

RESOLUTION NO. 662

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO THE EXTENSION OF SEWER SERVICE OUTSIDE THE CITY, AUTHORIZING THE EXECUTION OF A UTILITY EXTENSION AGREEMENT WITH THE CANTERWOOD DEVELOPMENT COMPANY PROVIDING FOR TEN (10) ERU's OF SEWER SERVICE TO ONE OFFICE BUILDING ON LOT 1 OF THE CANTERWOOD DIVISION ELEVEN PHASE 2 BUSINESS PARK EAST OF CANTERWOOD BOULEVARD AND NORTH OF BAKER WAY, GIG HARBOR, WASHINGTON.

WHEREAS, on August 10, 2005 the applicant Canterwood Development Company, submitted a request connect an approximately 25,000 square foot office building to the City sewer utility system as provided for in Title 13, Gig Harbor Municipal Code; and

WHEREAS, the request was for ten (10) ERU's of sanitary sewer service for one office building on Lot 1 of the Canterwood Division 11 Phase 2 Business Park located east of Canterwood Boulevard and north of Baker Way, Gig Harbor, Washington; and

WHEREAS, on March 13, 2006, the City Council held a public hearing on the Utility Extension Agreement; and

WHEREAS, on March 13, 2006, the City Council considered the Utility Extension Agreement together with the Canterwood Development Company's request for an exception to conformance with the City zoning requirements pursuant to Section 13.34.060 J., Gig Harbor Municipal Code during a regular public meeting and voted to approve the zoning exception amendment and the Utility Extension Agreement attached hereto as Exhibit A; Now, Therefore,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

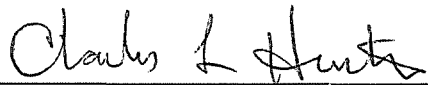
Section 1. The City Council hereby authorizes the Mayor to execute the Utility

Extension Agreement attached hereto as Exhibit A, with the applicant Canterwood Development Company with the condition that the connection fees shall be adjusted after the first year of operation to reflect actual flows as provided for in GHMC 13.32.060 B. 18.

Section 2. The City Council hereby directs the Community Development Director to record the Utility Extension Agreement against the Property legally described in Exhibit A to the Utility Extension Agreement, at the cost of the applicant, pursuant to RCW 36.70B.190.

PASSED by the City Council this 13th day of March 2006.

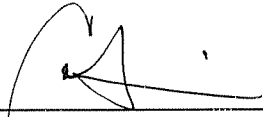
APPROVED:


MAYOR, CHARLES L. HUNTER

ATTEST/AUTHENTICATED:


CITY CLERK, MOLLY M. TOWSLEE

APPROVED AS TO FORM;
OFFICE OF THE CITY ATTORNEY:

BY: 
CAROL A. MORRIS

FILED WITH THE CITY CLERK: 3/8/06
PASSED BY THE CITY COUNCIL: 3/13/06
RESOLUTION NO. 662

UTILITY EXTENSION AGREEMENT WAIVING RIGHT TO PROTEST LID

THIS AGREEMENT is entered into on this 13th day of March, 2006, between the City of Gig Harbor, Washington, hereinafter referred to as the "City", a Washington Municipal Corporation and Canterwood Development Company and Canterwood Commercial LLC, a corporation organized under the laws of the State of Washington, hereinafter referred to as "the Owner".

RECITALS

WHEREAS, the Owner is the owner of certain real property located in Pierce County which is legally described as set forth in Exhibit A attached hereto and incorporated herein by this reference as though set forth in full, and

WHEREAS, the Owner's property is not currently within the City limits of the City, and

WHEREAS, the Owner desires to connect to the City sewer utility system, hereinafter referred to as "the utility," and is willing to allow connection only upon certain terms and conditions in accordance with Title 13 of the Gig Harbor Municipal code, as now enacted or hereinafter amended,

WHEREAS, the City Council held a public hearing on this Agreement on March 13, 2006, during a regularly scheduled Council meeting, and authorized the Mayor to execute this Agreement on behalf of the City; NOW, THEREFORE,

FOR AND IN CONSIDERATION OF the mutual benefits and conditions hereinafter contained, the parties agree as follows:

TERMS

1. Warranty of Title. The Owner warrants that he/she is the Owner of the property described in Exhibit A, which is attached hereto and incorporated herein by this reference, and is authorized to enter into this Agreement.

2. Extension Authorized. The City hereby authorizes the Owner to extend service to Owner's property from the existing utility line on Canterwood Boulevard (street or right-of-way) at the following location: Baker Way and Canterwood Boulevard.

3. Costs. Owner will pay all costs of designing, engineering and constructing the extension. All construction shall be done to City standards and according to plans approved by the City's Community Development Director. Any and all costs incurred by the City in reviewing plans and in inspecting construction shall be paid for by the Owner.

4. Sewer Capacity Commitment. The City agrees to provide to the Owner sewer utility service and hereby reserves to the Owner the right to discharge to the City's sewerage system 10 ERUs; provided however, that the City retains the authority to temporarily suspend such capacity where necessary to protect public health and safety, or where required to comply with the City's NPDES permit, or any other permits required by any agency with jurisdiction. These capacity rights are allocated only to the Owner's system as herein described. Any addition to this system must first be approved by the City. Capacity rights acquired by the Owner pursuant to this agreement shall not constitute ownership by the Owner of any facilities comprising the City sewerage system.

5. Permits - Easements. Owner shall secure and obtain, at Owner's sole cost and expense any necessary permits, easements and licenses to construct the extension, including, but not limited to, all necessary easements, excavation permits, street use permits, or other permits required by state, county and city governmental departments including the Pierce County Public Works Department, Pierce County Environmental Health Department, State Department of Ecology, Pierce County Boundary Review Board, and City of Gig Harbor Community Development Department.

6. Turn Over of Capital Facilities. If the extension of utility service to Owner's property involves the construction of water or sewer main lines, pump stations, wells, and/or other city required capital facilities, the Owner agrees if required by the city to turn over and dedicate such facilities to the City, at no cost, upon the completion of construction and approval and acceptance of the same by the City. As a prerequisite to such turn over and acceptance, the Owner will furnish to the City the following:

- A. As built plans or drawings in a form acceptable to the City Community Development Department;
- B. Any necessary easements, permits or licenses for the continued operation, maintenance, repair or reconstruction of such facilities by the City, in a form approved by the City Attorney;
- C. A bill of sale in a form approved by the City Attorney; and
- D. A bond or other suitable security in a form approved by the City Attorney and in an amount approved by the City Community Development Director, ensuring that the facilities will remain free from defects in workmanship and materials for a period of 2 year(s).

7. Connection Charges. The Owner agrees to pay the connection charges, in addition to any costs of construction as a condition of connecting to the City utility system at the rate schedules applicable at the time the Owner requests to actually connect his property to the system. Any commitment payment that has not been forfeited shall be applied to the City's connection charges. Should the Owner not initially connect 100% of the Sewer Capacity Commitment, the Capacity Commitment payment shall be credited on a pro-rated

percentage basis to the connection charges as they are levied.

8. Service Charges. In addition to the charges for connection, the Owner agrees to pay for utility service rendered according to the rates for services applicable to properties outside the city limits as such rates exist, (which is presently at 150% the rate charged to customers inside city limits) or as they may be hereafter amended or modified.

9. Annexation. Owner understands that annexation of the property described on Exhibit A to the City will result in the following consequences:

- A. Pierce County ordinances, resolutions, rules and regulations will cease to apply to the property upon the effective date of annexation;
- B. City of Gig Harbor ordinances, resolutions, rules and regulations will begin to apply to the property upon the effective date of annexation;
- C. Governmental services, such as police, fire and utility service will be provided to the property by the City of Gig Harbor upon the effective date of annexation;
- D. The property may be required to assume all or any portion of the existing City of Gig Harbor indebtedness, and property tax rates and assessments applicable to the property may be different from those applicable prior to the effective date of annexation;
- E. Zoning and land use regulations applicable to the property after annexation may be different from those applicable to the property prior to annexation; and
- F. All or any portion of the property may be annexed and the property may be annexed in conjunction with, or at the same time as, other property in the vicinity.

With full knowledge and understanding of these consequences of annexation and with full knowledge and understanding of Owner's decision to forego opposition to annexation of the property to the City of Gig Harbor, Owner agrees to sign a petition for annexation to the City of the property described on Exhibit A as provided in RCW 35A.14.120, as it now exists or as it may hereafter be amended, at such time as the Owner is requested by the City to do so. The Owner also agrees and appoints the Mayor of the City as Owner's attorney-in-fact to execute an annexation petition on Owner's behalf in the event that Owner shall fail or refuse to do so and agrees that such signature shall constitute full authority from the Owner for annexation as if Owner had signed the petition himself. Owner further agrees not to litigate, challenge or in any manner contest, annexation to the City. This Agreement shall be deemed to be continuing, and if Owner's property is not annexed for whatever reason, including a decision by the City not to annex; Owner agrees to sign any and all subsequent petitions for annexations. In the event that any property described on Exhibit A is subdivided into smaller lots, the purchasers of each

subdivided lot shall be bound by the provisions of this paragraph.

10. Land use. The owner agrees that as long as the property has not been annexed to the City, that any development of the property described in Exhibit A shall meet the following conditions after execution of this Agreement:

- A. The use of the property developed under the July 15, 2005 Pierce County Hearing Examiners Approval of the Preliminary Plat/Major Amendment to the Canterwood Master Planned Community, Canterwood, Division 11 (Phases 2, 3, and 4), as it pertains to the Lot 1 of Phase 2 (Exhibit B), and shall be consistent with that approval;
- B. The redevelopment of the Property after annexation of the Property to the City of Gig Harbor shall conform to the City's land use plan, zoning, fire codes and those portions of the city building code which are referenced by the fire code, and the city public works standards, in effect in the City at the time of such redevelopment. The intent of this section is that future annexation of the property to the City of Gig Harbor shall result in a development which conforms to City standards.

11. Liens. The Owner understands and agrees that delinquent payments under this agreement shall constitute a lien upon the above-described property. If the extension is for sewer service, the lien shall be as provided in RCW 35.67.200, and shall be enforced in accordance with RCW 35.67.200 through RCW 35.67.290, all as now enacted or hereafter amended. If the extension is for water service, the lien shall be as provided in RCW 35.21.290 and enforced as provided in RCW 35.21.300, all as currently enacted or hereafter amended.

12. Termination for Non-Compliance. In the event Owner fails to comply with any term or condition of this Agreement, the City shall have the right, at any time, to enter onto the Owner's property and for that purpose disconnect the sewer, in addition to any other remedies available to the City.

13. Waiver of Right to Protest LID. Owner acknowledges that the entire property legally described in Exhibit A would be specially benefited by the following improvements (specify):

Specific road improvement projects that affect the Gig Harbor North area will be determined through the Supplemental Environmental Impact Study process being conducted as part of the City's consideration of proposed Comprehensive Plan amendments in the Gig Harbor North area.

Owner agrees to sign a petition for the formation of an LID or ULID for the specified improvements at such time as one is circulated and Owner hereby appoints the Mayor of

the City as his attorney-in-fact to sign such a petition in the event Owner fails or refuses to do so.

With full understanding of Owner's right to protest formation of an LID or ULID to construct such improvements pursuant to RCW 35.43.180, Owner agrees to participate in any such LID or ULID and to waive his right to protest formation of the same. Owner shall retain the right to contest the method of calculating any assessment and the amount thereof, and shall further retain the right to appeal the decision of the City Council affirming the final assessment roll to the superior court. Notwithstanding any other provisions of this Agreement, this waiver of the right to protest shall only be valid for a period of ten (10) years from the date this Agreement is signed by the Owner.

14. Specific Enforcement. In addition to any other remedy provided by law or this Agreement, the terms of this Agreement may be specifically enforced by a court of competent jurisdiction.

15. Covenant. The conditions and covenants set forth in this Agreement and incorporated herein by the Exhibits shall run with the land and the benefits and burdens shall bind and inure to the benefit of the parties. The Owner, and every purchaser, assignee or transferee of an interest in the Property, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a party thereto, but only with respect to the Property, or such portion thereof, sold, assigned or transferred to it. Any such purchaser, assignee or transferee shall observe and fully perform all of the duties and obligations of the Owner contained in this Agreement, as such duties and obligations pertain to the portion of the Property sold, assigned or transferred to it. All costs of recording this Agreement with the Pierce County Auditor shall be borne by the Owner.

16. Attorney's Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. In any suit or action seeking to enforce any provision of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs, in addition to any other remedy provided by law or this agreement. Venue of such action shall lie in Pierce County Superior Court or the U.S. District Court for Western Washington.

17. Notices. Notices and correspondence to the City and Owner shall be sufficiently given if dispatched by pre-paid first-class mail to the addresses of the parties as designated below. Notice to the City shall be to the attention of both the City Administrator and City Attorney. Notice to any person who purchases any portion of the Property from the Owner shall be required to be given by the City only for those property purchasers who provide the City with written notice of their address. The parties hereto may, from time to time, advise the other of any new addresses for notices and correspondence.

TO THE CITY:

City Administrator
City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335

City Attorney
Carol Morris
Law Office of Carol A. Morris, P.C.
P.O. Box 948
Seabeck, WA 98380

TO THE OWNER:

Canterwood Development Company
Canterwood Commercial LLC
Russell Tanner, President
4026 Canterwood Drive NW, Suite B
Gig Harbor, WA 98332

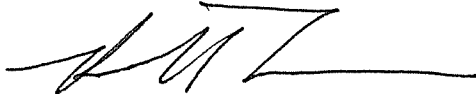
18. Severability and Integration. This Agreement and the Exhibits attached hereto constitute the agreement between the parties on this subject matter, and there are no other understandings, verbal or written, that modify the terms of this Agreement. If any phrase, provision, or section of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any statute of the State of Washington which became effective after the effective date of the resolution or ordinance adopting this Agreement, such invalidity shall not affect the other terms of this Agreement.

DATED this ____ day of _____, 2006.

CITY OF GIG HARBOR

Mayor Charles L. Hunter

OWNER



Russell Tanner, President
Canterwood Development Company
Canterwood Commercial LLC

ATTEST/AUTHENTICATED:

City Clerk, Molly Towsle

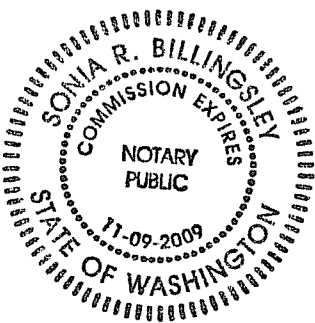
APPROVED AS TO FORM:

Carol A. Morris, City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Russell Tanner is the person who appeared before me, and acknowledged that he signed this instrument and acknowledged it as the President of the Canterwood Development Company and Canterwood Commercial LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 3/7/06



Signature Sonia R. Billingsley
NOTARY PUBLIC for the State
of Washington, residing at
GIG HARBOR
My commission expires: 11/9/09

STATE OF WASHINGTON)
)ss:
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Charles L. Hunter, is the person who appeared before me, and acknowledged that he signed this instrument, on oath stated that he is authorized to execute the instrument and acknowledged it as the Mayor of the City of Gig Harbor, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Signature _____
NOTARY PUBLIC for the State
of Washington, residing at _____
My commission expires: _____

**EXHIBIT A
LEGAL DESCRIPTION**

LOT 1
PRELIMINARY PLAT OF CANTERWOOD DIVISION 11
PHASE 2 BUSINESS PARK

PARCEL NUMBER 0122251052

THAT PORTION OF THE SOUTHEAST QUARTER OF THE NORTHEAST
QUARTER OF SECTION 25, TOWNSHIP 22 NORTH, RANGE 1 EAST OF THE
W.M., IN PIERCE COUNTY, WASHINGTON LYING WESTERLY OF THE
TACOMA-LAKE CUSHMAN TRANSMISSION LINE;

ALSO EXCEPTING THERE FROM ANY PORTION CONVEYED TO PIERCE
COUNTY BY STATUTORY WARRANTY DEED AS RECORDED JANUARY 11,
1994, UNDER RECORDING NO 9401110660;

SITUATE IN THE COUNTY OF PIERCE, STATE OF WASHINGTON

(PER RAINIER TITLE COMMITMENT NO 10079535)

EXHIBIT B
PIERCE COUNTY HEARING EXAMINER DECISION JULY 15, 2005

AUG-16-2005 TUE 01:15 PM

FAX NO.

P. 07



Pierce County

Office of the Pierce County Hearing Examiner
902 South 10th Street
Tacoma, Washington 98405
(253) 272-2208

STEPHEN K. CAUSSEAU, JR.
Pierce County Hearing Examiner

July 15, 2005

Lorigon Corporation
Canterwood Development Company
4026 Canterwood Dr. NW, Ste. B
Gig Harbor, WA 98332

RE: PRELIMINARY PLAT/MAJOR AMENDMENT TO CANTERWOOD MASTER
PLANNED COMMUNITY; DIVISION 11 (PHASES 2, 3, AND 4), APPLICATION
NUMBERS: 355073/355074

Dear Applicant:

Transmitted herewith is the Report and Decision of the Hearing Examiner regarding your request for the above-entitled matter.

Very truly yours,

STEPHEN K. CAUSSEAU, JR.
Hearing Examiner

SKC/cka

cc: Parties of Record
PIERCE COUNTY PLANNING AND LAND SERVICES
PIERCE COUNTY CODE ENFORCEMENT
PIERCE COUNTY DEVELOPMENT ENGINEERING DEPARTMENT
PIERCE COUNTY PUBLIC WORKS AND UTILITIES DEPARTMENT
TACOMA-PIERCE COUNTY HEALTH DEPARTMENT
FIRE PREVENTION BUREAU
PIERCE COUNTY PARKS AND RECREATION
PIERCE COUNTY COUNCIL
PIERCE COUNTY RESOURCE MANAGEMENT

1--



PIERCE COUNTY

OFFICE OF THE HEARING EXAMINER

PIERCE COUNTY

REPORT AND DECISION

CASE NO.: PRELIMINARY PLAT/MAJOR AMENDMENT TO CANTERWOOD
MASTER PLANNED COMMUNITY: DIVISION 11 (PHASE 2, 3,
AND 4), APPLICATION NUMBERS: 355073/355074

OWNER/
APPLICANT: Lorigon Corporation
Canterwood Development Company
4026 Canterwood Drive NW, Suite B
Gig Harbor, WA 98332

AGENTS: Baseline Engineering
Attn: Mr. Kevin Foley
1910 - 64th Avenue West
Tacoma, WA 98466

Eva Jacobson
Still Water Planning, Inc.
P.O. Box 2314
Gig Harbor, WA 98335

SUMMARY OF REQUEST:

Formal subdivision of a vacant 23.46-acre site in three phases. Phase 2 will be a 3-lot commercial/business development totaling 7.95 acres; Phase 3 includes 12 single-family lots on 11 acres; and Phase 4 includes 11 single-family condominium-style residences on 4.51 acres. The project will be served by private roads and Canterwood Step Sewer System/City of Gig Harbor, and is located in a Master Planned Community (MPC) zone classification, east of Canterwood Boulevard and north of Baker Way, within the Canterwood Master Planned Community, in the NE 1/4 of Section 25, T22N, R1E, W.M., in Council District #7.

SUMMARY OF DECISION:

Request granted, subject to conditions.

PUBLIC HEARING:

After reviewing Planning and Land Services Report and examining available information on file with the application, the Examiner conducted a public hearing on the request as follows:

The hearing was opened on June 8, 2005, at 10:00 a.m.

Parties wishing to testify were sworn in by the Examiner.

The following exhibits were submitted and made a part of the record as follows:

- EXHIBIT "1" - Planning and Land Services Staff Report and Attachments**
- EXHIBIT "2" - Letter from Sam Yekalam to Examiner dated June 29, 2005, with attachments**

TY BOOTH appeared, presented the Planning Division Staff Report, and testified that proper notice had been given and that the environmental official had issued an MDNS conditioned upon payment of traffic mitigation funds to Gig Harbor. The site is located within the Urban Growth Area of the City. The PAC recommends approval with slight modifications to conditions. The proposed commercial uses will bring the Master Planned Community into better compliance with its goals by providing joint residential and commercial uses. The applicant proposes to develop the site in three phases with the three commercial lots in the western portion, condominiums in the north center, and single family residences in the balance of the site to the east. The MPC has very vague density requirements, but the project is similar to the overall Canterwood development and staff recommends approval.

DAWN ANDERSON, development engineer, appeared and testified that Title 17B of the code requires curb, gutters, and sidewalks. The applicant can apply for a deviation, but must propose something compatible. The County can't just allow them to do something.

EVA JACOBSON appeared on behalf of the applicant and testified that they propose a quality business park of offices versus commercial uses. They will access all buildings from the interior Canterwood road and not from the arterial. The PAC wants sidewalks along the Baker Way access. The PAC wanted to ensure safe passage for pedestrians and also recommended a sidewalk on Canterwood Boulevard. They wanted Gig Harbor to work with Pierce County and Tacoma Public Utilities to explore a trail through the TPU easement. The project will meet all Gig Harbor standards for roads. They desire to construct a pedestrian walkway through the easement versus along Canterwood Drive. Walking and equestrian trails extend throughout the entire MPC, and they will construct trails through the plat area. Trails will tentatively provide a connection to the plat. They have provided wetland mitigation and set aside the wetland and buffer. Residents of Canterwood do not

want sidewalks and all other plats fell under the old standards, and the MPC has no sidewalk requirement. A walking/riding trail extends along the north and west sides of the parcel, the west side of Old Stump Drive, and the west side of the plat road extending to the north. They propose constructing sidewalks along Baker Way on the west side of the easement as the lots will access from the west side of the easement. The lots are large enough to provide on-site septic systems if Gig Harbor does not provide service. However, Canterwood participated in the ULID to bring sewers to the area. A variance process allows Gig Harbor to provide sewer service.

KEVIN FOLEY appeared and testified that Division 11 is at the end of the line. The MPC classification was adopted in 1994 and before that, the approvals were through the SPR process. They have provided an alternative pathway system. If 17B does apply, they will ask for a deviation. He requested a condition of 17B standards or administration deviation.

SAM YEKALAM appeared and testified that the plat is subject to the Residential Design Standards, but with the MPC, they may have vested the improvements.

The Examiner left the record open until July 1, 2005, for the applicant and staff to determine whether the MPC would allow development of the site without sidewalks. No one spoke further in this matter. The hearing was concluded at 10:44 a.m.

NOTE: A complete record of this hearing is available in the office of Pierce County Planning and Land Services.

FINDINGS, CONCLUSIONS AND DECISION:

FINDINGS:

1. The Hearing Examiner has admitted documentary evidence into the record, viewed the property, heard testimony, and taken this matter under advisement.
2. Pursuant to the State Environmental Policy Act (SEPA) and the Pierce County Environmental Regulations (Title 18D, Pierce County Code), the Pierce County Environmental Official has reviewed this project and issued a Mitigated Determination of Nonsignificance (MDNS) on February 16, 2005, with a comment deadline of March 3, 2005. No appeal was filed.
3. Notice of this request was advertised in accordance with Chapter 1.22 of the Pierce County Code. Notice of the date and time of hearing was published two (2) weeks prior to the hearing in the official County newspaper. Property owners within 300 feet of the site were sent written notice. Notice has been posted on the site.
4. The Peninsula Advisory Commission (PAC) heard and considered this project on

May 25, 2005, and voted unanimously to recommend approval.

5. The applicant has a possessory ownership interest in a generally rectangular, unimproved, 23.46 acre parcel of property which it proposes to develop in three phases. The site plan shows that the first phase (Phase 2) will consist of three business lots with a total of 7.95 acres; phase two (Phase 3) will consist of 12 single family residential lots on 11 acres; and phase three (Phase 4) will consist of 11 single family condominium style dwellings on 4.51 acres.
6. The site plan shows that the western property line of the site abuts Canterwood Blvd. NW for 1,324 feet and that the parcel varies in depth between 596 feet along the north property line to 1,140 feet along the south property line. Old Stump Road abuts the north property line for approximately 350 feet and Baker Way extends diagonally across the site from near the center of the western property line to the southeastern corner. A 100 foot wide, Tacoma-Lake Cushman transmission line right-of-way extends north to south across the western portion of the site.
7. The site plan shows the three commercial lots located between the transmission line right-of-way and Canterwood Blvd. Access to said lots will be provided from Baker Way west of the transmission line. Phase 3 consists of 12 single family residential lots, nine of which abut the eastern property line and three of which are located in the northern interior portion. A 40 foot wide private road extending north from Baker Way and terminating in a cul-de-sac provides access to all lots. The condominiums proposed for Phase 4 are located in the northcentral portion of the site with access provided from Old Stump Drive to the north. Phase 4 abuts the transmission line on the east, Old Stump Drive on the north, a 100 foot wide, open space tract on the east, and lots in Phase 3 on the south. A storm management tract extends between Baker Way and the private road. Open space tracts separate Baker Way from the transmission right-of-way and from the south property line.
8. The site is located within the Canterwood Master Planned Community which received approval in 1985. Abutting uses include Canterwood single family residential plats to the north, the Phase 1 of Division 11 cluster home development to the east, and unimproved large lots not within Canterwood to the south. Uses to the west across the Canterwood Blvd. include single family dwellings and a multi-family, four-plex development.
9. Vegetation on the site consists of second growth Douglas fir, alder, maples, and Western Red Cedar trees with a mixture of dense underbrush dominated by salal and black huckleberry. The topography of the site slopes downward from west to east with a nature depression located at the center of the parcel. The easterly portion of the site has slopes which range from 1% to 18% and the westerly portion varies between 1% and 5%. A Category II wetland exists in the northern portion of

the site adjacent to Phase 4 and normally requires a 100 foot wide, undisturbed buffer. However, the applicant's and County's wetlands biologists have determined that buffer width averaging will not adversely impact the wetland and that a minimum buffer width of 50 feet provide adequate protection. The total buffer area exceeds the requirements of the code.

10. The site plan shows that the three commercial lots will range from 1.8 acres to 2.9 acres. The 12 single family residential lots in Phase 3 will average 13,000 square feet, and the 11 residences in Phase 4 will have a density of 2.4 dwelling units per acre. The applicant filed a completed application for preliminary plat/major amendment approval to the Canterwood Master Planned Community (MPC) on November 26, 2002. The Urban Zone Classifications Use Table set forth in Section 18A.35.020(B)(2) of the Pierce County Code (PCC) provides no density, lot size, or setback requirements in the MPC zone classification. Section 18A.75.080 PCC requires review of MPCs in accordance with planned unit developments (PUD). Said section authorizes PUDs anywhere within an Urban Growth Area subject to approval by the Examiner and the Pierce County Council. The subject site is already located within the Canterwood MPC and zone classification and therefore is part of an existing MPC. Densities may vary between two and 25 dwelling units per acre so long as the overall average residential density is between four and 10 units per acre. Overall, the Canterwood MPC has numerous divisions with varying densities, lot sizes, setbacks, and housing styles. The present project will also add commercial uses to the mix and the proposal is not inconsistent with the balance of Canterwood.
11. The Canterwood MPC includes numerous and significant recreational opportunities to include a golf course, swimming pool, tennis courts, and trails. Residents of Canterwood Division 11, Phases 3 and 4, may take advantage of said opportunities. Furthermore, the proposed lot sizes in the single family residential subdivision are of sufficient size to provide meaningful, on-site recreational opportunities. Open space provided within the tract includes the 38,531 square foot wetland and wetland buffer tract, a 78,202 square foot open space tract abutting the south and west sides of Baker Way, and a 6,847 square foot open space area at the northeast corner of the intersection of the internal plat road and Baker Way. The applicant also proposes a significant, 125,449 square foot, storm management tract near the center of the site. The formal open space calculates to 2.84 acres and additional open space includes the transmission line right-of-way and the 2.9 acre storm management tract. The plat makes appropriate provision for open spaces, parks and recreation, and playgrounds.
12. The applicant will construct storm drainage facilities to Pierce County standards and will direct on-site runoff from roads and driveways to the storm management tract. Compliance with Pierce County Ordinances will ensure that the plat makes

appropriate provision for drainage ways.

13. The applicant will construct the internal plat road to Pierce County private road standards and the access to the condominium units in accordance with Pierce County standards. Adequate entering and stopping sight distance exists or will be made available at the intersection of said roads and Old Stump Drive and Baker Way. All lots will access onto internal plat roads. All three commercial lots will access onto Baker Way and no lot will have direct access onto Canterwood Blvd. The plat makes appropriate provision for streets, roads, alleys, and other public ways.
14. The Canterwood Water Company will provide domestic water and fire flow to the site and the City of Gig Harbor will provide sanitary sewer service pursuant to the Canterwood Step Sewer System. The plat makes appropriate provision for potable water supplies, sanitary waste, and fire protection.
15. The applicant must comply with the Pierce County School Impact Fee Ordinance and make a per lot payment to the Peninsula School District to offset the impacts on the district of school aged children residing in the plat. Compliance with said ordinance will ensure that the plat makes appropriate provision for schools and school grounds.
16. Issues arose regarding the requirement for sidewalks along Baker Way and Canterwood Blvd. The Examiner left the record open to provide an opportunity for staff to research the issues of sidewalk requirements in an MPC. Chuck Kleeberg, Director of Pierce County Planning and Land Services, wrote in a memorandum dated February 6, 1998:

In a subdivision that includes a planned development district (PDD) or site plan review (SPR), the building sites shall be subject to the specific standards imposed by the Hearing Examiner.

In the present case Canterwood streets throughout the MPC do not have sidewalks. Safe walking conditions are provided by trails, and the present site plan shows trails circulating throughout the site to include the north side of Baker Way and the west side of the internal plat road. A trail also extends between the internal plat road and Old Stump Drive, and around much of the perimeter of the condominium phase. In the present case, sidewalks should extend along both sides of Baker Way from Canterwood Blvd. NW to the western edge of the transmission right-of-way to provide safe walking access to the commercial buildings in Phase 2. However, the roads in Phases 3 and 4 should not have sidewalks as such will maintain consistency with the balance of the MPC. The PAC recommended a sidewalk along Canterwood Blvd., but the commercial buildings will not gain access from

Canterwood Blvd, and no other sidewalks exist along said road. The Examiner has added a condition, however, which requires the applicant to attempt to gain permission to construct a trail along the transmission line right-of-way. The project makes appropriate provision for safe walking conditions.

CONCLUSIONS:

1. The Hearing Examiner has jurisdiction to consider and decide the issues presented by this request.
2. The applicant has established that the request for preliminary plat approval and a major amendment to the Canterwood Master Planned Community for Division 11, Phases 2,3, and 4 is consistent with the MPC zone classification of the PCC and also consistent with the balance of the Canterwood MPC.
3. The proposed preliminary plat makes appropriate provision for the public health, safety, and general welfare for open spaces, drainage ways, streets, roads, alleys, other public ways, transit stops, potable water supplies, sanitary waste, parks and recreation, playgrounds, schools, and school grounds, and safe walking conditions.
4. The proposed preliminary plat/major amendment will serve the public use and interest by providing an attractive location for a single family residential subdivision and an appropriate location for office buildings within the Canterwood MPC. Therefore, the request should be approved subject to the following conditions:
 1. Per the Revised Code of Washington, RCW 58.17.140, a final plat meeting all requirements of the preliminary plat shall be approved by the Pierce County Hearing Examiner and recorded within 5 years of the date of preliminary plat approval. No extensions are provided for as stipulated in the RCW.
 2. All requirements of the Pierce County Building Department must be met prior to the issuance of building permits for the development of lots.
 3. No logging, clearing, grading, or filling shall be conducted on the property until such time as erosion control and storm water drainage plans have been approved by the Development Engineering Section. Subsequent to said approval, tree removal, clearing, grading, and filling shall be limited to those areas reasonably necessary to construct roads and utilities, and to clear a reasonable building pad. This restriction shall not be read to prohibit or limit tree removal or vegetation clearing by home purchasers where applicable.
 4. No clearing, grading, fill, or construction of any kind will be allowed within Tracts G & H except for the placement of a horse trail, removal of diseased or

dangerous trees, and the placement of underground utility lines and supplemental landscaping. A diseased tree shall be defined as one that has a strong likelihood of infecting other trees or brush in the area or becoming dangerous as a result of the disease, as determined by an expert approved by Pierce County. A dangerous tree shall be any tree which, in the opinion of an expert approved by Pierce County (such as, but not limited to, an experienced landscaper), has a strong likelihood of falling in the event of a 60 mph wind.

5. The following note shall appear on the face of the final plat:

"The lots within this subdivision have been approved by Pierce County for single-family residential use only, except for those in Phase 2 which will be developed in accordance with the approvals by the Pierce County Hearing Examiner."
6. Utility easements shall be provided on the face of the final plat which are necessary to the provision of water, power, sewer, natural gas, and mail delivery to the lots within the subdivision. The affected purveyors should be contacted prior to development of the final plat for their specific easement requirements.
7. A Class IV General Forest Practice Application (FPA) from the Washington State Department of Natural Resources and/or Pierce County is required prior to the commencement of any timber harvesting activity on the site.
8. A storm drainage plan must be submitted to the Development Engineering Section as part of the site development plans. The storm drainage plan shall be in accordance with the Pierce County, Title 17A, Construction and Infrastructure Regulations - Site Development and Storm Drainage Management, Ordinance No. 99-24S.
9. The stormwater drainage release rates shall be restricted in accordance with Pierce County, Title 17A, Construction and Infrastructure Regulations - Site Development and Storm Drainage Management, Ordinance No. 99-24S, Section 6.6.2, Restricted Release Rates and 6.6.3, Discharge with no Established Drainage Course.
10. The stormwater design requirements may vest on the date of the preliminary plat/land use application provided the stormwater site development application is submitted within 180 days of the preliminary plat/land use application. To vest, the applicant must adhere to the process outlined in Pierce County, Title 18, Vesting, Ordinance 98-66S, Sections 18.160.010B, Definitions, and 18.160.050B, Vesting of Applications, and Title 18,

Application Filing, Ordinance 98-66S, Section 18.40.010, Preliminary Reviews.

11. Upon completion of the construction of the public/private storm drainage and road improvements, the proponent will be required to place an 18-month maintenance guarantee to ensure the correction of any defects or subsequent problems. The 18-month maintenance guarantee will be held for 18 months from the County's acceptance of public road improvements or 18 months from the County's acceptance of the project engineer's inspection report for private improvements.
11. A site stabilization plan must be submitted to the Development Engineering Section as part of the site development plans.
12. The site stabilization plan must include erosion control measures for development of the project up through completion of all structures.
13. Erosion control facilities must be installed, and subsequently, inspected and approved by Pierce County prior to site clearing. All necessary erosion control facilities must be properly maintained during all phases of site development to prevent debris, dust, and mud from accumulating on the County right-of-way and/or adjacent property.]
14. All work associated with stabilizing slopes and other disturbed areas shall be in accordance with Pierce County, Title 17A, Construction and Infrastructure Regulations - Site Development and Storm Drainage Management, Ordinance No. 99-24S.
15. If cleared, the County right-of-way must be seeded, mulched, and stabilized as required by the County.
16. The intent of the erosion control facilities is to protect downstream property owners from landslides, sediment buildup, and downstream channel scouring. If the intent of the requirement is not met, then all building and construction activity on site shall be discontinued and directed to meeting the intent of the requirement.
17. A clearing and grading plan must be submitted to the Development Engineering Section as part of the site development plans in accordance with Pierce County, Title 17A, Construction and Infrastructure Regulations - Site Development and Storm Drainage Management, Ordinance No. 99-24S.

18. All clearing and grading limits outside of the road easement/right-of-way shall be shown on the site development plans.
19. Any new and existing accesses must be accurately depicted on the applicable plan and submitted to the Development Engineering Section for review and approval.
20. All lots must access off internal plat roads.
21. All private roads within this plat must conform to the Pierce County, Title 17B, Construction and Infrastructure Regulations - Road and Bridge Design and Construction Standards, Ordinance 99-24S. These roads shall provide the following:
 - All roads constructed within the limits of this development shall be required to provide concrete curb, gutter, and sidewalks on both sides of the internal plat roadway in accordance with Title 17B, Construction and Infrastructure Regulations - Road and Bridge Design and Construction Standards, Ordinance 99-24S Section 17B.30.040, Development Standards Within Urban Growth Areas.
 - Street lighting shall be required at each intersection providing access to the development, at all internal plat intersections, and at the end of all cul-de-sacs in accordance with Title 17B, Construction and Infrastructure Regulations - Road and Bridge Design and Construction Standards, Ordinance 99-24S, Section 17B.30.040, Development Standards Within Urban Growth Areas. Street lighting is provided as a means of further enhancing traffic safety.
 - The applicant will be responsible for retaining a professional engineer licensed in the State of Washington to conduct all inspections on all private roads, shared access facilities, alleyway construction, or public road improvements in accordance with Title 17B, Construction and Infrastructure Regulations - Road and Bridge Design and Construction Standards, Ordinance 99-24S, Section 17B.30.050D, Inspections, Right of Entry, Access.
 - All construction shall adhere to the Manual on Design Guidelines and Specification for Road and Bridge Construction in Pierce County and the Pierce County Department of Public Works & Utilities Transportation Services Standard Drawings in accordance with Title 17B, Construction and Infrastructure Regulations - Road and Bridge Design and Construction Standards, Ordinance 99-24S, Section 17B.10.060,

Standards Adopted.

22. All emergency vehicle accesses must conform to Pierce County Title 17C, Construction and Infrastructure Regulations - Building and Fire Codes, Ordinance 99-24S.
23. The County will not issue single family building permits until all necessary drainage improvements, roads, shared accesses, or alleys are completed with the exception of minor items that may be damaged during home building such as sidewalks, bioswale linings, or shoulder leveling courses which may be financially guaranteed in accordance with the applicable sections of the Pierce County, Title 17A, Construction and Infrastructure Regulations - Site Development and Storm Drainage Management, Ordinance No. 99-24S.
24. Any work in the County right-of-way will require a separate right-of-way permit issued by the Pierce County Public Works Department.
25. All gates must conform to the applicable sections of the Pierce County, Title 17B, Construction and Infrastructure Regulations - Road and Bridge Design and Construction Standards, and Title 17C, Construction and Infrastructure Regulations - Building and Fire Code, Ordinance 99-24S.
26. Unless otherwise approved by the County Engineer, the applicant is responsible for obtaining a subordination agreement with any applicable utility company having facilities or easement rights within an area proposed to be deeded to Pierce County. The agreement shall make the applicable utility company's rights subordinate to the rights of the County for the particular piece of deeded property. The County must approve the terms of the agreement. The applicant is responsible for paying all costs associated with obtaining the subordination agreement.
27. All roads must be completed and approved by the County prior to issuance of building permits on individual lots.
28. A "Road Maintenance Covenant" and formation of a homeowner's association will be required.
29. Any work in the County right-of-way will require a separate right-of-way permit issued by Pierce County Public Works Department.
30. A Wetland Delineation and Analysis Report shall be submitted to Pierce County for review and approval prior to issuance of the Site Development Application(s). This report must be prepared in accordance with the

applicable sections of the Pierce County, Title 18E, Critical Areas, Ordinance 97-84. The report shall also address the stormwater drainage systems collection and discharge to these wetlands.

31. The delineated wetland boundary and the determined wetland buffer limits shall be survey located. The determined wetland buffer boundary shall be marked in accordance with the requirements of the Wetland Approval. The delineated wetland determined wetland boundary and the 8-foot building set back limits must be accurately shown on the site development plans.
32. Prior to issuance of a permit, the applicant will be required to submit a financial guarantee to the County to ensure compliance with the provisions of Pierce County, Title 17A, Construction and Infrastructure Regulations - Site Development and Storm Drainage Management, Ordinance No. 99-24S, the permit, and accepted plans.
33. All fences, pillars, signs, structures, etc. must be located on private property and must not impair sight distance to the County road.
34. The applicant will be required to submit and record a Right of Entry Agreement with Pierce County.
35. The applicant will be required to submit a reclamation guarantee to Pierce County.
36. The applicant will be required to submit a Plat Agreement to Maintain Stormwater Facilities and to Implement a Pollution Source Control Plan. This document must include Stormwater Pollution Prevention Best Management Practices that must be incorporated into the project stormwater facilities in accordance with the Pierce County, Title 11, Illicit Stormwater Discharges, Ordinance 96-47.
37. The applicant will be required to submit an 18-month guarantee to Pierce County.
38. All site retaining walls shall be constructed in accordance the with applicable requirements of the Pierce County, Department of Public Works and Utilities, Transportation Services, Standard Drawings for Rock Facing, be constructed with segmental concrete in accordance with the manufacturers installation guidelines, be constructed of cast-in-place concrete, be constructed of large fractured fin concrete block, or be constructed of other systems approved by Pierce County. All exposed surfaces of site retaining walls shall have the attractive face visible.

39. Any and all land to be deeded or dedicated to Pierce County shall have all easements subordinated to Pierce County or relinquished. All cost associated with the subordination or relinquishment of all easements shall be the responsibility of the applicant.
40. This project shall conform to all the applicable sections of the following Pierce County ordinances that were in effect at the time of application:
- Title 11, Illicit Stormwater Discharges, Ordinance 96-47.
 - Title 17A, Construction and Infrastructure Regulations - Site Development and Storm Drainage Management, Ordinance No. 99-24S.
 - Title 17B, Construction and Infrastructure Regulations - Road and Bridge Design and Construction Standards, Ordinance 99-24S.
 - Title 17C, Construction and Infrastructure Regulations - Building and Fire Codes, Ordinance 99-24S
 - Title 18E, Critical Areas, Ordinance 97-84.
41. Should this project not be served by sanitary sewer, the TPCHD will require a review of potential adverse environmental impacts and justification for utilization of on-site sewage treatment and disposal. The TPCHD is in receipt of a plat subdivision review application and will forward the results of its review of that application to the environmental official once the review has been completed.
42. All grading and filling of land must utilize open clean fill, i.e., dirt or gravel. All other materials, including waste concrete and asphalt, are considered to be solid waste and permit approval must be obtained through the TPCHD prior to filling.
43. **Residential:** Fire flow requirements for one-and-two family dwellings are 750 GPM for 20 psi for 45 minutes, except that 1000 GPM for 20 psi for 60 minutes is required when the total floor area including attached garages is 3600 square feet or more. A hydrant shall be located within 350 feet of the middle of the street frontage of each lot, except that no hydrant is required on a dead-end street not exceeding 600 feet in length when a hydrant is installed at the intersection of the cross street. Hydrant spacing shall not exceed 700 feet.
44. **Commercial:** Fire flow of not less than 1500 gpm for a duration of one hour at a residual pressure of not less than 20 psi and fire hydrant spacing not exceeding 500 feet shall be provided. The actual fire flow requirement shall be determined at the time of building permit application based on the type of

construction and the size of buildings. Installation of fire sprinkler systems can result in a 50 to 75 percent reduction of fire flow.

45. Preliminary water plans shall be submitted to the Fire Prevention Bureau for approval. As-built water system plans and flow test results shall be submitted to and approved by the Fire Prevention Bureau prior to final plat approval. This requirement can be waived if a bond or other approved form of security is provided prior to final approval.
46. Prior to issuance of any permits on the site (site development or forest practices), or the initiation of any clearing, grading, filling, or vegetation removal, the project shall complete the requirements necessary to obtain wetland approval and shall obtain Final Wetland Approval.
47. The stormwater facilities for this development shall be designed to minimize impacts to water quality and quantity, and wetland and buffer habitat. All stormwater shall be pretreated prior to its release into a natural system (wetland) and all stormwater facilities shall be located outside of wetlands and wetland buffers. A copy of the stormwater plans and calculations shall be submitted to and reviewed by the Development Engineer in conjunction with the Environmental Biologist for Area 1 prior to the issuance of the Site Development Permit or Final Wetland Approval.
48. In accordance with Section 18E 20.020.D of Title 18E, in order to provide permanent protection of the wetland and stream buffers from future encroachment, a permanent 2- or 3- rail, split-rail wooden fence (or Pierce County approved substitute) is required to be installed along the outer edge of the on-site wetland and stream buffer located north of Baker Way. This is being required to distinguish the wetland and stream buffer from the developed portions of the site and help protect the wetland, drainage course, and buffers from intrusion and other human impacts. Photographs of the installed fence shall be submitted to the Pierce County Environmental Biologist for Area 1 upon completion.
49. The following notes shall be included on the face of the final plat:

"Notice: This site lies within a Critical Area – Wetland and Fish and Wildlife Habitat Area, as defined within Title 18E Pierce County Code. Restrictions on use or alteration of the site may exist due to natural conditions of the site and resulting regulations.

The wetland approval for this formal plat was recorded at the Pierce County Auditor's office on _____ (date), recording number _____.

The on-site wetlands were delineated by _____ on _____ (date) and survey located by _____."

50. Erosion control measures must be in place prior to any clearing, grading, or construction. These control measures must be effective to prevent soil from being carried into surface water by stormwater runoff. Sand, silt, and soil will damage aquatic habitat and are considered pollutants.
51. Any discharge of sediment-laden runoff or other pollutants to waters of the state is in violation of Chapter 90.48, Water Pollution Control, and WAC 173-201A, Water Quality Standards for Surface Waters of the State of Washington, and is subject to enforcement action.
52. During construction, all releases of oils, hydraulic fluids, fuels, other petroleum products, paints, solvents, and other deleterious materials must be contained and removed in a manner that will prevent their discharge to waters and soils of the state. The cleanup of spills should take precedence over other work on the site.
53. Coverage under the National Pollution Discharge Elimination System (NPDES) and State Waste Discharge General Permit for Stormwater Discharges Associated with Construction Activities is required for construction sites, which disturb an area of five acres or more and which, have or will have a discharge of stormwater to surface water or a storm sewer.
54. The applicant shall construct sidewalks on both sides of Baker Way between its intersection with Canterwood Blvd. NW and the western right-of-way line of the Tacoma Lake Cushman transmission line. The applicant shall also explore with Tacoma Public Utilities the possibility of constructing a pathway near the western right-of-way line to provide pedestrian access to the office buildings. If TPU grants such permission, the applicant shall construct a trail in accordance with a plan to be approved by the Planning Division.
55. The decision set forth herein is based upon representations made and exhibits, including plans and proposals submitted at the hearing conducted by the hearing examiner. Any substantial change(s) or deviation(s) in such plans, proposals, or conditions of approval imposed shall be subject to the approval of the hearing examiner and may require further and additional


hearings.

56. The authorization granted herein is subject to all applicable federal, state, and local laws, regulations, and ordinances. Compliance with such laws, regulations, and ordinances is a condition precedent to the approvals granted and is a continuing requirement of such approvals. By accepting this/these approvals, the applicant represents that the development and activities allowed will comply with such laws, regulations, and ordinances. If, during the term of the approval granted, the development and activities permitted do not comply with such laws, regulations, or ordinances, the applicant agrees to promptly bring such development or activities into compliance.

DECISION:

The request for preliminary plat approval and major amendment approval to the Canterwood Master Planned Community for Division 11, Phases 2, 3, and 4 is hereby granted subject to the conditions contained in the conclusions above.

ORDERED this 15th day of July, 2005.


STEPHEN K. CAUSSEAU, JR.
Hearing Examiner

TRANSMITTED this 15th day of July, 2005, to the following:

**OWNER/
APPLICANT:** Lorigon Corporation
Canterwood Development Company
4026 Canterwood Drive NW, Suite B
Gig Harbor, WA 98332

AGENTS: Baseline Engineering
Attn: Mr. Kevin Foley
1910 - 64th Avenue West
Tacoma, WA 98466

Eva Jacobson
Still Water Planning, Inc.
P.O. Box 2314
Gig Harbor, WA 98335

17—

OTHERS:

Dawn Anderson
Pierce County Annex
2401 South 35th Street
Tacoma, WA 98409

PENINSULA ADVISORY COMMISSION (PAC)

James D. DePew
10304 – 86th Avenue NW
Gig Harbor, WA 98332

Michael B. Murphy
11030 – 56th St. NW
Gig Harbor, WA 98335

Lindie Schmidt
14015 14th Ave. NW
Gig Harbor, WA 98332

Andy Markos
4203 – 77th Ave. Ct, NW
Gig Harbor, WA 98335

David McHugh
474 – 3rd Avenue F
Fox Island, WA 98333

PIERCE COUNTY PLANNING AND LAND SERVICES
PIERCE COUNTY BUILDING DIVISION
PIERCE COUNTY DEVELOPMENT ENGINEERING DEPARTMENT
PIERCE COUNTY PUBLIC WORKS AND UTILITIES DEPARTMENT
TACOMA-PIERCE COUNTY HEALTH DEPARTMENT
FIRE PREVENTION BUREAU
PIERCE COUNTY PARKS AND RECREATION
PIERCE COUNTY COUNCIL
PIERCE COUNTY RESOURCE MANAGEMENT

CASE NO: PRELIMINARY PLAT/MAJOR AMENDMENT TO
CANTERWOOD MASTER PLANNED COMMUNITY:
DIVISION 11 (PHASES 2, 3, AND 4), APPLICATION
NUMBERS: 355073/355074

NOTICE

1. **RECONSIDERATION:** Any aggrieved party or person affected by the decision of the Examiner may file with the Department of Planning and Land Services a written request for reconsideration including appropriate filing fees within seven (7) working days in accordance with the requirements set forth in Section 1.22.130 of the Pierce County Code.

2. **APPEAL OF EXAMINER'S DECISION:** The final decision by the Examiner may be appealed in accordance with Ch. 36.70C RCW.

NOTE: In an effort to avoid confusion at the time of filing a request for reconsideration, please attach this page to the request for reconsideration.

m-2/16/05



**PIERCE COUNTY
MITIGATED DETERMINATION OF NONSIGNIFICANCE**

Environmental Application No. 355074
Application Family: 351059, 355073, 363084, 363085
Parcel Nos. 0122251051, 0122251052

ACTION: Preliminary Plat/Major Amendment to Canterwood Master Planned Community:
Canterwood, Division 11 (Phases 2, 3, and 4)

PROPOSAL: Formal subdivision of a vacant 23.46-acre site in three phases. Phase 2 will be a 3-lot commercial/business development totaling 7.95 acres; Phase 3 includes 12 single family lots on 11 acres; and Phase 4 includes 11 single family condominium-style residences on 4.51 acres. The project will be served by private roads, Canterwood Water Company, and Canterwood Step Sewer System/City of Gig Harbor, and is located in a Master Planned Community (MPC) zone classification.

LOCATION: East of Canterwood Boulevard and north of Baker Way within the Canterwood Master Planned Community, in the NE ¼ of Section 25, T22N, R1E, W.M.

PROPONENT: Canterwood Development Company

The Responsible Official of Pierce County hereby makes the following Findings and Conclusions based upon a review of the environmental checklist and attachments, other information on file with Pierce County, and the policies, plans, and regulations designated by Pierce County as a basis for the exercise of substantive authority under the Washington State Environmental Policy Act (SEPA) pursuant to RCW 43.21C.060.

FINDINGS OF FACT:

1. The project site is 23.46-acres in size and consists of two triangular shaped lots bisected by a 100-foot Tacoma-Lake Cushman Transmission Line Right-Of-Way. The project site is located immediately east of Canterwood Boulevard and on the north and south sides of Baker Way, an internal Canterwood road. The access to Phases 2 and 3 will be off Baker Way while Phase 4 will be accessed internally off West Old Stump Drive Northwest.
2. A 38,531 square foot open space tract is proposed to be located to the east of Phase 4, while a 2.88 storm drainage pond entitled "Storm Management Tract" will be located at the center of the development surrounded by all three phases.
3. A 100-foot wide Tacoma-Lake Cushman Transmission Right-of-Way easement runs diagonally in a northwest to southeasterly direction immediately adjacent to Phase 2 of the proposed development. Baker Way, an internal Canterwood road, providing as one of the main accesses into the Master Planned Community, runs in a westerly to easterly direction and bisects the transmission line easement immediately south of lot 1 of the proposed Phase 2.
4. Overall, the project site is currently undeveloped and is covered with second growth Douglas fir, alder, maples, and Western red cedar trees with a mixture of dense underbrush, dominated by salal and black huckleberry brush. In terms of topography, the western portion of the project site sits significantly higher than the eastern portion while a natural depression exists at the center of the project. Phases 3 and 4 are relatively flat but are elevated above the proposed storm drainage pond located at the center of the site.
5. Site drainage generally flows either to the depression area or to the central portion of the proposed development. The easterly portion of the project site is sloped from east to west with slopes ranging from 1% to 18% and averaging about 13%-14%. A small ridge (running north/south) exists in the northeast portion of the site with side slopes (east/west) averaging about 10%. The remainder of the project site (southwestern portion) has undulating topography, generally sloping to the southwest corner of the site at slopes varying from 1%-5%.

6. The area directly north of the project site is developed with single family residences. The development to the east (within Canterwood) is made up of 24 "cluster homes" lots, which is also Phase 1 of Division 11. The parcel to the south is undeveloped and is outside the Canterwood Master Plan. The parcels to the west are outside Canterwood and are developed with single family residences and a planned development of multi-family (mostly fourplexes) structures.
7. The project site is not located within an area designated as being an environmentally sensitive area as outlined in Section 18D.30.010, Pierce County Development Regulations - Environmental. However, an environmental (SEPA) review is required as more than 8,000 sq. ft. of building area would be located on the site.
8. The landscaping requirements of Section 18A.35.030 of the Pierce County Development Regulations - Zoning are applicable to this site. A landscaping plan may be required to be approved prior to issuance of building permits.
9. The grading and placement of fill material increase the likelihood of erosion and sedimentation. Pursuant to Title 18C, Pierce County Development Regulations - Site Development, a temporary erosion and sedimentation control plan must be approved and implemented on the project site prior to and during site development. Potential significant adverse impacts associated with erosion and sedimentation are adequately mitigated through compliance with this regulation.
10. Pursuant to Title 18C, Pierce County Development Regulations - Site Development, a storm drainage plan and subsequent installation of an approved stormwater management system on the project site is required.
11. The Pierce County Development Engineer has reviewed the site and did not identify any critical slopes on the project site pursuant to Title 18E, Pierce County Development Regulations - Critical Areas, Chapter 18E.40. Therefore, it was not necessary for the applicant to complete a Geotechnical Report or a Geotechnical Assessment.
12. Review of the proposal and traffic analysis prepared by Heath and Associates, Inc., dated February 2003, and revised August 2003, by the Traffic Division of Pierce County Public Works and Utilities indicates that the traffic volumes generated by the proposal will not result in a significant adverse impact to the County road network.
13. The City of Gig Harbor has reviewed the proposal and a traffic analysis prepared by Heath and Associates, Inc., dated February 2003, and revised August 2003, and determined that traffic generated by the proposed project will have a significant adverse impact in the City of Gig Harbor at the intersection of Harbor View Drive and North Harbor View Drive. The City of Gig Harbor has determined that a pro-rata share contribution to the City Road Project at the intersection in the amount of \$10,565.00 will adequately mitigate for this project's potential significant adverse impact to said intersection.
14. This project falls within an Aquifer Recharge Area as defined and regulated by Chapter 18E - Aquifer Recharge Areas, Pierce County Development Regulations - Critical Areas. In accordance with Section 18E.50.020.D.2, the project is exempt from the hydrogeologic assessment requirements of Chapter 18E.50, and is subject to the mitigation measures contained under Section 18E.50.020.D.2.b. Potential significant adverse environmental impacts to the aquifer are adequately mitigated through compliance with this regulation.
15. A wetland analysis report titled "Canterwood Division 11 Wetland Delineation and Buffer Averaging Plan" has been prepared for the project site by Applied Environmental Services, Inc., dated March 11, 2003. One regulated Category II wetland is located in the northern portion of the site, adjacent to Phase 4. Under Chapter 18E.60 - Wetlands, Pierce County Development Regulations - Critical Areas, the buffer for a Category II wetland is 100 feet. Normally Category II wetlands require 100-foot undisturbed wetland buffers and Type 5 Waters 35-foot undisturbed buffers. However, buffer width modification is allowed per Section 18E.30.060.B.1. of Title 18E, Development Regulations - Critical Areas. It has been determined that buffer width averaging will not adversely impact the wetland. The total buffer area after buffer averaging is actually greater than the buffer area prior to averaging, and a minimum buffer width of 50 feet

will be maintained. Therefore, since buffer width averaging will actually provide for a more uniform and continuous buffer area, which in turn will provide for increased wildlife protection, buffer width averaging is approved. The project will be preserving the wetland and wetland buffer in a separate tract of land. Pursuant to Chapter 18E.60, the proponent is required to obtain a Wetland Approval prior to any site development, including timber harvest, occurring on the project site. Compliance with Title 18E - Critical Areas and conditions of Wetland Approval will adequately mitigate for any significant adverse environmental impacts to the wetlands.

16. The Pierce County Council passed a school impact fee ordinance (Ordinance 96-105S2) on October 22, 1996. This ordinance requires that new development pay a monetary fee to the local school district in order to mitigate impacts resulting from increased enrollment. Payment of the fee is required prior to the sale and occupancy of dwelling units within the subdivision. The payment of these monetary fees adequately mitigates the proposal's impact to the school district.
17. The Pierce County Hearing Examiner will consider the provisions of safe walking conditions for students when rendering a decision on the proposal.
18. **Forest Practices Permit** – An approved Class IV-General Forest Practices Application (FPA) may be required for this project in accordance with the State Forest Practices Rules, RCW 76.09, and Title 18H, Pierce County Development Regulations – Forest Practices. Section 18H.30.020.B.3 of Title 18H requires the imposition of a six-year development moratorium on a parcel where activity meeting the definition of a Class IV-General forest practice has occurred without an approved Class IV-General FPA. A six-year development moratorium prohibits Pierce County from accepting applications for development of land on the parcel during the moratorium period. The applicant is responsible for determining if the proposed clearing activity will require approval of a Forest Practices Application.
19. No significant cultural/historical resources have been identified on this site. If, however, during construction, any artifacts are uncovered either the Pierce County Planning and Land Services Department at (253) 798-7210, or the State Historic Preservation Office in Olympia at (360) 753-4405, must be notified.
20. No state or federal candidate, threatened or endangered plant or animal species or habitat has been identified on the project site.
21. This site contains a portion of a Type 5 stream. The proposal is, therefore, subject to Chapter 18E.60, Fish and Wildlife Habitat Areas – Development Regulations. In accordance with Section 18E.60.050.C, a 35-foot undisturbed buffer is required on both sides of the stream. In accordance with Section 18E.10.120.C, General Provisions, Pierce County Development Regulations, Critical Areas – Plat Notification is required for this project.

CONCLUSIONS OF RESPONSIBLE OFFICIAL: The Responsible Official concludes that a Mitigated Determination of Nonsignificance (MDNS) may be issued. This is based upon staff review of the environmental checklist and attachments, other information on file with Pierce County and the above-noted findings. The MDNS is supported by plans, policies, and regulations adopted by Pierce County for the exercise of substantive authority under SEPA. The following are the County adopted policies which support the MDNS.

1. Recognize that the mitigation of development impacts is the shared responsibility of the public and private sectors. The County requires that developers of land along identified transportation corridors contribute their fair share towards transportation improvements necessitated by their development(s). Impact mitigation efforts may include:
 - b. Requiring that developers assist the county and other jurisdictions in the provision of additional transportation facilities and services needed to serve new developments in proportion to the impacts and needs generated by their projects. (Section 19A.80.100.Q.2, Title 19A – Comprehensive Plan)
2. Determine the adequacy of transportation facilities taking into account existing development, approved but unbuilt development and proposed development through utilization of capacity-to-demand (LOS),

- a. Future development shall pay its fair share of the capital improvements needed to address the impact of such development, and may pay a portion of the cost of the replacement of obsolete or worn out facilities. Upon completion of construction, "future" development becomes "existing" development, and shall contribute to paying the costs of the replacement of obsolete or worn out facilities as described in Policy CFP 2.2.1.a (PCC 19A.100.020 B.1.a). (Section 19A.100.020.B.2.a, Title 19A - Comprehensive Plan)
- b. Future development's payments may take the form or, but are not limited to, voluntary contributions for the benefit of any public facility, impact fees, capacity fees, dedications of land, provision of public facilities, public or private partnerships and future payments of user fees, charges for services, special assessment, and taxes. Future development shall not pay impact fees for the portion of any public facility that reduces or eliminates existing deficiencies. (Section 19A.100.020.B.2.b, Title 19A - Comprehensive Plan)

MITIGATION: The Responsible Official has determined that the proposal does not have a probable significant impact on the environment, and an Environmental Impact Statement (EIS) is not required under RCW 43.21C.030(2)(c), only if the following conditions are met. This decision was made after review of a completed environmental checklist, other information on file with Pierce County, and existing regulations. This information is available to the public on request. These mitigation measures are required as authorized under the Substantive Authority of SLPFA in accordance with the guidelines contained in Section 18D.10.080 of the Pierce County Code and shall be implemented by the applicant.

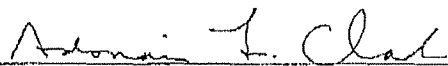
1. Prior to Final Plat approval of any phase within the development, the project proponent shall make a pro-rata share contribution to the City of Gig Harbor in the amount of \$10,565.00.

This Mitigated Determination of Nonsignificance (MDNS) is issued under 197-11-340(2). The lead agency will not act on this proposal for 15 days from the date of issue. Comments must be submitted by closing of the comment deadline. The Responsible Official will reconsider the MDNS based on timely comments and may retain, modify, or, if significant adverse impacts are likely, withdraw the MDNS. If the MDNS is retained, it will be final after the expiration of the comment deadline. No permits may be issued, and the applicant shall not begin work, until the comment deadline has expired and any other necessary permits are issued.

Responsible Official: Charles F. Kleeberg, Director
 Lead Agency: Planning and Land Services
 Pierce County Public Services Building (Annex)
 2401 South 35th Street
 Tacoma, Washington 98409
 (253) 798-7210

Date of Issue: February 16, 2005

Comment Deadline: March 3, 2005


 Adonais Clark, Environmental Designer

NOTE: Pursuant to RCW 43.21C.075 and Pierce County Environmental Regulations Chapter 18D.10.080 and Chapter 1.22 Pierce County Code, decisions of the Responsible Official may be appealed. Appeals are filed with appropriate fees at the Planning and Land Services Department, located at the Development Center in the Public Services Building. Appeals must be filed within 14 days of the expiration of the comment deadline.

NOTE: The issuance of this Mitigated Determination of Nonsignificance does not constitute project approval. The applicant must comply with all other applicable requirements of Pierce County Departments and/or the Hearing Examiner prior to receiving construction permits.

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