



NOTICE OF DECISION

PURSUANT TO RICHLAND MUNICIPAL CODE SECTION 19.60.080, NOTICE IS HEREBY GIVEN THAT ON DECEMBER 12, 2022 THE CITY OF RICHLAND HEARING EXAMINER ISSUED A DECISION APPROVING THE SITE PLAN REVIEW OF THE WILLOWBROOK APARTMENTS (CITY FILE NO. M2020-101):

**DESCRIPTION
OF ACTION:**

Site Plan Review application for the develop an approximately 14.36-acre site, with four (4) multi-family residential buildings containing up to 108 dwelling units, a clubhouse and covered parking structures together with associated parking, stormwater runoff and landscaping areas.

SEPA REVIEW:

The City of Richland is lead agency for the proposal under the State Environmental Policy Act (SEPA) and has issued a determination of non-significance (DNS) for this project after utilizing the optional DNS process in WAC 197-11-355.

APPROVED:

The Site Plan Review Application has been approved.

PROJECT LOCATION:

The project site is located east of the terminus of John Court, south of Broadmoor Street and is primarily zoned R-3 (Multiple-Family Residential) with the proposed secondary driveway access being partially located upon land zoned R-1-10. The overall project will occur upon Tracts A, B & F, Willowbrook No. 1 (Lots 2 & 3 Record Survey #3864), Tract B, Willowbrook No. 2, Phase 4A, and Lot 1 of Willowbrook No. 2, Phase 2, located in the southeast quarter of the southwest quarter of Section 36, Township 9 North, Range 28 East, and within the northeast quarter of the northwest quarter of Section 1, Township 8 North, Range 28 East, W.M., Benton County, WA. The Assessor's Parcel Nos. for the project site are: 136983050007002, 136983050008001, 136983050012000, 136983060000001 and 101882040002000.

Mike Stevens, Planning Manager

December 13, 2022
Date

A full text of the Hearing Examiner's decision can be viewed at:

<https://www.ci.richland.wa.us/departments/development-services/planning/land-use>

The Hearing Examiner's decision regarding this site plan review application shall be final, subject to judicial appeal in the time and manner as provided in RMC 19.70.060 and Ch. 36.70C RCW.

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF RICHLAND**

Regarding an Application for Type II)
Site Plan Approval to develop a 14+acre)
property mostly located in the R-3)
(Multi-Family Residential) Zone with)
four (4) multi-family residential)
buildings for up to 108 dwelling units)
and associated facilities and)
improvements, submitted by)

BIG CREEK LAND COMPANY, LLC)
Applicant,)

*(The site is located east of the terminus of John Court, south)
of Broadmoor Street, on Benton County Parcel Nos.)
136983050007002, 136983050008001, 136983050012000,)
136983060000001 and 101882040002000)*)

File No. M2020-101
(Willowbrook Apartments)

**DECISION APPROVING SITE PLAN
SUBJECT TO CONDITIONS OF
APPROVAL**

I. SUMMARY OF DECISION.

The applicant has met its burden of proof to demonstrate that its application merits approval, subject to conditions. This Decision is limited in scope to Site Plan approval under RMC 19.20.010(B)(3), allowing for development of the project site that is now mostly zoned R-3 (Multi-Family Residential), with two access routes, with 4 (four) multi-family residential buildings for up to 108 dwelling units, and associated facilities and improvements described in the proposed site plan and application materials. Future development or construction activities on any portion of the approved site plan will require compliance with then-applicable city development regulations for any aspect of such project, including without limitation those addressing building codes, grading, stormwater management, fire-flow/hydrant placement, utility infrastructure, transportation/traffic, impact fees, and the like.

**FINDINGS OF FACT, CONDITIONS OF
APPROVAL AND DECISION RE: WILLOWBROOK
APARTMENTS SITE PLAN IN THE R-3 (MULTI-
FAMILY RESIDENTIAL) ZONE –
FILE NO. M2020-101**

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HEARING EXAMINER FOR THE CITY OF RICHLAND

CITY HALL – 505 SWIFT BOULEVARD
RICHLAND, WASHINGTON 99352

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II. QUESTION PRESENTED.

Whether the pending application for Site Plan approval satisfies the approval criteria set forth in applicable city codes and regulations, particularly RMC 23.48.010, 19.60.060, and 19.60.095?

Short Answer: Yes, subject to appropriate conditions of approval.

III. RECORD, EXHIBITS, REVIEW PROCESS.

Exhibits entered into evidence as part of the record, and an audio recording of the public hearing held for this application is maintained by the City of Richland and may be examined or reviewed by contacting the City Clerk's Office.

Hearing Testimony: The list of individuals who appeared either in-person or online to provide sworn testimony during the duly noticed public hearing is attached as Appendix A.

Exhibits: The Development Services Division Staff Report, with its recommendation of approval subject to conditions, was provided to the Examiner in the week before the hearing. The Staff Report, with a number of attached exhibits, and others that were added after the hearing as authorized by the Examiner, were accepted into the Record:

1. Application
2. Site Plan Submittals
3. Landscaping Plan
4. SEPA Documents
5. Geotechnical & Hydrogeological Report
6. Hydrogeological Assessment of Critical Aquifer Recharge Area
7. Critical Areas Report
8. FWHCA Report
9. Traffic Impact Analysis
10. Ordinance 41-78
11. Public Hearing Notice (6/13/2022)
12. Public Hearing Notice & Posting Affidavits (6/13/2022)
13. Government Agency & Public Comments (6/13/2022)
14. Public Hearing Notice & Related Affidavits (12/14/2020)
15. Government Agency & Public Comments (12/14/2020)

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16. Public Hearing Postponement Notice & Affidavits (12/14/2020)
17. SEPA Threshold Determination & Site Plan Review Letter (12/14/2020)

18. *Post-hearing* Opposition Comments submitted within time allowed by the Examiner before close of the public hearing, posted on City's website page for application as "Comments and Rebuttal info allowed after close of Hearing"

19. *Post-hearing* Responses to Public Hearing Testimony and post-hearing opposition submittals, submitted by Applicant and Staff, within time allowed by the Examiner before close of the public hearing, posted on City's website page for application as "Applicant and City Responses due 7/1/22"

The Examiner visited the project site, the adjacent Amon Creek site, the surrounding road network, and adjacent residential neighborhoods near the requested Site Plan approval on the day of the hearing, and two other occasions in the weeks after the public hearing. The Examiner is fully advised on matters at issue herein, including without limitation applicable law, application materials, and relevant codes.

IV. FINDINGS OF FACT.

Based upon the record, the undersigned Examiner issues the following Findings of Fact. All statements of fact found in previous or following sections of this Decision are incorporated herein as Findings of Fact supporting this Decision. The use of captions is to generally identify topics, but should not be read or construed to modify or limit the meaning of any finding wherever it may be located in this Decision.

1. Big Creek Land Company, LLC, the applicant in this matter, seeks a Type II Site Plan Approval to develop a 14+ acre site with four (4) multi-family residential buildings for up to 108 total dwelling units, with two access routes, a clubhouse, covered parking structures, associated parking areas, stormwater runoff and landscaping areas, and associated improvements, substantially as illustrated in the applicant's proposed Site Plan, a copy of which is included in the record as *Exhibit 2. (Staff Report, page 2; and Exs. 1 and 2, Application and proposed Site Plan).*

2. The project site is located east of the current terminus of John Court, which would serve as one of two proposed access routes in and out of the proposed development. Just west of the project site, John Court connects with Piper Street, generally running north/south, through newer homes built as part of the Willowbrook neighborhood. Uses to the north of the site are single-family homes running along Broadmoor Street. The City's Amon Preserve is located downhill to the east of the project site, with portions of the Preserve and other vacant lands to the south of the site. (*Staff Report, page 3; Ex. 2, Applicant's proposed Site*

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Plan showing two access routes; Vicinity maps; Ex. 1, application; Site visits).

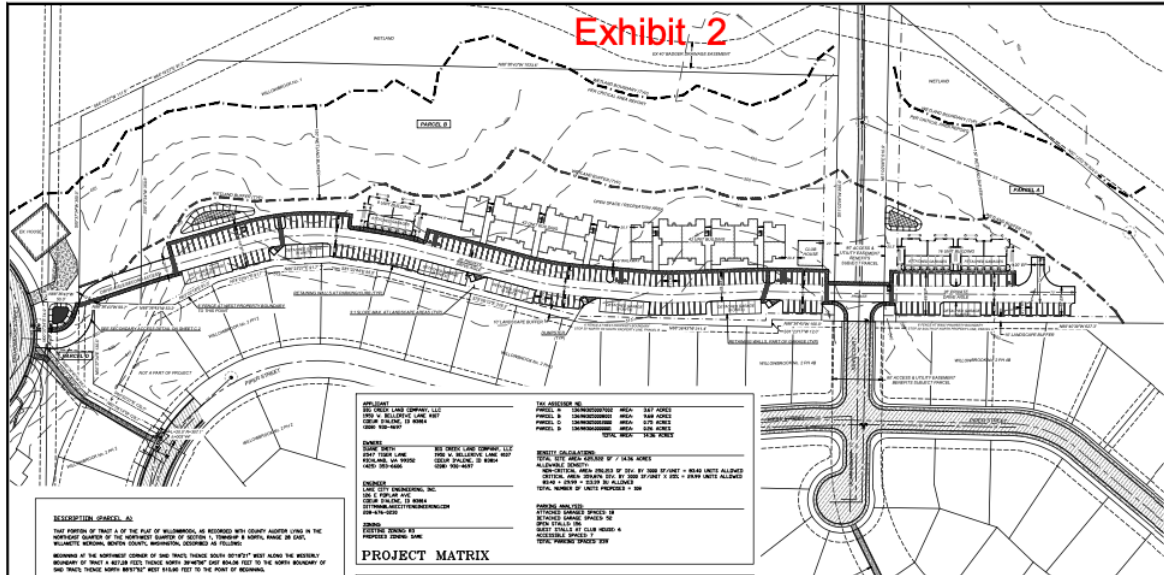
3. The second proposed access point would be via a “private driveway”, extending north of the project site and connecting to Broadmoor Street. This second proposed access route crosses over portions of two (2) private lots that are not owned by the applicant and the applicant has not confirmed legal rights to use portions of such lots for access or otherwise.¹ The applicant indicates that access easements or other rights needed to accomplish this second access route can be obtained. (*Ex. 2; Staff Report, page 3; Testimony of applicant representatives; Ex. 1, Application form; Post-hearing response from Applicant’s counsel, included as part of Ex. 19*).

4. The project site – where the residential buildings and other improvements except for the small “private driveway” area connecting to Broadmoor Street – spans five (5) separate tax parcels, generally forming a narrow north/south shape. The Assessor’s Parcel Nos. for the project site are: 136983050007002, 136983050008001, 136983050012000, 136983060000001 and 101882040002000. (*Staff Report, page 1; Assessor’s website, property/parcel search feature*).

5. Duane and Cheryl Smith are the current owners of most of the property addressed in this Decision, with Big Creek Land Company, LLC listed as the owner of the small parcel close to Broadmoor Street, but separated by small segments of the two private parcels identified in footnote 1 above. (*Assessor’s records*). The applicant’s representative, Clifford E. Mort, signed the application form under penalty of perjury, confirming that he is in fact the authorized agent of the owners of properties identified in the application. (*Ex. 1, Application form, signature on page 2*).

6. For the reader’s convenience, a screen shot showing the general layout of the proposed Site Plan, included in the record as *Ex. 2*, is republished below:

¹ Mapping available on the Benton County Assessor’s website indicates that the two parcels through which the applicant needs access rights to create the second route into the proposed site plan from Broadmoor Street are Parcel Nos. 136983020001016, owned by Columbia Villas, LLC, and 136983020002012 owned by R. and M. Shallman.



7. Details on the proposed Site Plan² offer the following information about parcel sizes, density calculations, and proposed parking:

| | | | |
|------------------|-----------------|-------------|-------------|
| TAX ASSESSOR NO. | | | |
| PARCEL A: | 136983050007002 | AREA: | 3.67 ACRES |
| PARCEL B: | 136983050008001 | AREA: | 9.68 ACRES |
| PARCEL C: | 136983050012000 | AREA: | 0.75 ACRES |
| PARCEL D: | 136983060000001 | AREA: | 0.26 ACRES |
| | | TOTAL AREA: | 14.36 ACRES |

DENSITY CALCULATIONS:
 TOTAL SITE AREA: 625,522 SF / 14.36 ACRES
 ALLOWABLE DENSITY:
 NON-CRITICAL AREA: 250,213 SF DIV. BY 3000 SF/UNIT = 83.40 UNITS ALLOWED
 CRITICAL AREA: 359,876 SF DIV. BY 3000 SF/UNIT X 25% = 29.99 UNITS ALLOWED
 83.40 + 29.99 = 113.39 DU ALLOWED
 TOTAL NUMBER OF UNITS PROPOSED = 108

PARKING ANALYSIS:
 ATTACHED GARAGED SPACES: 18
 DETACHED GARAGE SPACES: 52
 OPEN STALLS: 156
 GUEST STALLS AT CLUB HOUSE: 6
 ACCESSIBLE SPACES: 7
 TOTAL PARKING SPACES: 239

8. The Staff Report provides a short summary of applications submitted, abandoned, modified, and/or postponed for the same site since 2014. This Decision addresses an active

² Sheets C2 and C3 of the proposed Site Plan (Ex. 2) show the general boundaries for parcels labeled A, B, C, and D, with A at the southern end and D at the northern end.

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1 application, initially submitted in 2020 but postponed for revisions and updated professional
2 consultant reports, all now included as part of the record. *(Staff Report, page 2).*

3 9. There is no credible dispute that public notice requirements were satisfied and that
4 interested parties had multiple opportunities to provide comments regarding this project.
5 *(Staff Report, pages 17-18; Exs. 11, 12, notices and confirmation materials for this*
6 *application and hearing process; Ex. 13, written comments received in 2022; Ex. 14, public*
7 *notice materials for initial application review from 2020; Ex. 15, written comments received*
8 *following 2020 notices; Ex. 16, notice of hearing postponement and confirmation materials;*
9 *Ex. 18, post-hearing opposition comments and rebuttal information authorized during the*
10 *public hearing).*

11 10. As summarized in the Staff Report, proposals on this site have changed in the last few
12 years, with notices provided, comments received, revisions requested, and eventually
13 concluding in the Site Plan proposal addressed in this Decision. Throughout that time, the
14 zoning, permitted uses, and most all development standards for the site never changed, and
15 there is no evidence in the record that neighboring residents or opponents ever petitioned the
16 City to make such changes. Hundreds of written public comments are included in the record.
17 Testimony from project opponents during the public hearing repeated many of the same
18 comments and concerns expressed in written comments.

19 11. As explained below, project opponents failed to present a preponderance of evidence
20 that would rebut findings and analysis provided in the Staff Report that establish how the
21 proposed site plan satisfies applicable approval criteria, subject to appropriate conditions of
22 approval.

23 ***Site Plan approval required for this project.***

24 12. Under RMC 23.48.020(B), Site Plan approval is required for projects that propose
25 construction of any multiple family dwelling or dwellings containing an aggregate of 20 or
26 more dwelling units in an R-3 – multiple-family residential, or C-LB – limited business
district. There is no dispute that all of the applicant's proposed multi-family apartment
buildings (that provide far more than 20 units) are on parcels zoned R-3, so this Type II Site
Plan approval is required before this development can move forward.

13 13. The purpose of the Site Plan approval process is to, among other things, facilitate
14 project design that is compatible with adjacent land uses and is in keeping with the physical
15 constraints of the project site. *(RMC 23.48.010).*

16 14. For any project requiring a site plan approval as identified in RMC 23.48.020, like
17 the applicant's proposal to construct buildings with 20 or more multifamily dwelling units in

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the R-3 zoning district, a site plan shall be submitted to the hearing examiner for review and approval as a Type II permit application as defined in RMC 19.20.030. A site plan and application form shall be submitted to the administrative official, showing the following information:

- A. Boundaries and dimensions of the property;
- B. Location and width of boundary streets;
- C. Dimensions, location and number of dwelling units for each existing or proposed structure on the site;
- D. Roadways, walkways, off-street parking, and emergency vehicle access (emphasis added);
- E. Fencing and landscaping, showing location, type, dimensions and character; and
- F. Location, dimensions and character of recreational facilities and open space.
- G. The site plan shall be drawn in a concise and accurate manner, and of an appropriate scale for clarity in review. Copies shall be submitted in a number determined by the administrative official to be appropriate and sufficient.
- H. Where a multiple-family development is proposed to be constructed in phases, the site plan shall include all phases, regardless of size, in the proposed development. After a site plan providing for phased development has been approved by the hearing examiner, no further approval is required so long as each phase of development conforms to the approved site plan. (RMC 23.48.030, re: Site plan application requirements; NOTE: this application did not request approval to be developed in phases).

Jurisdiction; Hearing Examiner approval required for this Site Plan and any subsequent “Major Revisions” thereof.

15. The Hearing Examiner has jurisdiction to conduct an open record public hearing and issue a Decision regarding the pending application for Site Plan approval. This jurisdiction is based upon RMC 23.48.030, which mandates that for any project requiring a site plan approval as identified in RMC 23.48.020, a site plan shall be submitted to the hearing examiner for review and approval as a Type II permit application as defined in RMC 19.20.030. This requirement is restated in RMC 19.20.010(B)(3), where “Site Plan approvals or major revisions thereof” are expressly designated as Type II permit applications.

16A. To eliminate any confusion going forward, the Hearing Examiner finds and concludes that this Site Plan, for a multi-family residential project in the R-3 zone, may not be modified or revised in a manner that constitutes a “major revision” without following the Type II permit application process that requires review and approval by the Hearing Examiner. (RMC 19.20.010(B)(3); RMC 23.48.020 and .030, discussed above).

16B. Given that the issue has arisen with similar development projects in the City, and the Planning Manager previously requested that the Examiner add language to conditions of approval for a previous Site Plan that would eliminate confusion as to what might be deemed a minor or major revision to any Site Plan approved by the Examiner, the Examiner finds and

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concludes that it is in the public interest to include similar language in this Site Plan Decision. An additional Condition of Approval has been added to prevent major revisions without an opportunity for proper input or review.

16C. City codes specify that “Site Plan approvals or major revisions thereof” are expressly designated as Type II permit applications (*See RMC 19.20.010(B)(3)*), and RMC 23.48.070 indicates that some sort of Administrative site plan modifications might be available for “minor” revisions. RMC 23.48.030 mandates that for any project requiring a site plan approval as identified in RMC 23.48.020 [includes multifamily residential projects with more than 20 units in the R-3 zone], a site plan shall be submitted to the hearing examiner for review and approval as a Type II permit application as defined in RMC 19.20.030. So, to allow major revisions to a Site Plan using an administrative process, after the Site Plan has been approved by the Hearing Examiner following a full public hearing process, would not be in the public’s interest, as it could occur without substantially similar public notice and hearing procedures that the City Council deemed necessary and appropriate for approval of such projects.

17. Given the level of detail mandated for any Site Plan application submitted for review and approval by the Examiner (*See RMC 23.48.030, re: Site plan application requirements, discussed above*), and the broad discretion and authority granted to the Examiner to condition a proposed Site Plan to protect the public health, safety and welfare or otherwise bring a proposed development into compliance with the purpose and intent of the City’s zoning regulations found in Title 23 RMC (*See RMC 23.48.040, discussed below*), the Examiner finds and concludes that the following list includes, but is not limited to, the types of changes that shall be deemed a “major revision” to this approved Site Plan, necessitating review and approval by the City’s Hearing Examiner:

- i. Modification in building use;
- ii. Any increase in the number of buildings or structures; or increase in the size, height, or building footprint for any building shown on the Site Plan, or significant change in location for any building shown on the approved Site Plan, as determined by the Planning Manager;
- iii. Modification in the number, size, location or arrangement of off-street parking spaces, or loading areas, provided parking-related changes may be made to effectuate these conditions of approval, including without limitation to include the motorcycle parking spaces needed to satisfy city standards and additional parking spaces may be included in the project if accomplished in a manner that is consistent with applicable city codes and design requirements, all as determined by the Planning Manager;
- iv. Change in the number, size or location of access points to adjacent public streets;

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- v. Change in location of city utility lines or storm drainage facilities, except as approved by the Public Works Director and Planning Manager, to ensure that such changes achieve utility and stormwater service objectives without necessitating significant changes to other aspects of the approved Site Plan;
- vi. Change in location of any existing or proposed utility and/or access easements;
- vii. Change in location, type or size of landscaping materials proposed to be installed on site in the Final Landscaping Plan for the site, which is subject to review and approval by the Planning Manager prior to issuance of any building or other city permit required for development of the site;
- viii. Any change that, in the opinion of the City's SEPA Responsible Official, would significantly increase any adverse impacts or undesirable effects of the Site Plan.
- ix. Any other change that would cause the site plan to not meet a minimum requirement or design standard contained in the city's development standards.

Approval Criteria, Burden of Proof, Conditions of Approval.

18. Land uses that are otherwise permitted in a zoning district shall not be denied through the site plan review process unless such uses cannot meet the development and/or performance standards required for the use. *RMC 23.48.010*. So, to obtain site plan approval for a multi-family project in the R-3 zone, the applicant must demonstrate that its project can meet city development and performance standards for such use.

19. The burden of proof rests with the applicant, and any decision to approve or deny a Site Plan application must be supported by a preponderance of evidence. *RMC 19.60.060 and Hearing Examiner Rules of Procedure, Sec. 3.08*.

20. A Site Plan application must be supported by proof that it conforms to the applicable elements of the city's development regulations, comprehensive plan and that any significant adverse environmental impacts have been adequately addressed. (*RMC 19.60.060; substantially repeated in RMC 19.60.095(A)(B) and (E)*). In addition, Type II applications must be supported by findings and conclusions that the request is beneficial to the public health, safety and welfare and is in the public interest (*RMC 19.60.095(C)*); and that the development does not lower the level of service of transportation facilities below a certain level, unless improvements or strategies are made concurrent with development or a financial commitment is in place to complete the required improvements within six years of approval of the development (*RMC 19.60.095(D)*).

21. RMC 23.48.040 provides the Hearing Examiner with broad authority to impose conditions of approval on Site Plan applications, where it reads: "*Site plan approvals may be*

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1 *made subject to any condition(s) which the hearing examiner determines to be necessary to*
2 *protect the public health, safety and welfare or otherwise bring a proposed development into*
3 *compliance with the purpose and intent of this title. Such conditions may include but are not*
4 *limited to increased setbacks, and buffers, including landscaping, fences and walls;*
5 *restrictions on the type and location of outdoor lighting; surfacing of parking areas and*
6 *driveways; the installation of stormwater drainage facilities; the construction and location*
7 *of service roads and alleys; the points of vehicular ingress or egress (emphasis added); the*
8 *regulation of the time and type of various activities; vibration, noise, odors or similar*
9 *nuisances, and the type, size and location of signs.”*

10 ***Public Hearing Process.***

11 22. The duly noticed public hearing for this matter occurred on June 13, 2022, with the
12 Hearing Examiner, Staff, some applicant representatives, and members of the general public
13 present in council chambers at Richland City Hall, with multiple other parties participating
14 via the online hearing platform coordinated by City Staff.

15 23. During the hearing, Mr. Stevens summarized the Staff Report, key issues, and his
16 recommendation of approval, subject to conditions. Applicant representatives spoke to
17 explain how they believe the Site Plan has been designed to satisfy applicable requirements
18 and merits approval.

19 24. Dozens of other individuals offered testimony generally questioning or opposing the
20 project, raising issues and concerns, most all of which were already raised in hundreds of
21 pages of public comments received following several public notices issued for the proposal.
22 Several hearing witnesses were called as professional consultants to speak regarding
23 environmental concerns shared by a local homeowners association in the area. Written
24 reports from several subject matter experts, and letters from Alex Sidles, an attorney
25 representing a homeowners group that is opposed to this project, are included as part of the
26 record in Exhibits 13 and 15.

27 25. After the hearing testimony concluded, the Examiner held the record open to allow
28 for project opponents to submit written comments in rebuttal to information provided at the
29 hearing, and to allow the applicant and staff to submit responses to public hearing testimony
30 and post-hearing written comments that might be submitted. Copies of the post-hearing
31 opposition comments are included in the record as Ex. 18, and copies of the post-hearing
32 responses from City Staff and the applicant are included as Ex. 19.

33 26. The applicant's post-hearing written response offered minimal assistance in wading
34 through, analyzing, or offering a detailed rebuttal to the many written comments and
35 extensive testimony provided during the public hearing process. The Examiner undertook

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the effort to read the entire record, to determine whether all approval criteria and applicable legal requirements have been satisfied. Most public comments focused on Traffic & Safety concerns; Zoning and Land Use issues; and Environmental Issues. (*Staff Report, page 18; Hearing testimony presented to the Examiner*).

Traffic Safety, Access issues.

27. Upon consideration of all the written reports and testimony, the Examiner finds that the project opponents failed to present a preponderance of credible evidence to show that the Public Works determinations regarding transportation issues relevant to this project were in error. Specifically, the City's Traffic Engineer reviewed the applicant's Traffic Impact Analysis and found the trip generation and distribution information to be in concurrence with past recommendations; and the Public Works Department determined that the two proposed access points for this project, as shown on the proposed Site Plan, Ex. 2, are acceptable, and that the project satisfies applicable concurrency requirements. (*Staff Report, analysis on pages 16 and 17*).

28. Broadmoor Street residents who opposed the access point connecting to Broadmoor appeared to be biased against any additional traffic onto Broadmoor, especially from an apartment complex. Their expressions of general safety concerns about the curve on Broadmoor, and the location of the proposed access point, were insufficient to reject the Public Works' acceptance of the proposed access location, and do not serve as a basis to ignore Public Works determination that the project should be served by two access points, as proposed by the applicant in Ex. 2.

29. The Site Plan application materials expressly identify and include two access points for this project, and all SEPA reviews were based on the project designed to be served with two access points. The recommended Conditions of Approval reflect Public Works' staff determination that the project should be served by two access points, on Broadmoor and John Court, and that the Broadmoor access route must be constructed with the first part of this project. (*Condition of Approval No. 25*).

30. Eliminating an access point onto Broadmoor would almost certainly result in a project with only a single point of access, which would not comply with applicable City Fire Code requirements for a project of this size.

31. The Examiner takes official notice of International Fire Code (IFC) provisions that are adopted in the City of Richland at RMC 20.02.010, including without limitation the 2018 IFC, Appendix D, and a more restrictive City of Richland Fire Standard, captioned "Secondary Emergency Vehicle Access [SEVA] Standard" issued by the Fire Department

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and available for public review on the City's website. The City's SEVA Fire Standard reads as follows:

- The purpose of this standard is to provide the requirements for secondary emergency vehicle access (SEVA) for residential developments.
- A residential development that serves more than sixteen (16) dwelling units and each lot is less than one acre in size, shall be provided with an approved SEVA.
- A residential development that serves more than fifty (50) dwelling units and each lot is more than one acre in size, shall be provided with an approved SEVA.
- The number of dwelling units within a residential development served by a single fire apparatus access road may be increased without a permanent SEVA by the Fire Code Official, if the fire apparatus road will connect to a future development with separate access points that would omit the need for a SEVA within a 12-month window. Binding legal agreements, easements and future phased plans shall be provided to the Fire Code Official for determination if a temporary (less than 12 month) or permanent (greater than 12 months) SEVA access is required.
- Temporary SEVA roads allowed during continued development stages/phases lasting greater than 12 months and permanent SEVA roads must be paved with 12-inch minimum shoulders to support the imposed loads of 75,000 pounds. Temporary SEVA roads lasting less than 12 months shall have a minimum surface of two (2) inches of compacted gravel and support-imposed loads of 75,000 pounds.
- When a SEVA is required by this Standard, it must be separated from the primary access point by enough distance to avoid a situation where both would be blocked or unavailable simply because they are too close together. All dwelling units must be able to be accessed from two completely separate access routes. These separate access routes shall be placed a distance apart equal to not less than one-half the length of the maximum overall diagonal dimension of the property or area to be served, measured in a straight line between the accesses, as determined by the Fire Code Official.
- All SEVA roads shall have a twenty (20) foot unobstructed road width, meet the turning radius requirements listed in the Richland Fire Department Subdivision and Street Requirement Standard and a vertical clearance of thirteen feet six inches (13'6").
- Long SEVA roads may be reduced, if approved by the Fire Code Official, to twelve (12) feet in width, provided 20' total road width and 35' long turnouts are present every 400 feet to accommodate the passage of emergency vehicles in both directions.
- SEVA road slope shall not exceed 12% longitudinal or 2% cross-slope.
- Bollards placed at potential access points where the Fire Code Official determines emergency access for structure fires, urban interface, wildland fires or where EMS access may be needed, shall be standardized as releasing with a 1/4 turn release mechanism using a 5-sided AWWA hydrant wrench, 32" standard height with less than 4" collapse height and painted in safety yellow. Bollards shall not be interconnecting by hardware such as cables, chains or other devices. Typical applications would include bollards placed at SEVA accesses, fire lanes, alleyways, bike paths, trailheads, school grounds,

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playgrounds, commercial buildings, and parking areas. Additional applications may be required by the Fire Code Official.

- The primary fire apparatus access road for the development must meet all the design requirements of the International Fire Code, Section D and Fire Department Standards, whichever is most restrictive as determined by the Fire Code Official.

- When the dwelling units on a single access fire apparatus road exceed 16, but remain less than 50 and a NFPA 13, 13R or 13D sprinkler system is installed throughout all dwelling units, the fire code official may consider omitting the SEVA requirement. [emphasis added]. Consideration to omit the SEVA requirement by the Fire Code Official shall not consider monetary developer considerations or a lack neighboring property access. The determination to omit the SEVA requirement must heavily weigh the need for EMS as well as fire response needs and should be on an extremely limited basis.

32. RMC 20.02.010 expressly adopts Appendix D from the IFC, which can allow for fire sprinklers under some circumstances in lieu of a second access route, but it also provides in relevant part as follows: “In the event of a conflict between code provision(s) and an existing standard, including an existing city of Richland standard, the most restrictive of the two authorities will apply as determined by the fire code official. [...]” (Emphasis added).

33. A developer cannot selectively benefit from old and new regulations. (See *East County Reclamation Co. v. Bjornsen*, 125 Wn. App. 432, 105 P.3d 94 (2005)(noting there is no authority for an applicant to “cherry pick” regulations under which its project is evaluated). So, applying the current SEVA Fire Standard to this project establishes that this proposal – for 108 residential dwelling units – is ineligible for consideration of a fire sprinkler alternative to a secondary access route, or SEVA. The City’s Fire Standard applicable to this application only allows for consideration of NFPA sprinkler systems in lieu of a SEVA requirement “When the dwelling units on a single access fire apparatus road exceed 16, but remain less than 50...”. Presumably, sprinklers may only be considered if the Site Plan is reduced to have fewer than 50 dwelling units. Such a modification could be deemed a revision to this Site Plan, and public interest in this issue warrants that such determination be made as a Type I permit approval as a “minor revision” (which is appealable to the Hearing Examiner), or as a Type II permit approval as a “major revision” (requiring public notice and public hearing associated with Type II review process detailed in city codes). (See RMC 19.20.010(B)(3); and RMC 19.20.020, captioned “Determination of proper type of procedure”).

34. Project opponents did not offer a preponderance of evidence that would serve as a basis to deny this project, or to require additional conditions of approval on transportation or access issues.

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Zoning and Land Use issues raised in public comments.

35. There is no dispute that most of the proposed site plan area, where the multi-family residential apartment buildings would be constructed with parking and associated improvements, is currently zoned R-3. Specifically, all of the property from the south end of “Parcel A” up to the northern boundary of “Parcel C” is zoned R-3, totaling over 14-acres. The smallest parcel, “Parcel D” is zoned R-1-10, but none of the apartment buildings are proposed on such parcel. (*See Zoning Map of project site area, on page 6 of Staff Report*).

36. The Staff Report explains that many public comments regarding this project raised a concern that the City’s Comprehensive Plan designates most of the project site for Medium-Density Residential Land Uses, so apartments should not be allowed on the property. (*See Land Use Map for the area from the City’s Comprehensive Plan, and discussion, on pages 4- 5 of the Staff Report*). The R-3 (Multiple Family Residential) Zone is considered a “High-Density Residential” zone and is not consistent with the intent of the Medium Density Residential land use designation. (*Staff Report, page 4, citing RMC 23.16.010(E)*).

37. While the comments are correct in raising the issue that this portion of the City’s zoning map are inconsistent with the Comprehensive Plan land use designation assigned to the area, the Examiner must follow long-standing Washington Supreme Court precedent, which holds that a specific zoning ordinance will prevail over inconsistent Comprehensive Plan provisions.

38. The Washington Supreme Court has long held that a comprehensive plan is a guide and not a document designed for making specific land use decisions, and that conflicts surrounding an appropriate use on a specific property are resolved in favor of the more specific regulations, usually zoning regulations. *Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 947 P.2d 1208 (1997).

39. A specific zoning ordinance will prevail over an inconsistent comprehensive plan. *Id.*, citing *Cougar Mountain Assocs. v. King County*, 111 Wn.2d 742, 757, 765 P.2d 264 (1988). If a comprehensive plan prohibits a particular use but the zoning code permits it, the use would be permitted. *Id.*, citing *Weyerhaeuser v. Pierce County*, 124 Wn.2d 26, 43, 873 P.2d 498 (1994). These rules require that conflicts between a general comprehensive plan and a specific zoning code be resolved in the zoning code's favor. *Id.*

40. If the current R-3 zoning regulations controlled development in most of the lands included as part of this proposed site plan, the density for this project – with 108 dwelling units – is almost half the maximum density (208 units) that could apply to the project site. (*Staff Report, density calculations on pages 6-7*). And, only considering the two largest parcels in the project (Parcels A and B), which have over 13-acres, the more restrictive R-2

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1 zone could allow for up to 130 units on the site. (See RMC 23.18.010(D), re: R-2 zone, allows
2 for 5.1 to 10 dwellings per acre).

3 41. In any event, this project site is subject to compliance with a more restrictive, site-
4 specific Ordinance applied to the area at the time it was annexed into the City of Richland,
5 which limits density to no more than 8-dwelling units per acre, or 112 units. ($8 \times 14 \text{ acres} =$
6 112 ; Staff Report, pages 7-8; Ex. 10, Ord. No. 41-78). With just 108 units, the pending
7 application is below the maximum density allowed for the site since the late 1970s. (Id).

8 42. The record is absent of any proof showing that project opponents have ever sought
9 zoning changes for the project site to prevent the multi-family development allowed under
10 current standards that apply to the properties in question.

11 43. Most of the opposition comments about land use focused on displeasure that
12 apartments might be constructed on the project site. But, as the Staff Report and public
13 records confirm, most all of the project site has been zoned R-3 (Multi-Family Residential)
14 for about 44 years, since 1978 when the Richland City Council rezoned the subject property
15 from Agricultural (AG) to Multiple Family Residential (R-3). (See Ordinance No. 41-78,
16 included in the record as Ex. 10; Staff Report, page 7).

17 44. Washington caselaw is very clear that a project application process, like this Site Plan
18 application, cannot be used to attack or seek changes to zoning and development regulations
19 that were adopted in accord with applicable law, and were never appealed. Here, the record
20 is absent any proof that project opponents pursued amendments to either the City's
21 Comprehensive Plan land use designation for the project sight, or the Zoning district assigned
22 to the largest part of the project, i.e. R-3 zoning with the reduced density addressed in Ord.
23 No. 41-78. This Site Plan review process cannot be used as a collateral challenge of
24 longstanding City zoning decisions. See lengthy discussion and summary of relevant caselaw
25 in *Twin Bridge Marine Park, LLC v. Dep't of Ecology*, 162 Wn.2d 825, 175 P.3d 1050
26 (2008)(summarizes the well-established principle of Washington law that prohibits collateral
attacks of prior government decisions to give closure and clarity to interested citizens where
agencies and public had sufficient notice to resolve any dispute in court or another forum but
did not do so); See, e.g., *Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wn.2d 169, 4
P.3d 123 (2000) (a challenge to a Chelan County decision concerning residential
development permits under the Growth Management Act, chapter 36.70A RCW, must be
brought under LUPA); *Skamania County v. Columbia River Gorge Comm'n*, 144 Wn.2d 30,
26 P.3d 241 (2001) (construing a federal act, 16 U.S.C. § 544m(a), no collateral attack on a
local final land use decision can be made when no timely appeal is filed); and *Chelan County*
v. Nykriem, 146 Wn.2d 904, 931-33, 52 P.3rd 1 (2002)(holding that land use decisions are
final after available appeal period expires and cannot be collaterally attacked).

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45. Given opposition comments that reflect longstanding sentiments, it is worth noting that the record is absent any evidence that surrounding property owners, associations, or land-preservation groups of any kind have made efforts to purchase the project site for open-space, to preserve views for adjacent properties, or to simply control the type of development that could occur on the site. The largest parcel included in this proposed development has been valued between \$249,560 and \$351,260 from 2012 to 2021, with the lower values applied since 2017. (See Benton County Assessor's website, assessed value for Parcel No. 136983050008001, the 9.58-acre parcel forming most of the north portion of the applicant's proposed site plan; and Zillow website, "Public tax history" for the parcel). The property values assigned to the parcels are not out of line with market conditions and appear to be within reach of many buyers, especially groups that might pool their resources – noting that new homes to the west of the project site, on lots far smaller than the project site, have sold for prices double the assessed value of the largest parcel and more. (See Benton County Assessor's website, showing sales of homes for more than \$600,000.00 on lots to the west of the applicant's proposed site plan).

Environmental issues, SEPA DNS issued for this project.

46. The Staff Report credibly summarizes the extensive public noticing, comments, and SEPA review for this project. (Staff Report, summarizing notices in 2020 and again in 2022 after wetland buffer width averaging proposed by the applicant was abandoned, on pages 2, 17, and 18). Following review of all agency and public comments, application materials, and multiple professional reports submitted by the applicant as well as project opponents, Staff issued a SEPA Determination of Non-Significance (DNS) for this project on or about June 13, 2022. (Ex. 4).

- ***Fish and Wildlife Habitat issues***

47. Comments and concerns about potential impacts on fish and wildlife habitat conservation areas in the vicinity of the project were fully explored and considered by reviewing Staff, resulting in a specific Condition of Approval, that would require preparation of a detailed mitigation plan subject to review and agreement amongst the City, WDFW, and the Department of Ecology's Wetlands Division. (See Condition of Approval No. 5). This condition is based on the evidence, is consistent with applicable law, and is capable of accomplishment. Facts supporting the condition are addressed below.

48. The record includes a Wildlife Habitat Assessment Report addressing the proposal, prepared for the applicant by qualified professionals from Wetland Resources Environmental Consulting. (See Exhibit 8).

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49. As summarized in the Staff Report, the applicant's Wildlife Habitat report (*Ex. 8*) explains that the regulated species and habitats identified on or within 300 feet of the project site include: (1) Amon Creek Natural Preserve (off site); (2) PHS mapped Priority Habitat – wetland (partially on site); and (3) PHS mapped fall chinook located within West Fork Amon Creek (partially on site). The applicant's report concludes that the proposed development plan has been specifically designed in consideration of on-site HCAs, as required by the City of Richland, and that the proposed development has been placed in the best possible location to avoid impacting on-site HCAs and that no impacts to on-site HCAs will occur as a result of the proposed development plan. (*Staff Report, pages 14-15; Ex. 8*).

50. Many public comments and opposition remarks directed attention to a letter from Michael Ritter, Habitat Biologist with the Washington State Department of Fish & Wildlife (WDFW), where he noted that, based on the information presented in the applicant's Wildlife Habitat Assessment Report and WDFW's knowledge of the project site (and adjacent Amon Nature Preserve), WDFW believes that Priority Habitats and Species (PHS) such as shrub steppe habitat, Sagebrush sparrow and Black-tailed jackrabbit will be permanently impacted by the proposed development. (*WDFW letter, included as part of Ex. 13*). WDFW also expressed concerns that the project may impact the adjacent Amon Creek/wasteway, which is a central feature of the immediately adjacent WDFW Priority Amon Creek Biodiversity Area and Corridor. As a result, WDFW reiterated concerns and recommendations from their October 2020 comment letter (*included as part of Ex. 15*), which were:

- An erosion control plan should not only be maintained throughout the construction of the project but until suitable vegetation is established on the site (1-3 years) to prevent sediment or sediment laden water from entering the riparian buffer or the Amon Watercourse.
- All storm water from the site during and post construction should not be allowed to enter the adjacent buffer and wetland. Stormwater treatment facilities must not be located within the buffer.

51. Based on the discrepancy between the applicant's qualified professional consultant's opinion and that of Michael Ritter, with WDFW, staff recommended that, if approved, a condition of approval be placed which requires the creation and implementation of a mitigation plan that satisfactorily addresses the impacts to the habitat and species listed by WDFW. The mitigation plan shall be prepared pursuant to RMC 22.10.220, Fish and wildlife habitat conservation area alteration and RMC 22.10.210 Fish and wildlife habitat conservation area – Performance standards, particularly RMC 22.10.210 (K). This mitigation plan requirement is included in the Conditions of Approval.

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52. As acknowledged in SEPA regulations and City codes, SEPA does not mandate zero impacts, even those that might be permanent. Instead, appropriate “mitigation” is defined to include “avoiding”, “minimizing”, “rectifying”, “reducing”, “compensating”, or “monitoring” an impact. WAC 197-11-768. (*See similar language in RMC 26.80.010, definition of “mitigation”*).

53. The Examiner finds and concludes that preparation and implementation of, and compliance with, the habitat mitigation plan included as part of the Conditions of Approval is supported by the evidence, consistent with applicable law, and capable of accomplishment.

- ***Stormwater issues.***

54. The Staff Report adequately summarizes evidence and information included in the record, and proposed conditions of approval to address Stormwater issues and requirements that will ensure that no stormwater runoff will drain into adjacent wetlands, in accord with state and local stormwater requirements. (*SR, pages 11-12; Conditions of Approval*). Opposition comments did not include a preponderance of evidence to establish that stormwater would drain into a wetland.

- ***Cultural Resource issues.***

55. The applicant is to be commended for commissioning the preparation of a site-specific cultural resources assessment, which was shared with the Washington State Department of Archaeology and Historic Preservation (DAHP) and interested local tribal entities. To protect historic resources, the details of such report are exempt from public disclosure. But, the conclusions of the cultural resources assessment received full concurrence from DAHP, the Confederated Tribes of the Umatilla Indian Reservation, and the Yakama nation – no cultural resources were discovered during the survey, so no direct archaeological supervision should be required during ground disturbance work. Instead, preparation of, and compliance with, an Inadvertent Discovery Plan is included as a Condition of Approval. (*Staff Report, page 17; Conditions of Approval*).

- ***Wetland issues.***

56. Questions raised in written comments and hearing testimony, including from Sarah Cooke, a professional wetlands consultant hired by project opponents, alleged that the Amon Creek Wetland to the east and south of the project site should have been identified as a Category I Wetland, which would require more stringent mitigation and buffers, and could effectively prohibit the applicant’s development as designed. These comments were not as credible as the Staff Report, which was prepared by Mr. Stevens, and the applicant’s wetlands assessment that identified the Amon Creek wetland as a Category II wetland.

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1 57. Ms. Cooke's comment letter concedes that she has not visited the site, and that her
2 comments are based on a review of the applicant's reports and application materials in the
3 City's file for this project. (*Ex. 13, which includes letter from Ms. Cooke, dated May 24,*
4 *2022*). In contrast, the applicant's Critical Areas Report and wetlands assessment is based
5 on field work, including site investigations in September of 2016. (*Ex. 7, Applicant's Critical*
6 *Areas Report, Revised in April of 2021, on page 4*). Ms. Cooke did express concerns that the
7 2016 wetlands delineation work may no longer be viable.

8 58. The applicant's wetlands consultant, Scott Brainard, testified that prior wetland
9 assessments deemed the Amon wetland to be a Category II wetland, and the Department of
10 Ecology generally agreed. While there is no letter from Ecology directly verifying Mr.
11 Brainard's testimony, there is no written comment from Ecology questioning or rejecting the
12 City's SEPA DNS, which is based in part on applying buffers for Amon Creek as a Category
13 II wetland.

14 59. More significantly, the post-hearing response materials submitted by City Staff and
15 the applicant, included in the record as *Exhibit 19*, provide a credible preponderance of
16 evidence showing that previous professional studies by qualified wetlands experts have
17 concluded that the Amon wetland at issue in this project is a Category II Wetland. (*See Ex.*
18 *19, Post-Hearing Responses from Applicant and Staff, on .pdf page 178, Amon Creek Natural*
19 *Preserve Wetland Rating Summary, as a Category II wetland, in 2016, in connection with a*
20 *City Public Works Project, full report from qualified Biologist with JUB Engineers begins on*
21 *.pdf page 176; Critical Areas Report for the City's Center Parkway Extension Project, dated*
22 *May of 2022, beginning on .pdf page 10, with rating of Amon Creek wetland as a Category*
23 *II wetland discussed on various pages, including .pdf pages 26 and 4; Summary of previous*
24 *studies and reports regarding the Amon Wasteway since 2005 that are consistent with the*
25 *City's 2022 Critical Areas Report referenced on .pdf page 19*).

26 60. By operation of WAC 197-11-545 (re: Effect of no comment after SEPA notice), if a
consulted agency does not respond with written comments within the time periods for
commenting on environmental documents, the lead agency may assume that the consulted
agency has no information relating to the potential impact of the proposal as it relates to the
consulted agency's jurisdiction or special expertise; further, lack of comment by other
agencies or members of the public on environmental documents within the applicable time
period shall be construed as lack of objection to the city's environmental analysis.

61. In this matter, no state or federal agency submitted written comments that would
support some public comments expressing concerns that the wetlands ratings applied for this
project were in error, or that various salmon-protection laws have not been satisfied,
including regulations and consultations based upon the Endangered Species Act (among other

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things).

62. The applicant's wetlands/habitat consultant, Mr. Brainard, submitted a short letter, summarizing reviews he undertook and sources he consulted to prepare his Wildlife Assessment Report for this project, including multiple sources of existing available information related to current Federal and State listings of threatened and endangered species and priority habitats, noting that he made references to such sources in his report. (Ex. 19, .pdf pages 8-9).

As part of the preparation of the Wildlife Assessment Report for Willowbrook, Revision 1: April 28, 2021, Wetland Resources Inc consulted multiple sources of existing available information related to current Federal and State listings of threatened and endangered species and priority habitats. These include: US Fish and Wildlife Services Environmental Conservation Online System (ECOS) for listed species believed or known to occur in Washington (<https://ecos.fws.gov/ecp0/profile/speciesProfile?spcode=B08B#crithab>), Washington Department of Natural Resources Natural Heritage and All Features Township, Range, and Section list (www.dnr.wa.gov/NHPdata), Washington State Department of Fish and Wildlife (WDFW) Threatened and Endangered Species (<https://wdfw.wa.gov/species-habitats/at-risk/listed>), and WDFW Priority Habitat and Species (PHS) Hard Copy Map. These resources are also referenced in the aforementioned Wildlife Assessment Report.

- *Alleged view impacts.*

63. Some local residents raised general view loss concerns, like views across the applicant's property. These concerns do not serve as a basis to reject the proposal. There is no dispute that Richland city codes do not provide protection for general views from one property onto another.

64. In Washington, a person has no property right in the view across their neighbor's land. A constitutionally protected property interest exists when a plaintiff demonstrates that he or she possesses a "legitimate claim of entitlement" under the law. *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972). Here, the Richland Municipal Code does not grant adjoining property owners a claim of entitlement in the protection of their views; the code does not require the city to deny a permit or other project application that might impair private views of lands beyond a landowner's property boundaries. Thus, any potential constitutional due process claims alleging view loss should fail.

65. The criteria for approval of a Site Plan does not include analysis of views of the proposed development from adjacent properties, nor do City regulations protect the views from adjacent properties other than any view protection that may result from compliance with

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applicable building height limits, setback requirements, and other bulk and density standards for the property.

66. Washington case law is very clear that there is no view protection in common law; nor are general views from a neighbor's property onto an adjoining property protected in City Codes at issue in this matter. See *Asche v. Bloomquist*, 132 Wn. App. 784, 133 P.3d 475, 2006 Wash. App. LEXIS 434 (Div. II, 2006); and *Durland v. San Juan County*, 182 Wn.2d 55, 340 P.3d 191 (2014).

67. There is no basis in fact or law to reject the SEPA DNS based upon alleged view impacts.

- ***SEPA DNS entitled to substantial weight.***

68. In the end, the proposed Site Plan has been conditioned to ensure that it will be developed in compliance with applicable city development requirements and performance standards, and specific conditions of approval, all of which are reasonable and capable of accomplishment. If constructed, operated, and maintained in compliance with this Decision, the proposed Site Plan should not result in any probable, significant, adverse environmental impacts on surrounding properties, residents, or uses.

69. While the city's code does not provide for appeals of SEPA threshold determinations to the City's Hearing Examiner, as is the case in many Washington jurisdictions, the standards for how and when a Washington court would overturn a SEPA threshold determination, such as the DNS issued for this proposal, are worthy of consideration. To successfully overturn a SEPA DNS, a challenger must present actual evidence of probable significant adverse impacts of the Project. *Boehm v. City of Vancouver*, 111 Wn.App. 711, 718-719, 47 P.3d 137 (2002). A "clearly erroneous" standard applies when reviewing SEPA threshold determinations made by local and state governmental entities, such as the DNS issued for this project. *King Cty. v. Washington State Boundary Review Bd. for King Cty.*, 122 Wn. 2d 648, 661, 860 P.2d 1024 (1993). A challenged DNS may be reversed if, although there is evidence to support it, the reviewing authority is left with the definite and firm conviction that a mistake has been committed. See *Norway Hill Pres. & Prot. Ass 'n v. King County Council*, 87 Wn.2d 267, 274, 552 P.2d 674 (1976). In reviewing a SEPA threshold determination, a reviewing authority must first determine whether "environmental factors were considered in a manner sufficient to amount to prima facie compliance with the procedural requirements of SEPA." *Sisley v. San Juan County*, 89 Wn.2d 78, 84, 569 P.2d 712 (1977) (quoting *Juanita Bay Valley Com. v. Kirkland*, 9 Wn. App. 59, 73, 510 P.2d 1140 (1973)).

70. Procedural determinations by the City's SEPA responsible official, like the SEPA DNS threshold determination made for this proposal, shall be entitled to substantial weight

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1 in any subsequent proceedings. Such deference is mandated by Washington caselaw,
2 including *Anderson v. Pierce County*, 86 Wn. App. 290 (1997) (holding that substantial
3 weight is accorded to agency threshold determinations), and is required by *WAC 197-11-*
4 *680(3)(a)(viii)* (“Agencies shall provide that procedural determinations made by the
5 responsible official shall be entitled to substantial weight.”), which provision is adopted by
6 reference as part of the City’s municipal code. (*RMC 22.09.200*).

7 71. The Examiner finds and concludes that the City’s SEPA responsible official, Mr.
8 Stevens, was present for all hearing testimony, and received copies of all written comments
9 before and after the hearing. Recognizing that Mr. Stevens held full discretion and authority
10 to do so, at no point did he indicate that the SEPA DNS issued for this project should be
11 modified or withdrawn, despite the many opposition comments submitted regarding various
12 environmental issues.

13 ***Concerns regarding Applicant’s rights to use proposed access routes.***

14 72. Some local residents expressed concerns or direct opposition to the proposed Site Plan
15 for reasons that focused upon challenges to private rights needed to achieve access onto
16 surrounding streets. The proposed Site Plan is reviewed to see if the proposed design satisfies
17 applicable approval criteria. Here, many comments sought delay or denial of this application
18 until pending resolution of private legal issues are resolved between the developer and some
19 local property owners, residents, or neighborhood associations.

20 73. Counsel for some project opponents made the following argument: “The access road
21 is required to build Willowbrook Apartments, yet the covenant prohibits the road. The
22 examiner should find that the developer has not made adequate provisions of road access.
23 Either the covenant will have to be amended or another access route found.” (*Mr. Sidles’*
24 *post-hearing letter, included as part of Ex. 18, post-hearing comments submitted as*
25 *authorized during the public hearing*).

26 74. While the Examiner appreciates the desire for certainty and finality of all private legal
claims that may have been or might be brought against this applicant, the Examiner does not
hold authority to rule upon private property questions and private disputes raised through the
hearing process. Nothing in this Decision should be read or construed to ignore or rule upon
the effect of any alleged covenant or legal instrument that might limit the applicant’s ability
to make use of either of the two access routes proposed and required for this Site Plan.

75. The applicant is fully aware of the challenges made to its rights to develop the
proposed Site Plan as submitted. Even though this Site Plan is approved, adjacent property
owners may not grant needed access rights, or a court of competent jurisdiction could rule in
a manner that makes the plan meaningless as currently designed, if roadway access is denied

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1 in a material way, or some covenant is enforced in a manner that prevents construction and
2 use of two access routes, or limits required emergency ingress/egress from the site, among
other things.

3 76. The Staff Report and exhibits from professionals consulted by the City adequately
4 confirm that the Site Plan can be designed and conditioned to satisfy applicable
5 development regulations, including without limitation two access points to satisfy
6 transportation, fire, and emergency access requirements. However, if subsequent lawsuits or
7 failure to obtain legal rights make either of the two required access routes – identified in the
8 applicant's proposed Site Plan (*Ex. 2*) – impossible to build or use, then the Site Plan could
9 require modifications or additional conditions, potentially fewer buildings, fewer dwelling
units, potentially sprinkler systems in all units, or other development restrictions to comply
with applicable codes, particularly the Fire Code. In fact, proposed changes could fall outside
of minor changes that could be made following Site Plan approval, necessitating an entirely
new Site Plan application.

10 77. Again, the Examiner relies on applicant's representations that they will be able to
11 obtain necessary access rights to develop the project as conditioned. The applicant assumes
12 all risk that might result from proposing a Site Plan design that cannot be accomplished if the
13 applicant's easement rights are not obtained or might be restricted in some material way by
14 a court with appropriate jurisdiction, rendering the Site Plan un-buildable as approved,
necessitating a major re-design and possible new application for a different Site Plan layout
reflecting changes based on lack of access or other development limitations that might arise
from a subsequent court ruling.

15 ***Landscaping.***

16 78. RMC 23.54.140 provides the landscaping requirements which must be met in order
17 to approve a Site Plan permit request. Provided the landscaping is installed and completed as
18 is currently proposed, the proposed landscaping plan meets all of the various requirements
contained within RMC 23.54.140. (*Staff Report, page 10; Ex. 3, Sheet L1*).

19 ***Utility Availability.***

20 79. The City has domestic water, sewer and electrical power lines in place within
21 reasonable proximity to serve the site and has adequate capacity to supply the proposed
22 project. (*Staff Report, utility discussion on page 16*).

23 ***General discussion.***

24 80. While the findings above attempt to address the primary arguments and issues raised

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1 in public comments, none of the issues raised by project opponents, whether specifically
2 discussed in this Decision or not, were supported by sufficient credible evidence to rebut
3 findings and analysis included in the Staff Report, especially given the substantial weight that
4 must be accorded to the SEPA DNS issued for this project. Comments raised about most
5 issues appeared to be speculative, some were self-serving (particularly alleged view impact
6 concerns, not in my backyard or the open area that I have enjoyed for years arguments, that
7 apartment dwellers are somehow less desirable than single family homeowners) and were not
8 supported by convincing studies or factual evidence on the subject.

9 81. Again, paraphrasing the action words contained in the definition given for the word
10 “mitigation” in the state SEPA regulations, the term “mitigation” does not mean zero impacts,
11 but means “avoiding”, “minimizing”, “rectifying”, “reducing”, “compensating”, or
12 “monitoring” an impact. WAC 197-11-768. *(See similar language in RMC 26.80.010,*
13 *definition of “mitigation”).*

14 82. The Examiner finds and concludes that the SEPA DNS issued for this proposal is
15 entitled to deference, is supported by a preponderance of evidence in the record, and that it is
16 based upon requirements that the applicant must follow applicable development regulations,
17 including without limitation those addressing stormwater management, wetland buffers,
18 traffic, cultural resources, and the like. Through compliance with applicable City
19 development regulations and the specific Conditions of Approval issued as part of this
20 Decision, this Site Plan approval includes measures intended to appropriately avoid and/or
21 mitigate potential environmental impacts.

22 ***As conditioned, the application satisfies approval criteria for Site Plan Review.***

23 83. The Staff Report provides a credible summary of Comprehensive Plan and Zoning
24 Code provisions, and a special Ordinance adopted when the site was annexed into the City,
25 which apply to this proposed Site Plan, and how the application complies with, or can be
26 conditioned to, satisfy such requirements. The Staff Report provides a credible summary of
modifications that the applicant has made to its first proposed Site Plan to fully apply wetland
buffers without averaging, resulting in a development that is concentrated about as far from
the property’s eastern edge as possible.

84. Based on the entire record, the Examiner finds and concludes that the applicant’s Site
Plan application demonstrates general conformance with the City’s comprehensive plan,
zoning and development regulations, subject to appropriate conditions of approval.

85. Except as modified in this Decision, all findings and statements of fact included in
the Staff Report are adopted as Findings of Fact by the Hearing Examiner and incorporated
herein by this reference. *(See Staff Report, including without limitation proposed Findings*

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on pages 18-20).

86. The record includes a preponderance of evidence establishing that, subject to appropriate conditions of approval, the proposed project satisfies all 5 approval criteria contained for a Type II permit, found in RMC 19.60.095, which reads as follows, with additional findings in *italics*:

A. The development application is consistent with the adopted comprehensive plan and meets the requirements and intent of the Richland Municipal Code. *See all findings above, and in the Staff Report; Staff Report, portions explaining how the project is designed or can be conditioned to meet performance standards and special requirements for multifamily residential uses in the R-3 zone that about a single-family residential zoning district, as analyzed in SR at page 8; As explained in the Staff Report, and in Mr. Stevens' credible testimony during the public hearing, the illustrations and notes on the proposed Site Plan for this project show compliance with applicable setbacks and performance standards, including without limitation building setbacks, a 150' setback from the north boundary as required in Ord. 41-78, and parking spaces for automobiles. (Staff Report, pages 8-9). The Staff Report recommends additional conditions of approval requiring 7 motorcycle spaces and a 40-foot height limit for buildings, consistent with height limits for buildings in the R-3 zone. (See Staff Report on page 9, citing building height limits found in RMC 23.18.040 and parking standards in RMC 23.54.020(A)); See all Conditions of Approval, imposed by the Examiner to ensure the project will be constructed in compliance with applicable provisions of the City's Comprehensive Plan and development regulations.*

B. Impacts of the development have been appropriately identified and mitigated under Chapter 22.09 RMC (the City's SEPA requirements and policies). *As noted above, the project was reviewed under applicable SEPA procedures, which resulted in issuance of a DNS for the project. The Examiner is required to grant substantial deference to the responsible official's SEPA threshold determination. Conditions of Approval are included to ensure that the project will not result in adverse impacts on surrounding properties, uses, and residents, all of which are reasonable and capable of accomplishment.*

C. The development application is beneficial to the public health, safety and welfare and is in the public interest. *As conditioned, the project should adequately protect and benefit the public health, safety and welfare and be in the public interest. Modifying Conditions of Approval without a full Type II review process would not be in the public interest.*

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1 D. The development does not lower the level of service of transportation facilities
2 below the level of service D, as identified in the comprehensive plan; provided,
3 that if a development application is projected to decrease the level of service
4 lower than level of service D, the development may still be approved if
5 improvements or strategies to raise the level of service above the minimum level
6 of service are made concurrent with development. For the purposes of this
7 section, "concurrent with development" means that required improvements or
8 strategies are in place at the time of occupancy of the project, or a financial
9 commitment is in place to complete the required improvements within six years
10 of approval of the development. *See discussion in the Staff Report regarding*
11 *transportation analysis, and Public Works analysis discussed in SR on pages 16-*
12 *17. See Conditions of Approval addressing transportation-related*
13 *improvements, including two required access routes, that will be required as part*
14 *of this development to comply with city concurrency requirements and the like.*

15 E. Any conditions attached to a project approval are as a direct result of the
16 impacts of the development proposal and are reasonably needed to mitigate the
17 impacts of the development proposal. *The conditions of approval for this project*
18 *are based on the evidence in the record, supported by applicable law, and fully*
19 *capable of accomplishment.*

20 V. CONCLUSIONS OF LAW.

21 1. Based on the record, and all findings provided above and in the Staff Report, the
22 Examiner concludes that the applicant's Site Plan application merits approval, subject to
23 conditions of approval as recommended by City staff and modified herein.

24 2. As conditioned below, the site plan makes adequate provision for the public health,
25 safety, and welfare, and will be in the best interest of the citizens of the city and in accordance
26 with the height, setback, and other performance standards for the project.

3 3. Approval of this Site Plan will not and does not constitute, nor does it imply any
4 expectation of, approval of any administrative, quasi-judicial, or other permit or subsequent
5 reviews that may be required for construction or other activities on any portion of this site
6 plan.

7 4. Any statement found in any other section of this Decision that is deemed to be a
8 Conclusion of Law is hereby adopted as such and incorporated herein by this reference.

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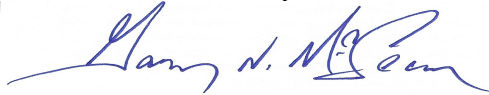
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VI. DECISION.

Based upon all Findings, Conclusions, and Conditions of Approval (a copy of which are attached hereto and incorporated as part of this Decision), the Willowbrook Apartments project application for a Site Plan, File No. M2020-101, is hereby APPROVED, subject to conditions.

ISSUED this 12th Day of December, 2022



Gary N. McLean
Hearing Examiner

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**CONDITIONS OF APPROVAL
FOR THE
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FILE NO. M2020-101**

In accord with authority granted in the Richland Municipal Code, including without limitation RMC 23.48.040 ("Site plan approvals may be made subject to any condition(s) which the hearing examiner determines to be necessary to protect the public health, safety and welfare..."), the hearing examiner approves the above-referenced Site Plan application subject to conditions, modifications and restrictions set forth below, all deemed necessary to protect the public health, safety and welfare, to make the application compatible with surrounding conditions and uses, and to fully implement the regulations, policies, objectives and goals of the city's comprehensive plan, zoning code, and other ordinances, policies and objectives of the city.

General Conditions added by the Hearing Examiner:

- A. *Site Plan Approved as shown on Exhibit 2.*** This Site Plan is approved and shall be constructed, developed, and maintained in substantial compliance with the applicant's proposed Site Plan, included in the record as *Exhibit 2*. This Site Plan approval allows the applicant to seek subsequent development and construction permits needed to develop a 14+ acre site with four (4) multi-family residential buildings for up to 108 total dwelling units, with two access routes, a clubhouse, covered parking structures, associated parking areas, stormwater runoff and landscaping areas, and associated improvements, substantially as illustrated in the applicant's proposed Site Plan, a copy of which is included in the record as *Exhibit 2*. (*Staff Report, page 2; and Exs. 1 and 2, Application and proposed Site Plan*).
- B. *Access Rights for both proposed access routes must be confirmed before submittal of Building or other development permit applications.*** The applicant/developer must submit legal instruments confirming access rights to construct and develop the Site Plan as proposed, with two access routes, in a form deemed satisfactory to the City Attorney, prior to submittal of Building, Construction, Grading or other plans required to obtain development permits necessary to construct any aspect of this project.
- C. *Process for Review of Potential Minor or Major Revisions to this Site Plan.*** Revisions to an approved Site Plan are reviewed under RMC 19.20.010, with minor revisions reviewed as a Type I application (see RMC 19.20.010(A)(6)), which requires approval by the Director; and major revisions reviewed as a Type II application requiring approval by the Hearing Examiner (see RMC 19.20.010(B)(3)).

As provided in RMC 19.20.030, a Type I application does not require public notice, but public notice must be issued regarding any decision to approve a Type I application, which is then subject to appeal before the Hearing Examiner; and all Type II applications require full public notice of such application, an open record hearing, and a decision by the Hearing Examiner.

Because this Site Plan has been approved following input and analysis based upon a public review and hearing process, and previous Site Plan projects may have been modified in significant aspects

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from the approved Site Plan without public notice and review, it is in the public interest for this Site Plan approval and future Site Plans to provide a clear condition explaining the sorts of revisions that will require a Type I or Type II review and approval, subject to application fees and filing requirements as determined by the Director or his/her designee.

For this Site Plan, “*Major Revisions*” shall include, but not be limited to the following:

- i. Modification in building use;
- ii. Any increase in the number of buildings or structures; or increase in the size, height, or building footprint for any building shown on the Site Plan, or significant change in location for any building shown on the approved Site Plan, as determined by the Planning Manager;
- iii. Modification in the number, size, location or arrangement of off-street parking spaces, or loading areas, provided parking-related changes may be made to effectuate these conditions of approval, including without limitation to include the motorcycle parking spaces needed to satisfy city standards and additional parking spaces may be included in the project if accomplished in a manner that is consistent with applicable city codes and design requirements, all as determined by the Planning Manager;
- iv. Change in the number, size or location of access points to adjacent public streets;
- v. Change in location of city utility lines or storm drainage facilities, except as approved by the Public Works Director and Planning Manager, to ensure that such changes achieve utility and stormwater service objectives without necessitating significant changes to other aspects of the approved Site Plan;
- vi. Change in location of any existing or proposed utility and/or access easements;
- vii. Change in location, type or size of landscaping materials proposed to be installed on site in the Final Landscaping Plan for the site, which is subject to review and approval by the Planning Manager prior to issuance of any building or other city permit required for development of the site;
- viii. Any change that, in the opinion of the City’s SEPA Responsible Official, would significantly increase any adverse impacts or undesirable effects of the Site Plan.
- ix. Any other change that would cause the site plan to not meet a minimum requirement or design standard contained in the city’s development standards.

“*Minor Revisions*” shall exclude all proposed changes that would constitute a “Major Revision” as listed above, but include: proposed changes that the Planning Manager determines to be truly minor and still in substantial compliance with the Site Plan approval; technical engineering items and details unless the proposed detail modifies or eliminates features specifically required as an element of approval; minor changes to internal pedestrian paths, driveway alignments, or utility designs; reduction in the number of residential units approved, as long as the modification meets

any minimum density requirement; minor changes to clarify notations on the Site Plan; and minor changes to facilitate final stormwater system design requirements.

D. *Site Plan Approval void if complete permit applications are not submitted within 24 months of issuance of this Decision.* Complete applications for all permits needed to develop the property as provided on the Site Plan must be submitted to the City for review by appropriate officials within 24 months of issuance of this Decision, unless extended for up to 12 months by the Planning Manager for good cause following a written request from the applicant explaining reasons for such extension and any progress made to pursue the project. Failure to satisfy this timeline shall void this Site Plan approval and require a new application.

E. The applicant shall comply with all professional report conclusions and recommendations submitted in connection with the Site Plan and engineering reviews, as approved and/or amended by the City.

F. The applicant shall be responsible for consulting with state, federal, and other agencies or entities with jurisdiction (if any) for applicable permit or other regulatory requirements. Approval of this Site Plan does not limit the applicant's responsibility to obtain any required permit, license or approval from a state, federal, or other regulatory body. Any conditions of regulatory agency permits, licenses, or approvals shall be considered conditions for this project.

G. Development and construction associated with this Site Plan shall comply with all applicable provisions of the Richland Municipal Code, whether or not such provisions are enumerated or referenced in the Site Plan, in the staff report or in this Decision; provided adjustments to street system improvements required by RMC Ch. 12.10 shall be in accord with final reviews and determinations by the City's Public Works Director, who is authorized to exercise sound engineering judgment in such matters. The burden is on the applicant to show compliance with these conditions and applicable provisions of the City's code and development regulations at every stage of development.

Conditions based on those recommended in Staff Report.

1. The site shall be developed in substantial conformance with the site plan, and landscaping plan submitted with the site plan review application, included in this staff report as *Exhibit 2* and as modified by these conditions of approval;
2. The site plan submitted with subsequent building permit application(s) shall specify precise setbacks for each building respective to distances from the nearest property line(s) and be in substantial conformance with the site plan approved by the Hearing Examiner;
3. A single freestanding sign is available to the property. Sign placement shall be reviewed via a separate sign permit;
4. An appropriate number of excess automobile parking stalls shall be converted to motorcycle spaces and meet the requirements of RMC 23.54.040, Motorcycles. Based on calculations provided in the un rebutted Staff Report, at least 7 (seven) motorcycle spaces are required.
5. A mitigation plan that enhances the wetland buffer area and satisfies WDFW's concerns regarding the permanent impacts to WDFW habitats and species shall be prepared by a professional critical areas consultant. The mitigation plan shall be prepared pursuant to RMC 22.10.110, Wetland

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- buffer areas, RMC 22.10.220, Fish and wildlife habitat conservation area alteration and RMC 22.10.210 Fish and wildlife habitat conservation area – Performance standards, particularly RMC 22.10.210 (K). The mitigation plan shall be reviewed and agreed upon by the applicant, City of Richland, WDFW and Washington State Dept. of Ecology (Wetlands Division). All required plantings and associated improvements associated with the approved mitigation plan shall be completed prior to a certificate of occupancy being issued for any of the proposed buildings.
6. An Inadvertent Discovery Plan (IDP) shall be submitted for review and approval by the Planning Manager prior to the issuance of any development permits for the subject property.
 7. All final, approved plans for public improvements shall be submitted prior to pre-con on a 24" x 36" hardcopy format and also electronically in .dwg format compatible with the City's standard CAD software. Addendums are not allowed, all information shall be supplied in full size (and electronic) format. Electronic copies of the construction plans are required prior to the pre-con meeting along with the multiple sets of paper drawings. When construction of the public infrastructure has been substantially completed, the applicant shall provide paper and electronic record drawings in accordance with the City's "Record Drawing Requirements". The electronic record drawings shall be submitted in an AutoCAD format compatible with the City's standard CAD software. The final record drawings shall be submitted and approved by the City before the final punch list inspection will be performed. All final punch list items shall be completed or financially guaranteed prior to final acceptance of the project.
 8. A copy of the construction drawings shall be submitted for review to the appropriate jurisdictions by the developer and his engineer. All required comments / conditions from all appropriate reviewing jurisdictions (e.g.: Benton County, any appropriate irrigation districts, other utilities, etc.) shall be incorporated into one comprehensive set of drawings and resubmitted (if necessary) for final permit review and issuance. Any and all necessary permits that may be required by jurisdictional entities outside of the City of Richland shall be the responsibility of the developer to obtain.
 9. Any work within the public right-of-way or easements or involving public infrastructure will require the applicant to obtain a right-of-way construction permit prior to beginning work, per RMC Chapter 12.08. The applicant shall pay a plan review fee based on a cost-per-sheet of engineering infrastructure plans. This public infrastructure plan review fee shall apply each time a project is submitted for review. This fee will be different for commercial projects versus subdivision projects. Please visit the Public Works Private Development page on the City's webpage to find the current per-sheet fee. A permit fee in the amount equal to 3% of the construction costs of the work within the right-of-way or easement will be collected at the time the construction permit is issued. A stamped, itemized Engineers estimate (Opinion of probable cost) and a copy of the material submittals shall be submitted along with the approved plan submittal.
 10. Public utility infrastructure located on private property will require recording of a City standard form easement prior to acceptance of the infrastructure and final acceptance of the project. The City requires preparation of the easement legal description by the developer two weeks prior to the scheduled date of final occupancy. Once received, the City will prepare the easement document and provide it to the developer. The developer shall record the easement at the Benton

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County Assessor and return a recorded original document to the City prior to application for final occupancy.

11. A pre-construction conference will be required prior to the start of any work within the public right-of-way or easement. Contact the Public Works Engineering Division at 942-7500 to schedule a pre-construction conference.

12. All plan sheets involving construction of public infrastructure shall have the stamp of a current Washington State licensed professional engineer.

13. Public improvement design shall follow the following general format:

- A. All materials and workmanship shall be in conformance with the latest revision of the City of Richland Standard Specifications and Details, Public Infrastructure Design Guidelines and the current edition of the State of Washington Standard Specifications for Road, Bridge, and Municipal Construction. Please confirm that you have the latest set of standard specs and details by visiting the City's web page.
- B. Fire hydrant location shall be reviewed and approved by the City Fire Marshal.
- C. All utilities shall be extended to the adjacent property (properties) at the time of construction.
- D. The minimum centerline finish grade shall be no less than 0.30% and the maximum centerline finish grade shall be no more than 10.0% for local streets. 12% can be allowed for local streets for short distances.
- E. The minimum centerline radius for local streets shall be 100-feet.
- F. Final design of the public improvements shall be approved at the time of the City's issuance of a Right-of-way Construction Permit for the proposed construction.
- G. All public improvements shall comply with the State of Washington and City of Richland requirements, standards and codes.
- H. The contractor shall be responsible for any and all public infrastructure construction deficiencies for a period of one year from the date of the letter of acceptance by the City of Richland.

14. If the project will be built in phases the applicant shall submit a master plan for the sanitary sewer, domestic water, storm drainage, electrical, street lighting and irrigation system for the entire project prior to submitting plans for the first phase to assure constructability of the entire project. This includes the location and size of any storm retention ponds that may be required to handle runoff.

15. If the City Fire Marshal requires a secondary emergency vehicle access, it shall be included in the construction plan set and be designed to the following standards:

- A. 2-inches compacted gravel, minimum (temp. SEVAs only).
- B. 2% cross-slope, maximum.
- C. 5% slope, maximum. Any access road steeper than 5% shall be paved or be approved by the Fire Marshal.
- D. Be 20-feet in width.
- E. Have radii that are accommodating with those needed for City Fire apparatus.

Secondary emergency vehicles accesses (SEVA's) shall be 20-feet wide, as noted. Longer secondary accesses can be built to 12-feet wide with the approval of the City of Richland Fire Marshal, however turn-

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outs are required at a spacing acceptable to the Fire Dept. Temporary SEVA's shall be constructed with 2-inches of compacted gravel, at a minimum. Permanent SEVA's shall be paved with 2-inches of asphalt over 4-inches of gravel, at a minimum.

16. All permanent survey monuments existing on the project site shall be protected. If any monuments are destroyed by the proposed construction, the applicant shall retain a professional land surveyor to replace the monuments and file a copy of the record survey with the City.

A. No survey monument shall be removed or destroyed (*the physical disturbance or covering of a monument such that the survey point is no longer visible or readily accessible*) before a permit is obtained from the Department of Natural Resources (DNR). WAC 332-120-030(2) states "It shall be the responsibility of the governmental agency or others performing construction work or other activity (including road or street resurfacing projects) to adequately search the records and the physical area of the proposed construction work or other activity for the purpose of locating and referencing any known or existing survey monuments." (RCW 58.09.130).

B. Any person, corporation, association, department, or subdivision of the state, county or municipality responsible for an activity that may cause a survey monument to be removed or destroyed shall be responsible for ensuring that the original survey point is perpetuated. (WAC 332-120-030(2)).

C. Survey monuments are those monuments marking local control points, geodetic control points, and land boundary survey corners. (WAC 332-120-030(3)).

When a monument must be removed during an activity that might disturb or destroy it, a licensed Engineer or Land Surveyor must complete, sign, seal and the file a permit with the DNR. It shall be the responsibility of the designing Engineer to identify the affected monuments on the project plans and include a construction note directing them to the DNR permit.

17. The City's Traffic Engineer has reviewed the traffic analysis report and finds that the Trip Generation and Distribution is in concurrence with past recommendations. Count volumes have been updated during days that are more representative of normal traffic. Section 6.1 of the report suggests that an annual growth rate of 1.8% was applied to the 2022 Existing Counts to obtain the 2032 Baseline. Checks on the numbers suggest that the actual growth rates applied between Figures 3 & 4 are higher than the 1.8% suggested. Therefore, the estimated LOS and delay are likely overestimated and conservative. We believe the project satisfies concurrency.

18. The proposed project is subject to Richland Municipal Code Section 12.03, requiring the payment of traffic impact fees. These fees will be due at the time of building permit issuance.

19. The entrance to the development off of the east end of John Court (a public right-of-way) shall be delineated with a standard commercial driveway. This proposed entrance and access road is on property that is owned by a separate owner than the project applicant. Permission to construct these improvements (and any necessary easements) shall be obtained by the applicant from the property owner prior to construction.

20. The private driveway onto Broadmoor Street shall be constructed per City of Richland commercial driveway standard details. The vision-clearance triangle at the Broadmoor Street

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driveway needs to be shown on the construction plans and be designed in accordance with RMC Chapter 12.11.020. Since the intersection is in a curve it will have to be evaluated per AASHTO guidelines.

21. "No Parking" signs shall be posted along the drive aisles and parking areas as required. Sufficient travel width needs to be maintained for larger vehicles and Fire Dept. apparatus.
22. The developer and his engineer shall demonstrate on the construction plans that all future driveways, sidewalks and pedestrian ramps will meet City and ADA requirements, and also provide at least 5-feet of separation between driveway and/or pedestrian ramp transitions.
23. The proposed access points onto Broadmoor Street and John Court are acceptable for this project, and are both required. Any proposed changes to said driveways will be subject to approval by the City Engineer, provided in no event shall the project be allowed to develop without 2 (two) access points onto John Court and Broadmoor Street, substantially as depicted in the approved Site Plan (Ex. 2).
24. The on-site drive aisles shall be constructed to provide for adequate fire truck & solid waste collection truck access & turnaround movements.
25. If the project is to be constructed in phases, the private driveway out to Broadmoor Street shall be constructed with the first phase. This roadway shall be designed to be passable by fire apparatus and solid waste collection vehicles.
26. Any dead-end drive aisles or parking areas longer than 150-feet (that will be continued later) need to have temporary turnarounds built at the end of them. The temporary turnaround will need to have a 50-foot radius and will require an easement over it.
27. There is a sewer maintenance & trail easement over the existing sewer maintenance access road that bisects the southern half of this property. Access over this roadway / trail shall be maintained during construction. The roadway / trail shall be restored to original condition after construction.
28. The closest domestic water mains to this project are located in Broadmoor Street to the north and John Court to the west. It shall be the responsibility of the developer to loop a water main through this property to serve domestic water at the time of project construction. Easements will be needed for this water main where it is outside of the public right-of-way. This water main shall be sized to adequately supply domestic water and fire flows to the proposed development. Looping of the water system provides redundancy and helps to eliminate stagnant water.
29. The developer will be required to demonstrate that all phases are capable of delivering adequate fire flows prior to construction plans being accepted for review. This may require looping of the watermain from off-site locations or oversizing of the main where needed.
30. The fire hydrant layout shall be approved by the City Fire Marshal.
31. In accordance with RMC Chapter 18.13 and WAC 246-290 regarding Cross Connections, premise isolation backflow assemblies are required to be installed on the domestic water services of all

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CITY HALL – 505 SWIFT BOULEVARD
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- 1 new commercial/industrial buildings immediately downstream of the City's water meter. This
2 will be a requirement on the construction plans. Please note this on the plans, and indicate where
3 the backflow device is to be installed.
- 4 32. The closest sanitary sewer available for the northern half of this development is located to the
5 north in Broadmoor Street, and to the south of it in the adjacent property that is under separate
6 ownership. The southern half of this property has an existing city sewer main running through it
7 already. It shall be the responsibility of the developer to extend a sewer main to this property at
8 the time of project construction.
- 9 33. A 10-foot wide exclusive sanitary sewer easement shall be provided for any sewer main that is
10 outside of the public Right-of-Way. Wider easements are required for mains that are buried
11 deeper than 10-feet. If any manholes are located outside of the public Right-of-Way, maintenance
12 truck access to said structure may be required.
- 13 34. All construction projects that don't meet the exemption requirements outlined in Richland
14 Municipal Code, Section 16.06 shall comply with the requirements of the Washington State
15 Department of Ecology issued Eastern Washington NPDES Phase II Municipal Stormwater
16 Permit. The Developer shall be responsible for compliance with the permit conditions. All
17 construction activities subject to this title shall be required to comply with the standards and
18 requirements set forth in the Stormwater Management Manual for Eastern Washington
19 (SWMMEW) and prepare a Stormwater Site Plan. In addition, a Stormwater Pollution Prevention
20 Plan (SWPPP) or submission of a completed erosivity waiver certification is required at the time
21 of plan submittal. The City has adopted revised standards affecting the construction of new
22 stormwater facilities in order to comply with conditions of its NPDES General Stormwater Permit
23 program. This project, and each phase thereof, shall comply with the requirements of the City's
24 stormwater program in place at the time each phase is engineered. The project will require
25 detailed erosion control plans.
- 26 35. The proposed storm drainage and grading of all areas within the proposed development shall be
shown on the plans (most grading and drainage plans must be prepared by a licensed civil
engineer). If site contains at least 1,000 sq.ft. of new asphalt, and/or contains 30% or more
impervious surfaces, storm drainage calculations from a licensed civil engineer are required.
Stormwater shall be kept on-site (on the developing property that generated it). Stormwater shall
not be flowed onto adjacent properties, or to the public Right-of-Way, without first obtaining
written permission.
36. The private on-site storm drainage system shall be designed following the core elements defined
in the latest editions of the Stormwater Management Manual for Eastern Washington, the current
Richland municipal codes, the Phase II Municipal Stormwater Permit, and the City's "Public
Infrastructure Construction Plan Requirements and Design Guidelines". Calculations shall be
stamped by a registered professional Civil Engineer. Prior to discharging any storm drainage
waters from paved surfaces into drainage ditches, groundwater or a public system, an oil/water
separator must be installed. The applicant's design shall provide runoff protection to downstream
property owners.

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- 1 37. If any existing storm drainage or ground water seepage drains onto the proposed site, said storm
2 drainage shall be considered an existing condition, and it shall be the responsibility of the property
3 developer to design a system to contain or treat and release the off-site storm drainage.
4
- 5 38. If there are any natural drainage ways across the proposed project, the engineered construction
6 plans shall address it in accordance with Richland Municipal code 24.16.170 ("Easements-
7 watercourses").
8
- 9 39. Any proposed storm drainage retention facilities within the boundary of the proposed project shall
10 not adversely affect neighboring properties.
11
- 12 40. Prior to or concurrent with the submittal of the first phase the developer shall provide a
13 Geotechnical report including the percolation rate of the soils in the area of any storm retention
14 ponds. If the project constructs a storm retention pond then the engineer will need to demonstrate
15 that the pond will drain itself within 72 hours after the end of a storm event, and not have standing
16 water in it longer than that. Engineering solutions are available for retention ponds that do not
17 percolate within 72 hours.
18
- 19 41. The amount of post-development storm runoff from the proposed site shall not exceed the amount
20 of pre-development runoff.
21
- 22 42. Any solid waste enclosures installed as part of this project shall be constructed to City standard
23 details.
24
- 25 43. The solid waste enclosure must be shown on the construction plans and will have to be placed so
26 that it is accessible by City solid waste collection vehicles.
44. When the construction is substantially complete a paper set of "record drawings" shall be prepared
by a licensed surveyor and include all changes and deviations. Please reference the Public Works
document "RECORD DRAWING REQUIREMENTS & PROCEDURES" for a complete
description of the record drawing process. All final punch list items shall be completed or
financially guaranteed prior to final acceptance of the project.
45. Public utility infrastructure located on private property will require recording of a City standard
form easement prior to acceptance of the infrastructure and release of a certificate of occupancy.
The City requires preparation of the easement legal description by the developer two weeks prior
to the scheduled date of final occupancy. Off-site ("third party") easements or rights-of-way for
City infrastructure are the responsibility of the developer to obtain. Once received, the City will
prepare the easement document and provide it to the developer. The developer shall record the
easement at the Benton County Assessor and return a recorded original document to the City prior
to application for final occupancy.
46. Any off-site easements or permits necessary for this project shall be obtained and secured by the
applicant and supplied to the City at the time of project construction and prior to final acceptance
by the City.

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Notice of Rights to Request Reconsideration or Appeal This Decision

Reconsideration –

Sec. 2.22(a) of the Richland Hearing Examiner Rules of Procedure reads as follows:

(a) The Hearing Examiner may reconsider a decision or recommendation on an application, if it is filed in writing within 7 calendar days of the date of issuance. Only parties of record have standing to seek reconsideration. Any request for reconsideration shall be served on all parties of record and to any party's designated representative or legal counsel on the same day as the request is delivered to the Hearing Examiner. The Examiner will seek to accept or reject any request for reconsideration within 3 business days of receipt. If the Examiner decides to reconsider a decision, the appeal period will be tolled (placed on hold) until the reconsideration process is complete and a new decision is issued. If the Examiner decides to reconsider a recommendation made to the City Council, the transmittal to the City Council shall be withheld until the reconsideration process is complete and a new recommendation is issued. If the Examiner decides to reconsider a decision or recommendation, all parties of record shall be notified. The Examiner shall set a schedule for other parties to respond in writing to the reconsideration request and shall issue a decision no later than 10 business days following the submittal of written responses. A new appeal period shall run from the date of the Hearing Examiner's Order on Reconsideration.

Appeal –

As provided in RMC 19.20.030, this Type II project permit Decision is subject to judicial appeal. The hearing examiner's decision regarding this Site Plan application shall be final, subject to judicial appeal in the time and manner as provided in RMC 19.70.060 and Ch. 36.70C RCW (*Except in the event of legal authority providing for a different appeal process, the city's final decision on an application may be appealed by a party of record with standing to file a land use petition in Benton County superior court. Such petition must be filed within 21 days of issuance of the decision, as provided in Chapter 36.70C RCW*).

NOTE: The Notice provided on this page is only a short summary, and is not a complete explanation of fees, deadlines, and other filing requirements applicable reconsideration or appeals. Individuals should confer with advisors of their choosing and review all relevant codes, including without limitation the city code provisions referenced above and the Land Use Petition Act (Chapter 36.70C RCW) for additional information and details that may apply.

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APPENDIX A

LIST OF SPEAKERS AT PUBLIC HEARING FOR WILLOWBROOK APARTMENTS SITE PLAN APPLICATION FILE NO. M2020-101

1. Mike Stevens, Planning Manager for the City of Richland; also serves as the City's SEPA Responsible Official, responsible for issuing SEPA threshold determinations;
2. Kevin Roberts, Counsel for the applicant, Big Creek Land Co., LLC;
3. Drew Dittman, Applicant's project engineer, Principal with Lake City Engineering;
4. Paul Johnson, expressed concerns about fish and wildlife, significance of Amon wetland;
5. Marsha Wirth, expressed general traffic, creek, wildlife, quality of life concerns;
6. Chris Childers, for Willowbrook HoA, directed attention to comment letters from counsel, Mr. Sidles, and subject matter expert materials provided in comments included as part of Exhibits 13 and 15;
7. Alex Sidles, counsel for the Willowbrook HoA, coordinated comments from several subject matter experts, and provided arguments opposing the application, mostly based on environmental and access concerns;
8. Ross Tilghman, transportation consultant for local HoA/project opponents, expressed concerns regarding access routes, particularly design for Broadmoor driveway route, frequency of use, width, sidewalk crossing route twice, general safety concerns about proposed design;
9. Jim Mathiew, hydrology consultant for local HoA/project opponents, expressed concerns and opinion that Stormwater system plan inadequate at this time so project should not be approved until complete Stormwater system plan/design is approved [note, most all projects in the City of Richland include conditions requiring final stormwater system designs to be submitted for review and approval by Public Works after the preliminary plat or site plan process is completed, as details in such plan are often affected by conditions of approval];
10. Sarah Cooke, wetlands consultant for local HoA/project opponents, did not personally visit the site, relied on review of application materials and applicant reports, file materials; expressed concerns that Amon wetland is not properly protected, that it should be a Category I instead of a Category II wetland, with larger buffers, recommends a proper wildlife survey, directed attention to her written comments included as part of Exhibits 13 and 15;
11. Johnathan Hayter, local resident, expressed general concerns about density in the project, that narrow access route could result in a bottleneck, could be dangerous, suggested an alternate exit route should be explored;
12. Terry Miller, attorney, represents the Shallman's (owners of a parcel where part of Broadmoor access route is proposed), expressed his belief that application was not complete due to unresolved access route issues;

APPENDIX A, LIST OF SPEAKERS AT PUBLIC
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13. [name inaudible], local resident, described importance of Amon basin, described work to clean up the basin, expressed concerns that development has adverse impacts on animals, birds, wildlife, and should be mitigated;
14. Raymond Swenson, local resident, attorney, described background working in field of environmental law; expressed opinion that Endangered Species Act considerations and fish habitat protections were not adequately addressed; treaty obligations; Stormwater problems; opposed project for multiple reasons;
15. Lisa Dukes, on Board of a local (Meadow Springs) HoA; expressed concerns about traffic on Broadmoor;
16. Greg Chartrand, local resident, expressed concerns that traffic and stormwater issues were insufficiently reviewed, may have used formulas that were not reliable;
17. Michael Thompson, local resident, described problems when sewer line in area was upgraded, concerns about standing water, groundwater problems that could be caused by project;
18. Abbie Wynne, local Willowbrook resident, expressed displeasure with zoning for the site, concerned that apartments will be for low-income residents [note, no evidence in application materials suggests anything other than market-rate project, and no evidence suggests that housing options for low-income residents should be treated differently under the law]; expressed concerns that proposed site access is bad;
19. Dirk Peterson, identified himself as associated with a local non-profit that helped create the Amon Preserve; believes that an MDNS should have been issued instead of a DNS; noted that comments show corrections are needed to address errors in the SEPA Checklist submitted for this project;
20. Craig Walker, local Broadmoor resident, dislikes zoning for the site; expressed general concerns about traffic, safety for children, believes mitigation is needed to address his concerns;
21. Ron C. [inaudible], local resident, expressed general concerns about traffic problems along Broadmoor, on an "S" curve; general water/flooding concerns in project vicinity;
22. Mary Wurch, local resident, described the Amon preserve as a "jewel", expressed concerns how development impacts the area;
23. Sierra Pedroxy, local resident, expressed general traffic concerns, more people using the preserve (?), general problems with the curved access route, and wildlife;
24. Tighe Racicot, local resident, opposes project, expressed concerns for children walking in the area;
25. Jacob Stanfield, local resident, expressed concerns that project has no support wall near his property;
26. S. Fox, local resident, along Piper Street, noted that her children play close to project site, noted that laws need to evolve;
27. Mike McGuire, V.P. of a local HoA, noted that traffic calming should be considered to reduce speeds on roads near project;
28. Jeff Reiten, President of a local HoA, suggested that a covenant related to the Meadow Springs subdivision (?) might be violated by this project's proposed access;

29. Diane [inaudible], local resident, expressed concerns about lighting, how it might impact nocturnal animals;
30. Krishna Swami, local resident, expressed general concerns similar to others about project;
31. Ken Spencer, local resident, expressed general concerns about project, noted that he believes Broadmoor is too busy;
32. Scott Brainard, Applicant's wetland/habitat consultant, offered testimony responding to some public comments; noted that Ecology agreed with the Category II wetland assessment for the Amon wetland near the project, in connection with a previous review;
33. Brad Lincoln, Applicant's transportation/traffic consultant, offered testimony responding to general traffic issues, and design of access route;
34. Pete Rogalski, Public Works Director, for the City of Richland, offered credible testimony responding to some public comments, noted that Broadmoor is a "Minor Collector"; that the well at issue in wellhead protection comments has been deemed non-potable, i.e. not for drinking water purposes before this project, that the aquifer is 800-1,200 feet from ground surface in the site vicinity.