

**CASE NUMBER
2520071032
SN:37.0 PC:89**

FILED
7/14/2025
Timothy W Fitzgerald
Spokane County Clerk

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7 SUPERIOR COURT OF WASHINGTON IN AND FOR SPOKANE COUNTY
8 CITY OF SPOKANE VALLEY, a municipal corporation,
9 Plaintiff,
10 v.
11 ALBERT W. MERKEL, an individual,
12 Defendant.
13 NO. 25-2-00710-32
DECLARATION OF KELLY E. KONKRIGHT IN SUPPORT OF PLAINTIFF'S MOTION TO STRIKE DECLARATION OF ALBERT W. MERKEL IN SUPPORT OF MOTION FOR PROTECTIVE ORDER

I, KELLY E. KONKRIGHT, hereby declare as follows:

1. I am over the age of 18, competent to testify, and I make the following statements based on my own personal knowledge.

2. I am currently employed as the City Attorney for the City of Spokane Valley. I have been employed in this position since December 1, 2023.

3. I submit this declaration to correct false statements made about me at paragraph 7 in the “Declaration of Albert W. Mekel [sic] in Support of Motion for Protective Order” (hereinafter “Defendant’s Declaration”) that was filed with the Court on July 7, 2025. The false statements are of a conversation that Defendant alleges occurred between him, City Manager John Hohman, and me on February 10, 2024.

4. I do not have any recollection of having a conversation with Defendant on or about February 10, 2024. I reviewed my email history and calendar for February of 2024, and did not see anything indicating that I or Mr. Hohman had any conversation with Defendant on or around

DECLARATION OF KELLY E. KONKRIGHT: 1

LAW OFFICES OF
LUKINS & ANNIS, PS
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1 that date.

2 5. Regardless, contrary to Defendant's statements, I would not and have not threatened to
3 file or cause the City or anybody else to file a legal action (either civil or criminal) against
4 Defendant for associating with the Painted Hills Preservation Association. Also, I have never
5 witnessed anything or otherwise seen any information indicating John Hohman ever made such a
6 statement.

7 6. The only potential communication I can fathom Defendant could be referring to is an
8 email I sent to all Councilmembers on January 19, 2024, in advance of the hearing beginning
9 January 31, 2024, on Black Realty's application to develop the former Painted Hills golf course as
10 a residential development. A true and correct copy of this email is attached as **Exhibit A**. Please
11 note that the City Manager John Hohman, with consent of Deputy Mayor Tim Hattenburg, has
12 waived the City's attorney-client privilege as to this email solely for the purposes of this motion
13 and opposing Defendant's motion for protective order. The City has not and is not waiving, nor
14 does it intend to waive, the attorney-client privilege as to any other document.

15 7. I drafted and sent the email to all Councilmembers (including Defendant) at City
16 Manager John Hohman's request. In this email, I explained that their testimony at land use hearings
17 being conducted by the City Hearing Examiner could potentially increase the risk of an aggrieved
18 party filing a legal claim against the City. I also recommended each Councilmember choosing to
19 testify at such hearings to consult with their own personal attorney regarding any individual risk
20 to them in the event a court were to determine they did not have legislative immunity from personal
21 liability. Nowhere in my email did I threaten any litigation against Defendant.

22 8. On March 19, 2024, the City Hearing Examiner issued its ruling approving the Painted
23 Hills development subject to a condition that was recommended by the City's Planning
24 Department staff but opposed by Black Realty. Black Realty then filed a lawsuit against the City
25 alleging the City violated its civil rights by imposing the condition. The lawsuit identifies
Defendant's status as a Councilmember together with his public opposition to the Painted Hills
development as supporting Black Realty's claims. *See Complaint*, p.1, filed in Spokane County

DECLARATION OF KELLY E. KONKRIGHT: 2

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1 Superior Court, Case No. 24-02341-32, a true and correct copy of which is attached hereto as
2 **Exhibit B.**

3 I certify under penalty of perjury under the laws of the State of Washington that the
4 foregoing is true and correct.

5 DATED this 14th day of July, 2025 at Spokane Valley, Washington.

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KELLY E. KONKRIGHT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11th day of July, 2025, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to all entities as follows:

4 Patrick J. Kirby
Patrick J. Kirby Law Office, PLLC
5 4353 S. Greystone Lane
Spokane, WA 99223
6 pkirby@pkirbylaw.com

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Via E-Filing
- Via Email

Attorney for Defendant

LUKINS & ANNIS, P.S.


KIRSTEN PRICE, Legal Assistant

DECLARATION OF KELLY E. KONKRIGHT: 4

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Exhibit A

Kelly Konkright

From: Kelly Konkright
Sent: Friday, January 19, 2024 5:12 PM
To: Pamela Haley; Tim Hattenburg; Laura Padden; Jessica Yaeger; Albert Merkel; Ben Wick; Rod Higgins
Cc: John Hohman; Erik Lamb
Subject: Land Use Hearings and Role of Councilmembers

CAUTION: DO NOT "REPLY ALL"

ATTORNEY-CLIENT PRIVILEGED COMMUNICATION OF THE CITY OF SPOKANE VALLEY – DO NOT DISCLOSE

Dear Councilmembers,

It has come to administration's attention that some Councilmembers have expressed a desire to testify at upcoming land use hearings, which testimony may be adverse to the land use applicants and/or the City's land use decisions, or contact the applicant(s) directly to discuss the project at issue. The purpose of this email is to advise you of potential legal liability to which such actions could expose the City and individual Councilmembers.

As a reminder, Councilmembers do not have executive or administrative authority. The Council establishes policy, as a body, through the passage of ordinances and resolutions. City administrative staff are charged with executing the policy established by Council, which includes the hearing examiner's consideration of land use applications under the Spokane Valley Municipal Code. See SVMC 18.20.030(A). The Spokane Valley Municipal Code ("SVMC") clearly provides that the hearing examiner – not Council – must determine whether applications for approval of preliminary plats, subdivisions, and other enumerated land use applications should be approved, conditionally approved, or denied in light of Council-established policy in the SVMC land use provisions. SVMC 18.20.030.

In regard to administering City services, RCW 35A.13.120 expressly requires Councilmembers to "deal with the administrative service solely through the manager . . ." If a Councilmember testifies at a land use hearing – especially if it looks as though they are testifying in their Councilmember capacity – then, depending on what was said and the surrounding circumstances, they may be acting outside their scope of authority and interfering with City administration by influencing the hearing examiner in violation of RCW 35A.13.120. In the event of a lawsuit based on that testimony, the legislative immunity doctrine would probably not apply to the Councilmember's conduct because providing land use hearing testimony and speaking with applicants about their project are administrative/executive in nature – not legislative. Without the protection of legislative immunity, you can be held personally liable should a court find your actions violated the applicant's rights.

Property owners have several legal rights that are implicated when a Councilmember directly involves themselves with a land use application. These rights include, but are not necessarily limited to, constitutional due process rights, a vested right to have their land use applications considered under the SVMC as it existed at the time they submitted their application, other property rights, and a right to be free from tortious interference with their business expectancies. If a Councilmember's interjection outside the legislative process causes a land use application to be denied, it may constitute a violation of that owner's legal rights depending on the specific circumstances. Indeed, Washington courts have held multiple municipalities and individual councilmembers responsible for improper land use application denials resulting from unauthorized councilmember actions.

Also, Councilmembers should keep RCW 42.23.070(1) in mind, which states "[n]o municipal officer may use his or her position to secure special privileges or exemptions for himself, herself, or others." If you use your status as a Councilmember (or allow others to assume you are acting as a Councilmember) when it appears that you are trying to

obtain a result beneficial to you, but not the community as a whole, you run the risk of violating this statutory ethics provision.

Litigation consumes an extraordinary amount of time and City resources that would otherwise be spent furthering Council's policies to the betterment of the community. As such, City administration strongly recommends that Councilmembers do not testify at land use hearings or discuss details of pending land use applications with land use applicants. If you nonetheless choose to do so, please be aware that you might not be entitled to a City-funded legal defense should a lawsuit arise out of such conduct. Given that possibility, you may find it prudent to consult with your own private attorney regarding your potential personal liability and how to mitigate the same.

If you have any questions regarding the above, please contact John Hohman.

Thanks,

Kelly E. Konkright | City Attorney
10210 E. Sprague Avenue | Spokane Valley, WA 99206
(509) 720-5150 | kkonkright@spokanevalleywa.gov



This email and any attachments may be subject to disclosure pursuant to Washington State's Public Record Act, chapter 42.56 RCW.

Exhibit B

COPY

Original Filed

MAY 13 2024

TIMOTHY W. FITZGERALD
SPOKANE COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR COUNTY OF SPOKANE

BLACK REALTY, INC., a Washington corporation

NO. 24202341-32

Petitioner and Plaintiff,

LAND USE PETITION ACT PETITION
FOR JUDICIAL REVIEW AND
COMPLAINT FOR DAMAGES

CITY OF SPOKANE VALLEY, a municipal corporation

Respondent and Defendant.

I. INTRODUCTION

After nearly a decade of watching Petitioner go through the planning and permitting process, including obtaining an approved Final Environmental Impact Statement, the City of Spokane Valley bowed to political pressure and imposed an illegal and impossible “condition” on final approval of Petitioner’s planned residential development and subdivision. The condition is that Spokane County must form a flood control district to maintain the development’s flood control systems. The City has no lawful basis to impose this condition and the County has made clear that it will not form such a district. All of this occurred after the then Mayor of Spokane Valley told Petitioner’s civil engineer that he “will do everything in my power to stop your project

LAND USE PETITION ACT PETITION FOR JUDICIAL
REVIEW AND COMPLAINT FOR DAMAGES - 1

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1 and it will never see the light of day." True to that promise, the City has delayed at every turn,
2 causing Petitioner tremendous damage. The City's conduct constitutes an unlawful land use
3 decision, and is an arbitrary and capricious display of bad government in violation Petitioner's
4 substantive due process rights protected under 42 U.S.C. § 1983, the Constitution of the United
5 States and the Washington State Constitution. This Land Use Petition and Complaint asks the
6 Court to reverse the City's arbitrary and capacious condition, remand the matter with instructions,
7 and award Petitioner its damages and attorneys' fees for the City's illegal conduct.

9 **II. FIRST CAUSE OF ACTION: LUPA PETITION**

10 **A. Jurisdiction and Venue**

11 This Court has jurisdiction over this matter under RCW Ch. 36.70C, the Land Use
12 Petition Act. Venue in this Court is proper under RCW 4.12.020.

13 **B. Parties and Decision**

14 The name and mailing address of Petitioner is:

15 Black Realty, Inc.
16 801 W. Riverside Ave. Suite 300
17 Spokane, WA 99201

18 The name and mailing address of Petitioner's attorneys is:

19 Foster Garvey PC
20 Attn: Patrick J. Schneider, WSBA No. 11597
21 Todd Reuter, WSBA No. 20859
22 William C. Lenz, WSBA No. 49891
23 618 W. Riverside Ave., Ste. #300
Spokane, WA 99201

24 Name and Mailing address of Local Jurisdiction:

25 City of Spokane Valley
10210 E. Sprague Avenue
26 Spokane Valley, WA 99206

LAND USE PETITION ACT PETITION FOR JUDICIAL
REVIEW AND COMPLAINT FOR DAMAGES - 2

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1
2 Identification of Decision Maker:

3 The decision-making officer is the City of Spokane Valley Hearing Examiner, Mr.
4 Andrew L. Kottkamp, of Kottkamp, Yedinak & Esworthy PLLC.

5 Additional Parties:

6 Black Realty and the City of Spokane Valley are the only necessary parties under RCW
7 36.70C.040(2). No other person or entity is an applicant for the land use entitlements or an owner
8 of the property at issue. RCW 36.70C.040(2)(b)-(c). There was no administrative appellant in the
9 proceedings below, as the hearing on the Applications was pre-decisional.¹ RCW
10 36.70C.040(2)(d).

11
12 Identification of Land Use Decision:

13 Petitioner appeals the Hearing Examiner's Findings of Fact, Conclusions of Law,
14 Decision and Conditions of Approval (the "Decision") for SUB 2016-0001/PRD 2015-0001,
15 Painted Hills, issued on March 19, 2024 (the "Original Decision") and the Hearing Examiner's
16 Decision on Applicant's Motion for Reconsideration and Motion to Submit Additional Evidence,
17 and City's Request to Submit Additional Evidence, issued on April 22, 2024 (the "Decision on
18 Reconsideration" and, together with the Original Decision, collectively, the "Decision"). Copies
19 of the Original Decision and the Decision on Reconsideration are attached as **Appendix A** and
20 **Appendix B**, respectively, to this Petition. The Decision is a "land use decision" as defined by
21 LUPA at RCW 36.70C.020 because it is the City's final determination, made by the body with
22 "the highest level of authority to make the determination, including those with authority to hear
23
24

25
26 ¹ Painted Hills Preservation Association, a Washington nonprofit corporation, filed an administrative appeal of the
environmental impact statement, which was handled through a separate decision by the Hearing Examiner under
City of Spokane Valley File Number App-2023-0003, which Petitioner does not appeal in this action.

LAND USE PETITION ACT PETITION FOR JUDICIAL
REVIEW AND COMPLAINT FOR DAMAGES - 3

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1 appeals" regarding the Applications (as defined below).

2 **C. Facts Demonstrating the Petitioner Has Standing**

3 Petitioner incorporates and re-alleges the facts set forth above. Petitioner has standing
4 under RCW 36.70C.060(1) because it is the owner of the property and the applicant to which the
5 land use decision is directed.

6 **D. Concise Statement of Facts²**

7 1. Petitioner incorporates and re-alleges the facts set forth above.
8 2. Petitioner submitted the applications for the Planned Residential Development
9 ("PRD") and Preliminary Subdivision that are the subject of the Decision (collectively, the
10 "Applications") on July 24, 2015. The Applications are for a real estate development called
11 "Painted Hills" and is proposed by Petitioner in the former Painted Hills Golf Course in the City
12 of Spokane Valley. The development is intended to provide 584 units of residential housing and
13 mixed-use commercial.

14 3. The Applications were met with significant opposition from officers and elected
15 officials at the City. Evidence of this opposition includes statements from the former Mayor of
16 the City, Rod Higgins, to Todd Whipple, the Petitioner's civil engineer for the project. One of
17 the Mayor's statements made while the Mayor was in office was that "I will do everything in my
18 power to stop your project and it will never see the light of day." Throughout the application
19 process, City staff would go months without responding to Petitioner's civil engineers or moving
20 the Applications forward. City of Spokane Valley Council Member Al Merkle has publicly
21 spoken against the project and fundraised to pay the legal fees for the neighborhood coalition

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² A more complete recitation of the facts are outlined in the Decision. The most relevant facts are outlined here for
ease of reference.

1 that has opposed the Applications.

2 4. A portion of Painted Hills is within a flood plain. City staff and Petitioner worked
3 together to develop a flood mitigation strategy (to be approved by FEMA) to amend the flood
4 plain through a combination of fill and flood control systems that would create a safe
5 neighborhood capable of withstanding a 500-year flooding event.

6 5. The City conducted a State Environmental Policy Act (SEPA) review. During that
7 review, the City issued a Determination of Significance on October 26, 2018 that required the
8 preparation of an environmental impact statement (EIS) to analyze any impacts of the
9 Applications on the environment.

10 6. The Final EIS (FEIS) was completed on June 6, 2023. The Painted Hills
11 Preservation Association appealed the adequacy of the FEIS. The Hearing Examiner affirmed
12 the FEIS in a separate decision issued on the same date as the Original Decision. The Hearing
13 Examiner's affirmance has not been appealed and is not the subject of this action. The FEIS is
14 now final and cannot be appealed by any party, making the rationality of its analysis of the flood
15 control system maintenance and the lack of the need for a Flood Control District binding on all
16 parties, including the City.

17 7. The FEIS contemplates that the future homeowner's association (HOA) required
18 to govern and maintain the project will provide for the maintenance of the flood control system
19 contemplated by the Applications.

20 8. The FEIS also provides for the recording of "waivers of remonstrance" that would
21 encumber the lots such that future lot owners would be required to form a Flood Control District
22 (sometimes referred to herein as an "FCD") if the HOA failed to adequately manage and maintain
23

1 the flood control system.

2 9. The FEIS does not require the formation of an FCD before finalization of the plat
3 or completion of site's development. Nor does the FEIS require an FCD be formed before
4 obtaining approvals from FEMA to amend the floodplain pursuant to the flood mitigation
5 measures to be constructed on site.

6 10. The City prepared and approved the FEIS, making its last-minute changes related
7 to whether an FCD would be required as a precondition of development shocking.

8 11. For nearly a decade the City participated in and required a detailed design and
9 planning process. This included a robust FEIS process, which has survived administrative appeal.
10 But in a January 24, 2024 staff report, issued only one week before the public hearing, the City
11 demanded for the first time; that the formation of a Flood Control District be made a condition
12 of approval for the Applications, and that the Petitioner not even be allowed to seek FEMA
13 approval of the floodplain revisions until an FCD is formed. This demand is in direct
14 contravention of the City's prior positions in its own FEIS and appears to have no function other
15 than to serve as a "poison pill" intended to kill the project.

16 12. On January 30, 2024, one day before the public hearing, Spokane County
17 Engineer Matt Zarecor submitted a written comment to the City in which he told the City that the
18 County was unlikely to support formation of a Flood Control District. The County is the
19 governmental entity designated by statute to have authority to form a Flood Control District,
20 which is a special district formed under RCW Ch. 85.38.

21 13. At hearing and in briefing, Petitioner pointed out the numerous flaws with the
22 City's decision to impose a Flood Control District as a condition of approval. These flaws include
23

24 LAND USE PETITION ACT PETITION FOR JUDICIAL
25 REVIEW AND COMPLAINT FOR DAMAGES - 6

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1 the fact that the City has approved the use of HOAs as a vehicle for maintaining flood control
2 systems in identical developments. The City has placed no evidence in the record that establishes
3 that an HOA would be incapable of doing so for Painted Hills. The City responded with broad
4 and unsupported speculation that an HOA *could* become insolvent in the future. It presented no
5 evidence to support this assertion and failed to explain why the proposed Painted Hills HOA was
6 any more likely to become insolvent than a Flood Control District would be. Another flaw in the
7 City's position is that the County, who is charged with forming and controlling a Flood Control
8 District, disfavors the use of one here. Part of the County's reluctance is based on significant
9 problems that have occurred with the Newman Lake FCD. There are also other maintenance
10 mechanisms that the County could use to provide flood control facility maintenance without the
11 need to form a new FCD. The City also ignored its own lack of authority under its Municipal
12 Code, SEPA, the RCWs, and Washington case law to require the Flood Control District. The
13 FCD condition was never proposed to Petitioner as a precondition to development during its
14 decade-long involvement with this project or in the City's FEIS. Imposing such a condition at
15 the last minute prejudiced Petitioner and its ability to offer testimony and solutions to the City's
16 concerns at the pre-decisional hearing on the Application.

17
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19 14. Despite this prejudice, the record contained the following material facts that are
20 not addressed by the City in its post-hearing briefing or the Hearing Examiner in the Decision:

21
22 a. Read Stapleton, the author of the City's FEIS, testified at the hearing that
23 while there were concerns raised during the EIS process about how an HOA might fail to
24 adequately maintain the flood control system, the mitigation for that concern was always
25 that a performance bond, maintenance bond, reporting requirements, and other mitigation

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LAND USE PETITION ACT PETITION FOR JUDICIAL
REVIEW AND COMPLAINT FOR DAMAGES - 7

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1 measures imposed on the HOA would ensure ongoing maintenance. He also testified that
2 at no point during the EIS process was it ever considered that an FCD would be required
3 as a precondition to the approval of the project. Testimony of Read Stapleton, February
4 1, 2024, Recording at 4:54:50.

5 b. Stapleton also testified that the staff report, issued one week before the
6 hearing, was the first he had heard of the FCD being a precondition to the project's
7 approval. Testimony of Read Stapleton, February 1, 2024, Recording at 5:00:06.

8 c. On January 30, 2024, County Engineer, Matt Zarecor, emailed City Staff
9 Chaz Bates and Lori Barlow that:

10 We have some concerns about condition 4.1 regarding the formation of
11 a Flood Control District. While I understand the facilities being
12 proposed are substantial and the risk of flooding if the maintenance of
13 the facilities proves inadequate is significant, Spokane County has some
14 reservations regarding the idea of forming a Flood Control District.
15 From our experience with Newman Lake Flood Control District they
16 tend to take much more time than would be expected and the budget
17 rarely covers the expenses. Not sure what to do at this late in the game.
18 I would just prefer not to have a condition on the plat that the County
19 would likely not support. Never looks good when government agencies
20 aren't on the same page.

21 d. Todd Whipple testified at the hearing that the County proposed using a
22 drain water account in which the County would assume the perpetual responsibility to
23 maintain the flood control system. The costs of such an account would be billed to the
24 owners of the properties in Painted Hills on a go-forward basis. Whipple testified that the
25 County proposed this as a solution to the City's concerns with having an HOA provide
26 ongoing flood control system maintenance. Testimony of Todd Whipple, February 1,
2024, Recording at 3:29:07.

1 e. Evidence was presented at the hearing that the City did not require an FCD
2 for the Summerfield project even though the project included similar flood control
3 mitigation measures and compensatory storage. Testimony of William Lenz, February 1,
4 2024, Recording at 3:31:10.

5 f. In its closing argument, Petitioner argued that the County and City could
6 enter an interlocal agreement for a stormwater management program under Spokane
7 County Code Chapter 9.70 (in lieu of an FCD or drain water account). Doing so would
8 mitigate the City's alleged concern that an HOA could not be counted on to maintain the
9 flood control system, with little to no cost to the County or City because all costs would
10 be borne by the owners of the parcels within the project. Petitioner's Written Closing
11 Argument, 26-27.

12 g. The City acknowledged that Flood Control Districts can be dissolved
13 (with a public hearing). Testimony of Ken Harper, February 1, 2024, Recording at
14 4:42:25. This acknowledgement shows that even a Flood Control District could fail in its
15 duties to maintain the flood control system in the same speculative manner that an HOA
16 could, making any distinction between these options based their speculative failure
17 irrational.

18 h. The City also admitted that it has not investigated the option of a drain
19 water account. Testimony of Ken Harper, February 1, 2024, Recording at 5:17:53. The
20 City promised to follow up, but never did. And, importantly, the City has never
21 demonstrated or established how a drain water account or any other mitigation alternative
22 proposed by Petitioner or the City in its own FEIS were insufficient to address the City's
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1 concerns related to ongoing maintenance of the flood control system. To the date of this
2 Petition and Complaint, the City has yet to engage in any discussion with Petitioner or its
3 representatives regarding these options or describe why an FCD is the only alternative
4 that works for the project.

5 15. This evidence was undisputed, but the Hearing Examiner disregarded it with no
6 analysis and issued the Decision with the requirement that an FCD be formed as a precondition
7 of the Planned Residential Development and plat. This willful and unreasoned action was
8 conclusory and taken without regard to the surrounding facts and circumstances. With no lawful
9 or logical basis, the City's imposed condition forces the Petitioner to form an FCD with the
10 County—an FCD the County does not and will not support—and to do so before Petitioner may
11 proceed with the FEMA process for finalizing the floodplain mitigation and construction of the
12 flood control system. All when better options exist and were presented to the City prior to the
13 Decision.

14 16. Upon receipt of the Original Decision, Petitioner approached various County
15 Commissioners and the County Engineer in an effort to determine whether the formation of an
16 FCD was a viable option that the County would consider. As detailed in the Declarations
17 submitted with Petitioner's Motion for Reconsideration (see below), the answer from all sources
18 was a resounding "no."

19 17. Petitioner filed a Motion for Reconsideration, asking the Hearing Examiner to
20 reconsider the Flood Control District condition and revise the Original Decision to omit that
21 condition. Petitioner also moved to submit additional evidence into the record before the Hearing
22 Examiner, which consisted of the Declaration of William Lenz in Support of Applicant's Motion
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LAND USE PETITION ACT PETITION FOR JUDICIAL
REVIEW AND COMPLAINT FOR DAMAGES - 10

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1 to Dismiss, the Declaration of David Black in Support of Applicant's Motion to Dismiss, and the
2 Declaration of Bryan Walker in Support of Applicant's Motion to Dismiss (collectively, the
3 "Declarations"). The Declarations included communications with County Staff and the County
4 Commissioners that establish the futility of pursuing County FCD formation approval.

5
6 18. On April 22, 2024, the Hearing Examiner issued a Decision on Reconsideration,
7 affirming the Original Decision, denying Petitioner's Motion for Reconsideration, and Denying
8 Petitioner's motion to admit additional evidence. The Hearing Examiner provided no analysis of
9 Petitioner's claims and arguments.

10
11 19. Since the Decision, the City has unlawfully denied Petitioner a flood development
12 permit to complete the infiltration and drywell testing on the site that is required to complete
13 FEMA analysis. The rationale from the City is that the permit could not be issued until after any
14 appeal related to the Applications was resolved. This condition is not present in any rule or code
15 provision in the City of Spokane Valley's Municipal Code, and is an illegal tying of the
16 floodplain development permit to the Applications. This decision was made pursuant to an April
17 29, 2024 email from Henry Allen, Senior Engineer for the City of Spokane Valley, denying the
18 Petitioner's request that the floodplain development permit be issued ("FPDP Decision").

19
20 20. This Petition is timely under RCW 36.70C.040(3) and (4).

21
22 21. Petitioner will file a Notice of Tort Claim under RCW 4.96.020 regarding the
23 City's tortious interference. If that claim is not resolved during the 60-day window, Petitioner
will and seek leave to amend the complaint to add a cause of action for tortious interference.

24 **E. Statement of Errors Under the Land Use Petition Act**

25
26 1. Petitioner incorporates and re-alleges the facts set forth above.

1 2. The Decision is unlawful pursuant to multiple standards in RCW 36.70C.130:

2 a. The Hearing Examiner engaged in an unlawful process and made a decision

3 that is not supported by substantial evidence by making findings of fact that

4 disregard the substantial evidence in the record that demonstrates that the

5 Decision is unlawful and violates controlling State law.

6 b. The Decision is an erroneous interpretation of law because it ignores and

7 violates RCW 82.02.020, and Article XI §11 of the Washington State

8 Constitution requires the City of Spokane Valley Municipal Code to be

9 interpreted and applied consistently with State law.

10 c. The Decision is a clearly erroneous application of law to facts because the

11 Hearing Examiner disregarded controlling State law and misapplied the City's

12 code to findings that are not supported by substantial evidence.

13 d. The Decision is based on error of law and an erroneous application of the law

14 to the facts because requiring creation of a flood control district constitutes a

15 direct or indirect in-kind tax, fee, or charge on development that is unlawful

16 under RCW 82.02.020 since it is not "reasonably necessary" as a direct result

17 of Plaintiff's proposed development. Under RCW 82.02.020, the City bears

18 the burden of establishing that a condition is reasonably necessary as a direct

19 result of the proposed development. "Reasonable necessity" means a

20 condition must meet requirements of nexus and rough proportionality. The

21 City failed to carry this burden.

22 e. The Decision contains errors of law and an erroneous application of the law

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LAND USE PETITION ACT PETITION FOR JUDICIAL
REVIEW AND COMPLAINT FOR DAMAGES - 12

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1 to the facts by violating SEPA's requirements at RCW 43.21C.060 by
2 conditioning the Applications on the formation of an FCD. That condition that
3 is not "reasonable and capable of being accomplished" and that is not "based
4 upon policies identified by the appropriate governmental authority and
5 incorporated into regulations, plans, or codes which are formally designated
6 by the agency (or appropriate legislative body, in the case of local
7 government) as possible bases for the exercise of authority pursuant to this
8 chapter."

9
10 f. The Decision erred by not admitting the additional evidence submitted with
11 Petitioner's Motion for Reconsideration (as submitted through the
12 Declarations), as Petitioner had less than a week to address the concerns raised
13 by the City's last-minute change requiring an FCD. The excluded evidence
14 had significant relevance to the question of whether the County would approve
15 the formation of an FCD (and, therefore, whether the condition violates RCW
16 82.02.020 and SEPA's requirements for reasonable mitigation). The
17 Declarations "were improperly excluded from the record after being offered
18 by a party to the quasi-judicial proceeding." They should be made part of the
19 record before the Court under RCW 36.70C.120(2)(b).

20
21 3. The Decision contains the following findings of fact that are not supported by
22 substantial evidence in the record:

23
24 a. The Decision at Page 16, Para. 21.2.9 provides: "The FEIS states that in
25 addition to the required HOA, a flood control district, which specializes in the
26

1 administration of flood control systems, would ensure the continued
2 competent operation and maintenance of the flood control system (which is
3 distinct from the on-site stormwater systems that will be the responsibility of
4 the HOA)...” The FEIS does not require any FCD to be formed, and rests
5 primary responsibility for flood control system maintenance on an HOA: “In
6 order to maintain common areas within the PRD site and on-site and off-site
7 flood conveyance infrastructure, a Homeowner’s Association (HOA) will be
8 established consisting of the owners of each residential, multi-family, and
9 commercial lot within the Painted Hills PRD project. This HOA will be
10 responsible for the continued operation and maintenance, including repair and
11 replacement as needed, of these facilities.” FEIS at 44. The FEIS only
12 contemplated that an FCD may be formed by the County or City in the future:
13 “At any point in the future, should the City or County wish to establish a flood
14 control district that encompasses the PRD site, the PRD will enable this
15 through the recording of “waivers of remonstrance” on the title of each lot
16 within the PRD.” FEIS at 54. The idea that an FCD was to be a required
17 primary source of flood control system maintenance at the outset of the project
18 is completely unsupported by the extensive record.

21

22 b. The Decision, Page 31, Para. 24.5.1 makes a similarly erroneous factual
23 finding that “the flood control system, which is separate from the HOA’s
24 stormwater system, will not be the responsibility of the HOA but of a flood
25 control district as discussed herein.” This is erroneous for the same reasons
26

set forth in Paragraph E.3.a above.

c. The Decision, Page 39, Para. 54 states: "The best way to ensure that there will be an entity responsible for the raising of funds and completing the timely and regular maintenance and upgrades to the system is a flood control district."

There was no evidence put into the record by the City why an FCD is the “best way” to maintain the flood control system in light of the alternative options available that are (i) cheaper, (ii) more reliable, and (iii) capable of being accomplished.

d. The Decision, Page 40, Para. 59 states: "The requirement that the Application[s] . . . are conditioned upon such a flood control district being formed, are reasonable conditions, capable of being accomplished. The fact that the formation of a flood control district is dependent upon a third-party approval is no different than many other kinds of permits that are required to be obtained prior to final plat approval." This finding is clearly erroneous and not supported by the record evidence, which established that formation of an FCD is not merely a "third-party approval," but is instead a legislative act by a separate governmental entity (Spokane County) to form a new quasi-municipal entity (the FCD), especially where the County has indicated, on the record, that it will not support the formation of an FCD.

4. The FPDP Decision is unlawful pursuant to RCW 36.70C.130 because it:

a. Erroneously interprets the Spokane Valley Municipal Code to require that any appeals related to the Applications be resolved before the floodplain

1 development permit can be issued;

2 b. Engages in an unlawful procedure requiring the resolution of any appeal

3 related to the Applications before issuing the floodplain development permit;

4 c. Erroneously applies an ordinance unrelated to the floodplain development

5 permit as a condition of issuing said permit, which is a clearly erroneous

6 application of the law to the facts.

7

8 **F. Request for Relief Under the Land Use Petition Act**

9 1. Petitioner incorporates and re-alleges the facts set forth above.

10 2. Based on the foregoing, Petitioner requests the following relief:

11 a. Reversal of the Decision to the extent it imposes Condition 4.1 and remand of

12 the Decision to the City with direction to immediately reissue the Decision

13 approving the preliminary plat and PRD with a new Condition 4.1 (to replace

14 Condition 4.1 of the Decision requiring an FCD) to either: (i) establish a drain

15 water account (per Spokane County Code §§ 9.14.220 and .225) or (ii) require

16 the implementation of the Spokane County Stormwater Management Plan per

17 Spokane County Code Ch. 9.70).

18 b. An order on remand requiring the City to reissue the Decision with a new

19 condition requiring the recording of waivers of remonstrance on the property

20 (a condition that was omitted from the Decision) to ensure that if the County

21 ever changes course in its analysis and prefers to maintain the flood control

22 system through the creation of an FCD, the County, which is the governing

23 body who has authority to make that determination, may do so without any

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25

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objection from the future owners of the property.

- c. Reversal of the Decision on Reconsideration and an order that the Declarations submitted by Petitioner in support of its Motion for Reconsideration be included in the record.
- d. Such other and further relief as the court deems equitable.

III. SECOND CAUSE OF ACTION: SUBSTANTIVE DUE PROCESS
VIOLATIONS UNDER 42 U.S.C. 1983

1. Plaintiff incorporates and re-alleges the facts set forth above.

10 2. The City's arbitrary and irrational actions, including the Decision, as described
11 above deprived and improperly interfered with Plaintiff's constitutionally cognizable rights
12 under its permit and its right to use and develop its property, resulting in damages and injury to
13 Plaintiff.

14 3. The City's actions violate Plaintiff's substantive due process rights under Article
15 I, § 3 of the Washington State Constitution and the Fifth and Fourteenth Amendments to the
16 United States Constitution.

18 4. Plaintiff is entitled to relief under 42 U.S.C. § 1983.

19 5. Plaintiff is entitled to its reasonable attorney's fees incurred in the vindication of
20 its civil rights under 42 U.S.C. § 1988.

IV. PRAYER FOR RELIEF

22 Plaintiff/Petitioner requests judgment in its favor on all claims and causes of action,
23 granting the following relief:

25 1. All relief requested above under LUPA, including reversal of the Decision to the
26 extent it imposes Condition 4.1 and an order remanding the Decision to the City with direction

LAND USE PETITION ACT PETITION FOR JUDICIAL
REVIEW AND COMPLAINT FOR DAMAGES - 17

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1 to immediately reissue the Decision approving the preliminary plat and PRD with a new
2 Condition 4.1 (with the other conditions and relief requested in paragraph II.F.2 above), reversal
3 of the Decision on Reconsideration, and an order that the Declarations submitted by Petitioner in
4 support of its Motion for Reconsideration be included in the record;

5 2. All consequential and general damages resulting from the City's violations of 42
6 U.S.C. § 1983 be awarded to Plaintiff in an amount to be proven at trial. These damages include,
7 but are not limited to, the costs and damages associated with lost business opportunities and sales
8 of the subject property, the carrying costs of the subject property, the costs incurred in preparing
9 and submitting the Applications and responding to conditions and issues not lawfully raised by
10 the City, the fees Plaintiff paid to the City for dealing with the unlawful acts of the City in
11 processing the Applications, Plaintiff's legal costs responding to the negligence of the City and
12 the Hearing Examiner, and Plaintiff's lost profits from the delay caused by the City and the
13 Hearing Examiner.

14 15 3. Pre and post judgment interest.

16 17 4. Attorneys' fees, including under 42 U.S.C. §1988.

18 19 5. Such other relief as the Court deems equitable.

20 21 DATED this 13th day of May, 2024.

22 23 24 25 26 FOSTER GARVEY PC
By 
Patrick J. Schneider, WSBA No. 11597
Todd Reuter, WSBA No. 20859
William C. Lenz, WSBA No. 49891
Attorneys for Petitioner / Plaintiff

LAND USE PETITION ACT PETITION FOR JUDICIAL
REVIEW AND COMPLAINT FOR DAMAGES - 18

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APPENDIX A
Original Decision

(Findings of Fact, Conclusions of Law, Decision and Conditions of Approval for SUB 2016-0001/PRD 2015-0001, Painted Hills – March 19, 2024)

v

CITY OF SPOKANE VALLEY HEARING EXAMINER

IN THE MATTER OF)	FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND CONDITIONS OF APPROVAL
)	
SUB 2015-0001/PRD 2015-0001)	
Painted Hills)	

THIS MATTER came on for hearing in front of the City of Spokane Valley Hearing Examiner on January 31, 2023, through February 2, 2024. This application contains a Planned Residential Development (PRD) and a Subdivision (SUB). The Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law, and Decision and Conditions of Approval as follows:

I. FINDINGS OF FACT

1. **Proposal Description:** A Planned Residential Development that includes 584 residential units, 22,400 square feet (sf) of retail space, and 29.87 acres of open space. The underlying 99.3 acres will be subdivided into 307 lots and requires a revision to the Special Flood Hazard Area (SFHA) on FEMA Flood Rate Insurance Map (FIRM) panel 53063C0751D (effective date July 6, 2010).
2. **Proposal Location:** The site is the former Painted Hills Golf Course, and includes parcel numbers 45334.0109, 45334.0108, 45334.0113, 45334.0110, 44041.9144, 45334.9135, 45334.0114, 45336.9191, and 45334.0106, located at the NW intersection of Thorpe Road and Dishman Mica Road, and further located in the SE 1/4 of Section 33, Township 25N, Range 44E, and the NE 1/4 of the NE 1/4, Section 4, Township 24N, Range 44E, and the SW 1/4 of Section 34, Township 25N, Range 44E, Willamette Meridian, Spokane County, Washington.
3. **Owners are as follows:**

Tax Lot	Owner	Zoning	Size (Acres)
45334.0109	Black Realty, Inc.	R3	0.87
45334.0108	Black Realty, Inc.	R3	0.87
45334.0113	Northwest Renovators Inc.	R3	0.27
45334.0110	Black Realty, Inc.	R3	0.87
44041.9144 ¹	Black Realty, Inc.	R3	8.24
45334.9135	Northwest Renovators Inc.	R3	1.68
45334.0114	Northwest Renovators Inc.	R3	0.60
45336.9191 ¹	Black Realty, Inc.	R3	85.07
45334.0106	Northwest Renovators Inc.	R3	0.87

SUB 2015-0001/PRD 2015-0001

Painted Hills

Page 1 of 58

TOTAL²	99.34
¹ <i>New parcel numbers have been assigned as a result of BLA-2018-0033 New parcel numbers are: #45334.9195, 44041.9193, 44041.9145, and 45336.9192. The two reconfigured parcels are bisected by taxing districts, which resulted in each parcel being assigned to parcel numbers.</i> ² <i>The total acres above is based on the area shown in the assessor's records; the plat of record indicates the total area is 99.54 acres.</i>	

4. Approval Criteria: Spokane Valley Comprehensive Plan, Title 19 Spokane Valley Municipal Code (SVMC) – Zoning (as in effect August 14, 2015), Title 20 SVMC Subdivisions (as in effect August 14, 2015), Title 21 SVMC – Environmental Controls (as in effect August 14, 2015), Chapter 22.20 SVMC – Concurrency (as in effect August 14, 2015), SVMC 22.130.040 - City of Spokane Valley Street Standards (SVSS), SVMC 22.150.040 - Spokane Regional Stormwater Manual (SRSM), as amended, Spokane Regional Stormwater Plan, Spokane Regional Health District Regulations, Chapter 24.50 Land Disturbing Activities.
5. Project Description: This project consists of two land use permits, both of which are classified as Type III land use actions: PRD-2015-0001 is a proposed Planned Residential Development (PRD) with both residential and commercial development. The residential development is comprised of 584 total units including 304 single-family units (252 single family dwellings and 52 cottage or townhouse style dwellings), 228 multi-family units, and 52 mixed-use units. The commercial development will include 22,400 square feet of retail space which involves mixed-use and free-standing buildings. The site will include 29.87-acres of open space, which is equal to 30% of the total project area. This open space will include a pedestrian trail system.
6. SUB-2015-0001 is a 307-lot subdivision. The subdivision contains 210 single family residential lots ranging in size from 5,215 sf up to 11,934 sf, 52 cottage lots, ranging in size from 1,686 sf up to 6,229 sf, 42 estate lots ranging in size from 8,800 sf up to 15,424 sf, a 9.88 acre lot intended for 228 units of multifamily residential development, a 1.81 acre lot intended for commercial-mixed use development that includes 52 residential units, a 1.58 acre lot for the existing restaurant, and tracts for open space and drainage. The subdivision creates the lots to implement the PRD.
7. The existing golf course buildings and parking lot at the corner of S. Dishman-Mica Road and Thorpe Road will be retained for commercial use. The former clubhouse is currently being used as a restaurant. A commercial mixed-use area is planned along S. Dishman-Mica Road adjacent to the main access point. The planned focus for the commercial areas will be to provide services and goods to the residents of the PRD, and this may include restaurants, coffee shops, day care, dry cleaners, convenience shops, etc.
8. Within the PRD will be 29.87 acres of open space, 3.05 acres of which will include flood control. The cottage, single family, and estate housing are separated by greenbelts. The commercial areas and housing will be separated by open space. In the south portion of the PRD next to Thorpe Road will be a large passive park area.

Throughout the open space and entire PRD there will be a trail system that will provide pedestrian connectivity and paths for active recreation.

9. Access to the development will be made from S. Dishman-Mica Road, Thorpe Road and S. Madison Road. S. Dishman-Mica Road is classified as an Urban Minor Arterial, and both Madison Road and Thorpe Road are classified as an Urban Major Collector. One access point will be made from S. Dishman-Mica Road adjacent to the commercial and multi-family development, one access point will be made from Thorpe Road to a commercial development and four access points will be located from Madison Road leading to the proposed residential development. Various internal streets will provide access to each lot. All streets will be designed and constructed to meet Spokane Valley Street Standards (SVSS) and include curb, gutter, drainage, and sidewalks.
10. This proposal has been evaluated for critical areas and has undergone an Environmental Impact Statement (EIS). Information related to critical areas, SEPA, and the FEIS are included in this decision.
11. Application Processing: The following summarizes key application procedures for the proposal:

Pre-Application Meeting:	December 4, 2014
Planned Residential Development Application Submitted	July 24, 2015
Preliminary Subdivision Application Submitted	July 24, 2015
Date of Complete Determination	August 14, 2015
Date of Mailed and Published Notice of Application	August 21, 2015
Routed Revised Environmental Checklist for Agency Review	September 21, 2016
SEPA Determination of Significance 1	September 8, 2017
EIS Scoping Meeting – Public Hearing	September 25, 2017
Scoping Status Summary Issued	November 9, 2017
Amended SEPA Checklist Submitted	August 20, 2018
SEPA Determination of Significance 2	October 26, 2018
DEIS Received	April 2, 2021
City DEIS Determination	June 9, 2021
DEIS Notice for Public & Agency Comments	July 16, 2021
FEIS Notice for Public & Agency Comments	June 6, 2023
FEIS Appeal of Adequacy Received	June 16, 2023
End of FEIS Appeal Period	June 20, 2023
Posted Notice of Public Hearing	January 12, 2024
Mailed Notice of Public Hearing	January 12, 2024

12. Vesting: On July 24, 2015, the PRD and Subdivision applications were submitted to City of Spokane Valley. On August 14, 2015, both applications were issued a Determination of Completeness. This determination vests both applications to Spokane Valley Municipal codes in effect on August 14, 2015. These codes include Title 19 SVMC Zoning Regulations (specifically chapter 19.50 SVMC Planned Residential Developments), Title 20 SVMC Subdivision Regulations, Title 21 SVMC Environmental Controls, and Title 24 SVMC Building Codes. Chapter 19.50 SVMC

was repealed by Ordinance No. 21-019 in 2021. All references to SVMC, and the regulations therein are reflective of the time of vesting.

13. Property Information:

Size and Characteristics	The site is 99.34 acres, containing 9 parcels. The site includes critical areas that are primarily floodplain.
Comprehensive Plan	SFR, Single Family Residential
Zoning	R3, Single-Family Residential
Existing Land Use	A majority of the site is vacant. There is a restaurant and golf driving range in the southwest portion of the property. There are still features of the previous golf course such as fairways and greens.

14. Surrounding Comprehensive Plan, Zoning and Land Uses:

North	Comprehensive Plan – SFR, Single Family Residential Zoning – R3, Single Family Residential Existing Land Use- The Carmel of the Holy Trinity Convent & SFR Development
South	Spokane County Comprehensive Plan – Low Density Residential Zoning – LDR Existing land use – Haase Landscape Inc., Single Family residential
East	Spokane County Comprehensive Plan – Low Density Residential Zoning – LDR Existing land use – Single Family Residential
West	Comprehensive Plan – Corridor Mixed Use & Single Family Residential Zoning – R3 & CMU Existing land use – Valley Chapel Church, Dishman Mica Auto Repair, Manufactured Homes.

II. FINDINGS AND CONCLUSIONS SPECIFIC TO THE SUBDIVISION REQUEST

16. Compliance with Title 20 SVMC (Subdivision Regulations). This project is vested to Title 20 SVMC in effect on August 14, 2015. The following section provides Hearing Examiner analysis for the subdivision code as it relates to the project:

16.1 20.20.090 General Design:

16.1.1 The design shape, size, and orientation of the lots shall be appropriate for the use intended and zoning and land use classification in the Comprehensive Plan of the area in which they are located.

16.1.1.1 Hearing Examiner Finding: The subject site is zoned R-3 Single-Family Residential. In the R-3 Zoning District lots can be subdivided to a minimum of 7,500 square feet per lot. However, the PRD regulations in SVMC 19.50.050 stipulate that the minimum lot size is waived, and that the density of the underlying zoning district establishes the maximum density allowed. The density of the R-3 Zone

SUB 2015-0001/PRD 2015-0001

Painted Hills

Page 4 of 58

is six dwelling units per acre. The density of the proposal is 5.83 units per acre. Although the lot sizes vary in the subdivision, it does not exceed the allowed density. The proposed lot sizes range from 1,800 to over 15,000 sf and can accommodate the residential development as proposed,

16.1.2 Lot Arrangement:

16.1.2.1 Side lot lines shall be generally perpendicular to public streets rights-of-way, but not more than 20 degrees perpendicular, or radial to the right-of-way in the case of curvilinear streets or cul-de-sacs.

16.1.2.2 Corner Lots:

16.1.2.2.1 The lot lines at the intersection of two public streets shall be located a minimum of two feet behind the back of curb.

16.1.2.2.2 At the intersection of two arterial streets (collector, minor or principal), the applicant may be required to provide a widened border easement or right-of-way area behind the pedestrian ramp landing for the placement of traffic control devices and streetlights and their related appurtenances (see Figure 20.20.01). The limits of the border easement and right-of-way area shall be determined by the City at the time of application. This area shall not extend more than 15 feet behind the landing. The boundary of this area may be defined by an arc that is tangent at each end to the standard border easement, typically located behind the back of sidewalk, or right-of-way if there is no border easement in the vicinity. If this area is already fully contained within right-of-way, then no additional border easement width shall be required. The only utilities allowed within this area are those necessary for the function of the proposed lights, signals, etc.

16.1.2.3 Lot Dimensions:

16.1.2.3.1 Lot dimensions shall comply with the minimum standards established in Chapter 19.70 SVMC;

16.1.2.3.2 Flag lots are prohibited. Reverse flag lots providing access to alleys or amenities located to the rear of the property are permitted.

16.1.2.4 Double Frontage Residential Lots:

16.1.2.4.1 Double frontage and reverse frontage lots shall be permitted only where necessary to separate residential development from arterial roadway or to overcome specific disadvantages of topography and orientation;

SUB 2015-0001/PRD 2015-0001

Painted Hills

Page 5 of 58

- 16.1.2.4.2 When lots back to arterials, screening shall be installed on the lot(s) limiting visibility between the arterial and the adjoining lots in accordance with SVMC 22.70.070;
- 16.1.2.4.3 No building, except buildings designed and constructed as two-family dwellings or one-family attached dwellings, shall be constructed on or across existing lot lines. Where buildings are designed and constructed on or across lot lines, the building shall be located so that the common wall separating the individual living units is located on and along the common lot lines of the adjoining lots.
- 16.1.2.5 Hearing Examiner Finding: Pursuant to SVMC 19.50.050.C lots within a PRD are not required to meet the minimum lot size provisions. The size requirement is waived by the PRD regulations. The proposal does not include any double frontage lots or lots at the intersection of two public roads as in all cases the lots are separated from the right-of-way (ROW) by linear open space. Because of the strip of open space located between Madison Road ROW and the lots, screening is not required. The preliminary plat map submitted meets the standards above as allowed by the PRD regulations. No flag lots are proposed.
- 16.1.3 Block dimensions shall reflect due regard to the needs of convenient access, public safety, connectivity, emergency vehicle access, topography, road maintenance, and the provision of suitable sites for the land use planned.
 - 16.1.3.1 Block Length. Block length shall comply with the adopted street standards.
 - 16.1.3.2 Block and Lot Labeling. Blocks and lots shall be identified in sequential numerical order.
 - 16.1.3.3 Street alignments shall be designed and constructed with appropriate consideration for existing and planned streets, anticipated traffic patterns, topographic and drainage conditions, public safety, adopted street standards, Comprehensive Plan, and the proposed use of the land so divided.
 - 16.1.3.4 Hearing Examiner Finding: Pursuant to the Spokane Valley Street Standards (SVSS) the block length is 600 feet. Block lengths, with the exception of Painted Hills Avenue and 42nd Avenue, comply with adopted street standards. However, both streets provide pedestrian connections to adjacent streets creating convenient pedestrian access within the PRD. The drawing does not identify blocks but does identify all lots in sequential number order. Blocks will be assigned prior to Final Plat submittal. The internal street system provides adequate access into the neighborhood and connectivity internally.

SUB 2015-0001/PRD 2015-0001

Painted Hills

Page 6 of 58

The design is adequate to handle the anticipated traffic and patterns. The streets will meet all requirements for public safety, drainage and adopted street standards.

16.1.4 When a tract is subdivided into lots of one acre or more in size, the community development director (hereafter referred to as the "director") may require an arrangement of the lots and streets, in conformance with the adopted arterial and local access street master plan or areas identified in SYMC 22,130.080, Future acquisition areas, such as to permit a subsequent redivision.

16.1.4.1 Hearing Examiner Finding: Two large lots are proposed on the Plat. Commercial Lot 1 is 92,865 sf and Multifamily Lot 1 is 520,184 sf. The large lots proposed on the Plat are intended to implement the PRD. The PRD proposes multifamily development and mixed-use commercial development on the lots. The large lots are consistent with the intended use of the PRD and no further division is anticipated. Because the lots are only allowed to develop consistent with the PRD no further development plan is required.

16.1.5 Lots should not be divided by the boundary of any city, county, zoning designation, or public right-of-way.

16.1.5.1 Hearing Examiner Finding: All lots within the subdivision are zoned R-3 single family residential and located within the City limits. No lots will be divided by public ROW.

16.1.6 Every lot shall have direct access to a paved public street, private street, or an easement for a private driveway.

16.1.6.1 Hearing Examiner Finding: Every lot within the proposal will be accessed by a paved public street. Many of the lots will also be adjacent to a paved trail system incorporated within the open space.

16.1.7 Prior to filing the final short subdivision, subdivision or binding site plan application, the applicant shall improve or make appropriate provisions for the construction of the public or private streets, alleys or private driveways that provide access to lots being created through the short subdivision, subdivision, or binding site plan consistent with applicable City-adopted standards.

16.1.7.1 Hearing Examiner Finding: The proposal includes a street system that will comply with the SVSS. These streets will have full improvements including curb, gutter, sidewalk and planters. Improvements shall be constructed prior to the recording of the final plat. Frontage improvements are also required to Dishman-Mica Road, Madison Road, and Thorpe Road. Additional infrastructure improvements are required along the 300-foot-long gap in sidewalk that will exist between the northern limits of the Painted Hills PRD site and the existing sidewalk which terminates at E. 40th Street and S. Pines Road. A crosswalk and pedestrian beacon will be installed at the intersection of E 40th Avenue and S Madison Road to provide safe pedestrian connection to the adjacent schools.

16.1.8 Wastewater design shall be in compliance with all applicable City regulations and other jurisdictional agency regulations.

16.1.8.1 Hearing Examiner Finding: Wastewater will be in compliance with all applicable City regulations and other jurisdictional agency regulations.

16.1.9 Adequate public domestic water supply and/or fire protection shall be provided in compliance with all applicable City regulations and other jurisdictional agency regulations.

16.1.9.1 Hearing Examiner Finding: Domestic water supply will be provided by Spokane County Water District #3. A certificate of water availability was provided on July 25, 2015. The certificate of water availability is valid within 12 months of its issuance. The certificate is dated March 16, 2015. A current certificate of water availability must be submitted as a condition of subdivision approval.

16.1.9.2 The site will be served by City of Spokane Valley Fire Department and Spokane County Fire District #8. The most southern portion of the site falls within the jurisdiction of Spokane County Fire District #8.

16.1.10 All road designs shall comply with Chapter 22.130 SVMC and adopted street standards.

16.1.10.1 Hearing Examiner Finding: Road designs comply, or shall be conditioned to comply, with Chapter 22.130 SVMC and adopted street standards.

16.1.11 Provisions for stormwater runoff shall comply with City regulations for stormwater management as set forth in Chapter 22.150 SVMC.

16.1.11.1 Hearing Examiner Finding: Stormwater management will comply with chapter 22.150 SVMC and the Spokane Regional Stormwater Manual (SRSM).

16.1.12 Existing and proposed easements for electric, water, sewer, gas, and similar utilities shall be illustrated on the short plat, plat, or binding site plan. The utility purveyors shall indicate to the department in writing that the easements are adequate for their service needs.

16.1.12.1 Hearing Examiner Finding: The application was routed to all utility purveyors. Comments have been incorporated into the conditions of approval as appropriate and the final plat map will show all existing and proposed easements.

16.1.13 The short subdivision, subdivision, or binding site plan shall provide for the location of underground utilities within public rights-of-way, border easements, alleys or utility easements including, but not limited to, those for electricity, communications, and street lighting. When conditions make underground installation impractical, the city manager may waive the requirement for underground utilities.

16.1.13.1 Hearing Examiner Finding: Appropriate easements shall be provided for existing and proposed utilities.

16.2 SVMC 20.20.100 Findings. Prior to approving any subdivision, the hearing examiner shall determine and make written findings of fact that appropriate provisions are made for the following:

16.2.1 The public health, safety, and general welfare;

16.2.1.1 Hearing Examiner Finding: Prior to any development, permits will be required from Spokane Regional Health District, Spokane County Public Works-Wastewater Division, Spokane Clean Air, Spokane County Water District #3, and City of Spokane Valley. Adherence to these permits and all conditions of approval herein will ensure compliance with the SVMC.

16.2.2 Open Spaces:

16.2.2.1 Hearing Examiner Finding: The PRD regulations in SVMC 19.50.060 requires 30% of the gross land area be dedicated for common open space. Open space is not a requirement for development in the R-3 zone. The subdivision implements the PRD. The proposed open space meets the minimum standard of open space for the PRD as set forth in SVMC 19.50.060 as discussed in section I of this decision.

16.2.3 Drainage Ways:

16.2.3.1 Hearing Examiner Finding: All drainage will follow the adopted SRSM for stormwater management. Drainage plans will be reviewed and approved by the City of Spokane Valley Development Engineering Division and conditioned accordingly to ensure compliance.

16.2.4 Street or roads, alleys, sidewalks, and other public ways:

16.2.4.1 Hearing Examiner Finding: The subdivision and PRD will be accessed from S. Dishman Mica Road, Thorpe Road and S. Madison Road. There will be a network of internal streets that will include one access point from Dishman-Mica Road and four access points from Madison Road. The internal street network will be fully improved including curb, gutter, sidewalk, and planters. Frontage improvements including curb, gutter, and sidewalk will also be made to Dishman Mica Road, Thorpe Road and Madison Road. A sidewalk will also be constructed from the north boundary of the plat that will close the gap that leads to the schools to the north.

16.2.5 Transit Stops:

16.2.5.1 Hearing Examiner Finding: Spokane Transit Authority (STA) determines the need for transit stops. The closest transit stop is located 0.6 miles to the north along E 32nd Ave. This is served by Route 97, with a weekday frequency of every 30 minutes and an evening and weekend frequency of every 60 minutes. The nearest bus stops are located 0.6-miles to the north along E 32nd Ave.

16.2.6 Public Potable Water Supplies:

16.2.6.1 Hearing Examiner Finding: Public water supplies are regulated by the Spokane Regional Health District and Spokane County Water District #3. A Certificate of Water Availability completed by Spokane County Water District #3 indicated water service was available at the time of application in 2015 and could serve the number of taps

requested. The certificate also states the water purveyor's water system has a current Washington Department of Health operating permit allowing the number of new taps or water requested. The certificate of water availability is valid within 12 months of its issuance. The certificate is dated March 16, 2015. A current certificate of water availability must be submitted as a condition of subdivision approval.

16.2.7 Sanitary Sewer:

16.2.7.1 Hearing Examiner Finding: The sanitary sewer system is coordinated by Spokane County Wastewater Division. A certificate of Sewer Availability from Spokane County states that sewer is currently available with service connections provided as required to service the proposed development. The developer is required to design, fund, construct, and provide financial surety for the necessary systems to extend sewer service to the site and provide service connections. The Certificate of Sewer Availability is signed March 13, 2015. The certificate also states that it shall be valid as long as the reference project remains active and is not modified.

16.2.8 Parks and Recreation:

16.2.8.1 Hearing Examiner Finding: Although the PRD includes a Passive Open Space Park & Wildlife Travel Corridor, no new designated public parks or recreation facilities are proposed as part of this subdivision. The City adopted a Level of Service (LOS) standard of 3.25 acres of park per 1,000 residents pursuant to the Parks and Recreation Master Plan 2019 Update, which is implemented through the Capital Facilities Element of the Comprehensive Plan. There is 17-acres of designated recreation area located approximately 370-feet to the SW across Dishman-Mica Road. The proposed subdivision will not impact the City's LOS standards for parks.

16.2.9 Playground, schools, and school grounds:

16.2.9.1 Hearing Examiner Finding: The site is located within Central Valley School District and lies within the service area for Chester Elementary School, Horizon Middle School, and University High School. Central Valley School District was notified of the subdivision and PRD and indicated at the time of application that students in the area would not likely attend schools in the boundary area. However, since 2015 the district has constructed a new elementary school, middle school and a new high school which resulted in redistricting within the district. The district has not provided updated comments.

16.2.10 Sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school.

16.2.10.1 Hearing Examiner Finding: Frontage improvements will be required along S. Dishman-Mica Road, S. Madison

Road, and Thorpe Road. These frontage improvements include curb, gutter, swale, and 6' wide sidewalks. Internal streets will include curb, gutter, swales, and 5' wide sidewalks. The PRD includes a pedestrian path system that provides travel throughout the development and connection to the community. A new flashing beacon and crosswalk will be constructed at the intersection of E 40th Avenue and S. Madison/S Pines Roads to facilitate safe pedestrian and cyclist access to the adjacent schools.

16.2.11 Whether the public interest will be served by the subdivision

16.2.11.1 Hearing Examiner Finding: As proposed, this subdivision is consistent with the SVMC and with the goals and policies of the Comprehensive Plan, as outlined in section VI of this decision.

16.2.12 The proposed subdivision is in conformity with all applicable development code provisions.

16.2.12.1 Hearing Examiner Finding: As proposed and conditioned, this subdivision meets, or will meet, all criteria set forth in the SVMC and all other criteria set forth by other agencies with jurisdiction.

16.3 SVMC 20.40.050 Phasing:

16.3.1 Any subdivision may be phased subject to the criteria identified in SVMC 20.40.050.A - E. A master phasing plan must be submitted with the preliminary subdivision. On July 18, 2017, a phasing plan was submitted. While the phasing plan appears to meet the criteria in SVMC 20.40.050.A-E, it is not consistent with the PRD criteria that requires 35% of the residences be completed prior to issuance of any commercial building permits. The phasing plan proposal includes residential lots and the two lots adjacent to Dishman-Mica Road intended for multifamily residential and mixed-use development. The phasing plan as proposed would create two lots for which the City could not issue building permits as the criteria for commercial development would not be met. The plan must be expanded to include an adequate number of residential lots to be consistent with the building permit limitations of the PRD in SVMC 19.50.050. In order to phase the improvements associated with the plan, a phasing plan consistent with the criteria of SVMC 20.40.050.A-E and chapter 19.50 SVMC must be submitted for review and approval by the City following the issuance of the LOMR by FEMA.

16.4 If all of the conditions of approval are met, the proposed subdivision will conform to applicable standards of the SVMC and the proposed subdivision will be consistent with the zoning standards.

17. Compliance with Title 21 SVMC – Environmental Controls, Chapter 21.20 SVMC – State Environmental Policy Act. The City Issued A Notice Of A Determination Of Significance, Which Required The preparation of an Environmental Impact Statement (EIS) for this project in conformance with the State Environmental Policy Act (SEPA), and Chapter 21.20 SVMC. The process, scope of analysis, summary of

community comment, and proposed resolution to anticipated impacts are described here.

17.1 SEPA Process:

- 17.1.1 On July 24, 2015, the application and SEPA Environmental Checklist for the PRD and Subdivision was received.
- 17.1.2 On August 21, 2015, the application materials and SEPA checklist were circulated for public and agency review.
- 17.1.3 On September 8, 2017, a Determination of Significance and Request for Comments on Scope of Environmental Impact Statement were issued.
- 17.1.4 On September 25, 2017, an EIS Scoping Meeting was conducted to receive public comment on issues to be discussed in the environmental impact statement.
- 17.1.5 On Nov. 9, 2017, a Scoping Status Summary Document was issued.
- 17.1.6 On Aug. 20, 2018, the applicant submitted an amended and restated SEPA checklist and other materials that modified the proposed site design in order to pursue a Conditional Letter of Map Revision - Fill (CLOMR-F) from FEMA. This design update to pursue a CLOMR-F approval represents a change in the FEMA re-map effort for the project.
- 17.1.7 On October 26, 2018, a Determination of Significance for a Revised Project Proposal and Request for Comments on Scope of an EIS was issued.
- 17.1.8 On April 2, 2021, the applicant submitted a draft Environmental Impact Statement (DEIS), and on June 9, 2021, the City determined that the DEIS would meet the minimum requirements for a DEIS pursuant to WAC 197-11-405, 197-11-425, 197-11-430, 197-11-440, and SVMC 21.20.110.
- 17.1.9 On July 16, 2021, the City released the DEIS for agency and public review.
- 17.1.10 On June 6, 2023, the City released the Final EIS (FEIS) for public review. The appeal period expired on June 20, 2023.
- 17.1.11 On June 16, 2023, an appeal of the adequacy of the FEIS was received (APP-2023-0003).
- 17.1.12 APP-2023-0003 will be heard by the Hearing Examiner in accordance with chapter 17.90 SVMC Appeals.

17.2 Scoping:

- 17.2.1 On September 8, 2017, a Determination of Significance (DS) for the proposed development was issued with a call for action for an Environmental Impact Statement (EIS) to be prepared. The purpose of the EIS is to evaluate the effects of the project on the natural environment, built environment, and transportation.
- 17.2.2 Following the issuance of the DS a scoping period for the project was held that included a public scoping meeting. On September 25, 2017, the public EIS scoping meeting was conducted to receive comments on issues to be discussed in the Environmental Impact Statement. During the public scoping comment period 251 comments were received. During this process the applicant chose to move forward with a Planned Residential Development. On August 20, 2018, the applicant submitted an amended and restated SEPA

checklist as well as additional and amended application materials reflecting the new proposal.

17.2.3 On October 26, 2018, a Determination of Significance was issued for the revised project proposal and SEPA checklist. A second public scoping comment period was held that yielded an additional 124 comments.

17.3 Project Proposal/ Alternatives:

17.3.1 The initial proposal for PRD and Subdivision of the former Painted Hills golf course site was reviewed for impacts and considered with development alternatives. This led to the initial DS that was issued in 2017.

17.3.2 On August 20, 2018, the applicant submitted an amended and restated SEPA checklist as well as additional and amended application materials reflecting the new proposal. Thereafter a second DS was issued on October 26, 2018.

17.3.3 Subsequent to the DS the public review and scoping process took place that led to a DEIS. The DEIS was determined to meet the minimum requirements for a DEIS pursuant to WAC 197-11-405, 197-11-425, 197-11-430 and 197-11-440 and SVMC 21.20.110.

17.3.4 A FEIS was issued on June 6, 2023 that included an overview of alternatives and associated analysis.

18. FEIS Alternatives. The FEIS presented three alternatives as described in the table below.

Alternative 1: No Action,	Alternative 2a PRD High Infiltration	Alternative 2b PRD Low Infiltration
<p>The No Action Alternative assumes that no on-site or off-site improvements occur in conjunction with or as a result of a residential project on the Painted Hills site.</p>	<p>This alternative includes the PRD proposal of approximately 42 estate single family residential lots, 206 standard single-family residential lots, 52 cottage-style single family residential lots, 228 multi-family residential units, 52 mixed use multi-family residential units integrated with approximately 13,400 square feet of retail/commercial use, 9,000 square feet of future stand-alone retail commercial use and the preservation of the club house and associated parking as a commercial area.</p> <p>For managing the flood flows impacting the site and for revising the floodplain boundaries, the project proposes on-site and off-site flood control facilities. On-site facilities include the replacement of existing culverts under Thorpe Road with a box culvert, installation of a concrete</p>	<p>This alternative includes approximately the same PRD development proposal as Alternative 2a. However, the key difference is Alternative 2b significantly increases the size of the floodwater infiltration pond adjacent to the gravel drywell infiltration gallery and eliminates the cottage-style single family residential lots at the northern limits of the site. The infiltration pond is larger in Alternative 2b to address recent (January 2020) infiltration testing that indicates slower infiltration might occur on the site when compared to infiltration testing conducted on the site in May of 2016.</p>

	<p>lined channel to a pipe system leading to a stormwater treatment swale and then to an infiltration pond. Stormwater that crosses under Madison Road will outfall into the pipe system. Off-site facilities east of the project site in Spokane County, which will intercept and prevent flood flows from reaching the project site, include replacing the Gustin Ditch with a 36-inch pipe, deepening the "triangle pond" and installing 18 drywells in the pond bottom. Street frontage improvements along Dishman-Mica Road, Thorpe Road, and Madison Road are also proposed.</p>
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19. Public Comments:

19.1 A total of 218 comments were received during the DEIS comment period that began on July 16, 2021. These public comments focused on concerns related to flooding, aquifer impacts, utility management, traffic, road damage, pedestrian safety, school crowding, pollution, wildlife, the volume of grade and fill, fire protection, and city liability. Subsequent to a review of the comments received, it was determined that revisions to the document were appropriate to provide clarification. Section 1.5 of the FEIS summarizes the clarifications that occurred to the introduction, natural environment, built environment, transportation sections as well as other elements not analyzed in the document. Appendix B of the FEIS provides a detailed list of responses to public comment and the location of all revisions.

20. FEIS Response to Concerns:

20.1 The FEIS evaluates potential adverse impacts to the following elements of the environment: natural environment (ground and surface water), built environment (land use, including relationship to land use plans regarding flood hazard areas), and transportation, including the importing of fill. Additional environmental elements including air quality, aesthetics, biological resources, environmental health, geology, historic, cultural, and archaeological resources, noise, public services, and recreation were analyzed to a lesser degree. The FEIS also proposes several mitigation measures that have been incorporated in the Conditions of Approval. The table below identifies concerns identified through public comment, if mitigation was proposed in the FEIS, and the section of the FEIS where the concern is discussed.

FEIS Concerns and Mitigation Measures			
Concern	Impact(s) Minimized	Mitigation Measure(s)	FEIS Section
Flooding	Yes	Yes	3.1 and 3.2

SUB 2015-0001/PRD 2015-0001

Painted Hills

Page 14 of 58

Traffic	Yes	Yes	3.3
Public Schools	Yes	No	3.4.8
Volume of Grade & Fill	Yes	Yes	3.3 and Appendix G
Wildlife	Yes	Yes	3.4.3
Utility Management	Yes	Yes	3.4.8
Pedestrian Safety	Yes	Yes	3.3
Fire Protection	Yes	Yes	3.4.8
Pollution and Noise	Yes	Yes	3.4.1 and 3.4.7
The Aquifer	Yes	Yes	3.1
City Liability	Yes	Yes	3.2
Road Impacts	Yes	Yes	3.3

21. A summary of each concern is presented and followed by discussion presented in the FEIS that addresses the concern or identifies measures to address the concern.

21.1 Flooding - Flood water will be displaced and impact properties off-site.
 21.2 Risk of failure and risk to adjacent properties is minimized for the following reasons and through the following measures:

21.2.1 Flood control system components will be designed to meet standards of the SRSM and Ecology's Stormwater Management Manual for Eastern Washington (SWMMEW). Each element of the system has been designed to withstand flow rates and volumes in excess of the 100-year storm.

21.2.2 During construction, depressions will be created that will serve as temporary repositories to capture any floodwater that enters the Painted Hills site during the construction phase. Following the excavation of the southern open space depression near Thorpe Road, excavation of the infiltration basin on the north end of the Painted Hills site would be completed. The capacity of these two basins would be designed to capture and infiltrate a 100-year storm event.

21.2.3 Box culvert under Thorpe Road: the new 30-foot long by 3-foot-deep box culvert will have a capacity to pass 500-year flood flows along the Golf Course Overflow Path without overtopping Thorpe Road. This new box culvert would replace the existing set of three, undersized 15-inch culverts.

21.2.4 Headworks at the inlet to the two-48" diameter pipes: typically headworks are obstructed by debris from the upstream basin preventing floodwaters from entering the flood conveyance system but this is unlikely for this project because the only known source of debris that could cause such a failure would be vegetative debris and the only known type of debris that would be expected to fully obstruct the headworks is large woody debris (e.g. fallen trees). This obstruction is very unlikely because the modeling shows that the flood depths and velocities under the 100-year and 500-year storm events lack the magnitude of velocities and depths required to carry large woody debris capable of obstructing trash racks at the headworks. Despite the general absence of floodwater volumes,

SUB 2015-0001/PRD 2015-0001

Painted Hills

Page 15 of 58

velocities, and large woody debris necessary to create a failure event at the headworks, additionally, the PRD project has incorporated a secondary storage area that could receive floodwaters in the event of a headworks obstruction event. If such an event were to occur, floodwater would crest over the open channel wall and flow into the adjacent approximately 4-acre open space area within the PRD. This open space area will function as a secondary storage pond and temporary containment measure. Also, due to the prominence and visibility of the 4-acre open space area within the PRD, it is expected that overflows into this secondary storage area would be apparent to those living within the Painted Hills PRD and to the Homeowners Association representatives who would then notify the flood control district of the situation thus triggering a maintenance crew to come to the site to remove any debris causing an obstruction.

- 21.2.5 Two 48-inch stormwater conveyance pipes; the two 48-inch pipes would extend north for approximately 2,100 feet along Madison Road. These pipes have been designed with a capacity to convey flood volumes up to the 500-year flood.
- 21.2.6 Sediment removal: Suspended solids in the floodwater will be filtered out by tall grasses planted in the biofiltration swale. Also, at the end of the biofiltration swale, the water would enter a settling pond where additional suspended sediments would precipitate to the floor of the pond. The sediment removal will help clean the stormwater entering the infiltration pond.
- 21.2.7 Infiltration pond and drywells (after the settling pond): the floodwater infiltration system is designed to eliminate flooding impacts by ensuring that floodwater can infiltrate on-site in the infiltration pond under normal ground conditions as well as in situations where the ground is frozen. Under normal conditions, floodwater will infiltrate through the permeable pond bottom. The infiltration pond has an outflow capacity of 730.43 cfs. When the ground is frozen and infiltration through the ground surface is reduced and water levels within the infiltration basin rises by 1 foot in elevation, the water would crest over the rims of the 50 individual drywells and infiltrate into the native soils. The dry well gallery can effectively infiltrate the peak flow rate of the 100-year storm for when the infiltration capacity of the basin is compromised due to partially frozen ground conditions.
- 21.2.8 Gustin Ditch area: Off-site flood conveyance elements, including the triangle pond and Gustin Ditch, are designed to accommodate approximately 2.25 times the peak 100-year storm flows coming from the east before entering the project site. These off-site improvements will eliminate 100-year and 500-year floodwater inflows onto the Painted Hills site from the east as modeled in the current FEMA floodplain insurance study.
- 21.2.9 The FEIS states that in addition to the required HOA, a flood control district, which specializes in the administration of flood control systems, would ensure the continued competent operation and maintenance of the flood control system (which is distinct from the on-site stormwater systems that will be the responsibility of the

HOA) and appropriate fees are collected; A waiver of remonstrance recorded on all lots would allow later formation of a flood control district to ensure that ownership, maintenance and repair responsibility is provided for indefinitely and does not become the responsibility of the residents outside of the development.

21.2.10 Improvements to the Gustin Ditch and Triangle Pond are subject to review and approval by Spokane County as well as FEMA.

21.2.11 It is of note that any development activities located in a flood hazard area are subject to review and approval through FEMA's Conditional Letter of Map Revision (CLOMR) and eventual approval via a Letter of Map Revision (LOMR). The applicant has submitted all flood and stormwater designs to FEMA for preliminary review, as established during a meeting with FEMA and other reviewing agencies on October 14, 2021. Comments were received from FEMA on August 22, 2022, and December 21, 2022, as part of a preliminary review. These comments request relatively minor revisions such as expanded responses and revisions to application materials. No modification of the flood control system design is required as a result of these comments. However, the technical review process is not yet complete, and FEMA may provide additional comments that need to be addressed. Further conditions from FEMA will be incorporated into future required permits.

21.2.12 Traffic - Increased traffic and its impact on the existing traffic system including the surrounding streets and travel routes in the greater vicinity.

21.2.13 This project, as proposed, will generate additional trips on the adjacent roadway network. Through the City's concurrency review process as prescribed in the Street Standards, a traffic impact analysis (TIA) was completed in 2016 to determine the impact of these additional trips on the operational performance of the street network. The TIA is included as Appendix F to the FEIS. The result of the TIA was an issuance of transportation concurrency certificate that identified sufficient capacity exists on the street network to accommodate the additional trips with the completion of specified mitigation. The analysis and results of the TIA are summarized in Section 3.3 of the FEIS. The mitigation identified by the TIA and subsequent concurrency certificate, in addition to the roadway and frontage improvements identified through development engineering requirements, have been identified throughout the FEIS process, as well, and are included in Section 3.3.3.

21.2.14 Impacts on public schools - Schools are currently overcrowded and the increase in population resulting from the proposed PRD will escalate the existing crowding.

21.2.15 The increase in student population may not be immediately accommodated by the Central Valley School District (CVSD). Additional student population may lead to students attending out of service area schools with capacity or increase the need for temporary classrooms. Section 3.4.8.2 of the FEIS provides a complete discussion on the projected student population associated with the Painted Hills PRD and the impacts to the school district's current

revenue stream, CVSD generates revenues to fund student enrichment and capital facilities to augment additional revenues channeled to the district from the state. The district utilizes various means to plan for and accommodate student population increases associated with urban growth.

21.2.16 FEIS section 3.4.8.2.2 summarizes how the future development would provide increased school tax revenues commensurate with the demand on facilities and operations created by additional school children residing within the PRD.

21.2.17 Volume of Grade & Fill - Impacts of the construction traffic on the traffic system during hauling of soil including interruption to traffic and damage to the roads from hauling 377,000 cubic yards of fill.

21.2.18 Section 3.3.2 of the FEIS and the Truck Haul Plan (Appendix G) discusses construction-related traffic, fill quantity, timing, routes, and impact to local roads. Impacts could include traffic delays due to the additional truck traffic on the roads, inconvenience and potential danger caused by dust and spilled fill material on the road. The additional truck traffic could result in damage to existing roadway infrastructure including pavement surfaces, signs, and guardrails. It is anticipated that truck volumes will be between 11-22 trips per day and 22-40 trips per day over a 4-year period depending on if dump trucks to the site occur year-round or if their activity is curtailed by weather conditions. Implementation of the mitigation measures identified in Section 3.3.3, in particular the mitigation requirement to finalize a truck-haul plan approved by the City, will ensure that the traffic-related effects of on-site fill activities are sufficiently mitigated.

21.2.19 The City's certificate of concurrency for the Painted Hills PRD project remains valid and any development proposals that have occurred after the issuance of the certificate of concurrency are required to consider background trips from the Painted Hills project. Therefore, the delay in approval for the Painted Hills PRD will not result in unaccounted for impacts on the system due to the fact that subsequent development proposals have included trips from the proposed project as background volumes in their traffic studies to obtain certificates of concurrency.

21.2.20 Wildlife - Wildlife will be displaced by the proposed development.

21.2.21 Section 3.4.3.1 and Appendix H of the FEIS describe biological resources on the Painted Hills PRD site. No federally listed or state-listed species or other species of concern were identified on the Painted Hills PRD site. The existing habitat is degraded, having been planted in non-native turf grasses with sparsely spaced conifer and deciduous trees lining some of the fairways when the site was a golf course. Alternatives 2a and 2b will retain a corridor of open space both along the south edge of the site, and through the riparian area of Chester Creek, allowing wildlife to safely cross the site. Sections 3.4.3.2 -3 of the FEIS contain a complete discussion of any environmental consequences identified and subsequent mitigation.

21.2.22 Utility Management - The utility network will be impacted by the increased demand for services resulting in decreased service quality to existing users

21.2.23 Section 3.4.8 - Energy of the FEIS discusses existing Inland Power and Light service to the site. As a public utility, Inland Power and Light bears the responsibility to update and maintain its power grid commensurate with urban growth. As confirmed in discussions with Inland Power and Light, no power supply improvements are necessary to serve the site and the project will only require distribution line improvements to serve the future development. The FEIS does not discuss environmental consequences or mitigation related to utility management.

21.2.24 Pedestrian Safety - Increased traffic will impact pedestrian safety, in particular the three existing school crossings.

21.3 Section 3.3 of the FEIS - Transportation Impacts generally summarizes the concern that pedestrian and cyclist safety will be impacted during construction and build-out as a result of speeding and increased volume and noted specifically a concern of school age children walking to Horizon Middle School and Chester Elementary School. Section 3.3.2 Environmental Consequences of the FEIS for both Alternative 2a and 2b provide a complete discussion of the improvements proposed by the developer and required by the City that includes complete frontage improvements (including sidewalks and/or pathways) around the perimeter of the site and internally throughout the site, extension of a 300-foot-long sidewalk from the Painted Hills site boundary to eliminate a gap, and a crosswalk with flashing beacon warning system; Section 3.3.3 of the FEIS provides a complete description of the Mitigation Measures identified. Speed was not studied as part of the Traffic Impact Analysis as it is a law enforcement issue.

21.4 Fire Protection - The increase in population will strain the existing emergency response services and the roads can't accommodate a mass evacuation with the increase in population.

21.5 General concerns were raised that the project would interfere with evacuation routes in the event that a wildfire occurs in surrounding rural residential areas. Section 3.4.8.1 - Fire provides a complete discussion of the potential for such events, logical escape routes, and the beneficial effect of cross circulation between S. Dishman-Mica Road and S. Madison Road. Fire Department development specific requirements were provided as part of the agency comments. Section 3.4.8.3 does not identify any related specific mitigation measures.

21.6 Pollution - The area will see an increase in pollution as it relates to traffic, construction, noise, and air quality.

21.7 Section 3.4.1 of the FEIS describes current air quality conditions, potential conditions associated with construction and build out, and mitigation measures to address both construction and cumulative effects. Section 3.4.7 describes current noise levels on and around the Painted Hills site and potential noise levels during construction and throughout the lifetime of the PRD. Construction-related noise will be limited to the times and levels prescribed in the City of Spokane Valley's Municipal Code (SVMC) 7.05.040(K)(1).

- 21.8 The Aquifer - The Spokane Valley-Rathdrum Prairie Aquifer will be negatively impacted during construction and through long term use of the PRD.
- 21.9 A portion of the site lies over the Spokane Valley-Rathdrum Prairie Sole Source Aquifer. On the Painted Hills site the aquifer is overlain by a relatively slow-draining topsoil layer and varying groundwater depths. The aquifer is susceptible to pollution. Sections 3.1.2 and 3.1.3 of the FEIS provide a complete discussion of the potential effects of the project on the Spokane Rathdrum Prairie Aquifer and concludes that no significant water quality or quantity impacts to the aquifer are anticipated.
- 21.10 City Liability - The city and its taxpayers may be held liable if bond obligations aren't met and if the homeowners association does not execute their requirements.
- 21.11 Sections 3.2.2 and 3.2.3 of the FEIS discuss how the flood control system will be owned and maintained by the Homeowner's Association (HOA), what will be done to maintain the solvency of the HOA and the reserve fund, and presence of a maintenance bond. Specific concerns addressed include who will maintain the flood control system, monitoring, funding, enforcement, and alternative responsibilities in the event of HOA insolvency. The FEIS mitigation addresses all of the above topics, and includes the caveat that the maintenance bond "be structured to allow the City and/or a future flood improvement district, if created, to access funds to perform operation and maintenance responsibilities on the flood control system if necessary." A waiver of remonstrance recorded on all lots would allow later formation of a flood control district to ensure that ownership, maintenance and repair responsibility is provided for indefinitely and does not become the responsibility of the residents outside of the development. See Section 3.2.3 of the FEIS for the complete list of mitigation measures that address each topic.
- 21.12 Although the SRSM requires an HOA be established and identifies specific requirements be addressed in the O&M manual, the continued operation of the HOA cannot be assured. It is the City's experience that HOA's can dissolve or become defunct over time. If this were to occur the City may become responsible for the continued operation of the flood control system. Due to the magnitude and importance of this system, a qualified professional is required to oversee the operation which creates an ongoing financial burden. Should the HOA dissolve the City may become responsible to assume this role at a cost to the taxpayers. Conversely a flood control district, which specializes in the administration of flood control systems, is a taxing district that cannot be dissolved without first a public hearing. The formation of a flood control district would ensure the continued competent operation and maintenance of the flood control system without transferring the cost burden to the residents outside of the development.
- 21.13 Although the mitigation provides that a flood control district may be formed by requiring a waiver of remonstrance be recorded on each lot, in order to avoid disruption to the operation and maintenance of the flood control system, or a transfer of the financial burden to the City, it does not require it. The flood control district should be established to assure appropriate fees are collected and responsibilities met for the continued operation and maintenance.

21.14 Road Impacts - construction, noise, and air quality - The large number of construction trips that will come with the high volume of grade and fill will damage the streets, create nuisance noise, and negatively impact air quality.

21.15 The increased truck traffic will impact residential traffic users. Impacts could include traffic delays due to the additional truck traffic on the roads, inconvenience and potential danger caused by dust and spilled fill material on the road. The additional truck traffic could result in damage to existing roadway infrastructure including pavement surfaces, signs, and guardrails. Section 3.3.2 of the FEIS and the Truck Haul Plan (Appendix G) discuss construction-related traffic, fill quantity, timing, routes, and impact to local roads. Implementation of the mitigation measures as identified in Section 3.3.3 of the FEIS, in particular the mitigation requirement to finalize a truck-haul plan, approved by the City to ensure that the traffic-related effects of on-site fill activities are sufficiently mitigated.

21.16 Hearing Examiner Finding: The procedural requirements of the State Environmental Policy Act (SEPA) have been fulfilled by the issuance of the City's threshold determination of DS and completion of the FEIS. The applicable mitigation identified in the FEIS has been included as conditions of approval with the underlying permits.

22. Chapter 21.30 SVMC Floodplain Regulations:

22.1 Flooding:

22.1.1 Flood flows enter the site from both the south (Chester Creek Golf Course Overflow) and the northeast (unnamed tributary of Chester Creek). FEMA identifies a majority of the project site as being in a Special Flood Hazard Area (SFHA) Zone AE (the area that will be inundated by the flood event having a 1-percent chance of being equaled or exceeded in any given year, also known as the base flood or 100-year flood), a small portion being located within the Zone X - Other Flood Areas (areas of 0.2% annual chance of flood), and a much smaller portion of the site being in another designation of Zone X - Other Areas (areas determined to be outside the 2% annual chance of floodplain). Zone AE is further identified on the FIRM as a Compensatory Storage Area which requires there shall be no net loss of flood storage or infiltration capacity and no obstruction shall be permitted in any storage area which restricts or diminishes flood water conveyance capacity or floodway characteristics.

22.2 Flood hazards were studied as part of the project design and EIS. The project proposes to revise the floodplain boundaries and the pertinent FEMA Flood Insurance Rate Maps (FIRM), panel number 53063C0751D, effective July 6, 2010, proposing to contain flood flows within the project to culverts, open channels, settling pond and infiltration pond, through the construction of flood control improvements. The infrastructure mitigates the net loss of flood storage and infiltration capacity without increasing the surface water elevation of the base flood to adjacent properties or compromising the floodway by constructing flood facilities that propose to capture, convey and rapidly infiltrate the flood flows. The map revision will enable the proposed residential and commercial development to be constructed outside of a FEMA regulated flood hazard area.

SUB 2015-0001/PRD 2015-0001

Painted Hills

Page 21 of 58

22.3 Flood models and the accompanying report in support of the proposed floodplain map revision were provided by WEST Consultants, Inc. A flood control narrative was provided by Whipple Engineers. As part of the EIS process, elements of the system were evaluated and designed to have redundant safety features in the event an element fails.

22.4 The stormwater control improvements were designed in compliance with SVMC Chapter 21.30 Floodplain Regulations and the SRSM. As part of project approval, FEMA will review the design for compliance with Federal regulations. The Applicant is currently pursuing a Conditional Letter of Map Revision (CLOMR) with FEMA which is required prior to issuing permits for development within the floodplain. FEMA's final approval will be documented by their issuing a Letter of Map Revision (LOMR) to the Applicant which is required prior to final plat. The LOMR documents that the floodplain boundary has been officially revised. Copies of both letters are to be received by the City and Spokane County.

23. Chapter 21.40 SVMC Critical Areas:

23.1 Wetlands:

23.1.1 Hearing Examiner Finding: No wetlands, as defined by City of Spokane Valley, the Washington State Department of Ecology (DOE), or the US Army Corps of Engineers (USACE) have been identified on the Painted Hills site.

23.2 Wildlife:

23.2.1 Hearing Examiner Finding: No federally listed or state-listed species or other species of concern were identified on the Painted Hills PRD site. The existing habitat has been degraded having been planted in non-native turf grasses with sparsely spaced conifer and deciduous trees lining some of the fairways when the site was a golf course. FEIS Alternatives 2a and 2b will retain a corridor of open space both along the south edge of the site, and through the riparian area of Chester Creek, allowing wildlife to safely cross the site. The Rocky Mountain Elk have been identified on site. However, this species is not identified as sensitive by State or Federal wildlife agencies. A Biological Evaluation was prepared by Biology Soil & Water Inc in 2019 that provided guidance for a monitoring plan that is included in the Conditions of Approval.

23.3 Geo-Hazard Areas:

23.3.1 Hearing Examiner Finding: The Painted Hills site is mapped by the Natural Resources Conservation Service (NRCS) as Nacisse Silt Loam, zero to three percent slopes, prime farmland if drained; and Phoebe Sandy Loam, zero to three percent slopes, prime farmland if irrigated. A Geohazard Evaluation was prepared by Inland Pacific Engineering Company in March 2015 that concluded that with good construction practices the potential for geologic hazard is low. An erosion control plan that complies with the Stormwater Management Manual for Eastern Washington (SWMMEW) and SRSM is required for the project and will be implemented during construction. Additional erosion control measures are required to be implemented

during construction consistent with the SRSM and the SWMMEW. Following construction, soils would be stabilized by paving, building, and landscaping/vegetation.

23.4 Cultural Resources:

23.4.1 Hearing Examiner Finding: A Cultural Resource Survey for the site was prepared in April 2018 by licensed Archaeologists with Plateau Archaeological Investigations. This survey concluded that no historic properties will be affected as a result of the proposed development.

23.5 Critical Aquifer Recharge Areas:

23.5.1 Hearing Examiner Finding: The FEIS analyzes the potential effects of the project on the Spokane Valley Rathdrum Prairie Aquifer. No significant water quality or quantity impacts to the aquifer are anticipated. Flood water will be directed through elements of the flood control system prior to infiltration.

23.6 The proposed subdivision and PRD is consistent with and complies with the requirements of chapter 21.40 SVMC. The mitigation identified in the FEIS have been incorporated as conditions of approval with the underlying permits where necessary.

III. FINDINGS AND CONCLUSIONS SPECIFIC TO THE PRD REQUEST

24. Compliance with Planned Residential Development Chapter 19.50 SVMC. This project is vested to chapter 19.50 SVMC in effect on August 14, 2015. The following section provides analysis of each required section of the PRD code as it relates to the project. Pursuant to SVMC 19.50.020 PRDs are permitted in all residential zones. The site is zoned R-3, Single Family Residential. Pursuant to SVMC 19.50.030 residential developments of all types are permitted in PRDs, and when a PRD is 10 acres or larger, secondary uses permitted in the Neighborhood Commercial (NC) zoning district may also be permitted. SVMC 19.60.040 (NC zone) identifies the commercial uses and services allowed. The proposed PRD proposes to include single-family, townhouse style, and multi-family residential development. It also proposes mixed-use and standalone commercial development. The proposed uses are consistent with chapter 19.50 SVMC.

24.1 SVMC 19.50.050 (Development Standards):

24.1.1 Relationship to Surrounding Areas: The design of the PRD shall consider the relationship of the site to surrounding areas. The PRD perimeter shall be designed to minimize adverse impact on adjacent properties and conversely minimize adverse impact of adjacent land use and development characteristics on the PRD.

24.1.1.1 Hearing Examiner Finding: The area surrounding the proposed PRD is primarily single-family, with some adjacent commercial and religious uses. Directly north is a Catholic convent. Mitigation measures as agreed upon between the applicant and the convent has been included as conditions of approval. The Chester Community Church is located immediately to the west. The existing restaurant, although surrounded by vacant land, is on the subject property. Directly across S. Dishman-Mica Road is an auto repair shop. This PRD proposes single-family, townhouse, multi-family, and mixed-use commercial units (22,400 sf will be developed commercial use). The nearest multi-family housing is an apartment complex located 0.4-miles northwest of the subject property. A cluster of commercial uses are located 0.4-miles northwest of the site within a CMU zone. This cluster includes Ponderosa Village shopping center, a brewery, and restaurant. This PRD proposal would minimize most adverse impacts to adjacent uses.

24.1.2 Site Acreage Minimum: The minimum required acreage is 5-acres.

24.1.2.1 Hearing Examiner Finding: The proposed PRD is 99.34-acres. The minimum acreage is in compliance with the Site Acreage Minimum.

24.1.3 Minimum Lot Size and Density: The minimum lot size provisions do not apply, except that the minimum lot size of the underlying zone shall be the criteria to calculate the total number of dwellings allowed. The Hearing Examiner may authorize an increase in density up to 20% greater than that permitted by the underlying zone.

24.1.3.1 Hearing Examiner Finding: The PRD proposes 584-units within 99.34-acres which is a density of 5.83 dwellings per acre. The

underlying R-3 zoning district allows for a maximum density of 6-units per acre. The PRD proposal is in compliance with the density standard.

24.1.4 Maximum Coverage. Building coverage and development of the site shall not exceed the percentage permitted by the underlying zone.

24.1.4.1 Hearing Examiner Finding: The maximum lot coverage in the R-3 zone is 50 percent. If approved, the PRD will be required to comply with the maximum lot coverage requirements in SVMC 19.70. Appendix A to the SVMC refers to lot coverage as "the total area of a lot occupied by the base (first floor) of buildings located on a lot."

24.1.4.2 The PRD proposes 136,660 square feet of building coverage within 99.34-acres. This makes the lot coverage 3.14 percent, complying with the maximum lot coverage requirements.

24.1.5 Landscaping Required. All common open space shall be landscaped in accordance with the landscaping plan submitted by the applicant as approved by the Hearing Examiner.

24.1.5.1 Hearing Examiner Finding: Landscaping and open space are a requirement of PRDs. If the PRD is approved, all open space, including the passive open space and wildlife travel corridor, and trails and paths as shown on the preliminary PRD, shall be shown on the final plat map. Pursuant to SVMC 19.50.050(F) "all common open space shall be landscaped in accordance with the landscaping plan submitted and approved by the hearing examiner. Natural landscape features which are to be preserved may be accepted as part of the landscaping plan".

24.1.5.2 A landscaping plan was submitted and is suitable for the intended use and provides visual screening.

24.1.6 Setback and Side Yard Requirements. Setbacks from the exterior boundary line of the PRD area shall be comparable to or compatible with those of the existing development of adjacent properties or consistent with development which may reasonably be expected under the existing zoning. The setbacks and side yard setbacks may be waived in a PRD - all building codes must be met.

24.1.6.1 Hearing Examiner Finding: Buildings proposed within the PRD will be required to adhere to perimeter setbacks consistent with adjacent zoning districts. This means that portions of the property to the north and west adjacent to existing R-3 and R-2 zoning district must follow a minimum setback of 20' from the perimeter. Portions of the property adjacent to CMU zoning will need to follow a minimum perimeter setback of 10'. This will be included in the conditions of approval and evaluated for compliance at the time of building permit.

24.1.7 Streets. All streets shall be designed and constructed to meet public street standards.

24.1.7.1 Hearing Examiner Finding: Street plans have been included in the PRD drawings. Streets will be designed to Spokane Valley Street Standards (SVSS) and reviewed in conformance with those standards as part of the on-site engineering design. A Condition of Approval address this requirement.

24.1.8 Off-street parking. Off-street parking shall be provided consistent with Chapter 22.50 SVMC.

24.1.8.1 Hearing Examiner Finding: Table 22.50-2 in chapter 22.50 SVMC Off-street parking and Loading standards indicates that there shall be two parking spaces per single family dwelling. Multifamily, studio, or one-bedroom units shall have 1 parking space per dwelling unit plus 5% of total for guests. Multifamily units with two or more bedrooms shall have 1.5 per unit plus 5% of total for guests. Review for compliance with this standard shall occur during the building permit process. A Condition of Approval has been added to ensure parking is adequately provided.

24.1.9 Secondary Use Limitations. Commercial uses shall be identified in the application. The gross floor area of commercial use shall not exceed 50 square feet per dwelling unit proposed. Building permits for commercial development shall only be issued after 35% of the residences are completed. Commercial uses shall be of a size and type to serve the residents of the development and shall be internally located.

24.1.9.1 Hearing Examiner Finding: The proposed PRD proposes residential development including single-family, cottages, townhomes, and multi-family, as well as commercial development. SVMC 19.50 allows for residential developments of all types and uses permitted in the Neighborhood Commercial zoning district when a PRD is greater than 10-acres. The commercial uses proposed within the PRD must be permissible in the Neighborhood Commercial Zoning district and may not exceed a total of 50 sf per unit. The PRD is limited to a total of 29,000 sf of commercial uses. Approved commercial uses in the neighborhood commercial district are primarily retail and services that specifically serve the needs of the surrounding residential neighborhoods. Conditions of Approval will require a phasing plan ensuring the pace of commercial development conforms with requirements of SVMC 19.50.050 and 19.60.040 and also limits the commercial development to a total of 29,000 sf.

24.1.9.2 All commercial development is in the western portion of the development along Dishman-Mica Road.

24.2 SVMC 19.50.060 Open Space Standards. PRDs are required to dedicate 30 percent of the gross land area for common open space for the use of its residents.

24.2.1 Hearing Examiner Finding: The open space shall be entirely within the PRD and within reasonable walking distance of all dwelling units within the PRD. The open space may not include accessory buildings and areas reserved for the exclusive use and benefit of an individual tenant or owners, public rights-of-way, private streets, residential driveways, parking areas, loading or storage areas, setback areas, or floodplains (100-year), flood prone areas, drainage easements, natural drainage areas, or creeks, pursuant to SVMC 19.50.060(D). The 29.8 acres of proposed open space includes 3.05-acres of area that is not currently designated as floodplain, but that would be designated as floodplain for flood control if the Letter of

Map Revision (LOMR) by FEMA is issued. The 3.05 acres is allowed to be included in the open space calculation as it will be permanently maintained as an amenity consistent with SVMC 19.50.060(D).

24.2.2 Location. Open space shall be located within the PRD and within walking distance of all dwelling units.

24.2.2.1 Hearing Examiner Finding: There is open space located throughout the PRD, however it is primarily along the outside boundaries. Each lot is within reasonable walking distance of open space, and the integrated trail system.

24.2.3 Access. All housing within the PRD must have access to open space. Access should not be blocked by major obstacles and areas dedicated for active recreational open space shall have reasonable access from street frontages.

24.2.3.1 Hearing Examiner Finding: The proposed open space has an integrated trail system that has access from existing right of way. Every dwelling within the PRD will have reasonable access to designated open space and the trail system.

24.2.4 Types of Open Space:

24.2.4.1 Land dedicated for open space should be usable for either greenbelts that serve as a buffer between land uses, using existing vegetation, or an aesthetic amenity such as boulevard trees, active recreational activities, or for protecting environmentally sensitive areas such as wetlands.

24.2.4.2 Except as provided in this decision, a minimum of 30 percent of the required common open space area shall be suitable for active recreation. The topography, soils, hydrology, and other physical characteristics of the area proposed for active recreation shall be of such quality as to provide a dry, obstacle-free space in a configuration which is suitable for active recreation.

24.2.4.3 The community development director shall determine the amount of required active recreation area pursuant to the criteria of the SVMC.

24.2.4.4 The percentage of active recreational areas may be increased to as high as 50 percent if it is determined that anticipated recreational needs will require a larger percentage. In increasing this percentage, the following standard should be used: the ratio of one acre to 125 residential units.

24.2.4.5 The percentage of active recreational area may be decreased to as low as 15 percent if it is determined that:

24.2.4.5.1 Inclusion of buffers or environmentally sensitive lands such as wetlands would better meet the open space needs of the residents of the subdivision; or

24.2.4.5.2 Meeting the standard would require detrimental grading or other disturbance of the natural setting.

24.2.4.6 Hearing Examiner Finding: The proposed open space will include passive and active areas. There is a large area of open space in the south portion of the site that is designated as a park and wildlife travel corridor. The proposed open space must include a minimum of 30% active recreation. The open space will include an integrated trail system that can be utilized for recreation. The amount of open space provided and the division of passive versus active space meets the requirement.

24.2.5 Land Required for Open Space Shall Not Include:

- 24.2.5.1 Accessory buildings, climate-controlled improvements, and areas reserved for the exclusive use and benefit of an individual tenant or owner.
- 24.2.5.2 Dedicated streets, alleys or public rights-of-way, required landscaped areas, areas required for yard depth or building setback or separation.
- 24.2.5.3 Vehicular driveways, private streets, parking areas, loading or storage area.
- 24.2.5.4 Floodplain (100-year), flood prone areas, drainage easements, natural drainage areas or creeks unless maintained as an amenity and specifically approved as being suitable for open space.
- 24.2.5.5 Hearing Examiner Finding: No structures are proposed to be placed within the proposed open space area. All features within the open space are open air and recreation related. The south 3.05-acres of the proposed open space will be located in an area designated as a floodplain once the LOMR is issued by FEMA. The area is not currently a designated floodplain area. The area is intended to absorb floodwaters in the case of failure of the flood control system but will be maintained as a grassed area suitable for open space. The area will be graded with a sloped perimeter on all sides. The area is suitable for open space assuming access is provided through the sloped areas. The developer should ensure that the area is accessible to all residents by providing stairs, a ramp or other similar types of access to the area. The PRD has been conditioned to require reasonable access be provided so that the open space can be used by the residents.

24.2.6 Implementation. The area proposed for open space shall be dedicated in common to the property owners within the plat or to a homeowners' association. Maintenance and operation of the dedicated open space shall be the responsibility of the property owners' or homeowners' association.

- 24.2.6.1 The City may choose to accept dedication, maintenance and operation responsibilities when the common open space area to be dedicated is in the public interest and either one or a combination of the following:
 - Greater than 10 acres.

- Adjacent to an established or future City Park or school grounds.
- Is an access to a body of water greater than three acres in size.
- Is an environmentally sensitive area.

24.2.6.2 The dedication shall be identified on the PRD plan.

24.2.6.3 Hearing Examiner Finding: The open space will be maintained by the homeowners' association. Maintenance obligations and responsibilities will be outlined in the Operations & Maintenance (O&M) manual. The City has indicated it will not accept dedication, maintenance or operation responsibilities for the open space.

24.2.7 Improvements: The following improvements to the area proposed for dedication may be required prior to final approval of the PRD:

24.2.7.1 Removal of construction debris and hazards

24.2.7.2 Rough grading and establishment of grass cover over those portions of the site suitable for playfields.

24.2.7.3 Hearing Examiner Finding: Both items are Conditions of Approval for the final plat.

24.2.8 Equivalent Facilities: When areas proposed for dedication do not meet the criteria for dedication in this chapter, such land may be improved by grading, filling, landscaping, or with installation of recreation equipment so as to be equivalent in result to the intent of this chapter. The director shall make determination of equivalency according to the following guidelines:

24.2.8.1 The proposed land and improvements must create recreational opportunities generally equivalent to or greater than the land required for the residents within the PRD.

24.2.8.2 The proposed land and improvements must not result in significant disturbance or alteration of an environmentally sensitive area, unless otherwise allowed by the City.

24.2.8.3 The proposed land and improvements shall be dedicated.

24.2.8.4 Hearing Examiner Finding: No equivalent facilities for open space have been proposed for this PRD.

24.2.9 Stormwater Detention Facilities: Stormwater detention ponds may be allowed by the City as part of dedicated open space subject to the following criteria:

24.2.9.1 The detention pond shall be constructed so as to drain fully when precipitation is not occurring (i.e., no standing water may be left) unless the pond is designed as an aesthetic amenity.

24.2.9.2 The side slope of the detention pond shall not exceed 33 percent unless slopes are existing, natural and covered with vegetation.

24.2.9.3 If detention facilities are located adjacent to or near a natural, year-round stream or wetland, these systems shall be left in natural or near-natural condition.

- 24.2.9.4 The detention area shall be landscaped in a manner which is both aesthetic and able to withstand the inundation expected.
- 24.2.9.5 Use of a dedicated open space area for stormwater detention shall not be acceptable if the detention area must be fenced or otherwise rendered unsuitable or unavailable for recreation use during dry weather.
- 24.2.9.6 In the case of joint use of open space for detention and recreation, the homeowners or homeowners' association shall be responsible for maintenance of the detention facilities.
- 24.2.9.7 Hearing Examiner Finding: No stormwater detention pond has been proposed as dedicated open space as part of this PRD proposal.
- 24.3.1 Rights and Duties. The owners of open space shall have the following rights which may be exercised in respect of such land, subject to restrictive covenants or other restrictions.
 - 24.3.1.1 The right to locate recreational facilities, such as tennis courts, swimming pools, picnic tables, and fireplaces (accessory to picnic tables) designed to be used exclusively for the use of residents of the development and their guests.
 - 24.3.1.2 The right to locate pedestrian paths, bicycle paths and bridle paths.
 - 24.3.1.3 The right to take whatever measures are reasonably necessary to protect and maintain such land, or land or property adjacent thereto, or to correct a hazardous condition posing a threat to life or limb.
 - 24.3.1.4 The right to regulate access to or entry on the open space land and duty to maintain such land.
 - 24.3.1.5 Hearing Examiner Finding: These rights are being utilized by the owner in the design and placement of open space. Features such as pedestrian path, basketball courts, and putting range have been included in the plan.
- 24.4 SVMC 19.50.070 Administration.
 - 24.4.1 Building permits, Building permits and other permits required for the construction or development of property under the provisions of this chapter shall be issued only when, in the opinion of the director, the work to be performed meets the requirements of the final plan and program elements of the PRD.
 - 24.4.2 Hearing Examiner Finding: The site plan of record, and all other conditions of approval will be reviewed during the building permit review process to ensure that all development is consistent with the approved PRD. The PRD shall be conditioned accordingly to ensure conformance with all conditions of approval.
 - 24.4.3 Minor and Major Adjustments:
 - 24.4.3.1 Minor adjustments may be made and approved by the director when a building permit is issued. Minor adjustments are those which may affect the precise dimensions or siting of buildings, but which do not affect

the basic character or arrangement of buildings approved in neither the final plan, nor the density of the development, nor the open space requirements. Such dimensional adjustments shall not vary more than 10 percent from the original.

24.4.3.2 Major adjustments are those which, in the opinion of the director, substantially change the basic design, density, open space or other requirements of the PRD. When, in the opinion of the director, a change constitutes a major adjustment, no building or other permit shall be issued without prior review and approval by the hearing examiner of such adjustment.

24.4.3.3 Hearing Examiner Finding: Any minor and major amendments proposed for this PRD will be reviewed and approved consistent with the procedures of SVMC 19.50.070. The project will be conditioned accordingly.

24.5 SVMC 19.50.080 Homeowners'/Property Owners Association Required. In a PRD, a property owners', or homeowners' association (HOA) shall be established for the purpose of ownership, maintenance and management of open spaces, common areas and private roads as required by the provisions of the SVMC.

24.5.1 Hearing Examiner Finding: As required by the SVSS and the SRSM, a homeowners' association (HOA) shall be formed for the funding, operation and maintenance of private streets, common areas, stormwater systems and related facilities. To ensure proper operation and maintenance of the facilities and funding for required activities, an operation and maintenance (O&M) manual with a financial plan is required. Note that the flood control system, which is separate from the HOA's stormwater system, will not be the responsibility of the HOA but of a flood control district as discussed herein. The O&M manual for the flood control system will be reviewed by Spokane Valley, Spokane County and FEMA.

25. The proposed PRD is consistent with the applicable SVMC development standards described above or can be made consistent with the applicable SVMC development standards through application of the conditions of approval that address the types of land uses allowed and the phasing of development.

26. Compliance with Chapter 22.20 SVMC (Concurrency). Chapter 22.20 SVMC (Concurrency) requires a finding of concurrency for the project. A finding of concurrency requires that adequate facilities are available when the service demands of development occur, or in the case of transportation "concurrent with development" which means that improvements or strategies are in place at the time of development, or that a financial commitment is in place to complete the improvements within six years. The cumulative impact of development should be considered when making this determination. If adequate facilities cannot be made available to maintain the adopted level of service (LOS), the project application shall be denied. SVMC 22.20.010 states that concurrency must be evaluated for transportation, water, and sewer.

26.1 Traffic Concurrency. Traffic Concurrency was issued by the Spokane Valley Traffic Engineer on February 23, 2017, with an expiration set at 5 years after preliminary plat approval. The Certificate reserved 545 PM peak hour trips for the project and established conditions of approval to address on-site and off-site impacts resulting from the project. The 5-year expiration timeframe will not begin until the preliminary plat has been approved.

26.2 Water Concurrency. A Certificate of Water Availability from Spokane County Water District #3 dated March 16, 2015, indicates water service will be provided by the construction of a water distribution system on the site by the developer. The certificate states water service will require an improvement to the water system by the contractor of the construction of a distribution system on site. The certificate also indicates the project is consistent with the water purveyor's Washington Department of Health (DOH) approved water system and the water system has a current DOH Operating permit allowing the number of new taps or water requested. The certificate is valid for one year from the date of signature. On December 29, 2022, the City sent a letter saying that Spokane County Water District #3 provided comments on an unrelated project that the water district is "operating on a limited supply of water rights in water system 93351N". The applicant amended the FEIS to include a discussion addressing this concern. A condition has been added that a valid water certificate be provided to the city before any further city permits, or related approvals, are issued by the city.

26.3 Sewer Concurrency. A Certificate of Sewer Availability from Spokane County Public Works dated March 13, 2015, states that Spokane County Public Works is capable of and will supply sewer service to the subdivision. The developer will design, fund, construct and provide financial surety for the necessary systems to extend sewer service to the site and provide service connections as required. The signed certificate is valid as long as the referenced project remains active and is not modified.

26.4 The proposal complies or will comply with the requirement of chapter 22.20 SVMC (Concurrency) pertaining to transportation, water and sewer concurrency. Conditions of approval will ensure compliance with this section.

27. Compliance with City of Spokane Valley Comprehensive Plan - Findings: The City's comprehensive plan has a series of goals and policies relevant to this PRD and subdivision proposal, described and referenced here, as appropriate.

27.1 Goal LUG-1: Preserve and protect the character of Spokane Valley's Residential Neighborhoods.

27.1.1 Hearing Examiner Finding: The existing vicinity is primarily single-family residential. The proposed development would add a new character to the area with the addition of mixed-use development, additional commercial land uses, and multi-family housing.

27.2 LUP-1.1: Maintain and protect the character of existing and future residential neighborhoods through the development and enforcement of the City's land use regulations and joint planning.

27.2.1 Hearing Examiner Finding: This proposal will incorporate higher intensity uses adjacent to existing uses. The development proposed complies with chapter 19.50 SVMC, Planned Residential

Development. The applicant proposes use of open space to buffer proposed development from existing uses. This will minimize the impact on the surrounding area.

27.3 LUP-1.2: Protect residential areas from impacts of adjacent non-residential uses and/or higher intensity uses through the development of enforcement of the City's land use regulations and joint planning.

27.3.1 Hearing Examiner Finding: The proposed PRD differs from the existing character in the surrounding vicinity. As proposed, the development complies with chapter 19.50 SVMC Planned Residential Development.

27.4 LUP-1.4: Encourage the development of transportation routes and facilities to serve residential neighborhoods. Special attention should be given to pedestrian circulation.

27.4.1 Hearing Examiner Finding: The proposed development will involve improvements to the existing road system as well as the incorporation of a pedestrian trail system. No new transit stops have been proposed in association with this development.

27.5 LUP-1.5: Encourage the development of parks and the dedication of open space in and adjacent to residential areas. Open space dedication shall be proportionate to the size of the development.

27.5.1 Hearing Examiner Finding: Chapter 19.50 SVMC, requires the PRD dedicate approximately 30% of the total project area as open space. The PRD as proposed meets this requirement. Each area will be connected by open space corridors. Establishment of a public park has not been included in the proposal.

27.6 LUP-1.6: Preserve site characteristics that enhance residential development (trees, bodies of water, vistas, and similar features) using site planning techniques such as clustering, planned unit development, transfer of development rights and lot size averaging.

27.6.1 Hearing Examiner Finding: The proposal is for a PRD that will have impacts on the site characteristics. An Environmental Impact Statement was created to analyze and mitigate these impacts. Open space is included in the proposal that will preserve some natural features including Chester Creek, however the development at large will change the nature of the site and vicinity.

27.7 GOAL LUG-2: Encourage a wide range of housing types and densities commensurate with the Community's needs and preferences.

27.7.1 Hearing Examiner Finding: This PRD proposal will increase the range of housing types and will follow the density requirements of the underlying R-3 zoning district.

27.8 LUP-2.3: Encourage the development of transportation routes and facilities to serve residential neighborhoods. Special attention should be given to walking, biking and transit use.

27.8.1 Hearing Examiner Finding: The PRD proposal includes a pedestrian trail system through the development. This pedestrian trail system will feed into the city's existing transportation network. The nearest transit stops are nearly a mile north of the subject property.

27.9 LUP-2.4: Residential development should be designed to provide privacy and common open space. Open space areas shall be proportionate to the size of the residential development.

27.9.1 Hearing Examiner Finding: Chapter 19.50 SVMC, requires the PRD provide a total of 30% open space. The PRD meets the minimum requirements for open space. The development will provide a new form of housing to the area such as townhouse style, cottage housing, and apartments. Open space will be utilized as buffers.

27.10 Goal LUG-4: Provide neighborhood and community scale retail centers for the City's neighborhoods.

27.10.1 Hearing Examiner Finding: The PRD will provide for new commercial development in compliance with chapter 19.50 SVMC, which allows 50-square-foot of commercial space times the number of units in the development. Up to 29,000 square feet of commercial can be included in the PRD and may provide new retail options to the community.

27.11 Goal LUG-7: Provide a balanced transportation network that accommodates public transportation, high occupancy vehicles, pedestrians, bicyclists, automobiles and integrated parking.

27.11.1 Hearing Examiner Finding: Traffic improvements will be included as part of development of this PRD proposal. The goal of the improvements will be to accommodate the increase in traffic to the area. A new pedestrian trail system will also be included on site. The proposal will not provide an increase in public transportation options, and the nearest transit stop is approximately one mile north.

27.12 LUP 7.2: Encourage pedestrian and bicycle circulation by providing public sidewalks, street trees, street furniture and other amenities.

27.12.1 Hearing Examiner Finding: The proposed development will provide an on-site pedestrian trail system that will be accessible to the public. At least 30% of the site is required to be retained as open space and provide potential recreational opportunities.

27.13 LUP 7.3: Require clear and safe pedestrian paths to enhance the pedestrian network.

27.13.1 Hearing Examiner Finding: The site includes a pedestrian trail system that will enhance the pedestrian network.

27.14 LUP 7.6: Encourage transit use by improving pedestrian and bicycle linkages to the existing and future transit system.

27.14.1 Hearing Examiner Finding: The nearest transit stop is approximately one mile to the north on E 32nd Avenue. Although the site is proposing to add a pedestrian trail system, it does not connect with, nor incorporate, public transportation.

27.15 Goal LUG-14: Improve the appearance and function of the built environment.

27.15.1 Hearing Examiner Finding: The PRD will include a build out that will improve the appearance of the area by eliminating a vacant lot. The development will be consistent with the intent of its zoning district.

27.16 LUP-14.1: Use performance and community design standards to maintain neighborhood character, achieve a greater range of housing options, and to create attractive and desirable commercial and office developments.

27.16.1 Hearing Examiner Finding: The PRD will increase the range of housing options and provide desirable commercial and office space. However, it will be difficult for these features to also maintain

neighborhood character just by nature of the current uses in the area being of less intensity.

27.17 The subdivision and PRD meets the intent or will meet the intent of the City's Comprehensive Plan provided that the conditions of approval set forth herein are imposed and implemented.

IV. FINDINGS SPECIFIC TO PUBLIC COMMENTS

28. The Notice of Application was mailed to adjacent property owners and published in the newspaper on August 21, 2015. During the Notice of Application and SEPA comment period, the City received significant comments that led to the City issuing a DS (see exhibit 16). All comments received through the Scoping process or, the DEIS process, have been incorporated into the PEIS issued on June 6, 2023. Notice of Public Hearing was published on January 12, 2024, and January 19, 2024, posted on the site on January 12, 2024, and mailed to property owners within a 400-foot radius on January 12, 2024. Additional notice was emailed to the interested parties of record. The City received comments in response to the notice of public hearing and those comments were added to the record.

29. Adequate public noticing was conducted for SUB-2015-0001 and PRD-2015-0001 in accordance with adopted public noticing procedures.

V. FINDINGS SPECIFIC TO AGENCY COMMENTS

30. The Notice of Application was routed to jurisdictional agencies, utilities, and public districts for review and comments. Agency comments are attached in Exhibit 17 of the staff report. Requests for written comments were sent to the following agencies:

Agency	Received Comment	Comment Dated
City of Spokane Valley Development Engineering	Yes	January 6, 2016 February 28, 2017
City of Spokane Valley Senior Traffic Engineer	Yes	October 2, 2015 February 9, 2016
City of Spokane Valley Parks & Rec	No	
Spokane County Building & Planning	Yes	March 8, 2016
Spokane County Division of Engineering & Roads	Yes	January 13, 2016
Spokane County Division of Utilities	Yes	September 16, 2015
Spokane County Environmental Service Department	Yes	September 23, 2016
Spokane Valley Fire Department	Yes	August 31, 2015 October 5, 2016
Spokane County Fire District 8	Yes	October 14, 2015
Spokane Valley Police Department	No	
Spokane Transit Authority	No	
Spokane Regional Health District	Yes	September 21, 2015
Spokane County Water District No. 3	Yes	August 28, 2015

Central Valley School District	Yes	September 9, 2015
WA State Department of Ecology	Yes	November 19, 2018 September 14, 2015 September 28, 2017
Spokane Tribe of Indians	Yes	September 1, 2015 October 11, 2016
WA State Department of Archaeology & Historic Preservation	Yes	October 5, 2016
WA State Department of Fish & Wildlife	Yes	November 16, 2018
Spokane Region Clean Air Agency	No	
Century Link	No	
SEFNCO Communication	No	
Comcast	No	
Avista Utilities	Yes	September 18, 2015

31. The City received agency comments at various times throughout the project review in addition to the notice of application that included scoping notices, floodplain review, DEIS review, etc. However, only those comments received during the notice of application are identified in the table above as the FEIS process incorporated the comments appropriately. The conditions of approval reflect agency comments relating to conformity to applicable standards and regulations for the physical development of the site.

VI. HEARING EXAMINER CONCLUDING FINDING RE: PRD 2015-0001

32. PRD- 2015-0001 is consistent or can be made consistent through the application of conditions of approval, with the City's Comprehensive Plan; Title 19 SVMC - Zoning Regulations; Title 21 SVMC - Environmental Controls; Chapter 22.20 SVMC - Concurrency, the Spokane Valley Street Standards, the Spokane Regional Stormwater Guidelines Manual; and the Spokane Regional Health District regulations. SUB- 2015-0001 is consistent or can be made consistent through the application of conditions of approval, with the City's Comprehensive Plan; Title 19 SVMC - Zoning Regulations; Title 20 SVMC - Subdivisions Regulations; Title 21 SVMC - Environmental Controls; Chapter 22.20 SVMC - Concurrency, the Spokane Valley Street Standards, the Spokane Regional Stormwater Guidelines Manual; and the Spokane Regional Health District regulations.

VII. PERMIT PROCESSING

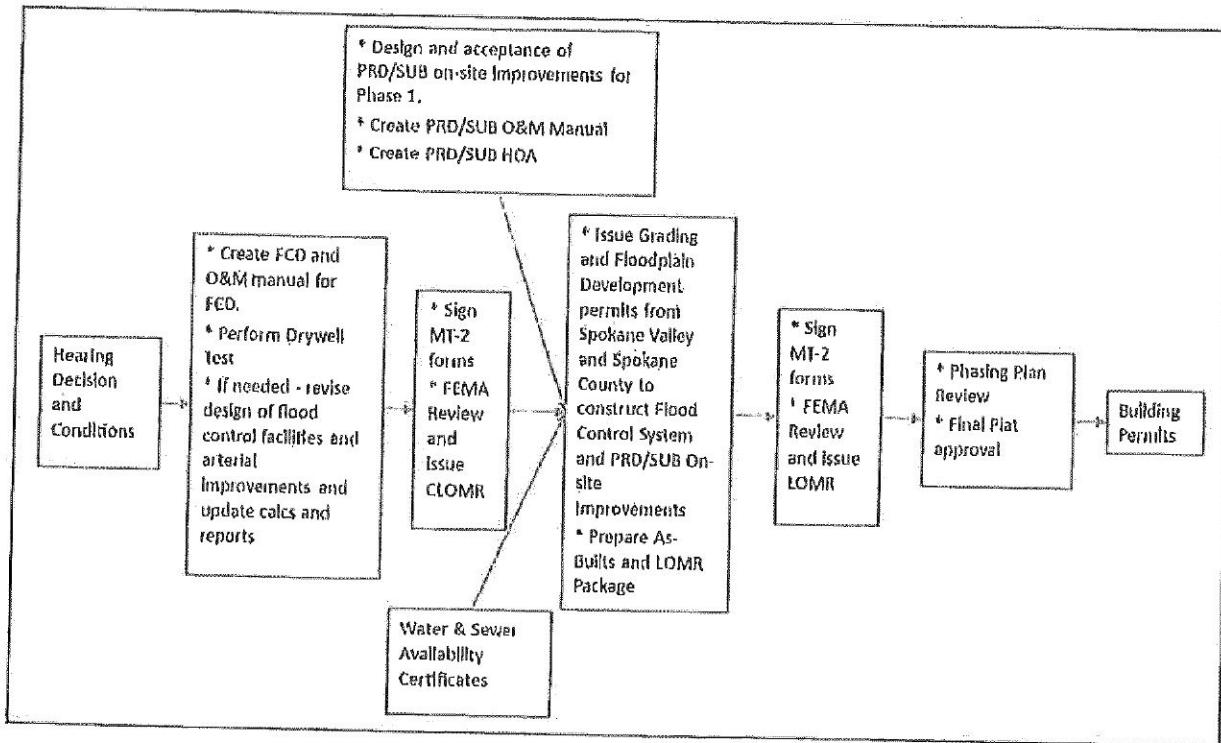
33. Due to the complexity of the project and the numerous permits involved from local, state and federal agencies it is important to understand the permits required and the sequence of actions and permits. Section 2.2.5 of the FEIS describes the relationship between FEMA and the local process in detail. The diagram below identifies the sequence of permits or approvals that are required. The conditions of approval are intended to ensure that modifications to the floodplain occur consistent with FEMA review and precede land use development that would not otherwise be allowed. Only after FEMA issues the LOMR can the final plat be recorded. Legal lots must be

SUB 2015-0001/PRD 2015-0001

Painted Hills

Page 36 of 58

established by the recorded plat prior to issuing building permits for the structures proposed in the PRD.



34. The Planning Division has reviewed PRD-2015-0001 and SUB-2015-0001, the submitted application and applicable approval criteria, and recommended that the Hearing Examiner approve PRD-2015-0001 and SUB-2015-0001 if all of the conditions of approval specified herein are imposed and implemented.
35. An open record public hearing was held January 31, 2024, through February 2, 2024.
36. At the opening of the hearing, the Hearing Examiner attempted to identify exhibits. The Hearing Examiner identified Appellant exhibits A1 through A26. The Hearing Examiner identified Applicant exhibits as those documents available in the administrative record and any exhibit used or relied upon by the Appellant and indicated that the Applicant's witnesses may use illustrative exhibits during their testimony. The Hearing Examiner identified City exhibits C1 to C12.
37. The Hearing Examiner expressed his concern to references to the "administrative record" in various exhibits. The Hearing Examiner has received and reviewed the "administrative record" provided to the Hearing Examiner and the parties in their disclosures. The parties agree that this "administrative record" contained all the documents disclosed by the City, and that all contained in that record were, collectively, exhibits to this hearing.

38. All of the evidence from the portion of the appeal hearing for the appeal of the FEIS (APP 2023-0003) was admitted into the record for the portion of the hearing regarding SUB 2015-0001 and PRD 2015-0001.
39. The summation brief of the Applicant, the summation brief of the City of Spokane Valley, and the summation brief of the Appellant, all dated February 23, 2024, are all admitted into the record.
40. Providing testimony on behalf of the City of Spokane Valley were the following individuals:
 - 40.1 Bill Grimes.
 - 40.2 Henry Allen, City Engineer.
 - 40.3 Jeremy Clark.
41. Appearng on behalf of the Applicant was attorney, William Lenz. Testifying on behalf of the Applicant were the following witnesses:
 - 41.1 Dave Black
 - 41.2 Bryan Walker
 - 41.3 Todd Whipple
42. Testifying from the public were the following individuals:
 - 42.1 Zachary Griefen.
 - 42.2 Kent Mayer
 - 42.3 Sandy Pavelich
 - 42.4 George Brandle
 - 42.5 Cara Wurst
 - 42.6 Marla Simons
 - 42.7 George Simons
 - 42.8 Darin Watkins
 - 42.9 Kristy Barnes
 - 42.10 Paul Hyndman
 - 42.11 Kirk Bighaus
 - 42.12 Louanne Niggemyer
 - 42.13 Al Merkel
 - 42.14 George Schroeder
43. Testifying in rebuttal on behalf of the Applicant were the following witnesses:
 - 43.1 Read Stapleton.
 - 43.2 Ken Puhn.
 - 43.3 Todd Whipple.

44. Mr. Lenz stated that the Applicant generally agreed with the staff report and had no objection to any of the proposed Conditions of Approval except for the sequence of some of the proposed Conditions of Approval. The Applicant's position regarding this issue is adequately explained in their memorandum submitted at the open record public hearing, as well as in their summation brief dated February 23, 2024.
45. The primary concern of the Applicant surrounded the formation of a flood control district as recommended by the City of Spokane Valley in their proposed Conditions of Approval. As the Hearing Examiner reads the Applicant's summation brief, not only are they opposed to the sequencing of the formation of a flood control district, but they are objecting to requiring a flood control district to be petitioned by the Applicant, and conditioning the project on the formation of a flood control district.
46. The City of Spokane Valley's position on this issue is adequately stated in their summation brief dated February 23, 2024. Basically, the concern of the City is that a homeowner's association may dissolve or may not meet its obligations to maintain the extensive flood control system, in perpetuity, and that the City of Spokane Valley may ultimately be responsible for the cost of maintaining and improving this flood control system.
47. The Hearing Examiner would note that it is the Applicant's desire to develop this property and that the need for a flood control system is based upon the Applicant's desire, not only as to density of the project, but also in the manner in which flood control/stormwater runoff, would be addressed.
48. The Hearing Examiner would first note that it is the Applicant's desire to have the subject property removed from FEMA designation as a flood zone by bringing in fill and by rerouting the stormwater runoff in the manner set forth within the FEIS.
49. It is the Applicant's sole responsibility to make improvements to the subject property to have the property removed from the FEMA flood zone designation in order to build their project.
50. If fill is brought into this property, raising the elevation for the construction of the dwelling units, flood water/stormwater will necessarily need to be diverted away from this new residential development, into drainage ways that ultimately lead to stormwater ponds. A failure of this system could result in flooding, not only on the subject property, but also on properties that are at a lower elevation than the subject property.
51. The FEIS provides a detailed analysis of the consequences should the flood control system fail.
52. This flood control/stormwater system will ultimately be rendered useless if there is no timely and regular maintenance and improvements as deemed necessary.
53. Maintenance of this system will be required in perpetuity.
54. The best way to ensure that there will be an entity responsible for the raising of funds and completing the timely and regular maintenance and upgrades to the system is a flood control district.
55. The Applicant understands that the maintenance of this system must be provided in perpetuity. The Applicant suggests that the homeowner's association be responsible for this, but ultimately indicates that they would support the adoption of a flood

control district. However, the Applicant just does not think that it is their responsibility to petition for the formation of a flood control district.

56. The Hearing Examiner has the authority to impose additional conditions other than those set forth within the FEIS, pursuant to RCW 58.17.110.
57. RCW 85.38.020 allows a minimum of ten owners of land located within a proposed flood control district to petition the County for the creation of this special district.
58. There are ten individual parcels within the potential flood control district. Each parcel has its own owner for purposes of RCW 85.38.020. The fact that there are certain property owners that own multiple parcels that would be located within the district is not fatal to the petition for a special district. It is not necessary that there be ten distinct and unrelated property owners.
59. The requirement that the Applicant petition for the establishment of a flood control district, and that permits requested in SUB 2015-0001 and PRD 2015-0001 are conditioned upon such a flood control district being formed, are reasonable conditions, capable of being accomplished. The fact that the formation of a flood control district is dependent upon a third-party approval is no different than many other kinds of permits that are required to be obtained prior to final plat approval.
60. The petitioning and approval of a flood control district is capable of being accomplished, just like the receipt of a CLOMR and LOMR from FEMA are capable of reasonably being accomplished.
61. The Hearing Examiner finds that it is an essential condition in approval of SUB 2015-0001 and PRD 2015-0001, that the flood control/stormwater system proposed by the Applicant have a means in performing regular maintenance and making necessary repairs and improvements for the flood control/stormwater system proposed by the Applicant that will continue in perpetuity.
62. Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference.

VIII. CONCLUSIONS OF LAW

1. The Hearing Examiner has the authority to render this decision.
2. As conditioned, the proposed preliminary plat complies with minimum requirements for lot size and density. The proposed preliminary plat complies with all applicable standards in chapter 19.70 SVMC (Density and Dimensions).
3. As conditioned, the proposed subdivision will promote the health, safety, and general welfare, provide effective use of land, and will meet required level of service standards, in accordance with standards established by the state, local agencies and the City. The proposed preliminary plat conforms to applicable standards of the SVMC. The application is consistent with the zoning standards in effect at the time this application was determined complete and is subject to the implementation of applicable conditions of approval.
4. The relevant procedural and substantive requirements of Title 21 Environmental Controls have been met. The procedural requirements of the State Environmental

Policy Act (SEPA) have been fulfilled by the applicant's submittal of the required SEPA Checklist, Trip Generation & Distribution Letter, and the issuance of the City's threshold determination consisting of a Determination of Non-Significance (DNS).

5. The proposal complies or will comply with the requirements of chapter 22.20 (Concurrency).
6. The subdivision meets the intent set forth in the City Comprehensive Plan for the single-family residential land use designation and other applicable goals and policies.
7. Flood control districts as set forth in RCW 86.09 et seq. are created as provided in RCW 85.38. RCW 86.09.020.
8. As conditioned, this project is consistent with the Spokane Valley Comprehensive Plan, the Spokane Valley Municipal Code, and the Revised Code of Washington.
9. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

IX. DECISION

Based on the above Findings of Fact and Conclusions of Law, the Hearing Examiner **APPROVES SUB-2015-0001/PRD 2015-0001**, Painted Hills PRD, subject to the following Conditions of Approval.

X. CONDITIONS OF APPROVAL -

PLANNED RESIDENTIAL DEVELOPMENT

1. The PRD shall be developed generally as approved on site plan exhibit 8.
2. The approved preliminary PRD shall have a maximum density of 6 dwelling units per acre.
3. PRD-2015-0001 shall be contingent upon the LOMR issued by FEMA, and the subsequent recording of SUB-2015-0001 or phases thereof. If either of these actions does not occur, then approval of PRD-2015-0001 is void. If the preliminary plat expires, then the PRD approval is void.
4. Commercial uses are subject to commercial review procedures and shall be reviewed for compliance at the time of building permit. A commercial pre-application meeting is required.
5. Commercial uses shall be limited to a total of 29,000 sf, or a ratio of 50 sf per unit if the number of residential dwelling units is reduced by a modification to the PRD.
6. Commercial uses within the PRD shall be limited to those allowed in Neighborhood Commercial Zone effective on August 14, 2015. See Exhibit 18.
7. Building permits for commercial structures or multifamily residential units may be issued only after construction of at least 35% of the residences (attached or detached) in the PRD are issued a certificate of occupancy.
8. The development shall provide a minimum of thirty percent (30%) Open Space, per City code requirements prior to final plat approval. A total of 29.8 acres of open space is required. Pedestrian access shall be provided to the southerly 3 acres of

SUB 2015-0001/PRD 2015-0001

Painted Hills

Page 41 of 58

passive open space area in the form of steps, ramp, or other similar method to accommodate access through the sloped perimeter area. If access cannot be provided to the area, then a new PRD design shall be submitted that shows the total area open space requirement has been met. The modified PRD design cannot result in an increase in lots, or adjustments to the street network that would change the location of current connections to S. Madison Road, Thorpe Road, or S. Dishman-Mica Road.

9. Off-street parking for all uses within the PRD shall be provided consistent with Chapter 22.50 SVMC.
10. Modifications to the PRD may only be approved as follows:
 - 10.1. Minor adjustments shall be considered by the director and/or designee and may be made consistent with SVMC 19.50.070.B(1) in effect on August 14, 2015; and
 - 10.2. All other modifications or adjustments shall be considered as a Major Adjustment and shall be considered by the Hearing Examiner consistent with SVMC 19.50.070.B(2) in effect on August 14, 2015.
11. The following improvements to the dedicated open space shall be made prior to final approval of the PRD, or final plat approval. If the development is phased, those open space areas adjacent to the phase to be developed shall be improved minimally as follows:
 - 11.1. Construction debris and hazards shall be removed.
 - 11.2. Rough grading and establishment of grass cover over the portions of the site that will be fields.
12. Mitigation measures shall be implemented consistent with those listed in the November 15, 2018, letter received from the Carmel of the Holy Trinity convent. The mitigation measures identified below shall be considered a minimum, and additional landscaping may be incorporated:
 - 12.1. During initial development of the site, the owner shall plant, at her/her own expense, western red cedars or other mutually agreed upon evergreen trees of sufficient size, number, and spacing to provide a visual and sound buffer on the southern and eastern sides of the Carmel's wall and on the western edge of the 878-foot buffer described in #8 below. The number and spacing of trees shall consider the goal of providing visual and sound buffering while allowing the growth of trees to full maturity. All trees will be located on the Painted Hills site. Consideration shall be given to preservation of existing vegetation. Trees shall be watered, maintained, and replaced as needed to provide a vegetated screen between the project and the Carmel. No vegetation shall be permitted to touch or hang over the Carmel's wall, except for the hedges mentioned in #3 below.
 - 12.2. Public use of the vegetated buffer will be restricted and may not contain trails or other public amenities.
 - 12.3. Fences shall not touch or be connected to the Carmel wall. In order to limit public use of the space along the Carmel wall without using fences, hedges shall be maintained in lieu of fences to join the property owner's fence to the Carmel wall at the extremities of the buffer zones (perpendicular to the

SUB 2015-0001/PRD 2015-0001

Painted Hills

Page 42 of 58

Carmel wall on the norther end of its eastern wall (near the proposed cottages), on the eastern end of its southern wall (near the single family units), and toward the western end of its southern wall (western end of the multi-family units)). These hedges will be chosen so as to be of a nature to inhibit passage as well as to prohibit climbing over the wall.

- 12.4. Single family and cottage homes along the southern and eastern side of the Carmel's wall shall be limited to single story.
- 12.5. Single family and cottage homes will be subject to no less than the back property boundary set back, as prescribed by the requirements of the SVMC 19.40.020.
- 12.6. The trail between cottage homes and the eastern Carmel wall will be limited to tenant-use only and not be open for public use.
- 12.7. Windows on multi-family buildings will be configured away from viewing into the Carmel. No windows or balconies will be on the north facing sides of the multi-family buildings.
- 12.8. The initial 87-feet along the Carmel's southern wall on the site of the proposed multi-story buildings shall be restricted to the following activities: parking, garage placement, landscaping.
- 12.9. All the identified conditions shall be memorialized as CC&Rs for the PRD and shall apply to subsequent owners of the property.

XI. CONDITIONS OF APPROVAL - SUB-2015-0001

Planning

1. This subdivision shall adhere to all PRD conditions set forth in section XII of this report and as approved in PRD-2015-0001.
2. An inadvertent discovery plan (IDP) shall be provided to the City prior to the occurrence of any land disturbance or construction related activities. The IDP shall be maintained on-site at all times during development.
3. The approved preliminary plat shall have a maximum of 307 lots unless a preliminary plat alteration is approved pursuant to chapter 20.50 SVMC (Subdivision Alterations).
4. Alterations to the approved preliminary plat may be requested pursuant to chapter 20.50 SVMC (Subdivision Alterations) as currently adopted or hereafter amended and so long as the alteration is consistent with approved PRD-2015-0001.
5. Changes or modifications that result from the design and engineering permit and construction process may be allowed without requiring an alteration of the preliminary plat so long as they are consistent with PRD-2015-0001 as approved. These changes and modifications include:
 - 5.1. Engineering design that does not alter or eliminate features specifically required as a condition of preliminary plat approval or PRD-2015-0001;
 - 5.2. Changes in lot dimensions that are consistent with the underlying zone, and/or PRD-2015-0001, provided no increase in the number of lots occurs, and no public or private right-of-way is decreased in width; or

SUB 2015-0001/PRD 2015-0001

Painted Hills

Page 43 of 58

- 5.3. A decrease in the number of lots to be created so long as the minimum lot size and density of the underlying zone is maintained.
- 5.4. In the event a modification occurs under this section, the modification shall be provided on the final plat prior to final plat approval.
6. Pursuant to SVMC 20.20.050 (Prohibition against sale, lease, or transfer of property) any sale, lease, or transfer of any lot or parcel created pursuant to the SVMC that does not conform to the requirements of the preliminary plat approval or that occurs without approval, shall be considered a violation of chapter 58.17 RCW, and shall be restrained by injunctive action and shall be illegal, as provided in chapter 58.17 RCW. Each sale, lease, or transfer of each separate lot or parcel of land in violation of any provision of this ordinance shall be deemed a separate and distinct offense.
7. SVMC 20.20.080 (Professional Land Surveyor) requires the preparation of all preliminary and final subdivisions be made by or under the supervision of a professional land surveyor. The professional land surveyor shall certify on the final plat that it is a true and correct representation of the lands actually surveyed. A survey is required on all final plats. All surveys shall comply with the Survey Recording Act (chapter 58.09 RCW), Survey and Land Descriptions (chapter 332-130 WAC).
8. Pursuant to SVMC 20.30.050 (Expiration of Preliminary Approval), preliminary plat approval automatically expires five (5) years after preliminary approval is granted unless a time extension is approved for the project. If a request for an extension of time is not timely submitted and approved, the preliminary plat approval expires, and the preliminary plat is null and void.
9. Pursuant to SVMC 20.30.060 (Extensions of Time) an application form and supporting data for time extension requests must be submitted to the Economic Development Department at least thirty (30) calendar days prior to the expiration of the preliminary plat approval.
10. A final subdivision application that complies with all the submittal requirements specified in chapter 20.40 SVMC shall be submitted for review and approval.
11. If a phasing plan is submitted it shall be consistent with the criteria of SVMC 20.40.050.A-E and chapter 19.50 SVMC and may be submitted for review and approval by the City following the issuance of the LOMR by FEMA.
12. Pursuant to SVMC 20.40.030 (Filing Short Plat, Plat, or Binding Site Plan) the City of Spokane Valley shall record with the Spokane County Auditor's Office the final plat, upon receipt of all required signatures on the face of the plat.
13. Pursuant to SVMC 20.80.040 (Recordation), all fees for recording shall be paid by the applicant prior to recording.
14. A valid certificate of water and sewer availability shall be provided prior to any further development related decisions to be issued by the City including land use permits, grading permits, construction permits, etc.
15. The final plat shall contain a note on the face of the plat that identifies the rules and limitations of PRD-2015-0001 and flood control district obligations. The language shall be provided by the City upon request prior to submitting the final plat.

16. Addresses have been assigned for use in the subdivision – See Exhibit 19. The addresses shall be designated on the final plat consistent with exhibit 19 unless otherwise approved by the City.

Spokane Valley Development Engineering

1. Approval of SUB-2015-0001 shall be contingent upon all the conditions identified in this section B being completed.
2. A Professional Engineer, licensed in the State of Washington, shall prepare required engineering documents (including civil/street plans, drainage plans, drainage calculations, traffic studies, shared access driveway plans, etc.) Plans shall conform to the *2009 City of Spokane Valley Street Standards (SVSS)* or as amended, the *2008 Spokane Regional Stormwater Manual (SRSM)* or as amended, the *City of Spokane Valley Municipal Code (SVMC)* and all other federal, state, and local regulations including those for Spokane County, as applicable.
3. Review of on-site civil plans and supporting documents cannot proceed until an application for a Land Disturbance permit has been received. All documents (plans, reports, etc) must be submitted through the Building Department Permit Center located at 10210 E. Sprague Avenue.
4. Prior to Spokane Valley's and Spokane County's sign-offs on the Community Concurrence section of FEMA MT-2 Form 1 for FEMA's review of the flood control system project for the CLOMR the following shall be completed by the applicant:
 - 4.1. A flood control district (FCD) shall be formed for the perpetual funding, operation and maintenance of the flood control systems in Spokane Valley and Spokane County. The applicant or designated representative shall prepare a petition and submit it to Spokane County to initiate and complete the formation of the flood control district and shall provide support to the County through the formation process.
 - 4.2. A stamped operation and maintenance (O&M) manual shall be prepared for the flood control systems, which are under the responsibility of the flood control district (FCD), unless Spokane County provides its own manual. The O&M manual for the flood control systems shall include tasks to prepare for flooding emergency response and recovery.
 - 4.3. If a design is to be pursued based on flood water disposal method other than what is proposed for Alternative 2b Low Infiltration, then geotechnical testing supporting the design shall be performed and submitted to the City for review and approval. A Floodplain Development permit shall be obtained from the City for this testing.
 - 4.4. Flood control system design description shall include a discussion describing how construction will proceed such that at the end of each September enough of the system is completed so that it can handle the upcoming winter storms.
 - 4.5. Flood control system plans shall include a construction note requiring that at the end of each September during the construction of the flood control systems, the site shall be prepared for the upcoming winter storms and the City Development Engineering Construction Inspector shall be contacted to confirm preparations.

- 4.6. Revisions to the flood control systems design shall be incorporated and revised project documents shall be submitted for review and approval. Culvert headwalls and rock walls greater than 4 feet high shall be reviewed and approved by the City. Provide copies of the approved designs to the Spokane Valley Public Works Department.
5. Following FEMA's issuing a CLOMR and prior to approval of the Grading and Floodplain Development permits for the construction of the flood control system project, the following shall be accomplished by the applicant:
 - 5.1. A performance surety shall be required upfront by the City for the construction of the flood control system itself to ensure its completion.
 - 5.2. If any on-site (outside of the flood control system) improvements are to be constructed while the flood control system is being constructed, then prior to beginning this construction, the engineering design documents and the O&M manual with financial plan are to be submitted for review and shall be approved and the HOA shall be created.
 - 5.3. Provide a copy of the CLOMR from FEMA to the City and Spokane County. If FEMA requires any changes to the project, submit revised design for review and approval by the City. The City will determine if the revisions require a change of conditions by the Hearing Examiner.
 - 5.4. Provide documentation to the City of the resolution of the Applicant's ownership or rights of access to the Gustin Ditch and triangle pond.
 - 5.5. A pre-construction conference with Development Engineering is required prior to the start of construction. During this meeting, standards and submittal requirements for the Construction Certification will be given to the project engineer/inspector. The grading permit shall be obtained following the pre-construction meeting.
6. Following construction completion and prior to Spokane Valley's and Spokane County's sign-off on the MT-2 form for the flood control system project submittal to FEMA for the LOMR, the following shall be required:
 - 6.1. Determination by City that the constructed improvements are in conformance with the approved permit plans.
 - 6.2. Drywell registrations, HOA UBI number, and CC&R's associated with the non-flood control system improvements.
 - 6.3. As-built plans certified by a registered Professional Engineer for all project elements.
 - 6.4. Letter from design engineer certifying project constructed according to approved plans and specifications.
 - 6.5. Construction Certification Package
 - 6.6. An updated floodplain design narrative to state the applicant has received the CLOMR and has now built to those specifications.
7. Following FEMA's issuing a LOMR and prior to final project approval of the flood control system as required for final plat, provide:
 - 7.1. A copy of FEMA's LOMR to the City and Spokane County.

Prior to final plat:

8. A Homeowners Association (HOA) shall be formed for the perpetual operation and maintenance of private streets/pathways, drainage tracts and associated drainage facilities (outside of the flood control systems), and common areas.
9. A draft copy of the CC&Rs for the HOA shall be submitted with the initial submittal of final design plans for the streets, stormwater, and common areas.
10. An operation and maintenance (O&M) manual per SRSR Chapter 11 shall be prepared for the facilities and common areas which are under the responsibility of the Homeowners Association (HOA). Operations and Maintenance Manuals shall be submitted with the initial submittal of final design plans for the streets, stormwater, and common areas under the responsibility of the HOA. Prior to plan approval, the Operations and Maintenance Manual, which includes all operations and maintenance information for the street and stormwater systems shall be accepted.
11. The operation and maintenance manual for the HOA shall stipulate that the HOA contract for any maintenance requiring specialized knowledge, experience, training or certification and shall include a requirement that each October the HOA shall provide documentation to the Spokane Valley Public Works Department which includes:
 - 11.1. Evidence of the filing of the annual report to the Secretary of State;
 - 11.2. General status of the reserve fund account;
 - 11.3. Reserve fund calculations have been reviewed and adjusted as necessary based on the recent actual cost of operation and maintenance and
 - 11.4. Specific inspections, findings, and maintenance performed since the previous report.
12. The entire Project shall be accessed by one new public local access street that intersects S. Dishman-Mica Road and four new public local access streets that intersect Madison Road. Gates are not permitted on public streets per SVSS 7.7.6.
13. Bicycle and pedestrian facilities shall be completed along the site frontages, including a continuous six-foot-wide pedestrian walkway around and throughout the Painted Hills PRD site.
14. The project shall construct a new flashing beacon and cross walk at the intersection of East 40th Avenue and South Madison/South Pines to facilitate safe pedestrian and cyclist access adjacent to Horizon Middle School. At any time, the City may make modifications to this intersection if it determines that such modifications are necessary for the health, safety, and welfare of the traveling public.
15. Streetlights and parking lot light fixtures, if provided, shall be owned and maintained by the HOA and shall incorporate shields to ensure compliance with City foot-candle lighting requirements, mounting heights, and wattage.
16. A soils investigation and pavement design are required for all streets per SVSS Chapter 8.
17. Prior to the initiation of mass-grading activities associated with the project, the applicant will install a two-way left turn lane on S. Dishman-Mica Road and a

right-turn northbound lane on S. Dishman-Mica Road at the proposed new entry road into the PRD.

18. S. Dishman-Mica Road is a Minor Arterial. Access to an arterial is limited to a single access point. Per the Certificate of Transportation Concurrency, the project may have up to two new commercial driveway approaches on S. Dishman-Mica Road along the frontage of the project. The following conditions are based on the current design of the Project and may be subject to review and revision if conditions change in the future.
 - 18.1. The northernmost commercial driveway approach shall access the apartments only and shall be restricted to right-in/right-out by means of a raised median along S. Dishman-Mica Road or via a pork chop island within the driveway. The design of the median or pork chop shall be approved by the City.
 - 18.2. The southernmost commercial driveway approach shall access the northern commercial site only along S. Dishman-Mica and may be a full movement driveway with a two-way left-turn lane along S. Dishman-Mica for left-turn access.
19. S. Dishman-Mica Road is designated as a 3-Lane Minor Arterial and half-street frontage improvements are required per SVSS Chapters 2 and 7. Required improvements are detailed below:
 - 19.1. 22' of asphalt width from street centerline to edge of gutter.
 - 19.2. 2' wide Type 'B' curb and gutter per SVSS Std. Plan R-102.
 - 19.3. 10' wide roadside swale per SVSS Std. Plan S-130. The applicant shall install seed/grass in the roadside swale and maintain the swale.
 - 19.4. 6' wide concrete sidewalk per SVSS Std. Plan R-103.
 - 19.5. The Project shall construct southbound left-turn lanes on a) Dishman-Mica Road at the intersection with the new public local access street and at b) the intersection of Dishman-Mica Road and Thorpe Road concurrently with the construction of the new public local access street. The two southbound left-turn lanes shall provide a minimum of 150 feet of queue storage and shall have the required gap and taper lengths per WSDOT standards.
 - 19.6. Additional improvements as documented within the approved Traffic Impact Analysis and addendums.
20. The following determines the S. Dishman-Mica Road right-of-way (ROW) and border easement dedications per SVSS 7.5.2 and 7.5.3. Existing dedication widths were estimated using information from the Spokane County Assessor's Office. The project applicant is responsible for verifying all values listed below.
 - 20.1. The existing half ROW width is 34'.
 - 20.2. Required half ROW width is 26'.
 - 20.3. ROW dedication not required.
 - 20.4. A Border Easement is required and shall extend from the ROW to the back of sidewalk/pedestrian path.

- 20.5. Where the sidewalk/pedestrian path meanders into the project site, a Public Access Easement shall be provided.
- 20.6. Building setbacks begin at the edge of border easement.
- 21. Thorpe Road is designated as a Collector Arterial and half-street frontage improvements are required per SVSS Chapter 2 and SVSS Std. Plan R-122, "Swale Section". Required improvements are detailed below:
 - 21.1. 20' of asphalt width from street centerline to edge of gutter.
 - 21.2. 2' wide Type 'B' curb and gutter per SVSS Std. Plan R-102.
 - 21.3. 10' wide roadside swale per SVSS Std. Plan S-130. The applicant shall install seed/grass in the roadside swale and maintain the swale.
 - 21.4. 6' wide concrete sidewalk per SVSS Std. Plan R-103.
- 22. The following determines the Thorpe Road right-of-way (ROW) and border easement dedications per SVSS Std. Plan R-122. Existing dedication widths were estimated using information from the Spokane County Assessor's Office. The project applicant is responsible for verifying all values listed below.
 - 22.1. Existing half ROW width is 25'.
 - 22.2. Required half ROW width is 24'.
 - 22.3. ROW dedication not required.
 - 22.4. A Border Easement is required and shall extend from the ROW to the back of sidewalk.
 - 22.5. 13' wide Border Easement dedication required.
 - 22.6. Building setbacks begin at the edge of border easement.
- 23. The existing commercial site located on the southwest corner of the Project site will continue to be accessed by a single full movement approach on Thorpe Road. At any time, the City may make modifications to this intersection if it determines that such modifications are necessary for the health, safety, and welfare of the traveling public.
- 24. Revisions to the Chester Creek bridge at Thorpe Road shall be coordinated with Spokane Valley Public Works Department.
- 25. S. Madison Road is a collector. All lots along Madison Road shall take access from the interior streets only.
- 26. S. Madison Road is designated as a Collector Arterial and half-street frontage improvements are required per SVSS Chapter 2 and SVSS Std. Plan R-122, "Swale Section". Required improvements are detailed below:
 - 26.1. 20' of asphalt width from street centerline to edge of gutter.
 - 26.2. 2' wide Type 'B' curb and gutter per SVSS Std. Plan R-102.
 - 26.3. 10' wide roadside swale per SVSS Std. Plan S-130. The applicant shall install seed/grass in the roadside swale and maintain the swale.

26.4. 6' wide concrete sidewalk per SVSS Std. Plan R-103. The sidewalk shall extend to the intersection of 40th Avenue and Pines Road and connect to the existing sidewalk on the west side of Pines Road.

27. The applicant shall install an approximately 300-foot-long paved pedestrian connection on the west side of South Madison Road adjacent to the approximately 2-acre Water District #16 property. This connection will ensure a continuous pedestrian walkway on the west side of South Madison Road between East Thorpe Road and East 40th Avenue.

28. The following determines the S. Madison Road right-of-way (ROW) and border easement dedications per Std. Plan R-122. Existing dedication widths were estimated using information from the Spokane County Assessor's Office. The project applicant is responsible for verifying all values listed below.

28.1. Existing half ROW width is 30'.

28.2. Required half ROW width is 24'.

28.3. ROW dedication not required.

28.4. A Border Easement is required and shall extend from the ROW to the back of meandering pedestrian path or storm pipes, whichever is greater.

28.5. Building setbacks begin at the edge of border easement.

29. All internal streets shall be public streets and be designed per SVSS Table 7.3 and Standard Plan R-120.

30. The HOA shall cooperate with Spokane County to ensure right of way is provided at the triangle pond as necessary for the completion NE 40th Avenue between SR-27 and South Pines Road.

31. The approved TIA identifies a build-out year of 2025 after 7-8 years of phased construction and a planning horizon year of 2030. However, as described in this EIS, the time period for importing fill and constructing the project is at least 14 years (four years for importing fill and ten years for phased construction of the project). The traffic review shall be updated to account for the inconsistency in the EIS between the original identified build-out year of 2025 and the time period estimated for project completion. Such update shall include an additional horizon year analysis as determined by fill and construction parameters as well as FEMA coordination, which is estimated at 2042 or beyond. After completion of the initial grading and the issuance of the letter of map revision (LOMR) and issuance of the first phase Final Plat and prior to the issuance of the building permit that would exceed 100 cumulative trips, the Applicant shall complete an update to the approved Traffic Impact Analysis (TIA) based on a revised build-out year and horizon year. The TIA update shall include updated turning movement counts and an update to the trips from the vested projects identified in the approved TIA as well as updated mitigation to account for changing construction costs and mitigation projects. The applicant shall be responsible for all mitigation identified in the updated and City approved TIA due to traffic generated by the project.

32. The TIA identified the need for improvements at the 32nd/Pines intersection and the TIA acknowledged that the Project contributes to the need for improvements at this intersection. As identified, the Developer shall construct a northbound right-turn lane on Pines Road prior to the City's issuance of a certificate of occupancy for the

SUB 2015-0001/PRD 2015-0001

Painted Hills

Page 50 of 58

400th unit of the Project. The storage length for the dedicated right-turn only lane shall be determined at the time of development. The Developer shall furnish the City an intersection plan substantially similar to that required by WSDOT Standards for final approval prior to construction.

33. The TIA identified the need for improvements at the 16th Avenue/Pines/SR 27 intersections. The TIA acknowledges that the Project contributes to the need for improvements at these intersections. As identified, additional traffic capacity is needed which requires a new southbound right-turn only lane on Pines Road and a new traffic signal at 16th and Pines. The Developer shall furnish these improvements prior to the City's issuance of a certificate of occupancy for the 200th unit. The Developer shall furnish the City an intersection plan similar to that required by WSDOT and Traffic Signal Plans for final approval prior to construction.
34. The City may seek funding and/or complete traffic improvements at the Pines/32nd or the 16th/Pines/SR-27 intersections. If the City determines to pursue funding or complete said improvements prior to the Developer completing the improvements, the Developer shall enter into a voluntary mitigation agreement with a proportionate contribution toward the City's improvements for all phases of the mitigation project including but not limited to preliminary engineering, right-of-way, and construction.
35. All block lengths shall be limited to 600' per SVSS Section 7.5.14. The block lengths for 42nd Avenue and Painted Hills Avenue exceed 600'; therefore, a Design Deviation Request shall be required for the extended block lengths and shall be submitted for approval prior to civil plan submittal.
36. Local access street intersections shall meet the minimum spacing requirements per SVSS Table 7.5. A Design Deviation Request shall be required for the reduced intersection spacing between Painted Hills Avenue and 41st Avenue and shall be submitted for approval prior to civil plan submittal.
37. All residential developments with greater than 30 single family dwelling units shall have two (2) street accesses that meet the Fire Department separation requirement to ensure adequate emergency access per SVSS Section 7.5.14.
38. In accordance with the SVMC, Zoning Regulations (19.40.020 Residential Standards), all residential driveways shall be paved. Private driveways shall conform to SVSS Section 7.3.4.
39. Driveway approach design shall follow the 2009 SVSS, or as amended. For residential driveway approaches, the minimum width is 16' and the maximum width is 30' per SVSS Std. Plans R-110 through R-113. Additionally, the approach width shall not exceed 50% of the lot frontage width per SVSS 7.8.5. Based on these requirements, the minimum required lot width is 32'. Multiple proposed cottage lots along Painted Hills Avenue have lot widths less than 32'; therefore, Design Deviation Requests shall be required for reduced driveway approach widths and/or driveway approach widths exceeding 50% of the lot frontage width. The Design Deviation Requests shall be submitted prior to civil plan submittal.
40. All stormwater facilities shall be designed per the SRSM. Linear roadside facilities such as swales shall be located within the right of way and/or border easements when adjacent to public streets or within a tract or easement when adjacent to a

private street or driveway serving more than one lot. Non-roadside facilities such as consolidated ponds, which are those receiving runoff from more than one lot, shall be within a tract per SRSM 11.2.

41. Calculations shall be provided demonstrating that stormwater runoff from on-site development outside of the flood control system shall not contribute to or impact the function of the flood control systems for storms up to and including the 1-percent-annual-chance-event (100-year) flood.
42. For the triangle property improvements, additional easement rights will need to be granted by the property owner of APN No. 45343.9052, if the existing easement does not grant rights for the proposed use outright or if the easement is no longer in place.
43. For the General Construction Notes, use those in the SVSS Appendix 4A rather than those in the SRSM Appendix 3B.
44. Show all utilities and utility easements (i.e. Telephone, power, etc.). The permittee is responsible for arranging all utility adjustments, improvements, or relocations as required for completion of the project. All rigid objects shall be located out of the clear zone. The clear zone requirements can be found in the 2009 SVSS, or as amended. The permittee shall contact every utility purveyor impacted by the project and conduct the following –
 - 44.1. Discuss with the purveyor the proposed work including private services, utility improvements, and any relocations and adjustments as well as the costs for these activities,
 - 44.2. When utility relocations are required, obtain from the purveyor a written statement that they acknowledge and concur with or have alternatives for the needed work; and
 - 44.3. Forward a copy of the statement to Spokane Valley Development Engineering. Receipt of statements will be required prior to plan approval.
45. If sewer and/or water needs to be brought to the properties and to do this requires an Engineering design, copies of the approved sewer and water plans shall be submitted to Development Engineering. The civil plans for the project shall show the extents of pavement removal and replacement.
46. All new dry wells, including those associated with the flood control system, and other injection wells shall be registered with the Underground Injection Control program (UIC) at Department of Ecology prior to use and the discharge from the well(s) must comply with the ground water quality requirement (non-endangerment standard) at the top of the ground water table. Contact the UIC staff at UIC Program, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, (360) 407-6143 or go to: <http://www.ecy.wa.gov/programs/wq/gndwln/uic/UIClineregis.html> for registration forms and further information. Copies of the registration for drywells, which receive public road stormwater runoff, are to be sent to Development Engineering. The City of Spokane Valley NPDES Permit Number is WAR04-6507.
47. A Construction Stormwater Permit shall be obtained from the Department of Ecology. Construction site operators must apply for a permit 60 days prior to

SUB 2015-0001/PRD 2015-0001

Painted Hills
Page 52 of 58

discharging stormwater. More information can be obtained from <http://www.ecy.wa.gov/programs/wq/stormwater/construction/>. The Construction Stormwater Permit is required because:

- 47.1. Construction project disturbs one or more acres of land (area is the cumulative acreage of the entire project whether in a single or in a multiphase project), and,
- 47.2. If there is a possibility that stormwater could run off the site during construction and into surface waters or into conveyance systems leading to surface waters of the state,
48. A pre-construction conference with Development Engineering is required prior to the start of construction. During this meeting, standards and submittal requirements for the Construction Certification will be given to the project engineer/inspector. The grading permit shall be taken out following the pre-construction meeting.
49. For construction affecting public right-of-way, forty-eight (48) hours prior to construction securely post a sign at each ingress to the project area. Sign shall be clearly visible from the right-of-way and provide project construction details. See SVSS Section 9.7.
50. Construction within the proposed public streets and easements shall be performed under the direct supervision of a licensed Washington State Professional Engineer/Land Surveyor.
51. Permits are required for any access to or work within the right-of-way of the Spokane Valley or Spokane County roadway system. A traffic control plan shall accompany the right-of-way obstruction permit.
52. The TESC structures (such as filter fence, silt ponds, silt traps) shall be installed prior to the start of site work and maintained throughout the duration of construction and until the site has stabilized.
53. All survey monuments shall be protected during construction. Any disturbed or damaged monuments shall be replaced prior to certification / final plat and/or release of surety.
54. Prior to the issuance of a flood plain permit or any land disturbance permits by the City, a final haul route plan approved by the City will be developed and managed to ensure that truck trips to and from the site during construction exclusively use S. Dishman-Mica Road for site access over the duration of site construction. This plan shall include a section devoted to pre and post-construction inspections of the streets identified in haul route plan to determine any pavement failures that can be attributed to the construction trips. The applicant shall be responsible for all mitigation identified by the inspections.
55. An erosion control plan that complies with the Stormwater Management Manual for Eastern Washington (SWMMEW) and SRSM shall be developed for the project and will be implemented during construction.
56. Erosion control measures to be implemented during construction may include using silt fences, wattles, sediment basins, Inlet protection, watering and hydro-seeding as allowed/required by the SRSM and the SWMMEW.

57. During construction, areas of exposed soils shall be regularly sprayed with water or other dust suppressants. Cleared areas that will be exposed for prolonged periods shall be paved, planted with a vegetation ground cover, or covered with gravel.
58. A program and schedule for road sweeping shall be submitted concurrent with submittal of an application for the first phase or sub-phase of development.
59. Following construction, soils must be stabilized by paving, building, and landscaping/vegetation.
60. Non-motorized access shall be maintained during construction. Such facilities include sidewalks, trails, and roadside shoulders. Any modification to a pedestrian or bicycle access route shall be approved by the City prior to impact.
61. Site construction shall be conducted consistent with SVMC Section 7.05.040 (Nuisances Prohibited) which includes limits on smoke, soot, toxic substances, noise, and other public health hazards.
62. All on-site and off-site loads in trucks shall be covered to ensure that dust and soil does not fly off and pollute the air.
63. Well-maintained construction equipment and trucks shall be used to reduce emissions; vehicles and equipment shall be fitted with emission-controlling components such as air filters and catalytic converters. Prolonged periods of idling vehicles and other engine-powered equipment shall be avoided.
64. Woody vegetation cleared from the site shall not be burned but shall be ground or chipped on-site or hauled to an off-site location.
65. Upon completion of the improvements, a Construction Certification package and record drawings are required for the improvements and shall be submitted and approved prior to Final Plat approval.
66. All public improvements shall provide a Performance/Warranty Surety per SVSS Chapter 9. The City accepts Letters of Credit or Cash Savings Assignments only for Performance Sureties and Letters of Credit, Cash Savings Assignments, and Bonds for Warranty Sureties.
67. Right-of-way dedications and border easements shall be designated on the final plat map. Any right-of-way and easement dedications executed as part of the required floodplain improvements prior to final plat submittal shall be shown on the final plat map with recording numbers.
68. The Homeowner Association's UBI number shall be referenced on the face of the Final Plat.
69. RCW 58.17.120 requires that no plat shall be approved by any city, town, or county legislative authority covering any land situated in a flood control zone as provided in chapter 86.16 RCW without the prior written approval of the Department of Ecology of the State of Washington.
70. Plat language will be determined at the time of final plat submittal. Contact Development Engineering after civil plan approval and/or prior to first submittal of final plat to obtain plat language.
71. An advisory note informing buyers of flood risk should the flood conveyance system fail must be added as a note to the final plat document.

SUB 2015-0001/PRD 2015-0001

Painted Hills

Page 54 of 58

Spokane Valley Fire Department

1. Road names require approval and shall coincide with established road names in the surrounding road grid. Road names are acceptable as noted with the following revisions:
 - 1.1. Yony Lane shall be Perrine Lane
 - 1.2. Sundown Drive shall be a continuation of Daroy Drive
 - 1.3. Painted Hills Avenue shall be Watkins Avenue
2. Islands in round-a-bouts shall have rolled curbs and shall be constructed so that a minimum 20 ft. drive width is maintained with 30 ft. inside turn radius and 50 ft. outside turn radius.
3. The Multi-Family site requires a second access per IFC. This access shall be located at least half the diagonal distance of the primary access.
4. Fire apparatus access roads shall be posted with "No Parking – Fire Lane."
5. Addresses shall be posted so they are visible from the right-of-way.
6. Additional fire hydrants are required, submit a plan to SVFD for preliminary review.
 - 6.1. A signed water plan showing the location of required hydrants and size of water main is required.

Washington Department of Fish and Wildlife (WDFW)

1. The applicant will need to obtain a Hydraulic Project Approval to conduct any work on streams within the project area such as for the culvert extension at the Thorpe Road crossing on Chester Creek.
2. If the Applicant proposes to re-type Chester Creek from F to Ns this would not be supported by WDFW without a full protocol survey. A protocol survey throughout the entire drainage would be required to confirm fish absence and thus re-type the stream from F to Ns.

Spokane County Public Works Wastewater Division

1. The dedication shall state: "Public sewers shall be constructed to provide for the connection of each parcel to the County's system of sewerage. Uses on properties within the project shall be required to connect to the sewer and pay applicable charges per the County Sewer Ordinance. Sewer connection permits shall be required."
2. A public sanitary sewer easement shall be shown on the face of the plat with a dedication that states "The perpetual easement granted to Spokane County, its' successors and assigns is for the sole purpose of constructing, installing, operating, maintaining, repairing, altering, replacing, removing, and all other uses or purposes which are or may be related to a sewer system. Spokane County, it's successors and assigns at all times hereinafter, at their own cost and expense, may remove all crops, brush, grass or trees that may interfere with the constructing, installing, operating, maintaining, repairing, altering, replacing, removing and all other uses or purposes which are or may be related to a sewer system. The grantor(s) reserves the right to use and enjoy that property which is the subject of this easement for purposes which

will not interfere with the County's full enjoyment of the rights hereby granted; provided, the Grantor(s) shall not erect or construct any building or other structure or drill on the easement or diminish or substantially add to the ground cover over the easement. The easement described hereinabove is to and shall run with the land."

3. Applicant shall submit expressly to Spokane County Division of Utilities "under separate cover", only those plan sheets showing sewer plans and specifications for the public sewer connections and facilities for review and approval. Commercial developments shall submit historical and or estimated water usage as part of the sewer plan submittal.
4. Sewer plans acceptable to the Division of Utilities shall be submitted prior to the finalization of the project.

Avista

1. 10' "Dry" Utility Easements need to be shown on all lots having frontage along any roadway within this plat. These 10' "Dry" Utility Easements need to be behind, separate from and adjoining the border easements, so as not to encroach on them.
2. Utility dedication in the proposed 20' Emergency Vehicle Drive easement is required. Said easement shall read "20' Emergency Vehicle Drive/Utility Easement."
3. All existing electrical and gas easements must be show on the plat.
4. An open ditch inspection from Avista Real Estate Department is required prior to utility placement.
5. Easement AFN#4436419 needs to be shown on the Plat, having a width of 7.5' on each side from center of the gas line for a total of 15' Wide. If the 13' border easement overlaps Avista's Gas easement, then the border easement within said Avista easement, shall be subordinate to Avista's rights. Any construction within said Avista easement shall only be done with prior approval from Avista's Gas Engineering Department.
6. The following language must be inserted into the Dedication Language on the face of the plat:
 - 6.1. "Easements for "Dry" utilities (electric, gas, phone, fiber, cable TV) as shown on the herein described plat are hereby dedicated for the use of serving utility companies for the construction, reconstruction, maintenance, protection, inspection and operation of their respective facilities, together with the right to prohibit changes in grade over installed underground facilities and the right to prohibit, trim and/or remove trees, bushes, landscaping, without compensation and to prohibit brick, rock or masonry structures that may interfere with the construction, reconstruction, reliability, maintenance, and safe operation of same. Any easement located within the "Dry" utility easements shown hereon, shall be subordinate to Avista."
 - 6.2. "Storm drain dry wells and Water Meter boxes shall not be placed within the "Dry" easements; however, lateral crossings by storm drain, water and sewer lines are permitted."
 - 6.3. "Serving utilities reserve the right to cross Border easements, Future right-of-way acquisition areas, and common areas."

Spokane Regional Health District

1. The final plat shall be designed as indicated on the preliminary plat of record and/or any attached sheets as noted.
2. Appropriate utility easements shall be indicated on copies of the preliminary plat of record for distribution by the Planning Department to the utility companies, City of Spokane Valley Engineer, and the Spokane Regional Health District.
3. Sewage disposal method shall be authorized by the Director of Utilities, Spokane County.
4. Water service shall be coordinated through the Director of Utilities, Spokane County.
5. Water service shall be an existing public water supply when approved by the Regional Engineer (Spokane), State Department of Health.
6. Prior to filing the final plat, the sponsor shall demonstrate to the satisfaction of the Spokane Regional Health District that an adequate and potable water supply is available to each lot of the plat.
7. Prior to filing the final plat, the sponsor shall present evidence that the plat lies within the recorded service area of the water system proposed to serve the plat.
8. A plan for water facilities adequate for domestic use, domestic irrigation use, and fire protection use shall be approved by the water purveyor. Said water plan must have been approved by the fire protection district and the appropriate health authorities. The health authorities, water supplier (purveyor) and the fire protection district will certify prior to filing of the final plat, on the face of said water plan that the plan is in conformance with their requirements and will adequately satisfy their respective needs. Said water plan certification will be drafted on a transparency suitable for reproduction.
9. The purveyor will also certify prior to filing the final plat on a copy of said water plan that appropriate contractual arrangements have been made with the plat sponsor for construction of the water system, in accordance with the approved plan and time schedule. The time schedule will provide, in any case, for completion of the water system and inspection by the appropriate health authorities prior to application for building permits within the plat. The contractual arrangements will include a provision holding City of Spokane Valley harmless from claims by any lot purchaser refused a building permit due to failure of the plat sponsor to satisfactorily complete the approved water system.
10. A public sewer system will be made available for the plat and individual service will be provided to each lot prior to sale. Use of individual on-site sewage disposal systems shall not be authorized.
11. A statement shall be placed in the dedication to the effect that: "A public sewer system will be made available for the plat and individual service will be provided to each lot prior to sale. Use of individual on-site sewage disposal systems shall not be authorized."
12. The dedicatory language on the plat shall state: "Use of private wells and water systems is prohibited."

13. The final plat dedication shall contain the following statement: "The public water system, pursuant to the Water Plan approved by County and state health authorities, the local fire protection district, City of Spokane Valley, and water purveyor, shall be installed within this subdivision and the applicant shall provide for individual domestic water service as well as fire protection to each lot prior to the sale of each lot and prior to the issuance of a building permit for each lot."

Spokane County Water District No. 3

1. A water system plan must be submitted to and approved by the district.
2. The 6' irrigation service at S.4307 Dishman Mica Road will need to be abandoned. The district requires that plans be submitted to and approved by the district prior to the line being abandoned.
3. There is an existing well on the property. This well must be abandoned in accordance with the Department of Ecology requirements for abandoning water wells.

Dated this 19 day of March, 2024.

CITY OF SPOKANE VALLEY HEARING EXAMINER



Andrew L. Kottkamp

NOTICE OF FINAL DECISION AND NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 17.90 of the Spokane Valley Municipal Code (SVMC) and Chapter 36.70C of the Revised Code of Washington (RCW), the decision of the Hearing Examiner on an application for a preliminary plat is final and conclusive unless within 21 calendar days from the date of issuance of the Hearing Examiner's decision, a party with standing files a land use petition in Superior Court pursuant to RCW Chapter 36.70C.

On 3-20-2024 a copy of this decision will be mailed by regular mail to the Applicant and to all government agencies and persons entitled to notice under SVMC 17.80.130(4). Pursuant to RCW Chapter 36.70C, the date of issuance of the Hearing Examiner's decision is three (3) days after it is mailed.

THE APPEAL CLOSING DATE FOR THE APPEAL OF THIS DECISION TO SUPERIOR COURT IS ~~4-13-2024~~ (21 days from issuance of decision).

The complete record in this matter is on file during and after the appeal period with the City of Spokane Valley Community & Public Works Department Building and Planning Division, located at 10210 E. Sprague Avenue, Spokane Valley, WA 99206; by contacting staff at (509) 921-1000. Copies of the documents in the record will be made available at the cost set by the City of Spokane Valley.

Pursuant to RCW 36.70B.130, affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.

SUB 2015-0001/PRD 2015-0001

Painted Hills

Page 58 of 58

APPENDIX B
Decision on Reconsideration

(Decision on Applicant's Motion for Reconsideration and Motion to Submit Additional Evidence, and City's Request to Submit Additional Evidence – April 22, 2024)

BEFORE THE HEARING EXAMINER
FOR THE CITY OF SPOKANE VALLEY

PAINTED HILLS PRESERVATION ASSOCIATION, Appellant,
v.
CITY OF SPOKANE VALLEY, a Code City, and
BLACK REALTY INC., a Washington corporation, Respondents.

) FILE Nos. APP-2023-0003, SUB-2015-0001,
PRD-2015-0001
}
) DECISION ON APPLICANT'S
) MOTION FOR RECONSIDERATION
) AND MOTION TO SUBMIT
) ADDITIONAL EVIDENCE, AND
) CITY'S REQUEST TO SUBMIT
) ADDITIONAL EVIDENCE

I. FINDINGS OF FACT

1. On March 19, 2024, the Hearing Examiner issued its Findings of Fact, Conclusions of Law, Decision and Conditions of Approval (the Decision) for SUB 2016-0001/PRD2015-0001.
2. On March 29, 2024 the Applicant made motions for reconsideration and to submit additional evidence.
3. In response to the filing of this motion, the Hearing Examiner granted the City's request to have responsive materials submitted on or before April 12, 2024.
4. In their responsive materials, the City also requested by motion to submit additional evidence.
5. The Applicant moves the Hearing Examiner to reconsider and eliminate certain Conditions of Approval set forth in the Decision requiring the formation of a flood control District as a condition of the project's approval.
6. The Hearing Examiner conducted a three (3) day open record public hearing regarding an appeal of the environmental impact statement as well as the flood control hearing on the requested underlying permits. Substantial evidence was submitted into the record which formed the basis of the Hearing Examiners Findings of Facts and Conclusions of Law.
7. The Conditions of Approval set forth within the Decision were based upon Findings of Facts that were proven by substantial evidence.
8. The Hearing Examiner finds that there is no error in law of any of the Conclusions of Law set forth in the Decision.
9. The Applicant has failed to demonstrate that there was an error in issuance of the Hearing Examiners Findings of Fact, Conclusions of Law, and Conditions of Approval.
10. The Applicant and the City further request that the Hearing Examiner reopen the record to allow the submission of new evidence. The Hearing Examiner denies the request of both the Applicant and the City. There has been no demonstration that the proposed evidence was not available at the time of the

open record public hearing, and there has been no showing that this evidence could not have been submitted prior to the closing of the record.

II. CONCLUSIONS OF LAW

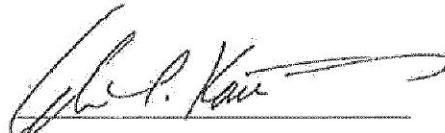
1. The Hearing Examiner has been granted the authority to render this decision.
2. All Findings of Fact were based on substantial evidence.
3. All Conditions of Approval were based on relevant Findings of Fact.
4. The Applicant has failed to demonstrate that the Decision contains errors in it's Findings of Fact, Conclusions of Law, and Conditions of Approval.
5. Any Findings of Fact that's more correctly a Conclusion of Law is hereby incorporated as such by this reference.

III. DECISION

Based upon the above Findings of Fact and Conclusions of Law, the Applicant's Motion for Reconsideration is hereby DENIED. The Applicant and City's Motions to admit additional evidence into the record are also DENIED.

Dated this 22 day of APRIL, 2024.

CITY OF SPOKANE VALLEY HEARING EXAMINER



ANDREW L. KOTTKAMP

NOTICE OF FINAL DECISION AND NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 17.90 of the Spokane Valley Municipal Code (SVMC) and Chapter 36.70C of the Revised Code of Washington (RCW), the decision of the Hearing Examiner on an application for a preliminary plat is final and conclusive unless within 21 calendar days from the date of issuance of the Hearing Examiner's decision, a party with standing files a land use petition in Superior Court pursuant to RCW Chapter 36.70C.

On 4/22/2024 a copy of this decision will be mailed by regular mail to the Applicant and to all government agencies and persons entitled to notice under SVMC 17.80.130(4). Pursuant to RCW Chapter 36.70C, the date of issuance of the Hearing Examiner's decision is three (3) days after it is mailed.

THE APPEAL CLOSING DATE FOR THE APPEAL OF THIS DECISION TO SUPERIOR COURT IS 5/16/2017 (21 days from issuance of decision).

The complete record in this matter is on file during and after the appeal period with the City of Spokane Valley Community & Public Works Department - Building and Planning Division, located at 10210 E. Sprague Avenue, Spokane Valley, WA 99206; by contacting staff at (509) 921-1000. Copies of the documents in the record will be made available at the cost set by the City of Spokane Valley.

Pursuant to RCW 36.70B.130, affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.