

BEFORE THE CITY OF LAKEWOOD HEARINGS EXAMINER

IN RE:)	Hearing No. 8289
INTERLAAKEN ESTATES)	
PRELIMINARY PLAT,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
RIORDAN DEVELOPMENT, LLC,)	AND DECISION
Applicant/Owner.)	
THE GARRY OAK COALITION,)	
Appellant.)	

APPLICANT/OWNER: Riordan Development, LLC

REPRESENTATIVE: Joshua Sharps
Washington Forestry Consultants, Inc.
9136 Yelm Highway SE
Olympia, Washington

APPELLANT: The Garry Oak Coalition

REPRESENTATIVE: Chistina Manetti, President

PROJECT SITE:
8002 112th Street S.W., Lakewood, Washington.

SUMMARY OF REQUEST:

Preliminary Plat approval to subdivide 2.43 acres at the intersection of 112th Street SW and Interlaaken Drive SW into eleven single-family residential lots. The City issued a SEPA MDNS and planning staff recommends approval of the proposed Preliminary Plat subject to several conditions.

The SEPA MDNS has been timely appealed by The Garry Oak Coalition. The Coalition and others also oppose the Preliminary Plat.

SUMMARY OF DECISION:

The appeal of the SEPA MDNS by The Garry Oak Coalition is **denied**. The Preliminary Plat application is **approved** subject to modified conditions.

1 **BACKGROUND**

2 The Applicant, Riordan Development, LLC, is the owner of a 2.43-acre parcel with an
3 address of 8002 112th Street SW and located at the intersection of 112th Street SW and
4 Interlaaken Drive SW. The site currently contains a single-family residence. The Applicant
5 seeks Preliminary Plat approval to demolish the existing residence and establish eleven single-
6 family residential lots consistent with the site's zoning designation of Residential 3 (R3). The
7 site is within a developed portion of the City and is surrounded by single-family residential
8 neighborhoods. The site also contains a number of trees including several Garry Oaks¹. Many of
9 these trees are proposed to be removed although the City has imposed a condition requiring a
10 buffer of remaining trees along the perimeter of the site, and the Applicant has offered to further
11 enhance this buffer. The Appellant, The Garry Oak Coalition, believes that the project's
12 environmental review has been substandard and the SEPA MDNS inadequate. The Appellant
13 asks that SEPA review be redone and that greater protection be afforded to the trees onsite and to
14 wildlife in the area.

15 This land use application commenced in late 2021. The project continued moving
16 forward through 2022 as required studies were completed and the plat design was confirmed.
17 Although the project has always provided development of eleven single-family lots, its original
18 design called for access onto Interlaaken Drive, not 112th Street. Through September 2022, the
19 Applicant submitted all required reports, plans, etc. such that by October 7, 2022 the application
20 was declared complete. This declaration is important as it caused the application to vest to the
21 City's land use regulations then in effect, including Tree Protection and Critical Areas
22 Regulations.

23 In late October 2022, notice of the completed application was published and comment
24 was invited. Planning staff received comments from several State agencies as well as other City

25

¹ The term "Garry Oak" is synonymous with "Oregon White Oak". Testimony, reports and other documents use the two terms interchangeably.

1 Departments. It also received several public comments in opposition, expressing concern over
2 the project's environmental impact as well as its orientation to Interlaaken Drive.

3 In early 2023, and at the City's urging, the Applicant revised the plat design so that it now
4 provides access off of 112th Street instead of Interlaaken Drive. Consistent with this redesign,
5 the Applicant submitted a revised SEPA Checklist, engineering plans and a revised Tree
6 Evaluation and Protection Plan ("Tree Plan"). The Tree Plan identifies more than 80 significant
7 trees on the project site including 11 healthy Garry Oaks but concludes that these trees are not
8 entitled to protection under the City's existing Tree Protection or Critical Areas Regulations.

9 The City responded to the Applicant's updated Tree Plan by requesting additional habitat
10 information in the form of a Biological Assessment. In April 2022, the Applicant presented the
11 requested Biological Assessment prepared by Washington Forestry Consultants, Inc. (WFCI)
12 who had also been the authors of the Tree Plan. Like the Tree Plan, the Biological Assessment
13 again finds that the trees on the site are not entitled to protection under the City's existing Tree
14 Protection and Critical Area Regulations.

15 Planning Staff agreed with the Applicant's Biological Assessment but nonetheless
16 requested that the Applicant prepare a "Significant Tree Preservation Easement", consisting of a
17 20-foot perimeter buffer in which 27 existing significant trees will be preserved and protected,
18 including 5 oaks.

19 In June 2023, the Applicant submitted its revised plat with access off of 112th and with
20 the proposed Tree Protection Easement. In July 2023, the City issued its SEPA Mitigated
21 Determination of Non-Significance (MDNS) which imposes the Tree Protection Easement and
22 other tree protection measures as conditions of project approval.

23 Members of the public continue to express concern about the project's environmental
24 impacts, especially to Garry Oaks and other mature trees on the site, as well as to regional
25 wildlife including several threatened species.

1 The Appellant, Garry Oak Coalition, timely appealed the SEPA MDNS. The Appellant
2 disagrees with the Applicant's Tree Plan/Biological Assessment and asserts that the project
3 qualifies for enhanced protection on the basis that it qualifies as "Critical Wildlife Habitat Area"
4 for several reasons.

5 It is perhaps worth noting that the City has recently enacted more robust regulations for
6 the protection of Garry Oaks, while the Washington Department of Fish & Wildlife (WDFW)
7 has promulgated enhanced protections as well. As earlier noted, these newer regulations do not
8 apply to the project as it vested to the tree protections in effect at the time the application was
9 deemed complete in October 2022.

10 This matter comes before the Hearing Examiner (1) on the appeal of the SEPA MDNS
11 brought by the Appellant, the Garry Oak Coalition, and (2) for a public hearing to determine if
12 the proposed Preliminary Plat should be approved.

13 **PUBLIC HEARING**

14 The Hearing Examiner issued a Pre-Hearing Order establishing a concurrent hearing date
15 of August 22, 2023, for the appeal of the SEPA Determination and the public hearing for the
16 Preliminary Plat application. A schedule was established for the disclosure of witnesses and
17 exhibits. The City presented its Staff Report together with its exhibits and the Appellant
18 responded with a lengthy list of exhibits. It was agreed that all exhibits would be recognized as
19 proposed by Exhibit I (the "Combined Exhibit List") attached hereto.

20 The hearing commenced on August 22, 2023, at 2:00 p.m. The City appeared through
21 Ramon Rodriguez, Associate Planner, and was represented by Eileen McKain, Assistant City
22 Attorney. The Applicant, Riordan Development, was represented by its owner, Richard Riordan,
23 appearing pro se. The Appellant, The Garry Oak Coalition, was represented by its President,
24 Christina Manetti, appearing pro se. The hearing occurred remotely utilizing the Zoom platform
25

1 with City Staff serving as the host. A verbatim recording was made of the proceedings and all
2 testimony was taken under oath.

3 **SEPA APPEAL TESTIMONY**

4 In its pre-hearing materials, the Appellant indicated that it would submit testimony
5 through one or more witnesses but decided to not call any witnesses and relied instead on its
6 exhibits together with concluding written arguments, to be submitted later. The Appellant did,
7 however, seek admission of eight additional exhibits which the Hearing Examiner allowed.

8 The Applicant then presented the testimony of Joshua Sharps, a Professional Forester and
9 Certified Arborist with Washington Forestry Consultants, Inc. (WFCI) Mr. Sharps, along with
10 Galen Wright, another Certified Arborist and Forester, coauthored the Updated Tree Evaluation
11 and Protection Plan dated April 11, 2023 (Exhibit C-5); the Biological Assessment dated
12 April 25, 2023 (Exhibit C-4); and the Interlaaken Estates Tree Easement dated April 11, 2023
13 (Exhibit C-6). These various reports supersede the Initial Tree Assessment prepared by WFCI in
14 2022. As explained in these reports, WFCI examined all conifer and deciduous trees greater than
15 9 inches DBH (Diameter at 4.5 feet above ground level) as well as all Oregon White Oaks
16 greater than 6 inches DBH. All trees were numbered and identified on mapping. A total of 127
17 trees ranging in diameter from 6 to 48 inches DBH were identified, with 84 trees deemed in "fair
18 or better" condition and 43 found to be unhealthy, dead or dying. A total of 21 Oregon White
19 Oaks were identified, including 11 deemed healthy and 10 unhealthy. WFCI concluded that the
20 City's tree retention requirements did not apply to the trees on the project site as the proposed
21 plat would result in lots less than 17,000 square feet in size and was therefore exempt from tree
22 retention requirements. LMC 18A.70.320.B.1. WFCI further concluded that the project site did
23 not constitute a "Priority Oregon White Oak Woodland" subject to protection as a "Critical
24 Wildlife Habitat Area" under LMC 14.165.010. This is defined as:

25 "Forested areas of pure oak, or of oak/conifer associations one acre or larger, and
all oak trees located within, where oak canopy coverage of the area is at least

1 25%. Stands of oak less than one acre in size may also be considered priority
2 habitat when found to be particularly valuable to fish and wildlife (that is, they
3 contain many cavities, have a large diameter at breast height, are used by priority
species, or have a large canopy)."

4 WFCI concluded that these requirements are not met on the project site: The Oregon
5 White Oak Trees on site cover less than one acre and make up only 15% of the trees; canopy
6 coverage is less than 25%; the average diameter of the oak trees is 13 inches DBH; only 2 trees
7 are over 20 inches DBH with none over 24 inches DBH; and none of the Oregon White Oaks
8 contain cavities and are not valuable animal habitat.

9 Despite its conclusion that the site does not require tree protection under the City's then
10 regulations, the Tree Plan nonetheless proposes to retain 27 healthy significant trees along the
11 perimeter of the project site as requested by City Staff.

12 WFCI was asked to follow-up its Tree Evaluation Protection Plan with a Biological
13 Assessment. This report, dated April 25, 2023, and again coauthored by Mr. Sharps and Galen
14 Wright, provides a more specific assessment of the Oregon White Oak trees on and near the
15 vicinity of the project site to better determine if they are to be considered priority habitat. 21
16 Oregon White Oaks were identified onsite out of a total of 127 trees. The remaining 106 trees
17 are a broad mix of deciduous and evergreen species. The Oregon White Oak trees were deemed
18 to cover less than one acre in size (.4 acres) and make up 17% of the number of trees onsite.
19 Diameters of these trees range from 6 to 24 inches DBH with the average being 13 inches DBH.
20 Only 2 are over 20 inches DBH with none over 24 inches DBH. They do not contain cavities
21 and are not valuable animal habitat. WFCI saw no evidence of use by threatened or endangered
22 species.

23 The Biological Assessment confirms that there are nearby stands of trees on adjacent
24 parcels to the southwest and across 112th Street. More importantly, the parcel across Interlaaken
25 Drive has a collection of diverse trees including approximately 18 Oregon White Oaks ranging in
diameter from 6 to 28 inches DBH. The forested area across the street covers approximately 1.4

1 acres. The oaks appear to be sound and healthy with no signs of decay or decadence. This
2 offsite stand of oaks is identified in mapping identified as Attachment 1 to the Biological
3 Assessment. The Biological Assessment concludes that:

4 "Even though some oak stand characteristics meet the standard for priority
5 habitat, it is our professional opinion that the stands of Oregon White Oak on this
6 property **do not** qualify as "Priority Habitat" due to: (1) the lack of any large
7 decadent oaks that by themselves provide significant habitat, and (2) the small
8 size and limited extent (less than one acre) of oak groves, and the (3) lack of
9 evidence of significant wildlife usage of the trees today."

10 Although WFCI's Tree Plan and Biological Assessment conclude that the project site is
11 exempt from any tree preservation requirements, the Applicant agreed to establish a Tree
12 Preservation Easement as a condition of plat approval. This easement, dated April 11, is found
13 at Exhibit C-6. The location of the easement on the project site, and the location of the trees to
14 be retained, is shown on Appendix III to Exhibit C-5. The easement provides a 20-foot
15 perimeter Significant Tree Easement on the site in order to retain as many significant trees as
16 practicable, and will result in 27 significant trees being retained including 5 White Oaks (out of
17 11 healthy oaks onsite). No construction or paving will be allowed within the easement area.
18 The easement is not required on individual lots where no healthy significant trees exist (Lots 6, 8
19 and 10). The easement allows for the removal of trees within the easement area but requires in
20 return that they be replaced at a ratio of 2-to-1 as measured by the total diameter inches of all
21 replacement trees to the diameter inches of all significant trees removed. Thus, the proposed
22 removal of a significant tree within the Tree Easement on Lot 1 would result in its replacement
23 by 7 trees.

24 Under cross examination by the Appellant, Mr. Sharps admitted that the Biological
25 Assessment was done in one day, the results were not compared with data from other times of
the year or nighttime data, that no cameras or traps were used, no bird survey was performed,
and with little recollection of what animals were actually seen. Mr. Sharps also acknowledged
that he is not credentialed to prepare a Biological Assessment (although the coauthor of the

1 report, Galen Wright, is). On redirect, Mr. Sharps again confirmed that WFCI stands firmly
2 behind its reports and that the project site does not qualify as Priority Oregon White Oaks
3 Woodland for the reasons previously explained.

4 Following the testimony of Mr. Sharps, the City presented the testimony of Ramon
5 Rodriguez, Associate Planner. Mr. Rodriguez has been a planner with the City for seven to eight
6 years and has been responsible for review of this Preliminary Plat application and its
7 environmental issues. Mr. Rodriguez began to receive materials for this application in 2021,
8 continuing into 2022. The Preliminary Plat application was deemed complete as of October 7,
9 2022, causing it to vest to the then City Code, including the City's then Critical Areas Ordinance,
10 Chapter 14 LMC, and Tree Preservation Code, Chapter 18A. LMC. The City would later amend
11 its Tree Preservation Code in March, 2023, to enhance protection for Garry Oaks but these
12 enhanced protections do not apply to the present application as it vested to the earlier regulations.

13 As project review continued into 2023, and in response to public comments, the City
14 requested the plat design be reoriented with access off of 112th Street rather than Interlaaken
15 Drive. Due to this change and for other reasons, City Staff asked the Applicant to update its Tree
16 Protection Plan and also asked the Applicant to provide a Biological Assessment. The updated
17 Tree Protection Plan and Biological Assessment conclude that the project is not required to
18 protect any of the trees onsite. The City concurred with this conclusion but nonetheless felt it
19 essential that some level of tree preservation be imposed. This led to the 20-foot Tree Protection
20 Easement noted above and included as one of the conditions of the SEPA MDNS.

21 The City issued its SEPA MDNS on July 7, 2023. The MDNS was the product of nearly
22 two years of reviewing plans, reports and comments. In response to concerns over the project's
23 initial orientation to Interlaaken Drive, the City had earlier directed the Applicant to redesign the
24 plan so that it had access from 112th Street. In response to public concerns over impacts to
25 significant trees and local wildlife, the City had required the Applicant to update its Tree Plan,

1 and then provide a Biological Assessment, and then impose a Significant Tree Easement. After
2 considering all the plans and reports, agency and public comment, and the Tree Plan and
3 Biological Assessment, the City concluded that the project would not have a significant
4 environmental impact provided that it was properly mitigated through the 6 conditions imposed
5 by the MDNS together with the protections provided by the City's land use and environmental
6 regulations. Most notably, the 6 conditions attached to the MDNS require the imposition of the
7 Significant Tree Easement along with other tree protection provisions.

8 Mr. Rodriguez's testimony concluded the presentation of testimony with respect to the
9 appeal of the MDNS.

10 PRELIMINARY PLAT TESTIMONY

11 At the conclusion of all testimony relating to the appeal, the public hearing for the
12 Preliminary Plat application commenced. One additional written public comment was
13 recognized (Exhibit D-27) followed by the continued testimony of Ramon Rodriguez, Associate
14 Planner. Mr. Rodriguez relied primarily upon his Staff Report and the extensive amount of
15 information it contains but also provided a general overview of the project. The site contains
16 2.43 acres and an existing house. It is proposed to be subdivided into eleven single-family lots
17 varying in size from 7,500 to 9,431 square feet. The project site is located at 8002 112th Street
18 but has frontage along both 112th as well as Interlaaken Drive. The site is generally flat except
19 in the northwest corner. It will be provided access through a road entering off of 112th and
20 terminating at a cul-de-sac. The project had originally been designed to have access off of
21 Interlaaken Drive but had been redesigned so that its access was off a less busy street. The Tree
22 Protection Plan prepared by WFCI has identified 84 healthy trees onsite. 57 of these healthy
23 trees will be removed but 27 healthy significant trees will be retained in a Tree Easement
24 including 5 Garry Oaks. All retained trees will be carefully protected during construction with
25 any pruning done by certified arborists.

1 The neighborhood contains single-family residences in all directions. It has a zoning
2 designation of R3 and is intended primarily for residential use with single-family dwellings. The
3 proposed Preliminary Plat is consistent with the zoning designation's intended use and satisfies
4 all minimum and maximum density requirements for this zone.

5 The project would normally require street improvements along both 112th Street and
6 Interlaaken Drive but the City has identified both streets for public improvement during
7 2024/2025. The City is therefore not requiring the developer to undertake improvements on
8 either street but will instead receive a fee in-lieu of the Applicant constructing these frontage
9 improvements. The internal street will be required to be improved with curbs, gutters, sidewalks
10 and a landscape strip including one street tree every 30 feet. The new internal street will be
11 privately owned.

12 Mr. Rodriguez again confirmed that the City has recently enacted a new Tree Protection
13 Ordinance providing greater protection to Garry Oaks. This ordinance does not apply to the
14 current project as it vested to the City's previous Tree Protection Ordinance. Nonetheless, the
15 City has demanded a Tree Protection Easement for the perimeter of the project as set forth in the
16 Tree Protection Easement (Exhibit C-6) and as visually demonstrated in Appendix III to the
17 updated Tree Evaluation and Protection Plan (Exhibit C-5). As noted earlier, any trees needing
18 to be removed from the Tree Protection Easement must be replaced at a 2-to-1 ratio of tree
19 density. Thus, the proposed removal of healthy trees on Lot 1 will require its replacement with 7
20 new trees within the tree easement on that same lot.

21 At the conclusion of Mr. Rodriguez's testimony, the Hearing Examiner questioned him
22 regarding the vegetative buffer provided by the Tree Protection Easement. With the assistance
23 of another staff member, Jessica Olson, Mr. Rodriguez explained that the project will not have a
24 dense vegetative buffer, especially as the City's proposed street improvements along 112th and
25 Interlaaken Drive will remove a considerable number of fir trees within the public right-of-way,

1 thereby reducing the existing vegetative screen. Street improvements will include new street
2 trees but these trees will not offer much vegetative buffer.

3 Following the City's presentation, Marc Pudists, Civil Engineer, testified on behalf of the
4 Applicant. Mr. Pudists confirmed that the retained trees within the Tree Protection Easement
5 will not provide a vegetative screen as they are mature trees with few low branches.
6 Nonetheless, Mr. Pudists indicated that the Applicant would be willing to consider a more robust
7 landscaping plan along the perimeter of the project in order to improve its aesthetics and enhance
8 its benefits to wildlife. Mr. Pudists wanted to make clear that the Applicant was not proposing
9 to widen the tree protection buffer but rather increase the landscaping within it. The Hearing
10 Examiner questioned Mr. Pudists as to whether it would be possible to protect an even greater
11 number of trees outside of the buffer area and within the area proposed for development. Mr.
12 Pudists responded that it would be difficult to retain any additional trees not found in the Tree
13 Protection Easement as they would interfere with development and prevent the project from
14 achieving the required density imposed by City Development Regulations.

15 Mr. Pudists also spoke briefly as to stormwater management and confirmed that all runoff
16 will be infiltrated included that coming from road surfaces, while roof runoff will be directed to
17 trenches. All of the stormwater management will require additional onsite area for its
18 management which further prevents the retention of internal trees.

19 Following the presentation by the Applicant, the hearing was opened to public testimony.

20 **Jan Gee.** Jan Gee is President of the Interlaaken Condo Association. The Association
21 consists of 20 condo units across the street on 112th Street SW. Speaking on behalf of the
22 Association, Ms. Gee is concerned over the project's reorientation to 112th and would prefer that
23 its access be returned to Interlaaken Drive. She worries that the project will increase traffic
24 along 112th and pose a risk to the condo owners, most of whom are older. At a minimum, she
25 hopes that the City might consider speedbumps along 112th to ensure that all traffic moves

1 slowly. Ms. Gee was also concerned by the disclosure that the City's intended street
2 improvements along 112th will remove a significant number of fir trees on both sides of the
3 street, including those in front of the condo units.

4 **Douglas Wallace.** Douglas Wallace resides at 11410 Interlaaken Drive. His property
5 adjoins the project site. Mr. Wallace has previously provided written comments in opposition to
6 the project and his testimony was intended to supplement those earlier written comments. Mr.
7 Wallace remains opposed to the project due to its removal of a significant number of healthy
8 trees including a large number of Garry Oaks. He also believes that some of the oaks described
9 in the Tree Plans as "unhealthy" are actually healthier than stated. He is disappointed by the
10 Biological Assessment and what appears to be a limited understanding of the site's biology. He
11 is also concerned that future street improvements planned by the City will require cutting into the
12 hillside and endanger the trees retained in the tree easement. Mr. Wallace acknowledged that he
13 was in disagreement with Ms. Gee and the Condo Association with respect to whether the project
14 should have access off of Interlaaken Drive or 112th. He had earlier advocated that the project
15 be reoriented to 112th due to the many dangers associated with access off of Interlaaken and its
16 busier traffic.

17 **James Dunlap.** James Dunlap acknowledged that he does not live in the area but asked
18 that the Hearing Examiner consider this project within the context of the larger habitat in which
19 it is located and to remember that 150-year-old oak trees simply cannot be replaced.

20 **Kurt Reidinger.** Kurt Reidinger also acknowledged that he is not a resident of the area
21 but worries about the environmental impacts of projects such as this which remove wildlife
22 protection on a piecemeal basis. He would encourage a more robust Biological Assessment and
23 enhanced tree protection/mitigation in order to provide much needed protection for the area's
24 wildlife, especially its threatened species.

1 **Christina Manetti.** Christina Manetti, President of The Garry Oak Coalition, reiterated
2 her written concerns that the Tree Protection Plan and Biological Assessment prepared by WFCI
3 lack the expertise needed to properly examine the site and determine the environmental impacts
4 of this project. Simply examining and counting the trees without considering their
5 environmental role is simply not enough. Land use regulations which allow large-scale
6 deforestation are antiquated and greatly in need of change. It is impossible to mitigate the loss of
7 large, old trees. Every Garry Oak proposed to be removed from this project would require at
8 least 100 years for its replacement. The City must increase its efforts to save oaks and other
9 important trees and, when it fails to do so, it is losing its sense of place despite its declaration
10 that the Garry Oak is the City's Official Tree. Big oaks must be saved as they are critical to the
11 area's biology and their importance is not recognized. If the project is to be approved, it should
12 be conditioned on retaining as many Garry Oaks and other mature trees as possible.

13 At the conclusion of all public testimony the City provided brief response and
14 acknowledged that it would prefer to impose even greater tree protection as is now provided by
15 the City's new tree protection regulations, but reiterated that this project vests to the City's earlier
16 regulations and their lesser protection. Nonetheless, the City has imposed much greater tree
17 protection than is required by its regulations in order to protect as many oaks and other mature
18 trees as possible within the proposed Tree Protection Easement along the site's perimeter.
19 Unfortunately, any attempts to retain additional trees in the site's interior would interfere with
20 required land use density mandated by its R3 zoning designation as Mr. Pudists had earlier
21 explained.

22 At the conclusion of all testimony the Hearing Examiner established a post-hearing
23 briefing schedule and also directed the Applicant to present a revised Landscape Plan consistent
24 with Mr. Pudists' testimony.
25

1 **POST-HEARING BRIEFING AND OTHER DOCUMENTS**

2 As directed, the Applicant presented a revised Landscape Plan (Exhibit J) proposing the
3 planting of 82 additional trees, 305 shrubs and 640 ground cover plants, all within the 20-foot-
4 wide Tree Preservation Easement. The enhanced Landscape Plan will provide both added
5 vegetative screening as well as enhanced native brush and groundcover for wildlife.

6 On September 1, 2023, Appellant submitted its initial hearing brief along with various
7 research articles, Fish & Wildlife regulations, photos, biological assessments from other land
8 use projects and proposed additional public testimony. The City provided its Response Brief on
9 September 8 (the Applicant did not provide a Response Brief) and the Appellant submitted its
10 Reply Brief on September 14. With receipt of the Appellant's Reply Brief the hearing was
11 concluded.

12 Caution must be exercised when attempting to briefly summarize the Appellant's
13 arguments as they span 45 pages of post-hearing briefing. With this in mind, and in a slightly
14 different order than as presented, Appellant's legal arguments might be summarized as follows:

15 1. The City has misinterpreted its own Critical Areas Regulations, Chapter 14.165
16 LMC. More particularly:

17 (a) LMC 14.154.020.B.1.b.ii.A recognizes that a "Priority Oregon White Oak
18 Woodland" is a "Habitat of Local Importance" and therefore entitled to enhanced
19 protection as a "Critical Wildlife Habitat Area". The City has interpreted this definition
20 as requiring forested areas of one acre or more *within the project site*. The Appellant
21 argues that this definition should not be so limited, and that the forested area should
22 qualify as a Priority Oregon White Oak Woodland if it is part of a larger forested area
23 *including offsite, nearby forested areas*, which collectively are greater than one acre.

24 While the project site is deemed to have a forested area of only .4 acre, there is another
25 1.4-acre forested area *on the opposite side of Interlaaken Drive* which, if added to the

1 project's forested area, would result in a total forested area of 1.8 acres, or well in excess
2 of the one acre required under LMC 14.165.010.

3 (b) The City has again misinterpreted its own ordinance LMC 14.165.010 in
4 its requirement that oak canopy coverage must be at least 25% of the forested area.²
5 Appellant argues that the City has misinterpreted this requirement by counting the
6 number of oak *trees* relative to all other trees in the forested area, but should instead be
7 measuring the oaks' percentage of canopy coverage relative to the coverage provided by
8 all other trees. [Note, this argument is important only if the Appellant's first argument
9 ("one acre or larger") is accepted.]

10 (c) Even if the oak grove onsite is not greater than one acre, the site
11 nonetheless achieves the status of "Priority Oregon White Oak Woodland" per LMC
12 14.165.010 in that it is "particularly valuable to fish and wildlife; contains cavities, has
13 large diameter trees used by priority species or has a large canopy".³ The City has erred
14 in failing to recognize this status.

15 (d) Even if the project site does not qualify as a "Priority Oregon White Oak
16 Woodland", it is nonetheless a "Critical Wildlife Habitat Area" for the reason that it is a
17 "Habitat of Local Importance" on the basis that it is a "snag-rich area" per LMC
18 14.154.020.B.1.b.ii.f. It is well documented that the site has a number of dead trees and
19 is therefore a "snag-rich area" entitled to enhanced protection.

20 2. Even if the project site is not a "Critical Wildlife Habitat Area", it is clearly within
21 an area of rich habitat and diverse wildlife. The City has not demanded enough information from
22 the Applicant to make an informed SEPA decision as to whether the project will have a
23

24 ² "Priority Oregon White Oak Woodland" means forested areas of pure oak, or of oak/conifer associations one acre
25 or larger, and all oak trees located within, or oak canopy coverage of the area is at least 25% . . ."

³ "Stands of oak less than one acre in size may also be considered priority habitat when found to be particularly
valuable to fish and wildlife (i.e., they contain many cavities, have a large diameter breast height (DBH), are used by
priority species, or have a large canopy." LMC 14.165.010.

1 significant adverse environmental impact to the project site and its surrounding area and wildlife.
2 In particular, the Biological Assessment submitted by the Applicant lacks any meaningful
3 analysis of the ecology of the site and its surroundings. The MDNS should be returned to require
4 the Applicant to undertake a more substantive investigation into the habitat and wildlife of the
5 project area.

6 3. The Appellant makes two additional arguments: (a) that the City failed to
7 undertake a "cumulative impact analysis" as part of its SEPA Determination, and (b) the City
8 failed to impose "mitigation sequencing" to minimize environmental impacts. Unfortunately, the
9 Appellant is using each of these terms inartfully and outside of their proper context. Except in
10 highly unusual circumstances, the concept of "cumulative impact analysis" does not apply to the
11 review of an MDNS and the Appellant has offered no explanation as to why it would apply here.
12 Similarly, the concept of "mitigation sequencing" applies where a land use is known to impact a
13 recognized critical area, resulting in an analysis as to how to minimize that impact. For there to
14 be "mitigation sequencing" there must first be a recognized critical area. Unless a critical area
15 has been clearly identified, mitigation sequencing does not apply.

16 It may be worth adding that Appellant utilizes a number of other important, well-
17 recognized land use concepts in its briefing ("no net loss", "best available science", etc.) but they
18 tend to be used outside of their proper context.

19 In its response, the City begins by pointing out that review of the SEPA Determination is
20 reviewed under the "clearly erroneous" standard. To be clearly erroneous, the Hearing Examiner
21 must be "left with the definite and firm conviction that a mistake has been committed". The City
22 also notes that it is the Appellant's burden of proof to demonstrate that the MDNS was clearly
23 erroneous. The Hearing Examiner is not to substitute his judgment for that of the City's, and the
24 City's decision to issue a MDNS is to be accorded substantial weight. The City further reminds
25 the Hearing Examiner that a MDNS does not mean that the proposal will not have probable,

1 significant adverse affects but simply that these impacts will be reduced to acceptable levels.

2 With these fundamental concepts in mind, the City responds to the Appellant's issues:

3 1.a In order for the site to contain a "Priority Oregon White Oak Woodland" the site
4 must have at least one acre of oak woodland. Oaks on other nearby properties do not count
5 toward the one-acre requirement. The City is entitled to deference in the interpretation of its
6 own regulations.

7 1.b As the project site does not have a forested area "one acre or larger" it is
8 unimportant whether its oak canopy coverage is at least 25% of the forested area. Nonetheless,
9 and similar to its argument above, the City is entitled to deference in the interpretation of its own
10 regulations.

11 1.c The investigation undertaken by WFCI establishes that the project site is not
12 otherwise defined as a "Priority Oregon White Oak Woodland" as it has not been demonstrated
13 to be particularly valuable to fish and wildlife, does not contain cavities, does not have large
14 diameter trees used by priority species, and does not have a large canopy. It is the Appellant's
15 burden to prove otherwise and the Appellant has failed to do so.

16 1.d The project site does not constitute a "Critical Wildlife Habitat Area" on the basis
17 of being a "Habitat of Local Importance" due to it being a "snag-rich area". The mere fact that
18 there are dead trees onsite does not make it a snag-rich area. The Biological Assessment has not
19 found it to be a snag-rich area, City Staff agrees, and the Appellant has not met its burden of
20 proving otherwise. In particular, the Appellant has not demonstrated that the dead trees on the
21 project site have "outstanding potential" as a habitat area. Indeed, the Appellant did not present
22 any testimony in support of its claim.

23 2. The MDNS is the end product of two years of project review. In particular, and
24 with respect to the project's trees and wildlife, the City required an initial Tree Evaluation Plan;
25 an updated Tree Evaluation Plan; a Biological Assessment and a proposed Significant Tree

1 Easement in order to make an informed decision as to whether the project had a significant
2 adverse environmental impact. Based upon all of the information it received, the City correctly
3 determined that the project's impacts could be appropriately mitigated through the conditions
4 imposed through the MDNS. The Appellant has not met its burden of proving that this decision
5 was clearly erroneous.

6 3. The Appellant has not otherwise demonstrated that the MDNS was issued in
7 error.

8 ANALYSIS OF THE SEPA ISSUES

9 1.a Has the City misinterpreted its own Critical Areas Regulations by failing to
10 consider nearby Oregon White Oak stands when determining whether the Oregon White Oaks on
11 the project site are a "forested area one acre or larger"?

12 It is undisputed that the Oregon White Oaks found on the project site cover less than one
13 acre, being limited to .4 acres in area. It is also undisputed that the Biological Assessment by
14 WFCI identified areas of nearby oak groves, including one on the opposite side of Interlaaken
15 Drive containing up to 1.4 acres. The issue, then, is whether this offsite oak grove should be
16 considered when determining whether there is a "forested area one acre or larger". The City has
17 determined that it should not and that the required forested area must be contained within the
18 project site. The Appellant argues that this restriction is not found in the definition and that a
19 more expansive definition should be applied. I concur with the City's interpretation of its own
20 regulation for several reasons:

21 1. The City's interpretation is entitled to deference. While this does not mean that
22 the City's interpretation should be followed without question, it does mean that the City's
23 definition is entitled to deference so long as it is a reasonable one. The City's interpretation is
24 reasonable.

1 2. The Appellant's definition of a "forest area one acre or larger" creates an
2 unworkable standard. The Appellant offers no explanation as to how far away other oak stands
3 might be in order to be considered part of a single forested area, or what physical barriers might
4 be sufficient to prevent it from being considered common forest. These problems become
5 obvious when applied to this project as the oak groves the Appellant's would like to add do not
6 even adjoin the project and are instead separated by a major public street. The Appellant's
7 definition is not compelling while the City's definition of its own regulation is not clearly
8 erroneous.

9 1.b Has the City misinterpreted its Ordinance LMC 14.165.010 by requiring the oak
10 canopy coverage to be at least 25% of the forested area?

11 If the oak forested area on the project site was more than one acre it would then be
12 important to determine whether the oak canopy coverage was at least 25% of the forested area,
13 but as the Hearing Examiner has concluded that the project site does not have forested area of
14 one acre or larger this issue becomes moot. Nonetheless, and for the benefit of a full record, the
15 Hearing Examiner would again conclude that the City is entitled to deference in the
16 interpretation of its own regulations and that its interpretation of the "25% canopy coverage"
17 requirement is a reasonable one. The Appellant has not met its burden of proving that the City's
18 interpretation is clearly erroneous.

19 1.c If the forested area onsite is less than one acre, does the site's oak grove still
20 constitute a "Priority Oregon White Oak Woodland" such that it is a "Habitat of Local
21 Importance" entitled to enhanced protection as a "Critical Wildlife Habitat Area" per LMC
22 15.154.020.B.1.b.ii.a?

23 An oak grove is more likely to be recognized as a "Priority Oregon White Oak
24 Woodland" if it covers more than one acre. But oak groves less than one acre in size may still
25 qualify as a "Priority Oregon White Oak Woodland" if they meet the City's alternate definition as

1 an area "particularly valuable to fish and wildlife (i.e., they contain many cavities, have a large
2 diameter breast height (DBH), are used by priority species, or have a large canopy)." LMC
3 14.165.010. Appellant asserts that the oak grove on the project site meets this definition but
4 offers no evidence in support of this position except its own opinions that the site's trees so
5 qualify. Appellant has not presented any expert testimony but instead challenges the Applicant's
6 experts as being ill equipped to render their opinions. This type of challenge does not satisfy the
7 Appellant's burden of proving that the City wrongfully relied upon this expert testimony when
8 issuing its MDNS. Stated somewhat differently, the Appellant must do more than merely attempt
9 to poke holes at the Applicant's witnesses' findings. It must present evidence clearly
10 contradicting the conclusions of the Applicant's experts. The Appellant has not done this.

11 1.d Even if the project site does not constitute a "Priority Oregon White Oak
12 Woodland" should it still be considered a "Habitat of Local Importance" entitled to enhanced
13 protection as a "Critical Wildlife Habitat Area" on the basis that it is a "snag-rich area" per LMC
14 14.154.020.B.1.b.ii.f?

15 Even if the project site does not qualify as a "Priority Oregon White Oak Woodland",
16 City regulations still protect it as "Habitat of Local Importance" entitled to protection as "Critical
17 Wildlife Habitat Area" if it is demonstrated to be a "snag-rich area". LMC 14.154.020.B.1.b.ii.f.
18 Appellant asserts that "without question" the project site is an unusually snag-rich area. It cites
19 to the Applicant's Tree Evaluation and Protection Plan which identifies more than two dozen
20 dead trees on the project site. Appellant notes that the City does not have a definition for "snag-
21 rich area" but that Pierce County defines this term as "areas with abundant, well distributed snags
22 and logs are also considered priority snag and log habitat." Appellant argues that while this
23 definition has not been adopted by the City it is a reasonable one and, if applied to the project
24 site, would qualify the site as a snag-rich area entitled to enhanced protection as Critical Wildlife
25 Habitat Area.

1 The City respectfully disagrees. It first notes that the Applicant's experts examined the
2 site (on at least three occasions) and, despite observing a number of dead trees, did not believe
3 the area to be a "snag-rich area". Planning staff were aware of the Tree Plan and its findings of a
4 number of dead trees and similarly concluded that the mere presence of dead trees did not
5 establish it as a snag-rich area. The City concludes its response by noting that it is not enough to
6 simply demonstrate that the area is "snag-rich". Rather, the City's regulation further requires that
7 the habitat be found to have "outstanding" potential habitat areas for fish and wildlife. Appellant
8 has not submitted any testimony that would demonstrate the project site - even if it is "snag-rich"
9 - to be considered "outstanding wildlife habitat" as a result of those snags. I concur.

10 2. Has the City relief upon inadequate information for the issuance of its MDNS,
11 and should it be required to undertake a fuller environmental analysis?

12 Appellant is clearly dismayed by the Tree Evaluation Plan and, more importantly, the
13 Biological Assessment presented by the Applicant's experts at WFCI. Appellant believes that
14 WFCI undertook no more work than the absolute minimum; was predisposed toward not finding
15 any habitat issues; demonstrated little awareness or interest in the area's many threatened species
16 and their necessary habitat; and spent the absolute minimum amount of time undertaking their
17 Biological Assessment. As these reports were critical to the City's decision to issue a MDNS,
18 Appellant asks that the SEPA Determination be returned; that a more robust habitat investigation
19 be undertaken; and that the City *then* determine whether an MDNS is appropriate. The City
20 responds by noting that the SEPA MDNS was the end product of a two-year examination of this
21 project, that it is supported by numerous studies, including two Tree Evaluations, a Biological
22 Assessment and a Tree Easement Plan. It is further supported by the State's many environmental
23 protections intended to supplement SEPA and avoid the need to rely on SEPA to adequately
24 condition a project to ensure environmental protection. I conclude that the City's SEPA review
25 was not inadequate; that it had sufficient information upon which to issue an informed

1 determination; and that the circumstances do not justify directing that the MDNS be returned for
2 greater investigation. While the Appellant would like to see more robust environmental inquiry,
3 the information the City gathered in preparation for its SEPA Determination was adequate to
4 make an informed decision and that MDNS satisfies the requirements and purposes of SEPA.

5 To summarize, I conclude that the Appellant has not met its burden of proving that the
6 MDNS was based upon incorrect interpretations of City regulations; or the product of inadequate
7 information upon which to make an informed decision; or a failure to carry out the purposes and
8 intent of SEPA. I further conclude that the Appellant's arguments regarding cumulative impacts
9 is misplaced and does not apply to this MDNS review, and that the Appellant's remaining
10 arguments regarding mitigation sequencing are also misplaced and have no application.

11 **ANALYSIS REGARDING THE PRELIMINARY PLAT APPLICATION**

12 Apart from the same habitat and wildlife issues that have driven the appeal of the SEPA
13 MDNS, the Preliminary Plat application is relatively straightforward. It complies with its zoning
14 designation, is compatible with surrounding land uses, satisfies all land use regulations including
15 density and other requirements, and is consistent with its land use designation in the
16 Comprehensive Plan as well as the goals and policies of the plan itself. It makes adequate
17 provision for traffic, roads, utilities and other essential services. While not everyone agrees with
18 it having access off of 112th Street, this is demonstrated to be a better choice than the original
19 access proposed off of Interlaaken.

20 But having decided that the Appellant's SEPA appeal is not well founded is not the same
21 as deciding that this project does not have environmental concerns, and declaring that the SEPA
22 MDNS is adequate is not the same as saying that the project could not be further conditioned to
23 ensure that it does not cause unnecessary harm to the area's ecology. The purpose of review by
24 the Hearing Examiner is to allow for a fuller consideration of all such issues. It is also the reason
25 why the Hearing Examiner has pressed the Applicant for more robust landscaping to not only

1 provide a vegetative screen but, more importantly, to maintain as much native vegetation as
2 practicable.

3 It has been repeatedly noted that the City's new tree protections would impose much
4 greater restriction on the use of this property due to its existing stand of trees, especially its Garry
5 Oaks. The Hearing Examiner has been encouraged to use his allowed discretion to, in effect,
6 apply these new standards in the form of additional conditions of project approval. I respectfully
7 decline to do so. The Applicant is lawfully entitled to have this application reviewed according
8 to the regulations in effect at the time its application was deemed complete. To do otherwise
9 would result in decision making that is arbitrary and capricious and based on personal
10 preferences rather than clear standards.

11 I am satisfied that the Amended Landscaping Plan is an appropriate response to the need
12 for greater vegetative cover. I would prefer to see even more landscaping/retained trees but
13 realize that this desire is in conflict with the legal requirement that the project attain a certain
14 minimum density: It simply cannot provide for the minimum number of required residences
15 according to its zoning and also increase internal trees/landscaping as there is not sufficient room
16 for both. In summary, I am satisfied that the Applicant's revised Landscaping Plan is the best
17 option available and should be approved, and the Preliminary Plat should be approved subject to
18 the other conditions proposed by City Staff.

19 I therefore make the following:

20 **FINDINGS OF FACT**

21 **Findings Relating to the SEPA Appeal.**

22 1. Any Findings of Fact contained in the foregoing Background, Public Hearing, or
23 Analysis Sections are incorporated herein by reference and adopted by the Hearing Examiner as
24 his Findings of Fact.
25

1 2. Appellant seeks Preliminary Plat approval to subdivide 2.43 acres at the
2 intersection of 112th Street SW and Interlaaken Drive SW into eleven single-family residential
3 lots.

4 3. Review of the Applicant's Preliminary Plat application commenced in late 2021
5 and continued through 2022. In October 2022, City Staff deemed the application complete,
6 allowing the application to vest to then City Development Regulations.

7 4. In 2022, the Applicant provided a Tree Evaluation and Protection Plan prepared
8 by its forestry and habitat experts, Washington Forestry Consultants, Inc. (WFCI). At the
9 request of the City, this Tree Evaluation Plan was updated April 11, 2023 and, at the request of
10 the City, was supplemented with a Biological Assessment dated April 25, 2023. The City also
11 requested a Significant Tree Easement Plan which was prepared by WFCI on April 11, 2023.

12 5. The revised Tree Evaluation and Protection Plan, as well as the Biological
13 Assessment, conclude that the project site is exempt from tree protection requirements under the
14 City's tree protections in effect at the time the project vested. City Staff concurs.

15 6. The Tree Evaluation and Protection Plan and the Biological Assessment find that
16 there is less than one acre of oak grove forested area on the project site.

17 7. The Tree Evaluation and Protection Plan and Biological Assessment further
18 conclude that the project site does not meet the definition of a "Priority Oregon White Oak
19 Woodland". City Staff again concurs.

20 8. WFCI notes that the project site has more than two dozen dead trees but does not
21 regard the site as a "snag-rich area". City Staff again concurs.

22 9. Although City Staff agrees that the project site is exempt from the City's tree
23 protections in effect at the time the project vested, it believes that greater tree protection is
24 necessary and has required the Applicant to prepare a Significant Tree Easement in order to
25 safeguard as many significant trees along the perimeter of the site as practicable.

1 10. During project review, City Staff received habitat, traffic, engineering and various
2 other reports and studies from the Applicant in support of the Preliminary Plat, received
3 comment from public agencies, and sought public input. As the project advanced, Staff
4 recommended changes to the plat design consistent with comments received from agencies and
5 the public and also sought further habitat studies in the form of an updated Tree Evaluation Plan,
6 Biological Assessment, and a proposed Significant Tree Easement.

7 11. The City, as lead agency, issued its SEPA Mitigated Determination of Non-
8 Significance (MDNS) in July 2023. In preparing its SEPA Determination, the City identified the
9 project's possible impacts to the earth, air, water, plants, animals, energy, and nature resources;
10 environmental health, noise; land use; housing, aesthetics; light and glare; recreation, historical
11 and cultural preservation and transportation.

12 12. In rendering its SEPA Determination City Staff took into consideration the City's
13 existing regulations and adopted plans, including the City's Tree Protection Regulations and its
14 Critical Areas Code.

15 13. City Staff also took into consideration the findings of the Tree Evaluation and
16 Protection Plan as well as the Biological Assessment prepared by WFCI.

17 14. After taking all of this information into consideration, City Staff concluded that
18 "the requirements for environmental analysis, protection and mitigation measures will be
19 adequately addressed by the City's Development Regulations and other applicable local, State or
20 federal laws or rules as provided by RCW 43.21C.240 and WAC 197-11-158". Having
21 concluded this, Staff issued its MDNS which, among other things, imposes a condition that the
22 Significant Tree Easement be imposed along with other tree protections.

23 15. The City's SEPA review was consistent with its policies and procedures. More
24 specifically: City Staff carefully reviewed the Environmental Checklist; identified specific
25 adverse impacts; determined whether the impacts have been identified in existing law;

1 determined whether the impacts had been adequately addressed in those laws by either avoiding
2 or mitigating the impacts or by a legislative acceptance of the impacts associated with certain
3 levels of service; conditioned approval of the project on compliance with the requirements for
4 mitigation measures in the law; and placed the required SEPA Statement in the Threshold
5 Determination.

6 Findings Relating to the Preliminary Plat Application.

7 General Description.

8 16. The Applicant seeks Preliminary Plat approval to subdivide 2.43 acres into eleven
9 single-family residential lots with an associated private road, frontage improvements, stormwater
10 facilities, landscaping, and perimeter tree easement. The configuration of the proposed
11 subdivision, including landscape and tree buffer, is demonstrated on Exhibit J (recent new
12 landscape map).

13 17. The project site is bounded on the north by Interlaaken Drive and, further north,
14 single-family residential neighborhoods. The project site is bounded on the west by 112th Street
15 and, further west, single-family residences and condominiums. The property is bounded on the
16 east and south by single-family residential neighborhoods.

17 18. The project site currently contains a single-family residence which is proposed to
18 be demolished.

19 19. The project site has a zoning designation of Residential 3 (R3). The properties
20 abutting and near the site have a similar zoning designation.

21 20. The property has a designation of Single-Family Residential in the
22 Comprehensive Plan. Surrounding properties have a similar designation in the Comprehensive
23 Plan.

24 21. The site does not have any identified wetlands or other critical areas. It does,
25 however, contain more than 80 "significant trees". The species, condition and location of these

1 trees are more fully described in the updated Tree Evaluation Protection Plan dated April 11,
2 2023, and the map identified as Appendix III to the Plan.

3 22. On October 7, 2022, the City issued a Notice of Complete Application
4 (Exhibit D-2). City Staff has reviewed the plat application according to the land use regulations
5 in effect on October 7, 2022, when the application was deemed complete.

6 23. On October 17, 2022, a Notice of Application was published in the News Tribune,
7 posted on site and posted on the City's website. The City received comment letters from the
8 Department of Ecology, local agencies and other City Departments. The City also received ten
9 public comments expressing concerns over the project's orientation to Interlaaken Drive and
10 concerns over the project's environmental impact especially to the Site's Garry Oaks as well as to
11 regional wildlife.

12 24. On July 17, 2023, the City issued a SEPA Mitigated Determination of Non-
13 Significance (MDNS) containing six conditions of approval (Exhibit D-4). The MDNS
14 generated additional public comment, again expressing concern over the project's environmental
15 impacts. The SEPA MDNS was timely appealed by the Appellant, Garry Oak Coalition.

16 25. On July 21, 2023, a Notice of Public Hearing was published in the News Tribune,
17 mailed to property owners within 300 feet and posted on the City's website.

18 Consistency with the City's Comprehensive Plan.

19 26. The Staff Report, at page 3, contains Findings relating to the project's consistency
20 with the City of Lakewood Comprehensive Plan. As earlier noted, the project site has a
21 designation of Single-Family Residential in the Comprehensive Plan. In accordance with this
22 land use designation City Staff finds that the project, as conditioned, is consistent with Goal
23 LU-1 and Policy LU-1.2; Goal LU-2 and Policy LU-2.5; Goal LU-4 and Policy LU-4.2, LU-4.21
24 and LU-4.22, as well as Policy LU-63.2; Goal T-4 and Policy T-4.1 and T-4.6; Goal U-3 and
25 Policy U-3.1; and Policy U-8.4. The Hearing Examiner concurs.

1 Findings Relating to Public and Agency Comments.

2 27. As earlier noted, on October 17, 2022, a Notice of Application was published.
3 The notice generated comments from State and local agencies, other City Departments, and also
4 received ten public comment letters. Additional comments were received in response to the
5 SEPA MDNS as well as the Notice of the Public Hearing before the Hearing Examiner. Public
6 comment expresses concern over the loss of trees on the site, especially the Oregon White Oaks;
7 impacts to regional wildlife especially threatened species, concerns over the project's orientation
8 to Interlaaken Drive; the lack of nearby parks and elementary schools, and concerns over
9 increased traffic and stormwater.

10 28. In response to these public concerns, Staff requested the Applicant to reorient the
11 project so that its access is off 112th Street instead of Interlaaken Drive.

12 29. In further response to public comment, City Staff required the Applicant to update
13 its Tree Evaluation and Protection Plan (Exhibit C-5). Staff then required the Applicant to
14 submit a Biological Assessment (Exhibit C-4), and present a Tree Protection Easement Plan
15 (Exhibit C-6).

16 Tree Protection.

17 30. As just noted, City Staff has required the Applicant to submit an updated Tree
18 Evaluation Protection Plans; Biological Assessment, and Tree Easement Plan. Collectively these
19 documents identify 84 healthy "significant" trees onsite including 11 Oregon White Oaks. The
20 site also contains 43 unhealthy or dead trees, including 10 Oregon White Oaks. These documents
21 identify an additional 23 significant trees located on the public right-of-way surrounding the
22 project site. City Staff indicates that these trees are likely to be removed as part of the City's
23 planned street improvements along 112th Street and Interlaaken Drive.

24 31. The Applicant has proposed a Tree Protection Plan which will impose a 20-foot
25 significant tree preservation easement along the perimeter of the project site. The Tree Easement

1 will preserve 27 healthy significant trees as demonstrated on Appendix III to the Tree Easement
2 Plan including 5 Oregon White Oaks (Exhibit C-5).

3 32. The Applicant seeks to remove a significant tree within the Tree Easement on
4 Lot 1. This tree is identified as an 11-inch DBH Douglas Fir in fair condition and as explained
5 more fully in Exhibit C-6. City Staff requires that in order for this tree to be removed it must be
6 replaced at a ration of 2-to-1 of the total diameter inches of all replacement trees to the diameter
7 inches of the tree being removed. Thus, its removal will require replacement by seven trees no
8 smaller than 3-inches DBH to be planted within the easement on Lot 1.

9 33. The authors of the updated Tree Protection Plan, Biological Assessment and Tree
10 Easement Plan Washington Forestry Consultants, Inc. ("WFCI"), find that the project site is
11 exempt from requirements for tree preservation for the reasons more fully described in the
12 Background and Public Hearing Sections. City Staff concurs.

13 34. Although City Staff finds that the project is exempt from tree preservation
14 requirements, it concurs with public comments regarding the need to preserve as many trees
15 onsite as possible while still achieving minimum density requirements imposed by its R3 zoning
16 designation. For this reason City Staff has required the Applicant to develop the Tree Easement
17 Plan discussed above so that as many significant perimeter trees can be retained as possible. In
18 return for this perimeter Tree Easement, the Applicant will be allowed to remove all other
19 existing trees.

20 35. It is not possible to preserve additional trees by either (a) increasing the width of
21 the Tree Easement, or (b) requiring specific internal trees to be saved, as neither possibility is
22 consistent with the project's need to achieve minimum density requirements imposed by the site's
23 R3 zoning and, further, would interfere with required stormwater management.

24 36. The Applicant has also agreed to provide a more robust landscaping plan within
25 the 20-foot perimeter Tree Easement, described more fully below.

1 Findings Relating to Roadways and Other Public Improvements.

2 37. The project site adjoins both Interlaaken Drive and 112th Street. The project
3 would normally be required to make improvements to both streets but both are scheduled for
4 public improvements during 2024/2025 as part of the City's Transportation Improvement Plan.
5 In light of these intended public improvements, the Applicant is not being required to make street
6 improvements but will instead pay a fee in-lieu of constructing frontage improvements along
7 both streets.

8 38. The project site will be accessed via a single entrance. The location of this
9 entrance is shown on several exhibits including Attachment III and Exhibit C-5. Lots will be
10 serviced by a single road terminating in a cul-de-sac. The road will be privately owned.

11 39. A sidewalk is required on both sides of the interior streets along with other street
12 improvements as identified on Engineering Plans.

13 40. Public sewer and water and other utilities are readily available in the
14 neighborhood.

15 41. All stormwater design shall be consistent with either the latest Stormwater
16 Management Manual for Western Washington or the Pierce County Stormwater Management
17 and Site Development Manual. All onsite stormwater runoff shall remain and infiltrate onsite.

18 42. The retention of stormwater onsite further impacts any consideration of retaining
19 internal trees.

20 Findings Relating to Compliance with Development Regulations.

21 43. The Preliminary Plat must comply with the site planning and general development
22 standards set forth in Chapter 18A.40 and 18A.60 LMC. The Staff Report, commencing at page
23 5, contains Findings relating to the project's compliance with these Development Regulations.
24 Staff finds:

1 (a) Proposed single-family uses are permitted outright in the site's R3 zoning
2 and the application is code compliant.

3 (b) The lots satisfy the minimum lot width per LMC 18A.60.090.A.4.

4 (c) All lots satisfy the minimum street frontage per LMC 18A.60.090.A.5.

5 (d) All lots satisfy the maximum length to width ratio per LMC
6 18A.60.090.A.6.

7 (e) All lots can or will meet all applicable bulk standards for the R3 zone.
8 Building coverage, impervious surface percentage, setbacks, height requirements, etc.
9 will be confirmed at the time of issuing building permits.

10 (f) The "vision triangle" requirements for all corner lots have been met per
11 LMC 18A.60.090.

12 (g) Sidewalks will be required on both sides of all interior streets consistent
13 with LMC 18A.60.130.B.

14 (h) Utilities shall be placed underground in accordance with LMC
15 18A.60.130.C.

16 (i) All proposed lots will access off the internal private street (Tract A)
17 consistent with LMC 18A.60.130.E.

18 (j) Street lighting shall be recorded in accordance with LMC 18A.60.130.F
19 with exact lighting location to be determined during site development review.

20 (k) All site development will be connected to a public primary infrastructure
21 system at the Applicant's expense pursuant to LMC 18A.60.140.A.

22 (l) The development shall be connected to the public water and sewer
23 systems pursuant to LMC 18A.60.140.B. All costs of connection shall be borne by the
24 Applicant.
25

1 Staff concludes that the project, as conditioned, is consistent with all City development
2 regulations as set forth in Chapter 18A.40 and 18A.60. The Hearing Examiner concurs and
3 adopts these as his own Findings of Fact.

4 Findings Relating to Compliance with Subdivision Criteria.

5 44. The Preliminary Plat must satisfy all requirements set forth in LMC 17.14.030 for
6 Preliminary Plat approval.

7 45. It must be demonstrated that appropriate provisions are made for the public
8 health, safety, and general welfare for open spaces, drainage ways, streets, alleys, other public
9 ways, transit stops, potable water supplies, sanitary waste, parks and recreation, playgrounds,
10 school and schoolgrounds, and all other relevant facts, including sidewalks and other planning
11 features that assure safe walking conditions for students to walk to and from school. The Staff
12 Report, commencing at page 8, contains Findings relating to each of these requirements.

13 46. The Staff finds that the project satisfies requirements for public health, safety and
14 general welfare by providing additional housing in an area served by existing public utilities and
15 infrastructure, with the public utilities readily available. The development is expected to be
16 easily incorporated into the City's transportation infrastructure as demonstrated by the
17 Applicant's Traffic Impact Analysis (Exhibit D-19). Anticipated additional traffic is not
18 expected to substantially impact either streets or regional traffic.

19 47. The Staff finds that the project, as conditioned, satisfies requirements for open
20 spaces, parks and recreation. The project is .2 miles from Idelwild Elementary School and .6
21 miles from Lakewold Gardens. The elementary school provides fields, playground equipment,
22 trails and recreational facilities while the Lakewold Gardens provides extensive gardens, walking
23 paths and educational opportunities.

24 48. Staff finds that the project, as conditioned, satisfies all requirements for drainage.
25 The developer will be required to obtain a Site Development Permit and undergo drainage

1 review. All drainage must satisfy the City's Engineering standards. All onsite stormwater runoff
2 shall remain and infiltrate onsite and shall receive water quality treatment pursuant to City
3 standards. All stormwater design shall be consistent with required standards as noted in earlier
4 Findings. All construction must comply with the City's impervious surface coverage standards.

5 49. Staff finds that the project complies with all requirements for streets, alleys, other
6 public ways and transit stops. As noted earlier, the project includes a private road access off of
7 112th Street SW. The road shall be built to local road standards. The road shall terminate in a
8 cul-de-sac again designed to City standards as well as in accordance with standards for
9 emergency vehicle turnaround. All private streets, easements, community utilities and property
10 shall be maintained by the owners of property served by them and kept in good repair with
11 conditions imposed to ensure that these standards are met. The closest Pierce Transit stop is .4
12 miles.

13 50. Staff finds that the project satisfies all requirements for schools and safe walking
14 routes. Clover Park High School is 1.6 miles east, Hudtloff Middle School is 3 miles north and
15 Idelwild Elementary School is .3 miles northwest. Existing bus routes will provide service to
16 Clover Park High School and Hudtloff Middle School with a nearby bus stop available for both
17 buses. Students attending Idelwild will need to walk or be driven. There is uninterrupted
18 sidewalk pedestrian access the length of this route. Staff concludes that adequate planning
19 features exist within the neighborhood to assure safe walking conditions.

20 51. There are presently no sidewalks adjacent to the property's frontage along 112th
21 Street SW or Interlaaken Drive SW but both streets are scheduled for public improvements in
22 2024/2025 including sidewalks. Public improvements to the adjoining streets shall also include
23 streetscape landscaping.

24 52. Staff therefore finds that the project, as conditioned, is consistent with all City
25 Development Regulations, the City of Lakewood Comprehensive Plan, provides sufficient

1 provisions for the public health, safety and general welfare, and otherwise satisfies all criteria set
2 forth in LMC 17.40.030. The Hearing Examiner has carefully reviewed Staff's Findings and
3 concurs.

4 Findings Relating to Landscaping.

5 53. As previously noted, the project would normally require frontage improvements
6 along 112th Street SW and Interlaaken Drive SW including a streetscape landscape strip. These
7 improvements are not required for the reason that both streets are scheduled for public
8 improvements during 2024/2025. The Applicant will therefore pay a fee i- lieu of constructing
9 frontage improvements along these streets.

10 54. Streetscape landscaping will be required along the internal private street as shown
11 on the site map, Attachment III to Exhibit C-5, and to include street trees 30 feet on center.

12 55. The Applicant proposed originally some additional landscaping within the
13 proposed Tree Protection Easement. As earlier noted, this easement consists of a 20-foot
14 perimeter buffer to retain 27 existing significant trees. Upon inquiry by the Hearing Examiner,
15 the Applicant proposes further enhancement of this perimeter buffer and has submitted an
16 enhanced Landscaping Plan (Exhibit J). The revised plan will add 82 trees, 305 shrubs and 641
17 one-gallon groundcover plants within the 20-foot perimeter buffer. These additional plantings
18 will not only provide vegetative screening but will restore native vegetation beneficial to
19 regional wildlife.

20 56. Staff recommends approval of the Preliminary Plat subject to the ten conditions
21 found at pages 11 and 12 of the Staff Report but further subject to the condition that the
22 Applicant's revised Landscaping Plan (Exhibit J) be imposed. The Applicant has no objection to
23 these proposed conditions of plat approval.

24 Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:
25

1 CONCLUSIONS OF LAW

2 General Conclusions of Law.

3 1. The Hearing Examiner has jurisdiction over the parties and the subject matter.

4 2. Any Conclusions of Law contained in the foregoing Background Section or
5 contained in the foregoing Findings of Fact and Analysis are hereby incorporated by reference
6 and adopted by the Hearing Examiner as his Conclusions of Law.

7 3. All notice requirements have been met.

8 Conclusions of Law Relating to the SEPA Appeal.

9 4. The SEPA Determination is reviewed under the clearly erroneous standard. To be
10 clearly erroneous, the Hearing Examiner must be left with the definite and firm conviction that a
11 mistake has been committed.

12 5. The Hearing Examiner is not to substitute his judgment for that of the City's, and
13 the City's decision to issue an MDNS is to be accorded substantial weight.

14 6. The issuance of an MDNS does not mean that the proposal will not have probable
15 significant adverse affects but simply that these impacts will be reduced to acceptable levels.

16 7. The Appellant has the burden of proof to demonstrate that the MDNS was clearly
17 erroneous.

18 8. In making its SEPA Determination, the City correctly followed the requirements
19 set forth in WAC 197-11-158.

20 9. The application vested to the City's Development Regulations, Tree Protections
21 and Critical Areas Regulations in effect as of October 7, 2022, the date upon which City Staff
22 declared the application to be complete.

23 10. The City's interpretation of its own regulations is to be given deference.

24 11. The City's interpretation of LMC 14.165.010 is not clearly erroneous.

1 12. The City's interpretation of LMC 14.154.020 is not clearly erroneous.

2 13. The City's determination that the project does not qualify as a "Priority Oregon
3 White Oak Woodland" is not clearly erroneous.

4 14. The City's interpretation that the project site is not a Habitat of Local Importance
5 is not clearly erroneous.

6 15. The City's determination that the project site is not a Critical Wildlife Habitat
7 Area is not clearly erroneous.

8 16. The City's determination that the project site does not constitute a "Snag-Rich
9 Area" per LMC 14.154.020.B.1.b.ii.f is not clearly erroneous.

10 17. The City's determination that the project site is exempt from tree protection
11 pursuant to the Tree Protection and Critical Areas Regulations at the time the project vested as of
12 October 7, 2022, was not clearly erroneous.

13 18. The City's SEPA Determination otherwise satisfies all SEPA requirements and is
14 valid.

15 19. The proposed project, as mitigated will not have have a significant adverse affect
16 on the environment.

17 20. The Appellant's appeal should be dismissed.

18 Conclusions Relating to the Preliminary Plat Application.

19 21. The project, as conditioned, is consistent with the City's Comprehensive Plan.

20 22. The project is consistent with its R3 zoning designation.

21 23. The project, as conditioned, is consistent with City Development Regulations
22 including all regulations contained in Chapters 18A.40 and 18A.60 LMC.
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1 of sewer service to the site, including providing new and/or protecting existing easements for
2 sewer lines and equipment.

3 3. Prior to City of Lakewood's approval of the final plat, the Applicant shall comply
4 with each of the following agencies' requirements, as evidence by their signature of approval on
5 the final plat: Pierce County Assessor-Treasurer's Office, Pierce County Planning and Public
6 Works Department, Pierce County Auditor, City of Lakewood Public Works Engineering
7 Department, City of Lakewood Community and Economic Development Department, and West
8 Pierce County Fire and Rescue.

9 4. A site development permit shall be required prior to the initiation of grading
10 filling or clearing.

11 5. The existing residential structures shall be razed prior to site development permit
12 issuance. Demolition of the residential structures shall require a City Demolition Permit.

13 6. Prior to final plat approval, the following items shall be required unless altered by
14 the Lakewood Public Works Director:

15 a. A Site Development Permit and Drainage Review are required. The
16 permit application and plans shall be reviewed and approved prior to recording of the
17 final plat. The submittal requirements can be found in LMC 12A.04.040, 12A.10.080
18 and the ESM.

19 b. All onsite storm water runoff shall remain and infiltrate onsite. All onsite
20 runoff from pollution generating hard surfaces shall receive water quality and quantity
21 treatment in accordance with LMC 12A.11. All stormwater designs shall be consistent
22 with either the latest Stormwater Management Manual for Western Washington,
23 (currently the 2012 as amended in 2014), or the Pierce County Stormwater Management
24 and Site Development Manual, (currently the 2015). Drainage modeling using a DOE or
25 Pierce County approved modelling software is required. Storm water infiltration testing
and soil analysis is required and shall be consistent with the latest approved stormwater
design manuals.

c. The proposed access road shall be built to local road standards as outlined
in the City of Lakewood Engineering Standards Manual Appendix 2, Table 2.

d. Per 17.26.050 Owners to maintain streets, easements and utilities -
Organization required to guarantee maintenance and assessment costs.

All private streets, easements, community utilities and properties shall be
maintained by the owners of property served by them and kept in good repair
at all times. In order to insure the continued good repair, it must be
demonstrated to the Department prior to recording of the plat that:

There is a workable organization to guarantee maintenance with the
committee or group to administer the organizational functions; and

1
2 There is a means for assessing maintenance costs equitably to property
3 owners served by the private streets, easements, community utilities and
4 properties.

5 e. The plans for all work within the public right-of-way shall be prepared by
6 a professional engineer licensed to practice with the State of Washington. The plans shall
7 be submitted and approved prior to work beginning in the right of way.

8 f. The project proposes paying a fee in-lieu of constructing the frontage
9 improvements along 112th Street SW and Interlaaken Drive SW, which the City will
10 construct in 2024 and 2025 as party of the City's 2023-2039 Transportation Improvement
11 Plan. The reference fee will be due prior to final plat approval.

12 g. The Landscaping Plan is required during site development review to verify
13 LMC 18A.70.150.A.2 compliance.

14 7. The future residential structures must be designed to meet the requirements of the
15 building construction codes in effect at the time of complete application.


16 8. All soils exported from the site shall be taken to a licensed facility approved by
17 the City of Lakewood. Only clean fill shall be used at the site.

18 9. A sign permit is required if a neighborhood identification sign is proposed.

19 10. Final subdivision approval shall not be granted until all conditions set forth by
20 this preliminary approval are completed. If the plat is not completed and recorded within five
21 years from the date approval is granted, the preliminary plat approval shall become null and
22 void.

23 11. The Applicant shall comply with its Amended Landscaping Plan submitted as
24 Exhibit J.

25 DATED this 27 day of September, 2023.



Mark C. Scheibmeir
City of Lakewood Hearing Examiner

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3 **APPEAL BEFORE THE HEARING EXAMINER**
4 **CITY OF LAKEWOOD**

5 IN RE:

No. 8289

6 APPEAL OF ADMINISTRATIVE
7 DECISION

**CITY'S PROPOSED
COMBINED
EXHIBIT LIST**

8 PERMIT # 3756
9 SEPA DETERMINATION -
10 INTERLAAKEN PRELIMINARY PLAT

11 CHRISTINA MANETTI, PRESIDENT
12 GARRY OAK COALITION

Appellant.

13 **I. EXHIBIT LIST.**

- 14 **A. 2023-07-31 Appeal of Administrative Decision.**
- 15 **B. 2023-07-31 Receipt for Appeal.**
- 16 **C. 2023-07-17 Mitigated Determination of Non-Significance (MDNS) -**

17 **Interlaaken Estates Preliminary Plat SEPA (App. 3756) with the following exhibits:**

- 18 1. SEPA Checklist prepared by Momentum Civil dated March 30,
19 2023.
- 20 2. Preliminary Plat Drawing prepared by Informed Land Survey dated
21 June 6, 2023.
- 22 3. Preliminary Grading, Drainage, and Utility Plan prepared by
23 Momentum Civil dated June 6, 2023.
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25

1 4. Oregon White Oak Biological Assessment prepared by Washington
2 Forestry Consultants dated April 25, 2023.

3 5. Tree Evaluation and Protection Plan prepared by Washington
4 Forestry Consultants dated April 11, 2023.

5 6. Significant Tree Easement Plan prepared by Washington Forestry
6 Consultants dated April 11, 2023.

7 7. Preliminary Drainage Report prepared by Momentum Civil dated
8 April 3, 2023.

9 8. Ten (10) Combined Public Comments.

10 9. Washington Department of Ecology Comment Letter dated October
11 31, 2022.

12 10. Public Comment Response Memorandum prepared by Momentum
13 Civil dated April 25, 2023.

14 **D. 2023-08-15 City's Staff Report with the following exhibits:**

15 1. April 25, 2023 Revised Tree Removal Application (Permit #3757)

16 2. October 7, 2022 Notice of Complete Application

17 3. October 17, 2022 Notice of Application and Optional DNS

18 4. July 7, 2023 SEPA MDNS

19 5. July 21, 2023 Notice of Public Hearing

20 6. September 14, 2022 Preliminary Plat Application

21 7. August 19, 2022 Preliminary Plat Drawing prepared by Informed
22 Land Survey
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- 8. August 15, 2023 Revised Preliminary Plat Drawing prepared by Informed Land Survey
- 9. June 6, 2023 Preliminary Grading, Drainage, and Utility Plan prepared by Momentum Civil
- 10. April 25, 2023 Oregon White Oak Biological Assessment prepared by Washington Forestry Consultants
- 11. April 11, 2023 Tree Evaluation and Protection Plan prepared by Washington Forestry Consultants
- 12. April 11, 2023 Significant Tree Easement Plan prepared by Washington Forestry Consultants
- 13. April 3, 2023. Preliminary Drainage Report prepared by Momentum Civil
- 14. April 26, 2023 SEPA environmental checklist
- 15. September 1, 2022 Applicant's response to required findings
- 16. May 19, 2022 Certificate of water availability
- 17. April 20, 2023 Title report
- 18. Submitted September 19, 2022 Legal lot status information (copies of deeds)
- 19. September 1, 2022 Trip Generation and Assessment – Level 1
- 20. Bus routes for neighboring schools
- 21. October 31, 2022 Comment Letter from the Washington Department of Ecology

- 1 22. June 2, 2023 Comment letter from Lakewood Public Works
 2 Engineering Department
 3 23. May 5, 2023 No Comment Email from the West Pierce Fire and
 4 Rescue
 5 24. October 28-31, 2022 & July 23 – August 15, 2023 Combined Public
 6 Comment Letters and Emails
 7
 8 25. July 31, 2023 SEPA Appeal by the Gary Oak Coalition
 9 26. August 20, 2023 Comment letter – Kurt Reidinger.

10 **E. Hearing Examiner’s Prehearing Order.** August 8, 2023.

11 **F. City’s Proposed Exhibit List.** August 9, 2023.

12 **G. City’s Amended Exhibit List.** August 15, 2023 - Adds Staff Report.

13 **H. Appellant’s Proposed Exhibit List. August 18, 2023 as submitted.**

14 **I. Appellant’s Exhibit List, modified. August 21, 2023.** The City proposes
 15 modifying Appellant’s August 18, 2023 list for this Proposed Combined List as follows:
 16

- 17 1. MITIGATED DETERMINATION OF NON-SIGNIFICANCE (MDNS)
 18 2. Notice of Appeal
 19 3. Pre-hearing order
 20 4. SEPA CHECKLIST APPLICATION
 21 5. Interlaaken report, Washington Forestry Consultants
 22 6. Interlaaken - Updated Tree Evaluation and Protection Plan, Washington

23 Forestry Consultants

- 24 7. Washington Forestry Consultants, Biological Assessment for Connie Kay

25 short plat

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8. Soundview Consultants, Technical Memorandum, 4901 123rd Street project

9. Washington Forestry Consultants - Tree Evaluation and Protection Plan -

Swan Grove Apartments

10. COMBINED NOTICE OF APPLICATION

11. Letter from WDFW wildlife biologist Darrin Masters

12. Letter from WDFW wildlife biologist Darrin Masters to the City of

Lakewood regarding 123rd Street warehouse project

13. Letter from Professor Douglas Tallamy, University of Delaware,
entomologist and expert on oaks and oak habitat

14. HEX report, Interlaaken project

15. Excerpt from Soundview Consultants, Technical Memorandum, 4901 123rd
Street project

16. Aerial of 8002 112th Street SW – from Redfin website

17. Excerpt from Washington Forestry Consultants’ tree assessment for Connie

Kay short plat

18. Table from Washington Forestry Consultants’ tree assessment for Connie

Kay short plat

19. Oaks at Swan Court project on Gravelly Lake Drive

20. Research grade iNaturalist sighting of Western gray squirrel near

Interlaaken

21. Map, iNaturalist research-grade sighting of Western gray squirrel near

Interlaaken

- 1 22. Map of area along Interlaaken between 112th and Washington Boulevard,
- 2 July 2016
- 3 23. Map of area along Interlaaken between 112th and Washington Boulevard,
- 4 May 2017
- 5 24. Map of area along Interlaaken between 112th and Washington Boulevard,
- 6 June 2021
- 7
- 8 25. Sound Oaks Initiative map – Lakewood overview
- 9 26. Sound Oaks Initiative map, close up of Interlaaken property with urban
- 10 Garry oak canopy
- 11 27. Lakewood area heat map
- 12 28. Slide about tree equity and urban heat from Tree Advisory Board Ad Hoc
- 13 Committee, 3/29/22
- 14
- 15 29. Western Gray Squirrel Recovery Plan, WDFW (PDF)
- 16 30. Management Recommendations for Washington’s Priority Habitats and
- 17 Species: Western Gray Squirrel, WDFW (PDF)
- 18 31. Immediate neighbor’s photo of bird of prey in one of the tall Douglas firs
- 19 32. Distance between Interlaaken property (8002 112th St SW) and JBLM
- 20 (Google Earth)
- 21 33. Avian presence in Interlaaken neighborhood – various examples
- 22 34. Wildlife presence in Interlaaken neighborhood – various examples
- 23 35. iNaturalist sightings of woodpeckers (5 species) in 98498
- 24 36. Excerpt from WDFW Species and Habitats information about Western gray
- 25 squirrel

1 37. Aerial of Interlaaken neighborhood deforestation

2 38. 1998 WDFW publication

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4 **J. Applicant's Landscape Plan Prepared by Lyon Landscape Architects.**

5 The City's Community and Economic Development Department (CED) has
6 provided the documents identified as Exhibits A through C to the Hearing Examiner and
7 all parties of record. CED will make all documents identified as Exhibit D (the Staff
8 Report with exhibits), highlighted above, available as a link via for the Preliminary Plat
9 public hearing and SEPA appeal. Due to the consolidation of the SEPA Appeal and Plat
10 hearing, some documents are duplicated. This Combined Exhibit List also adds a
11 comment submitted August 20, 2023, after the Staff Report was submitted to the Hearing
12 Examiner. It has been added as Exhibit D-26.

13 Appellant has provided documents identified as Exhibit H via Dropbox and email.

14 Appellant has duplicated documents previously identified by the City and specifically,
15 Appellant's Exhibits I-1 through I-4; I-6 and I-14, as identified in this Combined List.

16 In an email submitting Appellant's Exhibit List, Appellant referred to, but did not
17 include as an exhibit, a 1998 WDFW publication. Instead, the City suggests listing this as
18 Exhibit I-38 in this Combined Exhibit List.

19 Appellant has identified its Proposed Exhibit List as Exhibit 18. Instead, the City
20 suggests listing Appellant's Exhibit List as Exhibit H, Appellant's Exhibit List as
21 submitted, to distinguish it from what the City proposes as Exhibit I, Appellant's Exhibit
22 List as modified, in this Combined Exhibit List.
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1 The City proposes this Combined Exhibit List in hopes of assisting with the
2 efficiency of the SEPA appeal hearing, not as an endorsement of any of Appellant's
3 proposed exhibits.

4 Dated this 21st of August, 2023

5 CITY OF LAKEWOOD
6 HEIDI ANN WACHTER, CITY ATTORNEY

7 Eileen M. McKain

Digitally signed by Eileen M. McKain
DN: cn=Eileen M. McKain, email=emckain@cityoflakewood.us, c=US
Date: 2023.08.21 14:21:34 -0700

8 Eileen M. McKain, WSBA #17792

9 Assistant City Attorney

10 Attorney for Defendant, City of Lakewood