

CITY OF SPOKANE HEARING EXAMINER

Re: Preliminary Plat Application by)
Whipple Consulting Engineers, Inc. to) FINDINGS, CONCLUSIONS,
subdivide approximately 12.15 acres) AND DECISION
into 45 new single-family lots on)
property located on Parcel No.) FILE NO. Z20-039PPLT
34071.0040)

SUMMARY OF PROPOSAL AND DECISION

Proposal: The Applicant is proposing to subdivide approximately 12.15 acres into 45 single-family lots in a plat to be known as “Tangle Ridge.”

Decision: Approved, with *revised* conditions.

FINDINGS OF FACT
BACKGROUND INFORMATION

**Applicant/
Agent:** Todd Whipple
Whipple Consulting Engineers, Inc.
21 S. Pines Road
Spokane Valley WA 99206

Owner: Tanglewood, LLC
PO Box 935
Otis Orchards WA 99027

Property Location: The subject property is located on parcel number 34071.0040, east of Tangle Heights Drive and adjacent to the Eagle Ridge development in the City of Spokane, Washington.

Legal Description: The legal description of the property is provided in Exhibit 3I.

Zoning: The property is zoned RSF (Residential Single Family).

Comprehensive Plan Map Designation: The property is designated as R 4-10 (Residential 4-10 units per acre).

Site Description: The subject property is located east of Tangle Heights Drive, utilizing Boulder Ridge Drive, and is surrounded on three sides by the Eagle Ridge development. Currently, the site is vacant and slopes down to the east. Properties to the south are outside the City limits and in the jurisdiction of Spokane County.

Surrounding Conditions and Uses: The adjacent zoning to the north, west, and east is RSF (Residential Single Family). The properties to the south are in the County. All adjacent City land uses are single-family homes or vacant low-density single-family lots.

Project Description: The applicant is proposing to plat 45 new single-family lots adjacent to the Eagle Ridge development. The proposed plat will be required to add capacity to the proposed booster pump station at the Cedar Hill reservoir for a firm capacity of 350 gallons per minute (GPM) and a total capacity 700 GPM. The point of connection to the Eagle Ridge II pressure zone will be the 8-inch distribution main in S. Falcon Point Court. This will satisfy the water requirements of the Tangle Ridge and Summit developments.

PROCEDURAL INFORMATION

Authorizing Ordinances: Spokane Municipal Code (SMC) 17C.110, Residential Development; SMC 17G.080.050, Subdivisions; and SMC 17G.060.170, Decision Criteria.

Notice of Community Meeting: Mailed: December 2 and 4, 2020
Posted: December 2, 2020

Notice of Application/Public Hearing: Mailed: January 28, 2021
Posted: January 27 and 28, 2021
Publication: February 1 and 8, 2021

Community Meeting: December 19, 2019

Site Visit: March 18, 2021

Public Hearing Date: March 11, 2021

State Environmental Policy Act (SEPA): A Mitigated Determination of Non-Significance (MDNS) was issued on February 19, 2021. The MDNS was not appealed.

Testimony:

Tami Palmquist, Principal Planner
City of Spokane Planning & Development
808 W. Spokane Falls Boulevard
Spokane WA 99201

Todd Whipple
Whipple Consulting Engineers
21 S. Pines Road
Spokane Valley WA 99206

Taudd Hume
Witherspoon Brajcich McPhee
601 W. Main Avenue, Suite 714
Spokane WA 99201

Michael Cressey
1316 W. Quail Crest Ave.
Spokane WA 99224

Brian Newberry
492 W. Basalt Ridge Dr.
Spokane WA 99224

Steve Schroeder
1303 W. Quail Crest Ave.
Spokane WA 99224

John Saywers
City of Spokane
Development Services Center
808 W. Spokane Falls Boulevard
Spokane WA 99201

Present but did not Testify or Submitted Comments to the Record:

Ben Goodmansen
Whipple Consulting Engineers
21 S. Pines Road
Spokane Valley WA 99206

Andrew Johnson
7054 S. Tangle Heights Dr.
Spokane WA 99224

Austin Fuller
Whipple Consulting Engineers
21 S. Pines Road
Spokane Valley WA 99206

Ruth Bindler
7109 S. Tangle Heights Dr.
Spokane WA 99224

John Busted
5904 S. Laurel Crest St.
Spokane WA 99224

Douglas and Barbara Smith
24 W. White Road
Spokane WA 99224

Shaun Smith
6978 S. Rollingwood Drive
Spokane WA 99224

Carol Constantin
6720 S. Shelby Ridge Rd.
Spokane WA 99224

Joshua Dewey
7103 S. Tangle Heights Dr.
Spokane WA 99224

Chad LeGate
7008 S. Shelby Ridge Rd.
Spokane WA 99224

Alex and Peggy Johnson
hydrodam@msn.com

Carol and Mihai Constantin
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Spokane WA 99224

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Doug and Barbara Smith
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Greg and Julie Matthews
7155 S. Tangle Heights Dr.
Spokane WA 99224

Megan Bastow
6725 S. Moran View St.
Spokane WA 99224

Terrie Ashby-Scott
1709 W. 26th Ave.
Spokane WA 99224

Bill Price
6963 S. Tangle Heights Dr.
Spokane WA 99224

Thomas Lee
6921 S. Woodhaven Dr.
Spokane WA 99224

Exhibits:

1. Planning Services Staff Report dated 03/02/21
2. MDNS dated 02/19/21

3. Application, including:
 - A General Application
 - B Preliminary Long Plat Narrative
 - C SEPA Environmental Checklist
 - D Shoreline/Critical Areas Checklist
 - E Trip Generation & Distribution Letter
 - F Geohazard Evaluation
 - G Preliminary Long Plat Application
 - H Storm Drainage Report
 - I Title Guarantee
4. Pre-Development Conference Notes dated 07/11/19
5. Community Meeting Materials, including:
 - A Community Meeting Sign-in Sheet
 - B Affidavit of Public Notice of Community Meeting on 12/19/19 posted near project on 12/02/19
 - C Affidavit of Individual Notice of Community Meeting on 12/19/19 mailed on 12/02/19
 - D Affidavit of Individual Notice of Community Meeting on 12/19/19 with corrected email address mailed on 12/04/19
 - E Community Meeting Summary
6. Request for Agency Comments dated 03/17/2020, including:
 - A Washington State Department of Ecology (WSDOE) dated 04/02/2020
 - B Avista dated 04/16/2020
 - C Spokane Tribe of Indians dated 04/01/2020
 - D Development Services Engineering dated 04/14/2020
 - E Washington State Department of Transportation (WSDOT) dated 04/02/2020
 - F Planning and Development Engineering dated 04/09/2020
7. Technically Incomplete Application Notification dated 04/17/2020, including Applicant's responses:
 - A Cultural Resource Study dated 06/19/2020
 - B Traffic various dates
8. Notice of Application and Public Hearing Instructions dated 01/25/21, including:
 - A Notice of Application and Public Hearing on 03/11/21
 - B Affidavit of Individual Notice of Hearing mailed on 01/28/21
 - C Affidavit of Public Notice of Hearing posted on site on 01/27/21
 - D Affidavit of Public Notice of Hearing posted at branch library on 01/28/21
 - E Affidavit of Publication on 02/01/21 and 02/08/21 dated 02/09/21
9. Public Comments
10. Planning Services Presentation
11. Applicant's Presentation
 - A Tangle Ridge Site Plan Original
 - B Tangle Ridge Site Plan Updated
 - C Tangle Ridge Utilities Updated
 - D Tangle Ridge Trail Design
 - 1 WSDOT Design Standards
 - E Meadowlane Intersection Draft
 - 1 Wheatland Est. WSDOT Meadowlane Condition Letter
 - F 195-Thorpe Accepted Plans
 - G The Summit Accepted Plans
12. Applicant's Letter dated 03/09/21

13. Appellant's Attorney Letter dated 03/10/21

The record was left open until March 19, 2021, to allow the City of Spokane to comment on supplemental materials submitted by the Applicant on March 10, 2021. The Applicant was given until March 26, 2021, to respond to the city's materials. The City and the Applicant submitted the following:

14. City Memo to Hearing Examiner dated 03/18/21
15. Appellant's Response dated 03/24/21 to City's 03/18/21 Memo

FINDINGS AND CONCLUSIONS

To be approved, the proposed preliminary plat must comply with the criteria set forth in Section 17G.060.170 SMC. The Hearing Examiner has reviewed the plat application and the evidence of record with regard to the application and makes the following findings and conclusions:

1. *The proposal is allowed under the provisions of the land use codes. See SMC 17G.060.170(C)(1).*

The site is zoned RSF. The Applicant proposes to develop the site with single-family residences. This proposed use is outright permitted in the RSF zone. See Table 17C.110-1; see also SMC 17C.110.115. The density range of the proposal, depending on how the area deductions for slopes and right-of-way (ROW) is calculated, ranges from approximately 6.19 units per acre to 7.85 units per acre, according to the project engineer's updated calculations. *Testimony of T. Whipple*; see also Exhibit 11. As the City concluded, with the allowed deductions, the net density of the project fits within the 4-10 units per acre allowed under the municipal code. See Exhibit 14. The proposed development will be required to satisfy all other applicable development standards, as provided in the conditions of approval, including a revision to show that the lots satisfy the minimum depth of 80 feet. See Paragraph 7 below. The Hearing Examiner concludes that this proposal is authorized by the land use codes.

2. *The proposal is consistent with the comprehensive plan designation and goals, objectives, and policies for the property. See SMC 17G.060.170(C)(2).*

The proposed development is consistent with the pertinent provisions of the Comprehensive Plan (CP). The site is designated as Residential 4-10. This designation allows single-family residences on individual lots and attached (zero-lot line) single-family residences. See CP, Chapter 3, p. 3-40. Land with this designation may be developed with a minimum of 4 units per acre and a maximum of 10 units per acre. See *id.* The density of the project fits within this designation, as discussed above.

In addition, the proposal is generally supported by the goals, objectives, and policies of the CP. The site is within the Urban Growth Area (UGA) and is designated for precisely this type of development. The proposed development is consistent in density to the adjacent Eagle Ridge development. See Exhibit 1, p. 4; see also CP, Chapter 8, Policy DP 1.4, p. 10 (encouraging project designs that blend with existing neighborhoods); see also CP, Chapter 8, Policy DP 1.2, p. 8-5 (stating that new development should be compatible with the context of the area and improve the surrounding neighborhood).

With respect to urban land within the City, this proposal is a natural progression in the residential development, consistent with the long-term plans for the area. See CP, Chapter 3, Goal LU 5, p. 3-26 (promoting development that is complementary with other land uses); see *also* CP, Chapter 3, Policy LU 5.5, p. 3-27 (discussing the need to ensure compatibility when permitting infill developments).

There are deficiencies in some of the infrastructure needed to support the proposed development. As a result, Staff has recommended specific mitigation measures to address the concerns. For example, the developer will be required to add capacity to the proposed booster pump station at the Cedar Hill Reservoir, in order to ensure an adequate water supply for the development. See Exhibit 1, p. 5. There are transportation deficiencies as well. To address those concerns, the developer will be required to contribute to the funding and construction of a J-turn improvement at US 195/Meadowlane Road, as well as another mitigation project intended to reduce the impacts of additional traffic on the ramp connecting northbound US 195 to eastbound I-90. See *id.*, pp. 5-6. These requirements are incorporated into the conditions of approval. See *e.g.* Conditions 2-5.

So long as the project conditions are satisfied, public services and facilities will be adequate to serve the proposed development. This fulfills Policy LU 1.12, Public Facilities and Services. See CP, Chapter 3, Policy LU 1.12, p. 3-14. In addition, the project, as conditioned, promotes the efficient use of land by focusing growth in areas where adequate facilities and services are available. See CP, Chapter 3, Policy LU 3.1, p. 3-17.

Considering the characteristics and design of the proposal, the Hearing Examiner agrees with the Staff that it is consistent with the CP. Therefore, this criterion is satisfied.

3. *The proposal meets the concurrency requirements of Chapter 17D.010SMC. See SMC 17G.060.170(C)(3).*

On March 17, 2020, a Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction. See Exhibit 6. In response, the City received comments from various agencies regarding the project. See *e.g.* Exhibits 6A-6F. As a result of the comments, the Applicant submitted additional traffic information and a cultural resources survey. See Exhibits 7A and 7B.

According to the comments received, public services and facilities are sufficient to serve the proposed development, with two exceptions. First, the proposed development will be required to add capacity to the proposed booster pump station at the Cedar Hill reservoir for a firm capacity of 350 GPM (total capacity 700 GPM). See Exhibit 1, p. 5. Building permits will not be granted until the proposed booster pump station at Cedar Hill reservoir is constructed and accepted into the City of Spokane water system. See *id.* All costs for the proposed booster station and any other water improvements required will be the responsibility of the proposed Tangle Ridge and Summit developments. See *id.*

Second, the additional traffic from the project will impact the level of service and safety of the intersection of US 195 and Meadowlane Road. See Exhibit 1, p. 5. The additional traffic load also impacts the ramp at NB US 195 and EB I-90. WSDOT and the City's Traffic department have identified the mitigation projects that will be necessary to address these impacts. So long as these mitigation measures are carried out, the traffic

concurrency requirement will be satisfied. The required mitigation measures are set forth in detail in the MDNS. See Exhibit 2.

The Hearing Examiner concludes that, with the proposed conditions, the project satisfies this criterion for approval.

4. *If approval of a site plan is required, the property is suitable for the proposed use and site plan considering the physical characteristics of the property, including but not limited to size, shape, location, topography, soils, slope, drainage characteristics, the existence of ground or surface water and the existence of natural, historic or cultural features. See SMC 17G.060.170(C)(4).*

The Hearing Examiner concludes that the property is suitable for the proposed use, given its physical characteristics. The development area is of sufficient size to accommodate the project, as is demonstrated by the layout shown on the proposed plat. Similarly, the shape and location of the site do not pose genuine limitations on its use and development. The topography, by contrast, does limit the development potential of this property. There are slopes as steep as 60% on the east side of the site. See Exhibit 1, p. 6. However, the majority of the site has a slope of 3-4%, and that is where the homes will be located. See *id.*

There is the potential erosion hazard due to the steep slopes on the east side of the property. See Exhibit 3C (Environmental Checklist ¶ B(1)(d)). There will likely be some localized erosion during the construction, although those impacts will be mitigated by best management practices. See Exhibit 3C (Environmental Checklist ¶ B(1)(f)). No erosion is anticipated from the completed project because the surfaces will be stabilized by paving, concrete, buildings, and landscaping. See *id.*

There are no indications of surface water on or in the immediate vicinity of the site. See Exhibit 3C Environmental Checklist ¶ B(3)(a)(1)). Storm water drainage on the property will be handled through the typical methods identified in the Spokane Regional Stormwater Manual (SRSM). See Exhibit 3C (Environmental Checklist ¶¶ A(14)(a)(1) & B(3)(b)). All future runoff will be treated in the catchment areas before infiltrating through the treatment soil and into the native soil. See Exhibit 3C (Environmental Checklist ¶¶ B(3)(c)(1) & (2)). No groundwater will be withdrawn as water will be supplied by the local water purveyor. See Exhibit 3C (Environmental Checklist ¶ B(3)(b)(1)). There is no reason to expect that groundwater will be impacted by this project.

There are no historic or cultural features on the development site. The Spokane Tribe of Indians requested that the developer complete a cultural survey to verify this conclusion. See Exhibit 6C. The developer did so, completing a cultural survey of the site in June 2020. See Exhibit 7A. The survey did not reveal any new archaeological resources. See *id.*, p. 12. No Native American or historic-era cultural materials or features were observed during the survey or subsurface investigations. See *id.* The survey concludes that the proposed development will not impact any historic properties. See *id.* In addition, no further archaeological investigations were recommended. See *id.*

Various City departments and agencies reviewed the SEPA checklist for physical characteristics of the property and no other comments were received indicating the site is unsuitable for development. See Exhibit 1, p. 6.

The Hearing Examiner concludes that the property is suitable for the proposed use, given the conditions and characteristics of the site. As a result, this criterion is satisfied.

5. *The proposal will not have a significant adverse impact on the environment or the surrounding properties, and if necessary conditions can be placed on the proposal to avoid significant effect or interference with the use of neighboring property or the surrounding area, considering the design and intensity of the proposed use. See SMC 17G.060.170(C)(5).*

On January 29, 2021, the Applicant prepared an environmental checklist for the project. See Exhibit 3C. The checklist supports the conclusion that no significant environmental impacts will arise from this project or will occur without being adequately mitigated.

With some limited exceptions, the site does not contain environmentally sensitive features. There are no wetlands, surface waters, or other limiting features. See Exhibit 3C, Environmental Checklist ¶¶ B(3)(a)(1). The property does not lie within a 100-year floodplain. See Exhibit 3C, Environmental Checklist ¶¶ B(3)(a)(5). No threatened or endangered species were identified on the site. See Exhibit 3C, Environmental Checklist ¶¶ B(4)(c) & B(5)(b). There are, however, critical areas in the form of geological hazards, i.e. steep slopes. See Exhibit 3D (Shoreline/Critical Areas Checklist). However, the development of the homes, as previously discussed, will be reserved to the parts of the site with only 3-4% slopes.

The project will have some impact on the environment. However, those impacts will be addressed through project mitigation. For example, there is some risk from erosion along the steep slopes, but those impacts can be mitigated through best management practices. The site is within the Critical Aquifer Recharge Area (CARA) and the Aquifer Sensitive Area (ASA). The potential impacts of runoff and drainage from the site will, therefore, be handled by implementing measures in accordance with the SRSM. See Paragraph 4 above.

There will be some impacts due to construction activity. However, the construction impacts will not result in significant environmental impacts, and can be adequately mitigated (e.g. dust control, limited work hours, etc.). Further, the construction activity is temporary. Once the construction project ends, the potential impacts from noise, dust, and emissions from vehicles will cease. See e.g. Exhibit 3C, Environmental Checklist ¶¶ B(2)(a) & B(7)(b) (addressing dust, emissions, and noise). And the environmental impacts of the completed project are minor. See Exhibit 3C. To the extent that impacts arise, those concerns will be addressed by the project conditions.

The project will also result in additional traffic. No specific impacts to the transportation system immediately adjacent to the proposed development were identified. There are impacts associated with US 195. Those impacts are the subject of detailed mitigation measures proposed by WSDOT and the City. Those mitigation measures are incorporated into the MDNS that was issued by the City on February 19, 2021. See Exhibit 2. There was no evidence that the proposed mitigation would be ineffective, and there was no expert testimony challenging the comments or analysis of the project engineer, WSDOT, or the City. The appeal period for this MDNS expired on March 5, 2021, without an appeal being filed. See *id.*

Based upon the foregoing, the Hearing Examiner concludes that the proposal will not have significant adverse impacts on the environment or the surrounding properties that will not be adequately addressed by project mitigation. Therefore, this criterion for approval has been met.

6. *The proposed subdivision makes appropriate (in terms of capacity and concurrence) provisions for: (a) public health, safety, and welfare; (b) open spaces; (c) drainage ways; (d) street, roads, alleys, and other public ways; (e) transit stops; (f) potable water supplies; (g) sanitary wastes; (h) parks, recreation and playgrounds; (i) schools and school grounds; and (j) sidewalks, pathways, and other features that assure safe walking conditions. See SMC 17G.060.170(D)(5).*

The proposal makes adequate provisions for public health, safety, and welfare. The record does not contain evidence that this project is antithetical to the community's interests. The proposal is designed and will be required to satisfy the applicable City standards for drainage, streets, and other public ways; proper disposal of storm water; and the like. All the pertinent facilities, such as streets, curbing, sidewalks, etc., must be designed and constructed in accordance with City standards. The development will be connected to public sewer and water. The transportation and water systems contain deficiencies. For this reason, specific mitigation measures were proposed to address the concerns. Other than those issues, there were no other comments from any department or agency suggesting that the proposed development placed undue stresses on the public infrastructure or services. There was no testimony or other evidence that convinced the Hearing Examiner that there would be significant impacts on public health, safety, or welfare.

The Hearing Examiner concludes that the proposal satisfies the applicable subdivision standards. The Hearing Examiner also adopts and incorporates the staff's analysis of this issue, found on pages 6-9 of the Staff Report. See Exhibit 1. This criterion is met.

7. *Lots 2 and 3 of the proposed subdivision must satisfy the minimum lot depth of 80 feet, in accordance with SMC 17C.110.208(G) and Table 17.110-3.*

The lots created in a subdivision must satisfy the dimensional standards of the municipal code. See SMC 17C.110.208. Those standards include a "Minimum Lot Depth" requirement, which reads as follows:

Each lot must meet the minimum lot depth standard stated in Table 17C.110-3. Lots that do not meet the minimum lot depth standard may be requested through planned unit development.

See SMC 17C.110.208(G). According to Table 17C.110-3, lots within a subdivision in the RSF zone must have a minimum depth of 80 feet. See Table 17C.110-3; see also SMC 17.110.200(C) (stating that all new lots in a subdivision must satisfy the standards in of Table 17C.110-3).

In the proposed preliminary plat, Lots 1, 2, and 3 have a depth of approximately 60 feet, well short of the minimum required depth. The minimum lot depth can be modified through a planned unit development (PUD), as provided in SMC 17C.110.208(G). However, no PUD application was made and Staff did not find any other basis for reducing the lot depth

in this subdivision. To correct the deviation, the Staff suggested the following project condition:

Lots 1, 2, & 3 must meet the minimum lot depth of 80 feet.

At the hearing, the project engineer argued that Lot 1 was compliant with the depth requirement, if one considers that its front yard faces Boulder Ridge Drive. *Testimony of T. Whipple*. The project engineer further requested that the City reconsider its position with respect to Lots 2 and 3, and suggested some alternative configurations for access to facilitate leaving those lots as proposed. *See id.* The project engineer also asked the Hearing Examiner to review the City's code interpretation on this issue. *See id.* The Hearing Examiner left the record open for a short period following the hearing to obtain further comments from the City and the Applicant regarding both lot depth and project density.

In its follow up comments, Staff made two determinations. First, the Staff stipulated that Lot 1 satisfied the lot depth requirements, for the reasons stated by the project engineer. *See Exhibit 14*. In order to reduce the impact to neighboring property, however, Staff requested that the future residence on Lot 1 be limited to a single-story structure. *See id.*

Second, Staff concluded that even if a PUD application were made, the dimensional minimums could not be reduced in this case. *See Exhibit 14*. When a proposed subdivision is adjacent to or across a ROW from existing residential development, there are limitations that apply to the "transition" area, i.e. the first eighty feet of the subject property. *See id.* The Staff concluded:

As the preliminary plat application has not been combined with a PUD application and PUD's are still subject to the transitional requirements between proposed and existing residential developments in order to facilitate consistent development patterns, Staff does not find a path forward in the code that would allow a lot to be developed in which it does not meet the minimum depth requirements outlined by SMC Table 17C.110-3.

See id. Therefore, Staff determined that Lots 2 and 3 must satisfy the minimum lot depth requirement, i.e. 80 feet. Staff revised the proposed project condition accordingly.

As the project engineer requested, the Hearing Examiner reviewed the relevant code provisions, and the follow-up comments, regarding this issue. Having done so, the Hearing Examiner concludes that the Staff's analysis¹ of the issues was correct. The Hearing Examiner did not find any provisions that would allow the depths of Lots 2 and 3 to be reduced. As the Staff noted, even a PUD could not be used for this purpose, given that Lots 2 and 3 are within the "transition" area (i.e. within the first 80 feet of a site adjacent to existing residential development). Thus, the Applicant will be required to reconfigure those lots to satisfy the dimensional standards.

The Hearing Examiner does not agree, however, that the single-story restriction on Lot 1 is appropriate. The applicable height limitation is 35 feet. The Hearing Examiner is not aware

¹ It should also be emphasized that the Planning Department's interpretation of the development code is entitled to due deference under Washington law.

of a special height restriction for a corner lot, configured in the manner proposed for Lot 1. The record does not establish that construction of a standard-height residence at this location will cause material impacts to the neighbors. Presumably, the anticipated impacts would be the proximity of a house to a neighbor's back yard or obstruction of views. However, as the project engineer pointed out, there are several examples of side yards adjacent to rear yards. The nature of extent of the actual impact is unknown. In addition, in the absence of specific code provisions or easement rights, neighboring property owners do not have a right to an unobstructed view. Without more, the Hearing Examiner does not believe the requested condition is appropriate.

8. *There is no legal basis to require the Applicant to preserve or construct a trail across the subject property for the benefit of the public.*

There were a range of questions, concerns, and requests in the public comments regarding this project. The primary issue raised, however, concerned trail access. Area residents regularly hike on the property. The neighbors wished to continue to have access to trails across the property. In addition, there were requests to develop a trail connecting the site to the trail system of Eagle Ridge. While the Hearing Examiner agrees that preserving or developing trail amenities is a good idea, generally speaking, there is no legal basis to require the developer to provide trail access across the site, or to develop a trail connecting the site to existing trails in the area.

The public does not have the right, currently, to access the site. There is no evidence in this record that any third parties have easement rights, for example. The testifying parties seemed to agree that walkers or hikers are trespassing on the site. A property owner can take steps at any time to stop a trespass onto or through his or her land. And a party trespassing across a property certainly has no basis to complain when he or she no longer enjoys the use of someone else's land.

The development of the site does not, in other words, cut off anyone's right to use or access the property. No such rights exist in the first place. The Hearing Examiner can only legally condition a project to address impacts caused by the project. See *Burton v. Clark County*, 91 Wn.App. 505, 521-22, 958 P.2d 343 (1998). If the project obstructed or interfered with a legal, public access, then conditions could be imposed to mitigate such impacts. Here, however, the project does not have an impact on any existing access rights. A condition requiring the installation of a trail does not alleviate a problem caused by the project—it creates an amenity for the benefit of the public. One could certainly argue that creating public amenities is a good thing for the community. However, it is not legally proper to require one property owner to bear a burden that should be shouldered by the community as a whole. See *id.*; see also *Nollan v. California Coastal Commission*, 483 U.S. 825, 835 n.4 (1987).

The relevant case law supports the conclusion that the Hearing Examiner cannot impose a condition requiring the developer to install a trail for the benefit of the neighbors or the public. See *e.g. Luxembourg Group, Inc. v. Snohomish County*, 76 Wn.App. 502, 887 P.2d 446 (1995) (holding that county could not condition approval of a subdivision upon the developer granting an access easement to the neighbor's landlocked property); see also *Burton v. Clark County*, 91 Wn.App. 505, 958 P.2d 343 (1998) (holding that a condition requiring a road dedication was improper because the exacted road lacked any tendency to solve the traffic and circulation problems identified by the county.); See *Nollan v. California Coastal Commission*, 483 U.S. 825, 837 (1987) (striking down a

condition requiring the property owner to grant an access easement across their property, which was situated between two public beaches); *see also Dolan v. City of Tigard*, 512 U.S. 374, 391 (1994) (invalidating a permit condition requiring the developer to dedicate a 15-foot strip of land for a pedestrian/bicycle pathway for the benefit of the public).

Given the foregoing, the Hearing Examiner concludes that the decision whether or not to install or improve a trail on the site is at the discretion of the property owner. The installation of a trail, therefore, will either be the result of a voluntary act of the developer or a matter that is negotiated with the neighbors or others. Under the circumstances, the condition proposed by the Applicant's representatives is the appropriate option. See Exhibit 15.

9. The Hearing Examiner concludes that this project should be approved despite other concerns raised by neighboring property owners.

As previously noted, the public comments and testimony included a myriad of concerns about the project. In addition to the issues already addressed above (e.g. water, traffic, trails, etc.), there were concerns about blasting damage, project density, setback requirements, drainage and runoff, removal of trees, annexation to the Eagle Ridge Homeowner Association (HOA), open space, and several other issues.

With respect to the Eagle Ridge HOA, the Hearing Examiner acknowledges that the proposed development could join or become a part of Eagle Ridge. The Hearing Examiner agrees with Mr. Newberry that the future residents of this development will certainly be availing themselves of the amenities of Eagle Ridge, and thus it would make sense that the project would join the HOA. However, the Hearing Examiner cannot require this project to become a part of the existing HOA. The covenants applicable to a property are a matter of private agreement, not government mandate.

The project conditions are extensive and address issues such as traffic impacts, water system upgrades, compliance with development standards (density, setbacks, etc.), and drainage and runoff. The project is not required to set aside additional open space, and there is no rule prohibiting the removal of trees from the development site. Many of the remaining concerns were either in the form of questions, or were sufficiently addressed by the Applicant. *Testimony of T. Whipple*; *see also* Exhibit 12.

The Hearing Examiner concludes that the project should be approved, albeit with a robust set of conditions.

DECISION

Based on the findings and conclusions above, it is the decision of the Hearing Examiner to approve the proposed preliminary plat subject to the following conditions:

1. Lots 2 & 3 must meet the minimum lot depth of 80 feet.
2. Per the MDNS, vehicular traffic from this project is expected to deteriorate the level-of-service and negatively impact safety at the intersection of US 195/Meadowlane. Tangle Ridge may not final plat any lots until a financial

commitment is in place (secured by a letter of credit or bond), which has been approved by the City, providing for the construction of the J-turn improvement at US 195/Meadowlane. This commitment may be defined as an agreement between several developers to fund and construct the J-turn within a specified time frame, not to exceed six years, as agreed upon by city staff and WSDOT. The J-turn project will consist of removing the eastbound left turn movement from the US 195/Meadowlane intersection and provide a J-turn opportunity south of the intersection. The applicant's contributions to funding the design and construction of the Meadowlane/US 195 J-turn project will qualify for a credit against transportation impact fees per SMC 17D.075.070.

3. Per the MDNS, vehicular traffic from this project is expected to add 6 AM trips and 4 PM trips to the NB US 195 to EB I-90 ramp. WSDOT has commented that no additional peak hour trips may be added to the ramp due to safety concerns. Tangle Ridge is required to complete an improvement to the US 195 corridor that will reduce the impact of its traffic on NB US 195 to EB I-90 ramp ("Mitigation Project"). Tangle Ridge may not final plat any lots until a financial commitment is in place (secured by a letter of credit or bond), which has been approved by the City, providing for the design and construction for the Mitigation Project, which shall be under contract for construction within one year from recording of the final plat. The details of the mitigation project will be agreed upon by the developers, City, and WSDOT. The applicant's contributions to funding the design and construction of the mitigation project will qualify for a credit against transportation impact fees per SMC 17D.075.070.
4. The proposed plat is required to add capacity to the proposed booster pump station at the Cedar Hill reservoir for a firm capacity of 350 GPM (total capacity 700 GPM). The point of connection to the Eagle Ridge II pressure zone will be the 8-inch distribution main in S. Falcon Point Ct. This will supply the Tangle Ridge and Summit development water requirements. Building permits will not be granted until the proposed booster pump station at Cedar Hill reservoir is constructed and accepted into the City of Spokane water system.
5. All cost for the proposed booster station and any other water improvements required will be the responsibility of the proposed Tangle Ridge and Summit developments.
6. All yards shall be Spokane Scape type landscaping per the published guidebook.
7. If the final plat is phased, provisions for temporary public turnarounds will need to be established at that time.
8. Per SMC 17H.010, subdivisions comprised of more than thirty lots shall include two access points or provide alternatives acceptable to the city fire department and the director of engineering services.
9. Per SMC 17H.010.030 Street Layout Design, street layout shall provide for future extension of streets into areas that are presently not subdivided. This plat shall provide for a future ROW extension at the end of the cul-de-sac to the south.

10. Public ROW widths shall be in accordance with the city's CP, the city's engineering design standards, or as directed by the director of engineering services. Minimum ROW widths are as shown in Table 17H.010-2, Right-of-way and Street Widths. The ROW width varies based on the required street elements including number of lanes, on-street parking, bike lanes, medians, turn lanes, roadside swales, pedestrian buffer strips, and street trees.
 - a. The minimum ROW widths for residential local access are 60 feet with sidewalks located within the ROW or 50 feet if sidewalks are located in an easement.
 - b. Public ROW or private tracts shall contain all street elements including paving, curbing, gutters, and pedestrian buffer strips or swales in accordance with the city's design standards.
 - c. Narrower ROW widths may be allowed at the discretion of the director of engineering services. Variance requests will be evaluated based on topography, traffic circulation, emergency vehicle access, zoning, existing development and on-street parking requirements. *The City is willing to allow the Residential Standard street width and ROW per SMC Table 17H.010-2 as long as the requirements of Section 17H.010.140 Emergency Vehicle Access and Staging Areas are met.*
11. New, permanent dead-end or cul-de-sac streets require the approval of the director of engineering services. Dead-end and cul-de-sac streets are only allowed when street connectivity is unachievable, such as property that is isolated by topography or the configuration of existing lots and streets.
 - a. Turn-arounds designed to meet the city's standards are required at all street dead-ends to allow emergency and service vehicles to turn around.
 - b. Dead-end or cul-de-sac streets shall be not less than 140 feet nor more than 600 feet long along the centerline as measured from the curb line of the cross street at the street entrance to the point of curvature into the cul-de-sac bulb. Proposed exceptions to this rule will be considered by the director of engineering services based on pertinent traffic planning factors.
 - c. A hard surfaced public pathway shall be provided at the end of every dead-end or cul-de-sac street connecting the sidewalk to an existing or future street or public pathway.
12. *Should the developer choose to work with the Eagle Ridge HOA to provide access to the existing trail on the east or north side of the subdivision, the City of Spokane will allow the trail to be placed in a tract to minimize property owner liability and maintenance requirements. The trail could thereafter, if agreed to between the developer and the HOA, be dedicated to the HOA.*
13. Sidewalks shall be located on both sides of the street for all public and private streets.

14. Sidewalk shall be constructed around the bulb of cul-de-sacs so that every lot is served by a sidewalk.
15. All sidewalks shall be designed and constructed in accordance with the city's design standards, standard plans, and specifications.
16. Pedestrian buffer strips are required on both sides of all streets between the sidewalk and the curb. The width and type of pedestrian buffer strip for each street shall comply with the requirements of the CP and the city's design standards.
17. Street trees are required to be planted in the pedestrian buffer strip on all residential lots.
18. Preapproved road names shall be identified on plat documents at the time of Final Plat submittal. "Boulder Court" is not an allowed street name as there is an existing "Boulder Rd" and "Boulder Ln" in Spokane County.
 - a. Per Section 17D.050A.060 Roadway Naming Standards:
 - i. Duplicate roadway names will not be allowed. Any roadway name shall not duplicate any county roadway names unless the new roadway is in alignment with the existing county roadway.
 - ii. Roadways with the same root name but different suffix (that are not in reasonable alignment with the existing roadway) will be considered as a duplicate roadway name, e.g., Chesterfield Drive or Chesterfield Lane and thus disallowed.
 - b. However, "Boulder Ridge Court" has been reviewed by Public Safety and will be an acceptable roadway name.
 - c. The existing street leg leading into this development is currently platted as W. Boulder Ridge Drive.
19. Please provide clarification for the intents of Tract "A" and Tract "B" (e.g. open space, stormwater treatment, stormwater disposal, etc.) as well as the party responsible for maintaining said tracts prior to submittal of the Private Development Permits and Final Plat.
20. A Critical Areas Checklist is required prior to submittal of the Private Development Permits due to erodible soils and steep slopes located within the proposed plat area. More information on the Critical Areas Checklist can be found in SMC 17E.040.
21. Construction plans for public street, sewer, water, and storm water systems must be designed by a Professional Engineer, licensed in the State of Washington, and submitted to Planning & Development for review and acceptance prior to construction.

22. Plan review fees for sanitary sewer, water, street, and storm water improvements will be determined at the time of plan submittal and must be paid prior to the start of review.
23. Civil engineered plans and profiles shall use NAVD88 datum.
24. Centerline survey monuments will be required to be installed in the locations defined in the City of Spokane Design Standards.
25. The following comments must be addressed prior to approval of the final plat:
 - a. Addresses must be shown on the final plat. Address permits can be applied for at the City of Spokane permit center or by calling (509) 625-6300.
26. A Construction Stormwater General Permit will be required from the WSDOE. For more information or technical assistance, please contact Shannon Adams at (509) 329-3610 Shannon.Adams@ecy.wa.gov
27. Avista requests a 10-foot wide dry utility easement to run contiguous with said easement in Eagle Ridge 11th and 12th Additions. Said easement to be located along front of proposed Lots numbered 1 through 45, with the following dedication language requested:
 - a. Easements for "Dry" utilities (electric, gas, phone, fiber, cable TV) as shown hereon are hereby granted over the rights-of-way for the private streets and adjoining said streets to the City of Spokane and its permitted serving utilities for the construction, reconstruction, maintenance, protection, inspection, and operation of their respective facilities; together with the right to prohibit changes in grade over installed underground facilities; the right to prohibit, trim, and/or remove trees, bushes, landscaping, without compensation; and to prohibit brick, rock, or masonry structures that may interfere with the construction, reconstruction, reliability, maintenance, and safe operation of same. Storm drain dry wells and Water Meter boxes shall not be placed within the "Dry" easements; however, lateral crossings by storm drain, water and sewer lines are permitted. Serving utility companies are also granted the right to install utilities across common areas, open space areas, and Tracts A and B with authorization from Homeowners Association. If the developer or his subcontractor should ditch beyond the limits of the platted easement strips shown herein, the easement shall then be identified by the actual physical location of the installed utilities.
28. The following statements will be required in the dedication of the final plat: (Additional statements may need to be added to the final plat and will be determined during final plat review).
 - a. Only City water and sanitary sewer systems shall serve the plat; the use of individual on-site sanitary waste disposal systems and private wells is prohibited.

- b. Ten foot utility and drainage easements as shown hereon the described plat are hereby dedicated to the City of Spokane and its permittees for the construction, reconstruction, maintenance, protection, inspections, and operations of their respective facilities together with the right to prohibit structures that may interfere with the construction, reconstruction, reliability, and safe operation of the same.
- c. Development of the subject property, including grading and filling, is required to follow an erosion/sediment control plan that has been submitted to and accepted by City of Spokane Development Services prior to the issuance of any building and/or grading permits.
- d. Prior to the issuance of any building permits, the lots shall be connected to a functioning public or private water system complying with the requirements of the Development Services Department and having adequate pressure for domestic and fire uses, as determined by the Water and Hydroelectric Services Department.
- e. The water system shall be designed and constructed in accordance with City of Spokane standards. A pressure of 45 pounds per square inch (psi) minimum at the property line is required for service connections supplying domestic flows. Pressures shall not drop below 20 psi at any point in the system during a fire situation. Pressures over 80 psi will require pressure relief valves be installed at the developer's expense.
- f. All drainage easements shown hereon shall be maintained by the property owner of the underlying lots. Any re-grading of the lots shall not alter the drainage of such facilities. The property owner shall maintain the drainage swales with a permanent live cover of lawn turf, with optional shrubbery and/or trees, which do not obstruct the flow and percolation of storm drainage water in the drainage swale as indicated by the approved plans. The City of Spokane and its authorized agents are hereby granted the right to ingress and egress to, over, and from all public and private drainage easements and tracts for the purposes of inspection and emergency maintenance of drainage swales and other drainage facilities. The property owner or his/her representative shall inform each succeeding purchaser of all drainage easements on the property and his/her responsibility for maintaining drainage facilities within said easements.
- g. The City of Spokane does not accept the responsibility of maintaining the stormwater drainage facilities on private property nor the responsibility for any damage whatsoever, including, but not limited to, inverse condemnation to any properties due to deficient construction and/or maintenance of stormwater drainage easements on private property.
- h. All stormwater and surface drainage generated on-site shall be disposed of on-site in accordance with SMC 17D.060 "Stormwater Facilities," the SRSM, Special Drainage Districts, City Design Standards, and, per the Project Engineer's recommendations, based on the drainage plan accepted for the final plat. Pre-development flow of off-site runoff passing

through the plat shall not be increased (rate or volume) or concentrated due to development of the plat, based on a 50-year design storm. An escape route for a 100-year design storm shall be provided.

- i. No building permit shall be issued for any lot in this plat until evidence satisfactory to the City Engineer has been provided showing that the recommendations of SMC 17D.060 "Stormwater Facilities," the SRSM, Special Drainage Districts, City Design Standards, and the Project Engineer's recommendations, based on the drainage plan accepted for this final plat, have been complied with. A surface drainage plan shall be prepared for each lot and shall be submitted to Development Services for review and acceptance prior to issuance of a building permit.
 - j. The development of any below-grade structures, including basements, is subject to prior review of a geotechnical evaluation for foundation design to determine suitability and effects from stormwater and/or subsurface runoff. The geotechnical evaluation shall be submitted to Developer Services for review and concurrence prior to the issuance of a building permit. It must address the disposal of storm water runoff and the stability of soils for the proposed structure. This evaluation must be performed by a geotechnical engineer, licensed in the State of Washington. It must be submitted to the City Building Department and to Development Services for review and concurrence prior to issuance of any building permit for the affected structure. An overall or phase-by-phase geotechnical analysis may be performed in lieu of individual lot analyses to determine appropriate construction designs.
 - k. Slope easements for cut and fill, as deemed necessary by Development Services in accordance with City of Spokane Design Standards, are granted along all public ROWs.
 - l. All public improvements (street, sewer, storm sewer, and water) shall be constructed to City of Spokane standards prior to the occupancy of any structures served by said improvements.
 - m. No building permit shall be issued for any lot in the plat until evidence satisfactory to the City Engineer has been provided showing that sanitary sewer and water improvements, constructed to City standards, have been provided to the lot in question.
 - n. General Facility Charges (GFCs) and Transportation Impact Fees will be collected prior to the issuance of a building permit for the affected lot.
 - o. All parking and maneuvering shall be hard surfaced.
 - p. All garages shall be setback a minimum of 20 feet from the back of the sidewalk.
29. If any artifacts or human remains are found upon excavation, this office should be immediately notified and the work in the immediate area cease.

30. Adhere to any additional performance and development standards documented in comment or required by City of Spokane, Spokane County, Washington State, and any Federal agency.

DATED this 13th day of April 2021.



Brian T. McGinn
City of Spokane Hearing Examiner

NOTICE OF RIGHT TO APPEAL

Appeals of decisions by the Hearing Examiner are governed by Spokane Municipal Code 17G.060.210 and 17G.050.

Decisions of the Hearing Examiner regarding preliminary plats are final. They may be appealed to the City Council. All appeals must be filed with the Planning Department within fourteen (14) calendar days of the date of the decision. The date of the decision is the 14th day of April. **THE DATE OF THE LAST DAY TO APPEAL IS THE 28th DAY OF APRIL 2021, AT 5:00 P.M.**

In addition to paying the appeal fee to appeal the decision, the ordinance requires payment of a transcript fee to the City of Spokane to cover the costs of preparing a verbatim transcript and otherwise preparing a full record for the City Council.