Exhibit A

BEFORE THE HEARING EXAMINER
FOR THE CITY OF BURIEN

In the Matter of the Application of	)	No. PLA 20-2576
	)	
Brian Nguyen, Lennar Northwest, Inc.	)	La Serra Preliminary Plat
	)	
	)	FINDINGS, CONCLUSIONS,
For Approval of a Preliminary Plat	)	AND RECOMMENDATION

SUMMARY OF RECOMMENDATION

The Hearing Examiner recommends that the request for a preliminary plat to subdivide 10 parcels totaling 8.04 acres into 36 single-family residential lots, located on the west side of 4th Avenue SW between SW 124th Street and 126th Street, be **GRANTED**. Conditions are necessary to ensure the proposal complies with the municipal code and to mitigate specific impacts of the proposal.

SUMMARY OF RECORD

Hearing:
The Hearing Examiner held an open record hearing on the request on April 6, 2021, using virtual hearing technology. The record was left open until April 19, 2021, to allow for the submission of additional information on the proposal.

Testimony:
The following individuals testified under oath at the open record hearing:

Brandi Eyerly, City Planner
Ivana Halvorsen, Applicant Representative
Heungkook Lim, City Surface Water Management Engineer
Zeke Spier
Rachael Brown
Paris Jones
Benjamin Freedman
Anne Magorty
Marie White
Brian Nguyen, Applicant
Ramesh Davad, City Development Review Engineer

Exhibits:
1. Staff Report, dated March 30, 2021
2. Project Narrative, Barghausen Consulting Engineers, Inc., dated December 18, 2020
3. Title Report

4. Preliminary Subdivision Application, dated December 11, 2020
5. Site Plans (18 Sheets), dated July 18, 2020, and December 4, 17, and 18, 2020
6. Residential Subdivision Development Regulations
7. Notice Materials:
    a. Notice of Application, dated January 15, 2021
    b. Notice of Public Hearing, published March 27, 2021
    c. Ad Confirmation (Notice of Public Hearing), *The Seattle Times*, dated March 22, 2021, for publication on March 27, 2021
    d. Mailing List
    e. Ad Confirmation (Notice of Application), *The Seattle Times*, dated January 13, 2021, for publication on January 15, 2021
8. Public Comments and Responses
    a. Comment from Anne Magorty, dated January 20, 2021
    b. Comment from David Goldenkranz, dated January 28, 2021
    c. Comment from Jon Cawley, dated February 4, 2021
    d. Comment from Paris Jones and Benjamin Freedman, dated February 5, 2021
    e. Comment from Kevin Blum, dated January 18, 2021
    f. Comment from Tim and Kristi Curran, dated January 18, 2021
    g. Comment from Rachael Brown, dated January 27, 2021
    h. Comment from Steve McClintock, dated January 31, 2021
    i. Comment from Vicci Bender, dated February 3, 2021
    j. Comment from Zeke Spier and Sue Kim, dated January 20, 2021
    k. Applicant Response to Public Comments, Barghausen Consulting Engineers, Inc., dated March 11, 2021
    l. Comment from Devon Miller, dated March 30, 2021
    m. Comment from Anne Magorty, dated March 30, 2021, with City Response, dated March 31, 2021
    n. Comment from Paris Jones and Benjamin Freedman, dated April 6, 2021
9. Environmental Review Materials:
    a. Mitigated Determination of Nonsignificance (MDNS), dated March 22, 2021
    b. Environmental Checklist, dated December 17, 2020
    c. City Environmental Review Report, dated March 19, 2021
    d. Comment from Washington State Department of Ecology, dated February 5, 2021
10. Memorandum from City Development Review Engineer Ramesh Davad, dated March 11, 2021; Revised Memorandum from City Development Review Engineer Ramesh Davad, dated April 7, 2021
11. Street and Traffic Materials:
    a. Road Standards Variance Request Letter, dated January 14, 2021; Road Standards Variance Request Application, dated January 12, 2021
    b. Traffic Impact Analysis, Transpogroup, dated January 6, 2021

12. Certificates of Availability:
    a. Certificate of Water Availability, dated July 31, 2020
    b. Certificates of Sewer Availability, dated July 10, 2020
    c. Fire Hydrant Availability Letter, dated December 16, 2020
13. Memorandum from City Surface Water Management Engineer Heungkook Lim, dated March 11, 2021; Revised Memorandum from City Surface Water Management Engineer Heungkook Lim, dated April 7, 2021
14. Preliminary Technical Information Report, Barghausen Consulting Engineers, dated December 16, 2020
15. Wetland and Stream Reconnaissance Report, Wetland Resources, Inc., dated July 13, 2020
16. Geotechnical Engineering Study, Earth Solutions NW, LLC, dated September 18, 2020
17. Tree Protection Plan, Washington Forestry Consultants, Inc., dated October 29, 2020
18. Safe Walking Conditions Information:
    a. School Bus Stop Information
    b. School Walking Conditions Map
19. Revised Site Plans (2 Sheets), dated April 2, 2021, and April 6, 2021

Based upon the testimony and documents submitted at the open record hearing, the Hearing Examiner enters the following findings, conclusions, and recommendation:

FINDINGS

Application and Notice

1. Brian Nguyen, Lennar Northwest, Inc. (Applicant), requests a preliminary plat to subdivide 10 parcels totaling 350,319 square feet (8.04 acres) into 36 single-family residential lots. The project site was previously used for a legally nonconforming commercial plant nursery and currently contains four single-family residences, six greenhouses, and associated outbuildings, all of which would be removed. Access to a majority of the lots would be provided from new internal public roadways connecting to SW 124th Street to the north and 4th Avenue SW to the east, with access to three lots at the southwest corner of the property being provided via a shared private driveway connecting to SW 126th Street. In addition to the new public roadways, site improvements would include installation of utilities; street improvements along the property's frontage with SW 124th Street, SW 126th Street, and 4th Avenue SW; construction of stormwater facilities; and the provision of open space. The property is located on the west side of 4th Avenue SW, between SW 124th Street and 126th Street.[1] *Exhibit 1, Staff Report, pages 1 and 4; Exhibit 2; Exhibit 4; Exhibit 5; Exhibit 19.*

[1] The property is identified by Tax Assessor Parcel Nos. 634100-0160, -0180, -0190, -0191, -0200, and 072304-9152, -9153, -9108, -9134, -9056. *Exhibit 1, Staff Report, page 1.* A legal description of the property is included with the title report. *Exhibit 3.*

2. The City of Burien (City) determined the application was complete on January 9, 2021. On January 15, 2021, the City mailed notice of the application to property owners within 500 feet of the site, posted notice on-site, and published notice on the City's website and in the *Seattle Times*, with a comment deadline of February 5, 2021. The City provided notice of the open record hearing associated with the application on or around March 27, 2021, by mailing notice to property owners within 500 feet of the site, posting notice on-site, and publishing notice on the City's website. The City received several public comments on the proposal in response to its notice materials, which are discussed in detail below. *Exhibit 1, Staff Report, page 5; Exhibit 7; Exhibit 8.*

State Environmental Policy Act

3. The City acted as lead agency and analyzed the environmental impacts of the proposal, as required by the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW). The City used the Optional Determination of Nonsignificance process allowed by Washington Administrative Code (WAC) 197-11-355 and provided notice with the notice of application. The notice materials stated that the City expected to issue a Determination of Nonsignificance for the proposal and provided a comment deadline of February 5, 2021. The Washington State Department of Ecology (DOE) submitted a comment letter concerning possible heavy metal contamination from the old Asarco smelter in north Tacoma and recommended analyzing soil samples for lead and arsenic. DOE further recommended that the Applicant develop a soil mediation plan and enter into the Voluntary Cleanup Program if lead or arsenic is found at concentrations above the specified Model Toxic Control Act (MTCA) cleanup levels. The City reviewed the Applicant's environmental checklist and other information on file and determined that, with mitigation measures, the proposal would not have a probable significant adverse impact on the environment. Accordingly, the City's SEPA Responsible Official issued a Mitigated Determination of Nonsignificance (MDNS) on March 22, 2021, with a 14-day appeal deadline of April 5, 2021. The MDNS was not appealed. The MDNS conditions require the Applicant to follow DOE's recommendations concerning soil contamination and to stop work and contact the Washington State Historic Preservation Officer if archeological resources are discovered during construction activity. The MDNS (Exhibit 9.a) also provided a recommendation stating, "To be compatible with the existing neighborhood and to prevent the effect of a continual wall that backyard fences would create along the City rights-of-way, the City strongly recommends that the houses on lots 20 through 28 be turned to face SW 124th Street and 4th Avenue SW." *Exhibit 1, Staff Report, page 6; Exhibit 7.a; Exhibit 9.*

Comprehensive Plan and Zoning

4. The property is designated "Moderate Density Residential Neighborhood" under the City Comprehensive Plan. The purpose of the Moderate Density Residential Neighborhood designation is to allow for single-family residential uses at a maximum density of six dwelling units per acre. *City Comprehensive Plan, page 2-13.* The designation is implemented through the RS-7,200 zoning category. *City Comprehensive Plan, page 2-*

13. City staff identified Comprehensive Plan Policy RE 1.6 as relevant to the proposal. RE 1.6 provides that Moderate Density Residential Neighborhood designated properties should generally reflect the following criteria:

- Existing development in the area is generally characterized by single-family residential development or platting at greater than four units per acre.
- Existing and planned public facilities and services are adequate to support single-family densities greater than four units per net acre.
- The area to be developed should not be constrained by critical areas and, where critical areas or buffers exist, consideration should be given to the health and safety of residents and to potential impacts on such critical areas and buffers.

City Comprehensive Plan, page 2-13. City staff reviewed the Applicant's proposal and determined that it would be consistent with the Moderate Density Residential Neighborhood designation and that, with conditions, it would comply with the City Comprehensive Plan. *Exhibit 1, Staff Report, pages 17 and 18.*

5. The property is zoned RS-7200 Single-Family Residential. The purpose of the single-family residential zones is "to establish areas in which a wide range of single-family housing opportunities can be provided, while preserving the character of the surrounding neighborhood and protecting environmentally sensitive areas." *Burien Municipal Code (BMC) 19.15.005.* Single-family detached dwelling units are allowed within the RS-7200 zone. *BMC 19.15.005.2.* BMC 19.15.005.2 requires a minimum 7,200 square foot lot area per dwelling unit in the RS-7200 zone but allows lots created through a subdivision to measure less than 7,200 square feet with lot averaging, provided that no lot measures less than 6,480 square feet. City staff reviewed the Applicant's site plan and determined that the 36 proposed lots would have an average lot size of 7,115 square feet and, therefore, would not comply with minimum lot size requirements. Following the hearing, the Applicant submitted revised site plans removing a previously proposed open space tract (former Tract B) and reconfiguring the lots to provide an average lot size of 7,218 square feet, with the smallest lot measuring 6,490 square feet, in compliance with BMC 19.15.005.2. BMC 19.15.005.2 also provides development regulations related to front and interior setbacks, building coverage, impervious surface coverage, and building height. Compliance with these development regulations would be reviewed prior to issuance of building permits. *Exhibit 1, Staff Report, pages 1, 3, 5, and 8 through 11; Exhibit 5; Exhibit 19.*

Existing Site and Surrounding Property

6. As noted above, the 8.04-acre property currently contains four single-family residences, as well as six large greenhouses and several outbuildings associated with a former commercial plant nursery, all of which would be removed as part of the project. The site topography slopes to the south and southwest, with slopes ranging from approximately 2 to 15 percent and a total elevation change of approximately 15 to 20 feet. Existing vegetation on the site consists primarily of grass, brambles, and scattered trees around the existing structures. The property is bordered to the north by SW 124th Street, to the east

by 4th Avenue SW, to the west by residential lots, and to the south by residential lots and SW 126th Street. All surrounding properties are zoned RS-7200 and are developed with single-family residences. *Exhibit 1, Staff Report, pages 4 and 5; Exhibit 2; Exhibit 5; Exhibit 14; Exhibit 16; Exhibit 19.*

Critical Areas

7. Earth Solutions NW, LLC, prepared a geotechnical engineering study for the Applicant, dated September 18, 2020, which determined that there were no geologically hazardous areas on or in the immediate area of the property and that the proposed development would be feasible from a geotechnical standpoint. The study also determined that stormwater infiltration on-site would be infeasible due to native soil conditions. The study provided recommendations for temporary erosion control measures, site preparation and earthwork, structural fill specifications, foundation design, retaining wall design, drainage, and stormwater detention vault design. Wetland Resources, Inc., prepared a wetland and stream reconnaissance report for the Applicant, dated July 13, 2020, which concluded that there are no wetlands or streams within, or in the immediate vicinity of, the project site. No other potential critical areas were identified on or near the property. *Exhibit 1, Staff Report, pages 13 and 14; Exhibit 15; Exhibit 16.*

Access, Parking, and Traffic

8. The Applicant's site plans show that access to several lots would be provided from new internal public roadways (Road A and Road B) that would connect to SW 124th Street to the north and 4th Avenue SW to the east. Access to Lots 20 through 29 would be provided from a new internal roadway terminating in a cul-de-sac (Road C) connecting to Road B, with access to Lots 23 through 28 provided by shared private driveways (Tracts D and E). Access to Lots 6, 7, 11, and 12 would be provided by a shared private driveway (Tract B) near the intersection of Road A and Road B. Access to Lots 8 through 10 at the southwest corner of the site would be provided from SW 126th Street via a shared private driveway (Tract C). Improvements consisting of curbs, gutters, sidewalks, streetlights, and landscaping would be required for the new internal streets and along the property's frontage to SW 124th Street, SW 126th Street, and 4th Avenue SW. An existing easement within Tract C that benefits an adjacent property would be maintained. Transpogroup, prepared a Traffic Impact Analysis (TIA) for the proposed subdivision, dated January 6, 2021. The TIA examined the traffic impacts for the proposed development of 32 single-family homes on the site, crediting the proposal with traffic generated by the 4 existing single-family homes and the commercial plant nursery on the site. The TIA determined that the proposal would result in approximately 2,032 fewer average daily trips, with 120 fewer AM peak hour trips and 278 fewer PM peak hour trips. Because the TIA determined that the proposal would generate fewer trips than the existing residential and commercial nursery uses, the proposed development would not require payment of traffic impact fees. *See BMC 19.35.110. Exhibit 1, Staff Report, pages 4 and 17; Exhibit 5; Exhibit 11; Exhibit 19.*

9. Access and street improvements for the development would comply with the 2016 Burien Road Design and Construction Standards (BRS). *Chapter 12.05 BMC.* The City Public Works Director approved a request for a road standards variance from the BRS minimum 300-foot intersection spacing requirement to allow the proposed intersection at Road B and 4th Avenue SW to be located 287 feet from the existing intersection at SW 126th Street and 4th Avenue SW. The City Development Review Engineer reviewed the subdivision application for compliance with the 2016 Burien Road Design and Construction Standards, and provided detailed recommendations in a memorandum, dated March 11, 2021. The Applicant would incorporate the recommendations during the plat development process. The City Development Review Engineer provided a revised memorandum, dated April 7, 2021, after reviewing the revised site plan submitted by the Applicant after the hearing. As discussed in more detail below, the revised memorandum included recommendations for the installation of street lighting along 4th Avenue SW. *Exhibit 1, Staff Report, page 11; Exhibit 5; Exhibit 10; Exhibit 11; Exhibit 19.*

Landscaping and Recreation

10. BMC 19.25.120.2 requires that single-family development in the RS-7200 zone retain at least 30 percent of the significant trees on the property.[2] Washington Forestry Consultants, Inc. (WFC), prepared a tree protection plan for the Applicant, dated October 29, 2020, that identified a total of 23 significant trees on-site, which would require a minimum of 7 significant trees to be retained. The Applicant does not propose to retain any significant trees on-site and, therefore, would be required to plant replacement trees pursuant to BMC 19.25.160. Under BMC 19.25.160, the tree replacement requirement may be satisfied by planting new trees having less than three-inch calipers at a replacement rate of two inches diameter for every one-inch diameter of the largest caliper of significant tree removed. WFC determined that the largest significant tree proposed for removal has a 41-inch diameter at breast height and, therefore, the Applicant would be required to plant 82 smaller saplings to satisfy the tree replacement requirement. The Applicant proposes to meet this requirement by planting 82 replacement trees in the interior of the subdivision and along abutting rights-of-way. The Applicant would comply with protection measures identified in the tree protection plan to ensure that trees on neighboring properties, which overhang or have critical root zones in the subject property, are adequately protected during construction, as required by Chapter 19.25 BMC. *Exhibit 1, Staff Report, pages 15 and 16; Exhibit 2; Exhibit 17.*

11. BMC 19.17.013 requires that residential subdivisions developed at a density of eight units or less per acre provide a minimum of 390 square feet of on-site recreational space per unit. The Applicant's proposal to subdivide 8.03 acres into 36 lots would require the Applicant to provide a minimum of 14,040 square feet of recreation space. *BMC 19.17.013.1.A.* The Applicant proposes to meet this requirement by providing recreation

[2] A significant tree is an existing healthy tree with a minimum six-inch diameter when measured four feet above grade. *BMC 19.10.493.*

space within the 31,359 square foot open space/stormwater Tract A. The Applicant would also be required to provide at least 400 square feet of children's play area within the recreational space, with no dimension less than 20 feet, located adjacent to pedestrian paths or near building entrances. Any play apparatus in the children's play area would be required to meet Consumer Product Safety Standards, and the property owner or a separate entity, such as a homeowners association, would be required to provide maintenance of the recreational space in a manner acceptable to the City. *BMC 19.17.013. Exhibit 1, Staff Report, pages 14 and 15; Exhibit 5; Exhibit 19.*

Stormwater

12. Tract A, located in the southeast portion of the site, is proposed for on-site stormwater facilities that would consist of a wet vault for water quality treatment and a detention vault for flow control. The Applicant submitted a Preliminary Technical Information Report (TIR), dated December 16, 2020, prepared by Barghausen Consulting Engineers. The TIR indicates that flow control best management practices (BMPs) would be used where feasible, noting that BMPs were not feasible for several dispersion methods due to site conditions. Runoff from the site would be collected using a series of catch basins and stormwater pipes and conveyed to the stormwater facilities in Tract A for detention and water quality treatment before discharging to the City's existing stormwater drainage network. The City Surface Water Management Engineer reviewed the proposed development for compliance with the 2016 King County Surface Water Design Manual and the 2016 Stormwater Pollution Prevention Manual, found the proposal reasonable, and provided several recommendations, including refining the final design of the flow control and conveyance system and providing an updated full TIR that would be reviewed during future permit processes. Following the hearing, the City Surface Water Management Engineer reviewed a revised site plan submitted by the Applicant, reiterated the previous recommendations, and provided additional recommendations related to the provision of recreation space within a tract that would also include stormwater facilities maintained by the City. E*xhibit 1, Staff Report, page 13; Exhibit 5; Exhibit 13; Exhibit 14; Exhibit 19; Testimony of Heungkook Lim.*

Utilities and Services

13. King County Water District 20 issued a certificate of water availability for public water service, with the condition that the Applicant connect to the 8-inch diameter water main located approximately 48 feet from the site. The nearest fire hydrant to the site would have a minimum flow rate of 2,300 gallons per minute for a duration of 2 hours or more. Southwest Suburban Sewer District issued certificates of sewer availability to serve the proposed subdivision by way of an existing 8-inch diameter sewer main. King County Fire District #2 issued a certificate of fire hydrant availability for the proposed subdivision, subject to conditions that the Applicant mark specified locations as no parking fire lanes, upgrade an existing fire hydrant located at 604 SW 126th Street with a 5-inch Storz adapter, install new fire hydrants upon completion of a Developer's Extension Agreement with King County Water District 20, obtain fire hydrant

availability certificates when applying for each lot's home building permits, and record maintenance provisions on the face of the final plat. The City Development Review Engineer reviewed the Applicant's site plans and provided comments related to utility installation and street lighting. Following the hearing, the City Development Review Engineer reviewed the Applicant's revised site plans, noted that the revised proposal included relocating existing poles and overhead power lines underground, and recommended that the Applicant install streetlights along the property's frontage with 4th Avenue SW. The Applicant would show on the plat any utility easements or reference documents pertaining to sewer and water utility easements necessary to provide service to the lots. Prior to issuance of development permits for any lots, the Applicant would demonstrate conformance with all requirements of the Fire Marshal. *Exhibit 1, Staff Report, pages 3, 11, and 12; Exhibit 10; Exhibit 12.*

Schools

14. The Highline School District would serve the proposed subdivision. Students that would attend the nearest elementary school, Hazelwood Elementary, the nearest Middle School, Cascade Middle School, and the nearest high school, Highline High School, would be eligible for school bus transportation. The School District does not provide a safe walking route from the subdivision to Hazelwood Elementary and does not recommend that students walk to Highline High School. City staff determined that a safe walking route would be available to Cascade Middle School and that safe walking routes would be available to school bus stops serving all the schools. *Exhibit 1, Staff Report, pages 16 and 17.*

Written Comments and Responses

15. As noted above, the City received several public comments on the proposal in response to its notice materials, specifically:
    - Anne Magorty raised concerns about existing stormwater runoff from the property impacting her neighboring property.
    - David Goldenkranz requested that the proposal include recreational play structures for children residing at the subdivision. He also requested that the proposed installation of a sidewalk along the property's frontage with SW 124th Street be extended to Ambaum Blvd. SW, noting existing pedestrian safety issues along the corridor due to speeding vehicles.
    - Jon Cawley expressed concerns that the proposal would not be required to adequately mitigate for impacts to public utilities, resulting in increased utility rates. He also raised concerns about how the proposed development would manage stormwater runoff and about construction vehicles damaging SW 126th Street.
    - Paris Jones and Benjamin Freedman noted that they own property adjacent to the subject property and requested additional information about the expected start date and duration of construction, how construction noise would impact people working from home, how construction traffic would impact area streets, the

anticipated environmental impacts of the proposal, whether the proposal would affect property values, whether sidewalks would be installed along 126th Street. They also raised concerns about the proposal's stormwater and privacy impacts and about whether the proposal would affect an existing easement providing access to their garage.

- Kevin Blum requested additional information about existing single-family residences on the property and about sidewalks that would be installed as part of the proposed development.
- Tim and Kristi Curran requested additional information about the anticipated construction timeline and home design details.
- Rachael Brown noted that she owns property adjacent to the project site and raised concerns about the proposal's impacts to a fence and trees on her property. She also requested additional information about how the proposal would prevent stormwater runoff from impacting her property.
- Steve McClintock noted that any excavation activity that would take place close to his neighboring property could weaken the root system for an 80-foot pine tree on his property.
- Vicci Bender raised concerns that the proposed development would not be compatible with the character of the existing neighborhood.
- Zeke Spier and Sue Kim provided a comment noting that people tend to deposit debris, including needles and empty beer cans, within existing open space areas in the neighborhood. They requested that the proposal design open space areas with landscaping and fencing to discourage the deposit of debris and to maintain a clean environment.
- Devon Miller inquired about the scope of sidewalk installation that would be included with the proposed development, noting existing pedestrian safety issues in the area.

Exhibit 8.

16. The Applicant provided a response to the public comments noting:

- The Applicant intends to provide a welcoming private park/open space in Tract A for residents of the proposed subdivision. The private park/open space would be landscaped and have some perimeter fencing. A homeowners association would be created to own and maintain the open space.
- The project would include construction of new sidewalks along the property's frontages on SW 124th Street and SW 126th Street and reconstruction of sidewalks along the property's frontage on 4th Avenue SW.
- The project does not propose to extend sidewalks along SW 124th Street to Ambaum Blvd. There is an existing walking path on the north side of SW 124th Street that is adequate for school walking conditions.

- The proposed homes would comply with zoning setback limits, and existing concrete rubble on the property would be removed. Any unavoidable impacts to an existing fence on neighboring property would be repaired by the developer.
- It is typical for the developer to install new six-foot tall wood fencing at the new lots. The developer would coordinate with a neighboring property owner about fencing along proposed Tract C.
- Off-site trees would be protected from impacts to the greatest extent possible. Off-site trees would be evaluated by an arborist, and the developer would follow the arborist's recommendations for tree protection.
- The developer would be responsible to ensure that no off-site impacts occur from development and/or to mitigate any inadvertent impacts.
- The site is not a known habitat site for wildlife.
- A proposed shared driveway within an existing easement would not impede continued use of the easement by the benefitted party. There may be limited closure of the easement during construction that would be coordinated with the affected property owner.
- All project-generated stormwater would be collected and routed to the project's stormwater pipes and vaults. The existing catch basin on the property may remain after development if it serves upstream properties other than the development site. No project-generated stormwater would be directed to the catch basin.
- A retaining wall at the back of proposed Lots 11 and 12 would contain a wall drain to collect any drainage and route it away from neighboring properties to the on-site drainage system.
- The start date of construction would be determined by market conditions and permit timelines. Site construction could begin as early as fall 2021.
- Erosion and/or fugitive dust during construction would be managed per a Temporary Sediment and Erosion Plan (TESC) consistent with state and local requirements.
- A traffic control plan and construction access plan would be prepared during final engineering.
- Redevelopment of the site with residential uses would likely increase or have no effect on property values in the neighborhood.

Exhibit 8.k.

Testimony

17. City Planner Brandi Eyerly testified generally about the proposal and how it would meet the requirements for preliminary plat approval under the municipal code and RCW 58.17.110. She noted that the City reviewed the environmental impacts of the proposal and issued an MDNS that was not appealed. Ms. Eyerly explained that the MDNS includes conditions related to potential soil contamination from the former Asarco smelter and regarding procedures for addressing the inadvertent discovery of cultural artifacts on-site, as well as a recommendation to reorient several proposed residential

structures to face 4th Avenue SW and SW 124th Street to provide integration with the surrounding neighborhood, noting that such reorientation is not required under the municipal code. She described how the proposal would provide access to lots within the subdivision, noting that proposed Roads A, B, and C would be dedicated to the City as public rights-of-way and that four, private joint-use driveways would provide access to lots north of the proposed cul-de-sac and to lots at the southwest corner of the property. Ms. Eyerly noted that proposed Tract A, at the southeast corner of the property, would contain two drainage vaults to detain and treat on-site stormwater before discharging to the city's stormwater drainage network. She stated that the project would not retain any significant trees on-site but detailed how the proposal to plant replacement trees on-site would meet municipal code requirements, noting that City staff has recommended conditions designed to protect off-site trees on neighboring properties during construction. Ms. Eyerly also noted that school bus stops are located within a mile of the property and that the proposed development would provide safe walking conditions to the bus stops for students residing at the subdivision. *Testimony of Ms. Eyerly.*

18. Applicant Representative Ivana Halvorsen testified that the Applicant would oppose a reorientation of lots to face SW 124th Street and 4th Avenue SW, noting that the current proposal would create a sense of community within the subdivision by providing new internal roadways for lot access and would integrate with the surrounding neighborhood by connecting the new internal roadways with both SW 124th Street and 4th Avenue SW. She asserted that reorienting the lots would isolate the perimeter lots from the rest of the subdivision and could cause confusion for visitors, delivery drivers, and emergency vehicles. Ms. Halvorsen noted that the project would include street improvements along the property's frontage to SW 124th Street, SW 126th Street, and 4th Avenue SW. She explained that the Applicant obtained approval of a deviation from street intersection spacing standards to allow the new intersection at 4th Avenue SW and proposed Road B to be located 287 feet from the existing intersection at SW 126th Street and 4th Avenue SW, noting that the deviation would not impact safety or sight distance. Ms. Halvorsen stated that the Applicant would submit a revised site plan to resolve the code deficiency regarding the proposal's minimum average lot area. She explained that several existing easements on the property would be eliminated as part of the project but that an existing access easement at the southwest corner of the property benefiting a neighboring property would be preserved. Ms. Halvorsen stated that the Applicant is willing to work with the City to try to preserve a handful of mature trees at the southwest corner of the property but noted that grading and foundation activity in the area may prevent tree preservation. *Testimony of Ms. Halvorsen.*

19. City Surface Water Management Engineer Heungkook Lim testified that the Applicant's preliminary stormwater management design is reasonable and sufficient for preliminary plat approval. He stressed that the Applicant's final stormwater management design would require further review by City staff to ensure that it would comply with

requirements of the 2016 King County Surface Water Design Manual. *Testimony of Mr. Lim.*

20. Zeke Spier testified that he supports additional residential development in the area. He stated that he agrees with City staff's recommendation to reorient perimeter lots to face SW 124th Street and 4th Avenue SW, noting that a reorientation of the lots could alleviate existing issues with people leaving trash and needles along 4th Avenue SW. *Testimony of Mr. Spier.*

21. Rachael Brown testified that she owns property adjacent to proposed Lots 6 and 7 and inquired about whether the proposal would include adequate tree protection measures for trees on her property. She also inquired about the proposed building setbacks for lots along the subject property's western property line. *Testimony of Ms. Brown.*

22. Paris Jones testified that she is excited about the proposed development but would like more information about who would be responsible for the maintenance of an existing easement at the southwest corner of the subject property that provides access to her property. *Testimony of Ms. Jones.*

23. Benjamin Freedman echoed Ms. Jones's testimony and stated that he agrees with City staff's recommendation that perimeter lots be reoriented to face SW 124th Street and 4th Avenue SW. He stated that he has concerns about temporary construction noise, noting that several people are currently working from home due to the COVID-19 pandemic. Mr. Freedman also raised concerns about the proposal's traffic and pedestrian safety impacts. *Testimony of Mr. Freedman.*

24. Anne Magorty testified that she has concerns about the proposal's stormwater impacts, noting that there is an existing catch basin at the northeast corner of her property and that her property has existing flooding issues. She stated that she currently manages these flooding issues by utilizing a sump pump but would like assurance that the proposal would not increase stormwater runoff to her property. *Testimony of Ms. Magorty.*

25. Marie White testified that she lives across the street from the project site and is excited by the proposed development. She stated that she supports the Applicant's proposed orientation of lots because it would provide a unified subdivision. *Testimony of Ms. White.*

26. Applicant Brian Nguyen responded to Ms. Jones's and Mr. Freedman's concerns about an existing access easement serving their property. He explained that the Applicant team would work directly with Ms. Jones and Mr. Freedman throughout the development process to ensure that they will have safe access to and from their property. Mr. Nguyen explained that the Applicant team is still in the process of working out the details for how

a future homeowners association would provide maintenance of the easement. *Testimony of Mr. Nguyen.*

27. In response concerns raised by the public, Ms. Eyerly explained that construction is allowed in the City between 7:00 AM and 9:00 PM. She noted that the tree root zones along the site's western property line would be protected but that state law allows neighboring property owners to trim overhanging limbs. *Testimony of Ms. Eyerly.*

28. Ms. Halvorsen testified that runoff flowing from the site to Ms. Magorty's property would be intercepted and routed to the on-site drainage facility. She also noted that the project would include a low retaining wall with a footing drain along the south property line, which would ensure that no downstream properties would be impacted by runoff from proposed Lots 11 through 17. Ms. Halvorsen stated that the Applicant would hire an arborist who would coordinate with neighboring property owners to evaluate off-site trees to ensure that their critical root zones are protected. She explained that the Applicant would construct six-foot, solid wood fencing along the backyard property lines and would adhere to required building setbacks. *Testimony of Ms. Halvorsen.*

29. City Development Review Engineer Ramesh Davad testified that, because the project proposes to install underground power, the Applicant would be required to install standalone streetlights along SW 124th Street. He explained that City staff has not yet addressed whether the Applicant would be required to install street lighting along the property's frontage to 4th Avenue SW but noted that it may be required, to address safety concerns, if adequate street lighting does not already exist. *Testimony of Mr. Davad.*

30. Ms. Halvorsen described existing street lighting along the property's frontage to 4th Avenue SW and stated that the Applicant would provide any additional street lighting required by the City's adopted Road Design and Construction Standards. *Testimony of Ms. Halvorsen.*

Additional Materials

31. The Hearing Examiner left the record open to allow for the submission of additional information on the proposal. The City submitted a revised site plan prepared by the Applicant and revised memoranda from City Surface Water Management Engineer Heungkook Lim and City Development Review Engineer Ramesh Davad following their review of the revised site plan, as described above. *Oral Ruling of the Hearing Examiner; Exhibit 10; Exhibit 13; Exhibit 19.*

Staff Recommendation

32. City staff determined that the proposed subdivision, as conditioned, would comply with RCW 58.17.110. City staff also determined that the proposal, as conditioned, would serve the public use and interest and would be consistent with the public health, safety, and general welfare because it would contribute to the community's ability to provide

additional single-family residential units and additional home ownership opportunities within the community. *Exhibit 1, Staff Report, page 8.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner has jurisdiction to receive and examine information on a preliminary plat application; conduct a public hearing on the application; prepare a record of the hearing; enter findings of fact and, based upon those facts, make a recommendation to the City Council. The recommendation may be to grant the application, grant the application with conditions, or deny the application. *BMC 2.15.070(2)(a); BMC 2.15.080; BMC 17.55.040.* A recommendation to the City Council is a Type 3 review process. *BMC 19.65.075.*

Criteria for Review

The Hearing Examiner's recommendation must be supported by the evidence presented and must be consistent with the objectives and goals of the comprehensive plan, zoning code, subdivision code, and other City codes and ordinances. *BMC 2.15.070(2); BMC 2.15.080; BMC 17.55.040(3).*

The preliminary plat application review standards and criteria are found in Title 17 BMC and Chapter 58.17 RCW. Subdivisions must conform to Chapter 17.15 BMC and Chapter 17.20 BMC, including the following:

- Subdivision streets shall conform in effect to the master plan as adopted and/or to the general pattern of the highway system of the city of Burien. *BMC 17.15.030.*

- The proposed subdivision and its ultimate use shall be in the best interests of the public welfare and the neighborhood development of the area and the subdivider shall present evidence to this effort when requested by the city of Burien. *BMC 17.15.050.*

- The tract to be subdivided shall not be part of or encroach on an area or areas designated in the master plan for future public facilities. *BMC 17.15.060.*

- No plan for the replatting, subdivision or dedication of any area shall be approved by the city of Burien unless the streets shown therein are connected by a surfaced road or street (according to city specifications) to an existing dedicated highway of the city. *BMC 17.15.140.*

- Sidewalks or walkways shall be required for all existing and proposed streets including perimeter streets in business and residential subdivisions as specified in Chapter 17.20 BMC. *BMC 17.15.170.*

- No lot or portion of a lot in this plat shall be divided and sold or resold or ownership changed or transferred whereby the ownership of any portion of this plat shall be less than the area required for the use (zone) district in which located. *BMC 17.15.230.*

- All lots must be served by or provision made for an adequate public sewage disposal system. *BMC 17.15.280.*

- All lots must have an adequate water supply before the plat may be recorded. *BMC 17.15.290.*

The criteria and standards in Title 17 BMC are essentially identical to those in Chapter 58.17 of the Revised Code of Washington (RCW). The application must meet the RCW criteria before a decision of approval may be made. *BMC 17.10.310.* RCW 58.17.110 requires that appropriate provisions must be made for the public health, safety, and general welfare, and for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and all other relevant facts, including sidewalks and other planning features, that ensure safe walking conditions for students who walk to and from school, and that the public interest is served by the subdivision.

The criteria for review adopted by the Burien City Council implements the requirement of Chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed developments to ensure consistency with City development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

Conclusions Based on Findings

1. With conditions, the proposed development would be consistent with the Title 17 BMC provisions for the subdivision of land. The City provided reasonable notice and opportunity to comment on the proposed subdivision. The City received several public comments, which generally raised concerns about the proposal's stormwater impacts, tree protection measures, utility impacts, and pedestrian safety impacts, as well as about the temporary construction noise that would be generated by the proposal. Construction activity at the site would be limited to between 7:00 AM and 9:00 PM, in accord with code requirements. The Applicant's preliminary stormwater management plan indicates that runoff from the site would be collected and conveyed to one of two drainage vaults located in proposed Tract A for detention and water quality treatment before discharging to the City's existing stormwater drainage network. The City Surface Water

Management Engineer reviewed the Applicant's preliminary stormwater management plan for compliance with requirements of the 2016 King County Surface Water Design Manual and the 2016 Stormwater Pollution Prevention Manual and found the plan reasonable and sufficient for preliminary plat approval. The Applicant would be required to provide an updated full Technical Information Report demonstrating that the project's final stormwater management design would meet applicable requirements of the 2016 King County Surface Water Design Manual prior to issuance of construction development permits. Washington Forestry Consultants, Inc., prepared a tree protection plan for the Applicant demonstrating that the proposal would meet tree replacement requirements for the 23 significant trees that would be removed from the property. The Applicant would be required to comply with tree protection measures identified in the plan to ensure that that neighboring trees with critical root zones extending on the property would be adequately protected during construction.

Access to the subdivision would be provided from new internal roadways connecting to SW 124th Street to the north and 4th Avenue SW to the east, with access to Lots 8 through 10 at the southwest corner of the site provided from a shared private driveway connecting to SW 126th Street. The Applicant would maintain an existing access easement located within the proposed shared private driveway and would work with neighboring property owners benefiting from the easement to ensure that they have safe access to their property during and after construction. To ensure adequate safety for pedestrians, the Applicant would be required to install any additional street lighting along the property's frontage to 4th Avenue SW required by the City's adopted Road Design and Construction Standards, as well as along the property's frontage to SW 124th Street. In addition, full frontage improvements consisting of curbs, gutters, sidewalks, streetlights, and landscaping would be required for both external and internal streets. The Applicant would be required to design all street improvements in compliance with the 2016 Burien Road Design and Construction Standards as outlined by the City Development Engineer. The Applicant received a road standards variance permitting it to construct access from 4th Avenue SW approximately 287 feet from the existing intersection at SW 126th Street and 4th Avenue SW. The Applicant's TIA shows that the proposed development would generate less traffic than existing uses of the property and, therefore, the Applicant would not be required to pay traffic impact fees. The Applicant obtained conditioned certificates of water and sewer service availability showing that the property would have an adequate water supply and would be served by an adequate public sewage disposal system.

Although the Hearing Examiner understands the City's concerns about the proposed orientation of the residences within the subdivision, the municipal code does not require that homes be oriented in a specific manner and the City has not argued or demonstrated that an appropriate nexus exists requiring the reorientation of the residences for approval of the plat. Accordingly, the Applicant may orient the homes as it sees fit so long as all municipal code requirements are satisfied.

The Applicant presented evidence that the proposed development would be in the best interests of the public welfare because the development would provide single-family residences, compatible with surrounding single-family residential development and consistent with the Comprehensive Plan designation for the property. Students would have safe access to schools via safe walking routes or via school buses at nearby school bus stops. No critical areas were identified on or near the subject property. The Applicant would meet or exceed the recreational open space requirements of the municipal code by providing recreation space within the 31,359 square foot open space/stormwater Tract A, which would include a children's play area. The City determined that, with mitigation measures, the proposal would not have a probable significant adverse impact on the environment and issued a Mitigated Determination of Nonsignificance, which was not appealed. Conditions, as detailed below, are necessary to ensure that the proposal would satisfy all City code requirements for the subdivision of land. *Findings 1 – 32*.

2. **With conditions, the proposal would satisfy the requirements of RCW 58.17.110 for approval of a subdivision.** The criteria and standards for preliminary plat approval in Title 17 BMC are essentially identical to those in Chapter 58.17 of the Revised Code of Washington (RCW). Specifically, RCW 58.17.110 requires that appropriate provisions must be made for the public health, safety, and general welfare, and for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and all other relevant facts, including sidewalks and other planning features, that ensure safe walking conditions for students who walk to and from school, and that the public interest is served by the subdivision. As noted above, these standards would be satisfied with the conditions detailed below, ensuring the proposal would satisfy all local and state requirements for plat development. *Findings 1 – 32.*

RECOMMENDATION

Based on the preceding findings and conclusions, the Hearing Examiner recommends that the City Council **GRANT** the request for a preliminary plat to subdivide 10 parcels totaling 8.04 acres into 36 single-family residential lots, located on the west side of 4th Avenue SW, between SW 124th Street and 126th Street, with the following conditions:[3]

1. It is the responsibility of the Applicant to ensure compliance with the various provisions contained in the Burien Municipal Code (including but not limited to the Zoning Code, Subdivision Code, Building Code and Fire Code), 2016 King County Surface Water Design Manual and the 2016 Stormwater Pollution Prevention Manual as adopted by the

[3] Conditions are necessary to mitigate specific impacts of proposed development and comply with municipal code. Conditions recommended by staff are modified to delete references to conclusions in the staff report so that compliance with the conditions can be determined without reference to the staff report.

City of Burien, and the City of Burien 2016 adopted Road Design and Construction Standards (BRS).

2. Prior to issuance of development permits for any construction activities on-site or in the right-of-way, the Applicant shall:
   a. Comply with all the conditions and corrections in the Development Review Engineer's Memorandum, dated March 11, 2021, and Revised Memorandum, dated April 7, 2021, including the Development Review Engineer's recommendation to install streetlights along the property's frontage on 4th Avenue SW.
   b. Coordinate with all utilities serving or proposed to serve the site regarding undergrounding such utilities, and any other requirements, prior to application for a right-of-way use permit or construction. Coordination with Seattle City Light regarding underground power and other electrical connection requirements should be done early in the project planning.
   c. Submit approved utility plans to the Development Review Engineer for the various utilities serving the site.
   d. Refine the final design of flow control and conveyance system prior to issuance of development permits for any construction activities on-site or in the right-of-way. The Applicant shall comply with all the conditions and corrections set out in the Surface Water Management Engineer's Memorandum from March 11, 2021, and Revised Memorandum, dated April 7, 2021, and shall provide updated plans and reports at the time of future permit applications (Building, ROW, or Clearing & Grading Permits).
   e. Protect the trees growing along the west property line on the neighboring property that overhang or whose critical root zones grow into the Applicant's property. These trees shall be protected as described under Tree Protection Measures on page 5, and Conclusions and Timeline for Activity on page 6 of the tree protection plan.
   f. Follow the recommendations of the WA State Department of Ecology's February 5, 2021, letter concerning soil contamination from the Asarco smelter in north Tacoma and on-site sources.

3. Prior to applying for review and recording the Final Subdivision, the Applicant shall:
   a. Provide water and sewer service to each lot consistent with the requirements of the serving utility and the City of Burien Title 17 Subdivision Code. The Applicant shall show on the plat any utility easements or reference documents pertaining to sewer and water utility easements, which are necessary to provide service to the lots.
   b. Demonstrate conformance with all requirements of the Fire Marshal.
   c. Provide a tot/child play area. Any play apparatus that is provided shall meet Consumer Product Safety Standards for equipment, soft surfacing and spacing, and shall be located in an area that is at least 400 square feet in size with no

dimension less than 20 feet and be adjacent to main pedestrian paths. Long-term maintenance of the entire recreation space is the responsibility of the owner or their separate entity i.e., Homeowners Association and be in a manner acceptable to the City.

d. If excavation or other construction work results in an inadvertent discovery, all work shall stop, and the Washington State Historic Preservation Officer contacted.

e. Development of the subdivision shall follow the recommendations provided in the Geotechnical Engineering Study. Where indicated in the Study, on-site observations by the Geotech is required.

4. Prior to the issuance of building permits, the Applicant shall:
   a. Pay a Transportation Impact Fee as set forth in Table 19.35-2 for each building permit issued for 32 new single-family structures.
   b. Comply with current development standards, or those existing at time of development, such as building setbacks (measured from property, easement and tract lines), building coverage, impervious surface coverage and height for future development of the single-family residence and designation of new lot lines.
   c. Apply for separate Fire Hydrant Availability Certificates for each new residence.

5. The Applicant shall comply with all conditions of the SEPA MDNS issued on March 22, 2021.

RECOMMENDED this 3rd day of May 2021.



ANDREW M. REEVES
Hearing Examiner
Sound Law Center