas code that the preliminary plat was reviewed under.
<b>LOCATION:</b>	34305 NW Pacific Highway, La Center, WA 98629. Assessor’s serial numbers: 258636000, 258704000, 258702000, 258727000, 258644000, and .
<b>APPLICABLE STANDARDS</b>	<p><u>Current Code:</u> La Center Municipal Code (LCMC) Title 18, Development Code: Procedures; 18.30, Subdivision Provisions; 18.210, Critical Areas; 18.300, Environmental Policy; 18.310.</p> <p><u>Previous Code:</u> La Center Municipal Code (LCMC) Title 17, Zoning: Urban Residential District; 17.25, Off-Street Parking and Loading Requirements; 17.65, Supplementary Development Standards; 17.84, Variances; 17.90</p>
<b>RECOMMENDATION:</b>	<p><b>APPROVAL of the Post Decision Review</b>, subject to conditions</p> <p><b>DENIAL of Variance no. 1 (side yard setback reduction)</b></p> <p><b>APPROVAL of Variance no. 2 (rear yard setback reduction Lot 51)</b></p>

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## II. OVERVIEW

The Highland Terrace subdivision received preliminary plat approval on December 18, 2006. Due to the economic conditions brought on by the recession beginning in December 2007, the applicant was unable to move forward with developing the then-proposed infrastructure improvements for the subdivision, which are required prior to final plat approval. Under Revised Code of Washington (RCW) 58.17.170, preliminary plats approved prior to or on December 31, 2007 were automatically vested for ten years under the development standards that they were originally reviewed under. In December 2016, the applicant applied and received a one-year extension, allowed under La Center Municipal Code (LCMC) 18.210.050. In November 2017, the applicant and the City recorded a development agreement (DA) that vested the terms of the preliminary plat approval until December 18, 2020.

On February 7, 2020, the applicant submitted engineering plans for approval to begin building the subdivision's infrastructure improvements. There were several changes (listed below) to the proposed subdivision design from what was originally approved for the preliminary plat. Some of these changes are tied to conditions of approval from the preliminary plat, while others are non-conditioned redesigns. As such, the applicant will need to receive PDR approval to ensure that the proposed subdivision meets the code standards that the preliminary plat is vested under and to ensure new environmental impacts are properly mitigated. The changes made to the preliminary plat will result in greater impacts to wetlands on-site than what was originally approved. To address these impacts, the applicant has voluntarily chosen to comply with the current critical areas code, which is more stringent than the past critical areas code that the preliminary plat was reviewed under. Mitigation for wetland impacts will occur at an approved off-site mitigation bank. Along with the PDR review, the applicant is requesting a variance to decrease the side yard setback standards of the vested code for 37 lots and rear yard setback of one lot. Wetland impacts and variance criteria are addressed in detail in the respective sections below.

Proposed changes from the approved preliminary plat:

- Redesign of the area around Lots 50-52 on the preliminary plat (Lots 70-74 in the new plat) associated with changing the curvature of NW 14th Avenue;
- Modified design of the cul-de-sac and adjacent lots abutting NW 19th Street;
- Realignment of the eastern leg of NW 18th Street to align the centerline of the street with the common boundary between tax lots 10 (Assessor # 258632000) and 149 (Assessor # 258764000) east of the site, in compliance with the preliminary plat conditions of approval.
- Shifting the alignment of NW 14th slightly east;
- Redesign of the NW 17th Street (now NW 16th Street) cul-de-sac and adjacent lots within that block;
- Aligning the Intersection of NW 14th Street/Pacific Highway with Larsen Road, in compliance with the preliminary plat conditions of approval;
- Realignment of NW 15th Street allowing future extension, in compliance with the preliminary plat conditions of approval;
- Redesign of lots bordering NW 12th Court associated with a larger stormwater pond and provision of open space.

### III. REVIEW

#### III. A Jurisdiction

The site is within La Center City limits and is currently zoned Low Density Residential (LDR-7.5). The site was previously zoned Urban Residential (UR) and the preliminary plat is vested under the standards of the UR zone as well as other applicable sections of the previous development code. The City of La Center provides sanitary sewer service and public streets. Clark Public Utilities provides potable water service. The project is within the La Center School District and the Clark County Fire and Rescue Fire District 11 service area.

#### III.B Applicable regulations

The relevant La Center regulations from the current and previous development code include the following.

##### **Current Code**

- 18.30, Procedures
- 18.210, Subdivision Provisions
- 18.300, Critical Areas
- 18.310, Environmental Policy

##### **Previous Code**

- 17.25, Urban Residential District
- 17.65, Off-Street Parking and Loading Requirements
- 17.84, Supplementary Development Standards
- 17.90, Variances

#### III.C Public Notice

Written notice of the application was mailed to the applicant, applicant's representative, and nearby property owners on March 20, 2020, in conformance with the requirements of LCMC 18.30.120. The City also published the notice of the MDNS in the Ecology SEPA Register (reference #: 202001605). The optional SEPA mitigated determination of nonsignificance (MDNS) process in WAC 197-11-355 was used for this application, combining the notice of application and SEPA determination comment period. The comment period for the project was from March 20, 2020 through April 3, 2020 (14 days). Comments were received from Ecology and the applicant has been conditioned to conform to the requirements from this letter below.

#### III.D Land Use Analysis (current code)

##### ***Title 18 Development Code***

##### ***Chapter 18.30 Procedures***

##### ***18.30.150 Post-decision review.***

**Response:** The original preliminary plat was reviewed under a Type III review process. Per 18.30.150(5)(e), an application for PDR of a Type III application shall be subject to a Type II review process if the proposed changes do no increase the potential adverse impact of the development, is needed to address a minor change in the facts or the law, and does not involve an issue of broad public interest. Based on the circumstances, staff classifies the application as a Type II PDR. Increased impacts to wetlands are being fully mitigated for, as addressed below and resulting from a preliminary plat condition of approval.

##### ***Chapter 18.210 Subdivision Provisions***

##### ***18.210.050 Expiration and extension of preliminary plat approval.***

(3) The review authority may approve a single one-year extension of a preliminary plat approval if he or she finds that the relevant facts and the law have not changed substantially since the original approval, or that the preliminary plat can comply with the law in effect on the date the application for the extension was filed by complying with certain additional and/or modified conditions of approval, and those additional conditions and/or modifications are adopted.

**Response:** In November 2017, the applicant and the City recorded a DA that vested the terms of the preliminary plat approval until December 18, 2020. The applicant is requesting an additional one-year extension of the preliminary plat approval under an updated DA, which would then expire on December 18, 2021. The updated DA is being reviewed under a separate process.

**III.E Land Use Analysis (previous code)**

**Title 17, Zoning**

**17.25 Urban Residential (UR) District**

**Response:** Detached single-family dwellings are a permitted use in the UR District. The following tables highlight the required dimensional standards for the UR District.

17.25.050

*Dimensional standards/single-family developments*

<b>UR Zoning District</b>	<b>Code Standard</b>
<i>Minimum Lot Size</i>	<i>7,500 square feet</i>
<i>Maximum Lot Size</i>	<i>15,000 square feet</i>
<i>Minimum Average Lot Width</i>	<i>60 feet</i>
<i>Minimum Average Lot Depth</i>	<i>90 feet</i>
<i>Minimum Front Yard Setback</i>	<i>20 feet</i>
<i>Minimum Street Side Setback</i>	<i>10 feet</i>
<i>Minimum Interior Side Yard Setback</i>	<i>7-1/2 feet</i>
<i>Minimum Rear Yard Setback</i>	<i>20 feet</i>
<i>Maximum Lot Coverage</i>	<i>40 percent</i>

**17.25.070 Provisions for lots smaller than 7,500 square feet.**

*Lots of sizes between 6,000 and 7,500 square feet shall be permitted within new land divisions; provided, that the following are met:*

- (1) The number of such lots within a particular land division does not exceed one lot, or five percent of the total number of lots within the division, whichever is greater.*
- (2) Within a particular land division, any two such lots facing a common street shall be separated by at least two full size lots.*
- (3) Such lots shall have a minimum width of 50 feet and minimum depth of 80 feet.*
- (4) Such lots shall be subject to the standards of the urban residential district except where noted herein.*

**Response:** The minimum lot size in the UR District is 7,500 square feet. As shown on the updated preliminary plat, Lots 3, 53, 72, 89, and 92 do not meet this minimum size. 17.25.070(1) allows lot sizes of land divisions to be between 6,000 and 7,500 square feet if the number of lots in this range do not exceed five percent of the total number of lots within the subdivision. 95 lots are proposed with 5 of the lots within this range; equaling roughly 5 percent of the lots. This standard is met. 17.25.070(2) and (3) are met as all of the lots under 7,500 square feet facing a street are separated by at least two standard lots and all of the lots under 7,500 square feet have a lot width greater than 50 feet and lot depth greater than 80 feet. None of the proposed lots are greater than 15,000 square feet, meeting the maximum lot size standard. Lot coverages for each lot were not provided on the updated preliminary plat. As defined in 17.10.510, lot coverage means the percentage of total land area covered by structures, including decks and all other projections except eaves.

Each lot of the preliminary plat is required to meet the setback standards of the zone, including a 20-foot front yard setback, 10-foot street side setback, 7.5-foot interior side yard setback, and 20-foot rear yard setback. Setbacks were measured for each lot. As drawn, all front and street side yard setbacks are met. The applicant is applying for variances to decrease the interior side yard setback for multiple lots and the rear yard setback for Lot 51. Specifically, for the interior side yard setback, the applicant is requesting a variance to decrease the minimum requirement from 7.5-feet to 6-feet for 37 lots: 2,4,9-13,14-16,18-20,31,32,60-66,69-71,79-82,84,86,88,89, and 91-94. For Lot 51, the applicant is requesting a variance to decrease the rear yard setback standard from 20-feet to 10-feet. The variance criteria are addressed below.

As a **Condition of Approval**, building lots shall not exceed 40 percent lot coverage.

*17.25.090 Development standards.*

*Development in the UR district shall comply with the following development standards to the extent applicable.*

- (1) Off-street parking shall comply with Chapter 17.65 LCMC and the following:
  - (a) A dwelling containing one to three units shall include a garage containing at least 200 square feet per unit and at least one additional uncovered parking space per unit.**
- (2) Solid waste storage shall comply with LCMC 17.84.030.*
- (3) Landscaping shall comply with LCMC 17.84.060.*
- (4) Signs shall comply with Chapter 17.70 LCMC.*
- (5) Streets and rights-of-way abutting the site shall comply with Chapter 12.10 LCMC.*
- (6) Storm water drainage and erosion control measures shall comply with Chapter 14.10 LCMC.*
- (7) Fences and hedges shall comply with LCMC 17.84.020.*

**Response:** Lots are conditioned below to include a garage for off-street parking. Additional uncovered spaces will be provided on the driveways for each unit. No fencing, hedging, solid waste storage, or signs are proposed at this time. Conditions of approval are included below for any of these features on-site if proposed. Landscaping is addressed below. Street and right-of-way standards and erosion control and stormwater are being reviewed by engineering for compliance with City standards.

As a **Condition of Approval**, each dwelling unit shall include a garage that is at least 200 square feet and at least one additional uncovered parking space.

**17.65 Off-Street Parking and Loading Requirements**

*17.65.010 Off-street parking requirements.*

*One to three dwelling units: 2 spaces per dwelling unit.*

**Response:** This standard will be met by parking provided in garages and driveways.

**17.70 Sign Code**

*17.70.020 Permit required.*

*(1) Permit Required. No sign shall be erected, maintained or displayed except as provided by this chapter and for which a permit has been issued by the city planner.*

As a **Condition of Approval**, no sign shall be erected on site without first obtaining a sign permit from the City, unless exempt under 17.70.050.

**17.84 Supplementary Development Standards**

*17.84.020 Height of fences and hedges.*

*(1) Front and Street Side Yards. Fences and hedges shall be no higher than four feet (measured from ground level) within five feet of a front property line or street side property line.*

*(2) Interior Side and Rear Yards. Fences and hedges shall be no higher than six feet (measured from ground level) along interior side and rear property lines.*

As a **Condition of Approval**, any fences or hedges that are proposed on individual lots shall conform to the height standards outlined in 17.84.020.

*17.84.030 Solid waste.*

*If refuse containers are used by more than one unit for temporary storage of solid wastes, the container(s) shall be screened from view from off-site by a sight-obscuring fence and/or evergreen landscaping and the area kept clean of all litter.*

As a **Condition of Approval**, each single-family residence in the development is conditioned to have curb side solid waste removal service through Waste Connections.

*17.84.040 Lighting.*

*(2) Lighting on any site shall not cause more than one foot-candle measured at any property line.*

As a **Condition of Approval**, lighting shall meet the requirements of the latest Engineering Standards for public right-of-way.

*17.84.060 Landscaping.*

*(1) The following standards apply to landscaping and screening on private property required pursuant to Table 17.84.060. Landscaping and screening within public rights-of-way shall comply with the applicable provisions in Chapter 12.10 LCMC.*

**Response:** Table 17.84.060 establishes landscape screening requirements between sites being developed and neighboring properties. The site was zoned UR. According to the table, UR zones bordering other UR zones, separated or not by a street, do not require any landscape screening. Per the preliminary plat staff report, landscape buffers were not required as surrounding sites were also zoned UR at the time. As such, no landscape screening is required.

*(7) Rooftop and ground-level exterior equipment shall be screened from adjoining property used or*

*zoned for residential purposes or from an adjoining public road right-of-way to at least an F2 or L3 standard if visible at grade from the property or right-of-way.*

As a **Condition of Approval**, if any rooftop and/or ground-level exterior mechanical equipment is proposed, the equipment shall be screened from adjoining residential properties or from an adjoining public road right-of-way to at least an F2 or L3 standard, if visible at grade from the property or right-of-way.

### **17.90 Variances**

#### *17.90.040 Approval criteria.*

*The review authority shall approve or approve with conditions an application for a variance if he or she finds the applicant has sustained the burden of proving that:*

- (1) Unusual circumstances or conditions, such as size, shape, topography and location of and existing legal development on the site, apply to the property and/or the intended use such that the strict application of this title would deprive the owner of the subject property of rights and privileges enjoyed by owners of other properties in the vicinity in the same zone; and*
- (2) The granting of the variance will not be materially detrimental to the public welfare, or injurious to the property or improvements in the vicinity and zone in which the property is situated.*

**Response:** The applicant is requesting a variance to reduce the interior side yard setback standard from 7.5 feet to 6 feet (20 percent reduction) on 37 of the 95 proposed lots. Staff finds that the granting of the requested variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone. However, staff does not believe that unusual circumstances or conditions exist on site that deprive the owner of the subject property of rights and privileges enjoyed by owners of other properties in the same zone. The applicant is proposing a variance to the side yard setback on approximately 39 percent of the lots in the subdivision. While existing and proposed easements on site may reduce the allowed building envelope for some lots, this does not constitute an unusual circumstance; all subdivisions, not just this one, are required to have utility easements across the front of the lots. According to the critical areas report for the proposed project, six wetlands and one Type Ns stream exist on site. Of the roughly 0.76 acres of wetlands on site, the applicant is proposing to directly impact 0.41 acres and indirectly impact 0.12 acres of wetland, totaling 0.53 acres of wetland impacts on site or approximately 70 percent. While some of these impacts are required to comply with conditions of approval of the preliminary plat, once wetlands are filled, they would no longer constitute a unique condition on site. Mitigation for these impacts is proposed off-site. Of the three existing homes on site, two will be demolished. In the variance application narrative, the applicant states that approving the relaxed setback on these lots will allow a greater flexibility to build homes appealing to buyers (3-car garages rather than 2-car garages) and help the project achieve overall profitability. While this may be true, providing larger garages and helping projects meet profitability are not considered unusual circumstances justifying variance relief. As all properties owners within this zone are/were subject to meeting the same setback requirements, the applicant is not being denied rights and privileges afforded within this zone. Based on the stated reasons above, staff denies the proposed variance to reduce the interior side yard setback standard from 7.5 feet to 6 feet on Lots 2,4,9-13,14-16,18-20,31,32,60-66,69-71,79-82,84,86,88,89 & 91-94.

The applicant is requesting a variance to reduce the rear yard setback on Lot 51 from 20-feet to 10-feet. As proposed, Lot 51 is situated between NW 14th Avenue to the east and parcel 258703000 to the west, which currently contains a single-family home. The existing home would remain on site. Per 17.10.055, "Lot line, front" means the property line abutting a street; meaning, Lot 51's front setback would be



between the future building footprint and NW 14th Avenue and the rear setback would be between the future building footprint and parcel 258703000. A strict application of the front and rear setback standards together under the UR zone (20-feet each) would render the lot unbuildable for a traditional single-family home, a use allowed outright in the zone and in conformance with all of the other lots in the subdivision. Lot 51 would still meet the required 20-foot front setback. Staff finds that the existing legal development on site presents a unique condition for Lot 51. The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity. The existing home on parcel 258703000 is located roughly 40-feet west of the property line shared with Lot 51. Coupled with a 10-foot rear setback for Lot 51, the existing residence and building on Lot 51 would be roughly 50-feet apart. For the reasons stated above, the variance request to decrease the rear yard setback for Lot 51 from 20-feet to 10-feet is approved.

### III.F Critical Areas Review / SEPA Analysis

#### ***LCMC 18.300, Critical Areas***

##### *18.300.090 Critical lands.*

##### *(2) Fish and Wildlife Habitat Conservation Areas*

*(a) Identified sensitive fish and wildlife habitat conservation areas shall be preserved or adverse impacts mitigated. Fish and wildlife habitat conservation areas that must be considered for classification and designation include:*

*(i) Riparian.*

*(d) Critical Area Report. A critical area report is required where specifically indicated and when an activity is proposed within a critical area or buffer that is not specifically exempt, or is permitted only with review. Where a critical area report is required, it must: [...]*

**Response:** The applicant submitted a wetland delineation and critical areas report that identified one Type Ns stream on the southeastern portion of the site, connecting to one of the wetlands, and flowing southeast off-site where it eventually connects with the East Fork Lewis River. Type Ns streams are designated as riparian areas under the City's critical areas ordinance.

*(f) Habitat Buffers. Fish and wildlife habitat conservation areas and buffers are assigned to the lands regulated by this section according to Table 18.300.090(2)(a). Development activities are restricted within buffer areas as indicated in Table 18.300.090(2)(f).*

**Response:** According to Table 18.300.090(2)(f), the designated buffer for Type Ns streams is 75 feet, which is shown on the revised preliminary plat. Infrastructure improvements associated with improving Pacific Highway, including new sidewalks, would be located within the 75-foot riparian buffer. This encroachment was not addressed in the critical areas report or the bank use plan submitted for the project addressing wetland impacts on site.

As a **Condition of Approval**, the applicant shall provide a critical areas mitigation addendum prior to engineering plan approval in conformance with LCMC 18.300.090(2), that accounts for the encroachment of the infrastructure improvements along Pacific Highway within the Type Ns stream buffer.

*(g) Buffer Standards.*

*(ii) Marking of the Buffer Area. The edge of the buffer area shall be clearly staked, flagged, and fenced prior to and through completion of construction. The buffer boundary markers shall be clearly visible, durable, and permanently affixed to the ground.*

*(n) Standard Requirements. All applications requiring review under this section shall have the following minimum conditions applied:*

*(ii) Permanent Marking of Buffer Area. A permanent and perpetual physical demarcation along the upland boundary of the habitat buffer area shall be installed and thereafter maintained. Such demarcation may consist of logs, a tree or hedgerow, wood or wood-like fencing, or other prominent physical marking approved by the director. In addition, signs (measuring minimum size one foot by one foot and posted three and one-half feet above grade) shall be posted at an interval of one per lot or every 100 feet, whichever is less, and perpetually maintained at locations along the outer perimeter of the habitat buffer approved by the director worded substantially as follows: "Habitat Buffer – Please Retain in a Natural State."*

**Response:** The applicant has been conditioned in the preliminary plat approval to mark the stream buffer prior to and through construction as well as install permanent signage along the stream buffer.

*(iii) A conservation covenant shall be recorded in a form approved by the city attorney as adequate to incorporate the other restrictions of this section and to give notice of the requirement to obtain a permit prior to engaging in regulated activities within a habitat area or its buffer.*

As a **Condition of Approval**, the applicant shall record a conservation covenant with the final plat for the stream buffer onsite prior to engaging in regulated activities in accordance with 18.300.090(2)(n)(iii).

*(5) Wetlands.*

*(b) Applicability. The provisions of this chapter apply to any soil disturbance occurring or land use proposal affecting a Category I, II, III, or IV wetland or its buffer unless otherwise expressly exempted by this chapter.*

*(c) Regulated Activities.*

*(i) For any regulated activity, a critical area report may be required to support the requested activity.*

*(ii) The following activities are regulated if they occur in a regulated wetland or its buffer:*

*(A) The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind.*

*(B) The dumping of, discharging of, or filling with any material.*

*(F) The destruction or alteration of wetland vegetation through clearing, harvesting, shading, intentional burning, or planting of vegetation that would alter the character of a regulated wetland.*

**Response:** The applicant submitted a revised wetland delineation and critical areas report for the proposed changes to the subdivision, which will lead to greater wetland impacts than what were approved under the preliminary plat. In total, six wetlands (one Category III and five Category IV) exist on site and all will be impacted to some degree, as detailed below. The proposal would be impacting wetlands on site from grading for lot development and future right-of-way.

*(g) Wetland Delineation. [...]*

*(h) Wetland Ratings. [...]*

**Response:** A wetland delineation was compiled by Ecological Land Services in June 2019. Six wetlands were delineated on site; five rated Category IV and one Category III.

(i) *Base Buffer Width. [...]*

**Response:** According to Table 18.300.090(5)(i)(i)-2 and the ratings from the wetland delineation, Category III wetlands require a 150-foot buffer. Per Table 18.300.090(5)(i)(i)-1 and the ratings from the wetland delineation, Category IV wetlands require a 50-foot buffer. Pertaining to wetlands on site, buffers are only required for Wetland A (150 feet) and Wetland E (50 feet). Wetlands B, C, D, and F are exempt from buffer regulations as they are all less than one-tenth of an acre and scored less than 20 points for function on the Washington State Wetland Rating System for Western Washington: 2014 Update.

(k) *Wetland Development Standards – General. [...]*

(l) *Wetland Activities. [...]*

**Response:** A summary of direct and indirect impacts to wetlands on site is included in the table below. In total, roughly 0.41 acres of direct impacts and 0.12 acres of indirect impacts will occur under the proposal. Mitigation to on site wetlands impacts is detailed below.

Impact Area	Category <sup>1</sup>	Cowardin Class <sup>2</sup>	HGM Class <sup>3</sup>	Impact Type	Impact Amount
Wetland A	III	Emergent	Slope	Direct	0.369 ac. 16,063 sq. ft.
				Indirect	0.112 ac. 4,886 sq. ft.
Wetland B	IV	Emergent	Slope	Direct	0.007 ac. 298 sq. ft.
Wetland C	IV	Emergent, Scrub-shrub	Slope	Direct	0.022 ac. 961 sq. ft.
Wetland E	IV	Scrub-shrub, Forested	Depressional	Direct	0.007 ac. 277 sq. ft.
				Indirect	0.009 ac. 406 sq. ft.
Wetland F	IV	Emergent	Slope	Direct	0.007 ac. 312 sq. ft.
				<b>Direct Total</b>	0.411 ac. 17,911 sq. ft.
				<b>Indirect Total</b>	0.122 ac. 5,292 sq. ft.

(m) *Requirements for Compensatory Mitigation. [...]*

**Response:** Impacts to wetlands cannot be avoided on site. Compensation will occur at an approved off-site mitigation bank (East Fork Lewis Mitigation Bank [EFLMB]), as detailed below. Credit ratios for compensation at the bank are recommended by EFLMB rather than Table 18.300.090(5)(l).

(n) *Types of Compensatory Mitigation.*

(ii) *Creation. The manipulation of the physical, chemical, or biological characteristics of a site to develop a wetland on an upland or deepwater site where a wetland did not previously exist. Establishment results in a gain in wetland acres. Activities typically involve excavation of upland soils to elevations that will produce a wetland hydroperiod, create hydric soils, and support the growth of hydrophytic plant species.*

**Response:** As detailed in the mitigation section below, the applicant is creating net wetland acres at an off-site mitigation bank from what is being impacted on site. Credit ratio recommendations per wetland category are determined by EFLMB.

*(o) Location of Compensatory Mitigation.*

*(i) Compensatory mitigation actions shall generally be conducted within the same sub-drainage basin and on the site of the alteration except when the applicant can demonstrate that off-site mitigation is ecologically preferable. When considering off-site mitigation, preference should be given to site within the city then alternatives using alternative mitigation, such as a mitigation bank, an in-lieu-fee program, or advance mitigation.*

**Response:** Mitigation will occur off-site at a mitigation bank in the same sub-drainage basin. The bank is located approximately 8 miles west of the project site. Off-site mitigation is ecologically preferable than on-site mitigation. According to the bank use plan submitted with the application:

*“The 2008 Compensatory Mitigation for Losses of Aquatic Resources, Final Rule recommends purchasing mitigation bank credits for ecological considerations (lower risk of failure and lower temporal loss of resources and services) and to avoid the maintenance and contingency issues and outright failures that often accompany permittee-responsible mitigation sites. Use of the Bank substantially lowers the risk of failure and temporal loss of resource. Mitigating the impacts offsite at EFLMB will be more meaningful and beneficial to the overall watershed as the goals and objectives for the establishment and success of EFLMB directly address watershed concerns and priorities and correspond in-kind with the mitigation needs of the proposed project. ELS therefore selected to mitigate offsite at EFLMB”.*

*(p) Wetland Mitigation – Preliminary Plan.*

*(q) Wetland Mitigation – Final Plan.*

**Response:** As mentioned, mitigation will occur off-site at EFLMB. The mitigation is highlighted in the table below. Bank credits will be purchased from EFLMB at a ratio of 1 to 1 as designated for impacts to Category III wetlands and 0.85 to 1 as designated for impacts to Category IV wetlands, as recommended by EFLMB. Bank credits required to compensate for indirect Category IV wetland impacts are proposed at a ratio of 0.85 to 1 with a 0.50 (50 percent) multiplier. The 50 percent multiplier is based on the rationale that indirect impacts can be adequately compensated for by using 50 percent of the Bank’s required ratio for direct wetland impacts. Staff has determined that the applicant has met the mitigation standards of the critical areas chapter for wetland impacts and mitigation efforts at EFLMB will achieve no net loss of ecological functions.

Impact Area	Impact Type	Impact Amount	Mitigation Ratio	Indirect Impact Multiplier	Proposed Credit Purchase
Wetland A	Direct	0.369 ac. 16,063 sq. ft.	1:1	N/A	0.369
	Indirect	0.112 ac. 4,886 sq. ft.	1:1	0.50	0.056
Wetland B	Direct	0.007 ac. 298 sq. ft.	0.85:1	N/A	0.006
Wetland C	Direct	0.022 ac. 961 sq. ft.	0.85:1	N/A	0.019
Wetland E	Direct	0.007 ac. 277 sq. ft.	0.85:1	N/A	0.006
	Indirect	0.009 ac. 406 sq. ft.	0.85:1	0.50	0.004
Wetland F	Direct	0.007 ac. 312 sq. ft.	0.85:1	N/A	0.006
<b>Total</b>					0.466

As a **Condition of Approval**, the applicant shall purchase the mitigation credits outlined in the Revised Bank Use Plan, dated January 29, 2020 by Ecological Land Services and provide proof to the City prior to impacting onsite wetlands or buffers.

*(iii) Marking Buffer during Construction. The location of the outer extent of the wetland buffer shall be marked in the field and such markings shall be maintained throughout the duration of the permit.*

*(iv) Permanent Marking of Buffer Area. A permanent physical demarcation along the upland boundary of the wetland buffer area shall be installed and thereafter maintained. Such demarcation may consist of logs, a tree or hedgerow, fencing, or other prominent physical marking approved by the hearings examiner. In addition, small signs shall be posted at an interval of one per lot or every 50 feet, whichever is less, and perpetually maintained at locations along the outer perimeter of the wetland buffer worded substantially as follows: "Wetland and Buffer – Please Retain in a Natural State."*

**Response:** As mentioned, Wetlands A, B, C, E, and F will be impacted during construction. Wetland D will be preserved. Wetland D does not require a regulatory buffer; however, marking for this wetland is still required. The wetland tract is not required to be marked.

As a **Condition of Approval**, the upland boundary of Wetland D, as shown on the revised preliminary plat, shall be clearly staked, flagged, and fenced prior to and through completion of construction. Markers shall be clearly visible, durable, and permanently affixed to the ground.

As a **Condition of Approval**, a permanent demarcation and signage of Wetland D shall be installed along the upland boundary of the wetland and perpetually maintained in accordance with 18.300.090(5)(q)(iv).(v) *A conservation covenant shall be recorded in a form approved by the city attorney as adequate to incorporate the other restrictions of this section and to give notice of the requirement to obtain a wetland permit prior to engaging in regulated activities within a wetland or its buffer.*

*(vi) In the cases of plats, short plats, and recorded site plans, include on the face of such instrument the boundary of the wetland and its buffer and a reference to the separately recorded conservation covenant provided for in subsection (5)(q)(v) of this section.*

As a **Condition of Approval**, the applicant shall record a conservation covenant with the final plat for the wetland tract and Wetland D prior to engaging in regulated activities in accordance with 18.300.090(5)(q)(v).

As a **Condition of Approval**, the applicant shall reference the recorded conservation covenants for the stream buffer, wetland tract, and Wetland D on the plat prior to final plat approval.

*18.300.110 Development standards.*

*(2) In order to approve application for development on lands subject to this chapter, the mayor or his or her designee shall find that the following standards have been met:*

*(g) All activities have received applicable state and federal permits, and comply with SEPA requirements if the lead agency makes a threshold determination of significance (DS), or a mitigated determination of nonsignificance (MDNS).*

*(i) Compliance with this chapter does not constitute compliance with state and federal environmental standards. The applicant shall be responsible for demonstrating such compliance.*

**Response:** The bank use plan provided a project history relating to meeting federal wetland impact requirements. A first version of this bank use plan was submitted to the appropriate regulatory agencies on May 30, 2016. On July 28, 2016, Jim Carsner from the U.S. Army Corps of Engineers (Corps), Seattle District visited the site as part of his review of the applicant's Nationwide Permit (NWP) 29 application (NWS-2016-540). Simultaneously, Mr. Carsner requested further delineation of a dry stream channel and revision of the existing wetland boundaries. ELS conducted a second site visit on September 28, 2016 to investigate and map the additional areas. It was determined that a redesign of the site plans was necessary to reduce proposed impacts to the greatest extent practicable. On November 11, 2018 the project was put on hold with the Corps as the developers needed more time complete the redesign. In June of 2019, the NWP was re-opened when an updated bank use plan was submitted. Mr. Carsner requested greater avoidance and minimization and the project design was altered again to meet these requests. On January 30, 2020, Mr. Carsner sent a letter to the applicant authorizing the proposed wetland impacts and bank use plan.

As described below, the proposed work received a SEPA MDNS threshold determination. All federal and state environmental standards are complied with.

### **Chapter 18.310 LCMC Environmental Policy**

The application is amending the original SEPA MDNS issued October 17, 2006. The City of La Center has reviewed the revised preliminary plat under the PDR process for probable adverse environmental impacts and has issued an amended MDNS for the project on April 3, 2020. The optional MDNS process in WAC 197-11-355 was used, combining the notice of application and SEPA determination comment period. The comment period for the project was from March 20, 2020 through April 3, 2020 (14 days). The City also published the notice of the MDNS in the Ecology SEPA Register (reference #: 202001605). Comments were received from Ecology on April 3, 2020. In accordance with WAC 197-11-355, no additional comment period is required for the amended MDNS determination.

As a **condition of approval**, the applicant shall meet all of the requirements outlined in the SEPA comments from the Department of Ecology dated April 3, 2020.

## IV. CONCLUSIONS & RECOMMENDATION

The review authority finds the applicant has sustained the burden of proving the application complies with the applicable provisions of the La Center Municipal Code. The subject application should be **APPROVED, SUBJECT TO THE FOLLOWING CONDITIONS.**

### IV.A Conditions of Approval

1. The applicant shall comply with all conditions of the approved preliminary plat still in effect.
2. The applicant shall submit engineering, construction, final plat, and building permit documents in compliance with the preliminary plat and post decision review documents unless otherwise modified by conditions of approval in this staff report or as approved by the City through subsequent approvals. The City shall review the Engineering Plans for compliance with the Engineering Standards, LCMC 12.10 Public and Private Road Standards, LCMC 18.320 Stormwater and Erosion Control and LCMC 13.10 Sewer System Rules and Regulations.
3. Building lots shall not exceed 40 percent lot coverage.
4. Each dwelling unit shall include a garage that is at least 200 square feet and at least one additional uncovered parking space.
5. No sign shall be erected on site without first obtaining a sign permit from the City, unless exempt under 17.70.050.
6. Any fences or hedges that are proposed on individual lots shall conform to the height standards outlined in 17.84.020.
7. Each single-family residence in the development is conditioned to have curb side solid waste removal service through Waste Connections.
8. Street lighting shall meet the requirements of the latest Engineering Standards for public right-of-way.
9. If any rooftop and/or ground-level exterior mechanical equipment is proposed, the equipment shall be screened from adjoining residential properties or from an adjoining public road right-of-way to at least an F2 or L3 standard, if visible at grade from the property or right-of-way.
10. The applicant shall provide a critical areas mitigation addendum prior to engineering plan approval in conformance with LCMC 18.300.090(2), that accounts for the encroachment of the infrastructure improvements along Pacific Highway within the Type Ns stream buffer.
11. The applicant shall record a conservation covenant with the final plat for the stream buffer onsite prior to engaging in regulated activities in accordance with 18.300.090(2)(n)(iii).
12. The applicant shall purchase the mitigation credits outlined in the Revised Bank Use Plan, dated January 29, 2020 by Ecological Land Services and provide proof to the City prior to impacting onsite wetland or buffers.
13. The upland boundary of Wetland D, as shown on the revised preliminary plat, shall be clearly staked, flagged, and fenced prior to and through completion of construction. Markers shall be clearly visible, durable, and permanently affixed to the ground.
14. A permanent demarcation and signage of Wetland D shall be installed along the upland boundary of the wetland and perpetually maintained in accordance with 18.300.090(5)(q)(iv).
15. The applicant shall record a conservation covenant with the final plat for the wetland tract and Wetland D prior to engaging in regulated activities in accordance with 18.300.090(5)(q)(v).
16. The applicant shall reference the recorded conservation covenants for the stream buffer, wetland tract, and Wetland D on the plat prior to final plat approval.

17. The applicant shall meet all of the requirements outlined in the SEPA comments from the Department of Ecology dated April 3, 2020.

## V. APPEALS

A final decision regarding a Type II application may be appealed by the applicant, applicant's representative, or by any person, agency, or firm with an interest in the matter within 14 calendar days of this decision date or by October 18, 2019. Appeals shall contain all information specified in LCMC 18.30.130. The public record for this file is available at the City's Public Works Building, 305 NW Pacific Highway, La Center, Washington between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday. Please contact Sarah Dollar at 360-263-7665 for further information.

For an appeal regarding a decision subject to a Type II process, the Finance Director/City Clerk shall schedule a public hearing to be held by the hearings examiner not more than 35 days from the date a complete appeal was timely filed. Notice and a staff report shall be provided, a public hearing shall be conducted, and a decision shall be made and noticed regarding the appeal. LCMC 18.030.130(4).



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Ethan Spoo, AICP  
Planning Consultant  
WSP



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Anthony Cooper, P.E.  
City Engineer  
City of La Center

## Exhibits

### Exhibit A – Application Materials

1. City Master Land Use Application
2. Original Hearing Examiner's Decision (File No. 2006-019-SUB)
3. Revised Variance Narrative
4. Critical Areas Report Revised
5. Bank Use Plan
6. Deeds and Legal Descriptions



7. Mailing Labels & Certification Map
8. Technical Completeness Review
9. Original Preliminary Plat
10. Revised Preliminary Plat Overview – RPP1
11. Revised Preliminary Plat – RPP2
12. Revised Preliminary Plat – RPP3
14. Notice of Application & Map

**Exhibit B – SEPA**

1. Mitigated DNS Notice and Checklist
2. Ecology Comments