

1 **BEFORE THE HEARING EXAMINER FOR THE CITY**  
2 **OF PORT TOWNSEND**

3 Phil Olbrechts, Hearing Examiner

4 RE: Madrona Ridge	
5 Preliminary Plat, Planned Unit 6 Development, Plat Vacation and Critical Areas Approval	<b>FINAL DECISION</b>
7 LUP21-064 and LUP21-066 though 8 LUP21-068	

9 **INTRODUCTION**

10 Montebanc Management LLC has applied for approval of applications for a preliminary plat,  
11 plat vacation, planned unit development (“PUD”) and critical areas permit for a 167-lot  
12 single-family residential development on over 39 acres located along both sides of Rainier  
St. and north of the Discovery Road roundabout. The applications are approved subject to  
conditions.

13 Port Townsend is singularly unique in the concern of its residents with global issues that  
14 transcend their municipal boundaries, in this case focusing upon affordable housing and  
climate change. Unfortunately for the residents, the City has no legal authority to make the  
15 developer responsible for addressing those two pressing problems. As to affordable housing,  
the courts don’t consider developers to be the cause of unaffordable housing. Case law on  
16 that subject, referenced in Conclusion of Law No. 3.5 below, strongly suggests that  
affordable housing should be a problem addressed by the population at large as opposed to  
making individual developers shoulder that burden.

17 Regarding climate change, the record simply doesn’t support any mitigation. As outlined in  
18 Conclusion of Law No. 3.6 below, the City has the burden of proof in establishing both a  
problem created by the developer and the necessity of mitigation to remedy it. In this case,  
19 there is no precise data on how much climate change damage will be created by the proposal  
what mitigation is necessary to remedy that damage. Mr. Talberth presented the intuitively  
20 appealing concept of no net loss in forestland, but there is no scientific evidence in the record  
to support that such mitigation is both necessary and effective. In addition, in the absence of  
21 any federally coordinated land use mitigation program, there is no assurance that the  
potentially substantial expense involved in no net loss mitigation would create any material  
22 reduction in climate change impacts.

23 **TESTIMONY**

24 A computer-generated transcript accompanies this decision as Appendix A. The transcript is  
provided for informational purposes only.

25 **EXHIBITS**

1 The March 11, 2022 revised staff report in addition to attachments A-Q identified at page 34-  
35 of the staff report were admitted during the hearing as Exhibit 1.

2 The following documents were also admitted as exhibits at the March 14, 2022 continued  
3 hearing:

4 Exhibit R: November 29, 2022 letter from Robert Nagle

5 **FINDINGS OF FACT**

6 Procedural:

7 1. Applicant. The applicant is Montebanc Management LLC, 400 NW Gilman  
Blvd 32781, Issaquah, WA 98027.

8 2. Hearing. A virtual hearing was held on March 8, 2022 at 2:30 pm with continued  
9 testimony on March 14, 2022.

10 Substantive:

11 3. Site and Proposal Description. Montebanc Management LLC has applied for  
12 approval of applications for a preliminary plat, plat vacation, planned unit development  
13 (“PUD”) and critical areas permit for a 167-lot single-family residential development on over  
14 39 acres located along both sides of Rainier St. and north of the Discovery Road roundabout.  
More specifically, the project involves roughly 34+-acres west of Rainier St., north of the  
15 Discovery Rd. roundabout and north of the currently undeveloped 15th St. right-of-way. An  
additional 5.5-acres east of Rainier St. and north of the 15th St. right-of-way is also part of  
the project. Project stormwater facilities are proposed on both sides of Rainier St. but no  
residential lots are sought on eastern portions of the site.

16 Rainier St. off-site to the south is partially improved to City arterial standards between  
17 Discovery Rd. and the 12 St. right-of-way (ROW).

18 West of Rainier St. new residential lots will be served by a network of public roads and a  
series of three (3) private driveways (presently labeled “alleys” (Ex. B). The new public  
19 street network provides logical connections to existing and/or planned ROW’s west and south  
of the site. The 3 private driveways will access a total of 14 lots.

20 East of Rainier St. will be preserved as open space except a stormwater pond on for roughly  
21 1-acre of upland and two (2) smaller areas planned for outfall use by (2) of the project’s four  
(4) stormwater pond facilities.

22 Several confirmed wetlands exist both on and off-site. On-site wetland buffers are shown as  
23 modified but are retained as open space through use of buffer averaging. Conditions related  
to operation and maintenance of these areas, including overflow stormwater facilities directed  
24 into wetland buffers, is part of this staff recommendation.

25 In their PUD request, Madrona Ridge seeks to modify typical City standards related to lot  
size, building setbacks, lot coverage and the Engineering Design Standards (EDS) (i.e. public  
26 and private road improvements). Specifically, their request (Ex. A – PUD Narrative) asks  
for:

- With the exception of Madrona Boulevard, all other public local access roadways will have 40' wide ROW's and a modified street section as shown in Ex. B.
- Three (3) new private driveways serving a total of 14 lots. The road section width in these driveways would be 20'.
- Reduced minimum lot sizes with a 3,600 sq. ft. minimum.
- Side yard setback reductions from a combined 15' to a minimum of 5' on each side except 10' if abutting a ROW.
- Front yard setback reductions down to 10' except where a garage door faces front in which case the front setback will be 20'.
- Maximum lot coverage permitted on all lots modified to allow 45%.
- Relief from Daylight Plane requirements for new residential structures as typically prescribed under PTMC 17.16.030D.

The Plat Vacation is requested to vacate the alley in Blocks 2 and 3 of the Motorline Addition together with all of the 16th St. right-of-way.

4. Surrounding Uses: North of the site is zoned P/OS(B) (Mixed Public/Infrastructure/Open Space) which contains the City's public water treatment facility, water reservoir and standpipe. There is also a leased wireless communication tower compound on the City-owned property. Properties to the south of 15th St. are zoned a mixture of R-III and R-IV (High Density residential). The staff report doesn't identify the uses located to the west and east. The aerial photographs of the critical areas report, Ex. C, show the areas to the east and west as heavily wooded and undeveloped. The zoning map shows these parcels zoned R-II. The critical areas report notes that surrounding land use is comprised mostly of undeveloped lots.

5. Adverse Impacts. As mitigated, there are no discernible adverse impacts that will be created by the proposal. A SEPA Determination of Non-significance was issued for the proposal on January 19, 2022. Infrastructure impacts are addressed in Finding of Fact No. 6. Other impacts are more specifically addressed as follows:

A. Compatibility. The proposal is compatible with surrounding development. As noted in Finding of Fact No. 4, the City's water treatment plant is located to the north and the remaining surrounding properties are zoned at the same or greater residential densities. The residentially zoned properties are largely undeveloped.

The open space/critical area tracts provide for enhanced compatibility by creating extensive buffering along adjoining uses, in particular along both sides of Rainier Avenue as well as the southwest corner of the project site. No screening is necessary along the northern project site as the adjoining property is composed of the City's water treatment site. Unopened 15<sup>th</sup> Ave along with a proposed adjoining trail is located along the southern property line.

Screening along the western property line is unclear. Page 20 of the staff report notes that "[r]evisions to the preliminary landscaping plan (Ex. B) will be needed to provide added emphasis on screening along the west property line." This requirement doesn't appear to be integrated into the conditions of

1 approval – perhaps staff was intending on requiring this as part of its review  
2 of a final landscaping plan. Conclusion No. 7 of the staff report also  
3 references a ten-foot landscaping strip along the western perimeter, but this  
4 strip doesn't appear to be included in the landscaping plan. The conditions of  
approval recommended by staff have been modified to ensure that this  
additional screening is included in the final landscaping plan.

5 B. Critical Areas. The project site has six (6) confirmed Category III wetlands  
6 and one Category IV wetland (see Ex. B site plan and Ex. C). The  
7 geotechnical report for the project, Ex. D, identifies no geologic hazardous  
8 areas and there is no evidence of any other critical areas at the project site. A  
9 Critical Area code checklist has been prepared to analyze and establish  
10 conditions for the project with respect to the subject wetlands (Exhibit L –  
11 Critical Area checklist). Staff have found the recommended conditions to  
12 bring the proposal into conformance with the City's critical areas regulations.  
Ex. L and resulting conditions are incorporated into the project decision. The  
Applicant's wetlands analysis, Ex. Cand C1, conclude that as mitigated the  
proposal will result in no net loss of ecological function. As detailed in Ex. L,  
each Category III wetland qualifies for application of a 150-ft. buffer based on  
high intensity land use planned at Madrona Ridge. The Category IV wetland  
(i.e., Wetland A-3) requires a standard 50-foot buffer.

13 C. Trees. The proposal provides for adequate retention/replacement of trees as  
14 required by City tree retention standards.

15 All preliminary short applications require the concurrent submittal, review and  
16 approval of a Tree Conservation Plan (TCP) prepared consistent with PTMC  
17 19.06, the City's Tree Conservation code. A preliminary TCP was submitted  
18 for this project showing existing trees and those planned for removal. Prior  
19 to final plat recording, the conditions of approval require the applicant to  
prepare and present a final TCP. Staff have determined that conditioned in  
this manner, the proposal will be able to conform to the City's tree retention  
requirements.

20 D. General Nuisance Impacts: light and shadow; noise, smoke, dust, odor,  
21 glare, vibration or other undesirable impacts. Beyond the other nuisance  
22 impacts identified in Finding 5A-C, no other nuisance impacts are found to  
23 exist due to the inherent nature of the proposed/allowed residential use. The  
24 greatest impacts of concern would be those associated with the construction of  
the proposed homes and infrastructure. The City's Engineering Design  
Standards adequately minimize these impacts by regulating construction  
hours, erosion control and construction traffic control.

25 One comment letter focused on the problems of increasing light pollution  
26 attributable to new development. A condition of approval requires street  
lighting to comply with the City's street lighting policy, Ordinance 3271.

1 Ordinance 3271 adopts street light specifications designed to minimize light  
2 pollution and related light impacts.

3 E. Affordable Housing. Numerous members of the public expressed concern  
4 over lack of affordable housing in the Port Townsend area. As would be  
5 expected, there is nothing in the record to suggest that the proposal adds to the  
6 lack of affordable housing in the community or even increases the cost of  
7 housing. To the contrary, the proposal adds to the City's housing inventory,  
8 that reducing upward pressure on housing prices. Also, as noted in Ex. Q, the  
9 small lot sizes of the proposal will result in relatively small homes, which  
10 should be associated with lower housing prices.

11 F. Climate Change. There is insufficient evidence to establish proportionate  
12 and reasonable mitigation for climate change impacts.

13 In Ex. H, John Talberth, the President and Senior Economist for the Center for  
14 Sustainable Economy, makes a reasoned request for "*a climate smart design  
15 for this development that minimizes its carbon footprint and requires  
16 mitigation measures for any forestland loss...*" Mr. Talberth advocates for a  
17 no-net-loss policy for forestlands.

18 Although the adverse impacts of climate change are commonly understood,  
19 the record of this proceeding does not have any evidence on how the proposal  
20 contributes to climate change and how or even if no-net-loss will effectively  
21 mitigate against those impacts.

22 6. Infrastructure. The proposal will be served by adequate and appropriate  
23 infrastructure. Infrastructure impacts are specifically addressed as follows:

24 A. Water and Sewer. The proposal will be served by adequate and appropriate  
25 water and sewer.

26 Water service to Madrona Ridge will be provided via new public and private  
system improvements. Consistent with the City's Water System Plan (WSP),  
portions of the project's water infrastructure will include extension of a 10"  
diameter main line from the north end of the project to a point in the 15th St.  
right of way determined by Public Works staff during review of the Street and  
Utility Development (SDP) process. Other city mains within the project will  
be sized according to EDS standards. Any private service lines will be  
identified as part of the SDP process and shown on the face of the Final Plat  
and PUD Agreement. Fire flow is available adjacent to the site via water  
main extensions within the site. Fire hydrants will be installed in accordance  
with the City's EDS.

Sanitary sewer service is available to Madrona Ridge via an existing public  
main running north-to-south in Rainier Street. Individual lots will be  
connected to this main via an engineered system of new public mains and  
private side sewer lines and clean-outs. Public mains located within street

1 rights-of-way or public utility easements will be reserved to the City. Any  
2 utility easements needed internally for the private sewer lines will be  
determined as part of the subsequent SDP process and shown on the final Plat.

3 B. Transportation. The proposal will be served by adequate and appropriate  
4 roads and pedestrian transportation facilities.

5 Interior access to Madrona Ridge lots is provided via a combination of new  
6 public roads and private driveways.

7 With the Discovery Rd. roundabout installation and Rainier St. improvements  
8 associated with the Rainier subarea plan and the Applicant's commitment to  
9 street infrastructure north of it along Rainier St. and to non-motorized  
10 improvements and connections, the Public Works Dept. determined the  
existing road infrastructure was designed and built for the purpose of serving  
the subarea and planned surrounding areas at the residential densities  
anticipated for the designated land uses. See Ex. P. This proposal is  
consistent with the planned housing density for the area.

11 The City's level of service (LOS) standards set acceptable levels of  
12 congestion. The proposal is found to meet those standards. Pursuant to  
13 Public Works analysis, see Ex. P, the traffic volumes generated by this  
14 proposal is not anticipated to adversely impact adopted LOS on the  
15 connecting public facility (Discovery Rd.) or any of the nearby intersections  
16 so long as project roadways – including Rainier St. - are built to acceptable  
17 Public Works standards and the proposed non-motorized connections are  
18 made. Specifically, these non-motorized improvements include off-site  
improvements of a paved trail in the 15th St. right of way and the  
development of a multi-use path on the west side of Rainier Street connecting  
to the existing roundabout at Discovery Road. A concrete sidewalk  
connection will ultimately be made as well between the roundabout and 15th  
St. on the west side of Rainier St. when the adjoining property develops.

19 There was some concern at the hearing expressed about traffic congestion at  
20 intersections that would serve the proposal. However, that testimony was not  
21 based upon any traffic engineering expertise and did not address the City's  
22 LOS standards. In the absence of any such evidence, the conclusions of the  
City's public works staff, based upon traffic engineering expertise and  
familiarity with the City's LOS standards, must be taken as conclusive that the  
proposal will not violate those level of service standards.

23 The staff report concludes that public works standards and the proposed non-  
24 motorized connections are met. Specifically, proposed non-motorized  
25 improvements include off-site improvements of a paved trail in the 15th St.  
26 right of way and the development of a multi-use path on the west side of  
Rainier Street connecting to the existing roundabout at Discovery Road. A  
concrete sidewalk connection will ultimately be made as well between the

1 roundabout and 15th St. on the west side of Rainier St. when the adjoining  
2 property develops.

3 Road modifications sought by the Applicant to prescriptive City standards as  
4 part of the PUD process can be adequately reviewed and conditioned through  
5 this process and the subsequent Street and Utility Development Permit (SDP)  
6 process.

7 The project gains primary access from Rainer St., north of the Discovery Rd.  
8 roundabout, near the unopened 16th St. right-of-way. The City has identified  
9 Rainier St. as a key north-to -south arterial needed for Pt. Townsend’s long-  
10 term transportation needs.

11 West of Rainier St. and running the east-to-west length of the site, a new  
12 public roadway labeled Madrona Boulevard (“Madrona Blvd.”) is shown  
13 within a newly dedicated 50-ft. wide right-of-way (ROW). The south side of  
14 Madrona Blvd. will have a 56 ft. wide concrete sidewalk and on-street  
15 parking. The north side of Madrona Blvd. will have a 10-ft. wide Multi-Use  
16 pathway and on-street parking.

17 Other internal rights-of-way streets connecting to Madrona Blvd. will be  
18 developed as 40’ ROW’s with sidewalks on one side and landscaping on the  
19 other side. Public on-street parking is may be available on either or both sides  
20 of the street depending on driveway layout to a achieve traffic calming effect.  
21 The arrangement of street trees may be flexed as part of the Street and Utility  
22 Development Permit process to achieve an attractive streetscape aesthetic and  
23 efficient driveway arrangement. Road names for all internal roads will be  
24 determined as part of the final Plat/Plat Vacation and PUD review process.

25 Three (3) “alleys” (which will be private driveways) are shown in the plat  
26 drawings with a 20 ft. wide paved section and wedge curb one side to  
accommodate 2-way traffic. Two (2) of the 3 driveways are short enough to  
not require vehicular turnarounds. The third driveway (in the SE residential  
corner) is long enough to require a turnaround which is incorporated into the  
adjacent stormwater pond maintenance access (Tract C, Storm Pond 4).  
Where determined necessary by Public Works staff, the private driveways will  
need to reserve a public utility component for on-going City water and sewer  
line maintenance.

27 C. Schools. The proposal will be served by adequate and appropriate school  
28 facilities and safe walking conditions to and from school. The staff report  
29 does not address impacts to schools. The capital facilities element identifies  
30 the Port Townsend School District as serving the City of Port Townsend with  
31 one elementary school, one middle school and one high school. The City has  
32 no school impact fee. According to staff testimony, Salish Coast Elementary  
33 School is about a half mile from the project site and children could walk to  
34 that school on a bike trail. Staff also testified that all school bus stops can be  
35 accessed via sidewalks.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

D. Parks and Open Space. The proposal will be served by adequate parks and open space. There are no parks and open space requirements for subdivisions. The proposal includes 5,000 square feet of open space beyond the minimum required by the City's critical area regulations for the wetlands on site.

E. Drainage. The proposal makes adequate and appropriate provision for drainage.

The submittal includes a preliminary engineered drainage plan and report (Ex. B & D). The Madrona Ridge stormwater design includes three (3) on-site storm ponds to address home and internal road runoff. Home sites will need to address runoff on-site to the extent possible before dispersing to the internal road network where it will then be conveyed to the constructed storm ponds. The storm ponds have been designed to accept all roadway runoff and lot coverage up to 45%.

A fourth storm pond (see Ex. B, Tract D/Storm Pond 4) is planned east of Rainier St. and north of 15th St. to accommodate Rainier St. runoff and is not associated with any of the resulting homes or interior roads. The Applicant seeks to convey both Tracts D and Open Space Tract E to the City. The City has agreed to accept both conveyances subject to conditions. If both Tracts are conveyed to the City, an easement to Madrona Ridge will be needed to provide them access to the outfall pipe and infiltration trench connected to the Tract B/Storm Pond 2. If Tract E is not conveyed to the City, then the conveyance of Tract D/Storm Pond 4 will need to be expanded to include that pond's outflow pipe and trench. Public Works engineering staff has agreed that Rainier Street runoff between 15th and 12th Streets can be accomplished via swales adjacent to the roadway. These will be made conditions of the Street and Utility Development (SDP) review and approval process.

Public Works staff have reviewed the submitted stormwater documents and indicate they are acceptable for continuing with the Preliminary Plat/Plat Vacation and PUD process. Aside from conveyance of Tract D, Madrona Ridge residents will be jointly and severally responsible for on-going maintenance of the other 3 on-site stormwater management facilities. These maintenance obligations will be specified and ensured via the PUD Agreement between the parties (i.e., the City and the Applicant).

7. Superior Design. The proposal provides for superior design and a significant increase in public benefit over a conventional preliminary plat.

Conventional development of this site is less desirable than the proposed PUD for several reasons. First and foremost, the traditional "block and lot" pattern typically seen in Port Townsend would result in less open space preservation and would likely require greater wetland buffer encroachments. The Applicant's proposes buffer averaging to achieve no net loss of wetland function and values (Exhibits C and C-1). Development is being clustered outside of the buffers to the extent practicable. While



1 the proposed design may be lower in density than prescriptive zoning permits, it does  
2 so by balancing the need to protect wetlands with the Applicant's goal of developing  
an economically viable single-family residential subdivision.

3 The proposed road dedications ensure future logical street grid connections can be  
4 made while unnecessary openings of the existing transportation grid are avoided.  
5 Staff have also found that the Applicant also proposes a cohesive pattern of housing  
6 that creates a neighborhood identity as encouraged by the Comprehensive Plan. This  
7 neighborhood identity may not be guaranteed with conventional development.

8 The proposed aggregation of lots also assures better protection of the wetlands. Most  
9 notably, the dedication of all four of the existing parcels on the east side of Rainier  
10 Street results in more wetlands protection than if the lots were developed  
11 individually. Three of those four lots are completely encumbered by wetlands or  
12 buffers. If those three lots were developed individually under conventional  
13 subdivision standards, the Applicant would qualify for reasonable use exceptions that  
14 would authorize development encroachment into the buffers and potentially even the  
15 wetlands themselves.

16 The Applicant has also volunteered dedication of Tract I, approximately 5.84 acres,  
17 for permanent open space for public use. This tract would not be required under  
18 conventional development standards. This open space Tract would feature a newly  
19 constructed multi-use natural surface trail that blends with the natural environment.  
20 Tract I preserves the opportunity for a future new public park, if and when the City  
21 acquires the adjacent Janke property located at 15th Street and Spring Street as a City  
22 Park site. A portion of this tract could have been used for addition SFH lots, but the  
23 applicant chose to preserve this area as permanent open space, enhancing the public  
24 benefits of this PUD proposal.

25 The proposed density is ultimately significantly less than that available with the  
26 underlying zoning designations. According to the Applicant, Ex. Q, the maximum  
density for the site would enable 493 units and the Applicant has instead only  
proposed 167 units. The wetlands and associated buffers would likely significantly  
reduce density in a conventional subdivision as well, but the Applicant has not taken  
all measures it could have taken to increase that density. As previously noted, the  
Applicant has proposed more open space than required by the addition of Tract I. As  
noted in Ex. Q, the Applicant has also opted for buffer averaging instead of buffer  
reduction (with mitigation), which also reduces density.

The Applicant is also proposing full width street improvements for Rainier Street  
along with associated stormwater conveyance and treatment and a multi-use trail on  
the east side of the street. If the Applicant had not bundled the lots on the east of  
Rainier with the project, the City likely could not have required frontage  
improvements on the eastern side of the street, except for perhaps the multi-modal

1 trail<sup>1</sup>. Even if the Applicant needed the east side lots for the Tract D stormwater  
2 control, that would only necessitate inclusion of one of the four lots.

3 Finally, the Applicant's reduced roadway width decreases impervious surface and  
4 reduced lot size reduces the size and hence cost of homes. The proposal also retains  
5 30% more tree canopy than required by City standards.

6 For these reasons, development of this site through a PUD provides greater public  
7 benefit without the adverse impacts than traditional "block and lot" development  
8 would allow.

## 9 CONCLUSIONS OF LAW

### 10 **Procedural:**

11 1. Authority of Hearing Examiner. PTMC 20.01.040 classifies PUDs, preliminary  
12 plats and plat vacation as Type III applications, which requires a hearing before the Hearings  
13 Examiner, who must issue a final decision. Minor critical area permits are classified as Type  
14 II applications. PTMC 20.01.030 requires consolidated permits to be processed by the  
15 highest review body required under any part of the application, which in this case is the  
16 Examiner.

### 17 **Substantive:**

18 2. Zoning Designation. Portions of the project site are zoned R-II (Medium Density  
19 Single Family) and the remaining portions are zoned R-III (Medium Density Multi-Family).

20 3. Review Criteria. Chapter 17.32 PTMC describes the procedures and criteria for  
21 preliminary approval of a PUD. PTMC 17.32.100 establishes the minimum criteria by which  
22 each proposed PUD will be considered and PTMC 17.32.090 sets forth approval criteria for a  
23 PUD seeking modified development standards. PTMC 18.16.060(A) governs the criteria for  
24 preliminary plat approval. RCW 58.17.212 governs the criteria for plat vacations. PTMC  
25 19.05.050B4 governs the criteria for critical area regulations. PTMC 20.01.235(D) requires  
26 the Examiner to make a specified set of findings for all Type III (quasi-judicial) applications.  
All the governing criteria identified in this paragraph are quoted in italics and addressed  
below.

3.5 Affordable Housing. The City cannot legally compel the Applicant to provide  
affordable housing units. Developers can only be made to mitigate problems they create.  
*See, e.g., Douglass Props. II, LLC v. City of Olympia*, 16 Wash. App. 2d 158 (2021). In  
constitutional takings analysis, affordable housing is not considered a problem created by  
developers. *See Sintra, Inc. v. Seattle*, 119 Wn. 2d 1 (1992)<sup>2</sup>. As determined in Finding of  
Fact No. 5E, the proposal is not exacerbating or creating a need for affordable housing.

---

<sup>1</sup> Under nexus and proportionality requirements imposed by constitutional takings law, the City can usually only make a developer install half street improvements. *Cf. Sparks v. Douglas County*, 127 Wn. 2d 901 (1995)(street frontage dedication for short plat justified under nexus/proportionality standard of takings law).

<sup>2</sup> *Sintra* held that Seattle's housing preservation ordinance, which required property owners to replace any low-income housing they destroyed or to pay a fee, potentially created a takings. As stated by the

1 3.6 Climate Change. The City cannot legally compel the Applicant to mitigate for  
2 climate change impacts due to inadequate evidence to justify such mitigation.

3 For conditions that involve exactions, whether they be dedications of land or fees to purchase  
4 land, the City of Port Townsend has the burden of proof to show that the condition is  
5 reasonably necessary as a direct result of the proposed development. *See Citizens'*  
6 *Alliance v. Sims*, 145 Wn. App. 649 (2008); *Koontz v. St. Johns River Water*  
7 *Management District*, 570 US 2588 (2013). As outlined in Finding of Fact No. 5F, in  
8 this case there has been no evidence presented on how and to what extent the  
9 proposal will exacerbate climate change and how much mitigation is necessary to  
10 remedy that impact.

11 Even if one could take the leap on this administrative record that 1:1 forest  
12 preservation mitigation would be necessary to mitigate the climate change impacts of  
13 the proposal, there's still an outstanding legal issue of whether such mitigation could  
14 be imposed given that such mitigation by itself would create no material change in  
15 climate change impacts. In the absence of a coordinated forest no-net-loss policy at  
16 the federal level, it would appear very difficult to establish that piecemeal and  
17 sporadic mitigation at the local level would serve to effectively mitigate climate  
18 impacts. At any rate, the evidence in this record does not prove that point.

19 At the hearing, Mr. Talberth cited to *Wash. State Dairy Fed'n v. Wash. Dep't of*  
20 *Ecology*, 490 P.3d 290 (2021), which held that the Department of Ecology should  
21 have considered climate change impacts in its issuance of stormwater/wastewater  
22 permits. However, that holding was based upon failure to consider climate change  
23 impacts in SEPA review. The appeal deadline for the SEPA MDNS was February 3,  
24 2022. See Ex. I. The SEPA review conducted by the City has not been timely  
25 appealed and so is beyond the jurisdiction of the examiner to review. *See, e.g.,*  
26 *Habitat Watch v. Skagit County*, 155 Wn.2d 397, 410-11 (2005)(under principles of  
judicial finality, administrative decisions that are not timely appealed are binding  
even if incorrect).

### **PUD Criteria:**

**PTMC 17.32.100(A)(1):** *PUDs shall be given preliminary approval, including  
preliminary approval subject to conditions, upon finding by the city that all of the  
following have been satisfied:*

1) *The proposed PUD conforms to: (a) Port Townsend Comprehensive Plan;*

4. Criterion met. With approval of PUD modifications to development  
standards, the criterion is met for the reasons identified in Findings No. 48-50 of the  
staff report.

---

court: "this burden [replacing loss of affordable housing] was unfairly allocated to individual  
property owners, rather than equally distributed among all citizens." 119 Wn.2d at 15-16.

1  
2 (b) *All provisions of the Port Townsend Zoning Code which are not proposed for modification;*

3 5. Criterion met. The criterion is met for the reasons identified at Findings  
4 No. 6-18 of the staff report.

5 (c) *All engineering design standards which are not proposed for modification;*

6 6. Criterion met. As noted in the staff report, p. 22-23, City staff have  
7 reviewed the proposal for conformance to engineering design standards and have  
8 found the proposal compliant for this stage of project review as authorized by PUD  
9 development standard modification standards.

10 (d) *Environmentally Sensitive Areas Ordinance (Chapter 19.05 PTMC);*

11 7. Criterion met. The criterion is met. The proposal is consistent with  
12 Chapter 19.05, the City's critical area regulations for the reasons identified in  
13 Finding of Fact No. 5B.

14 (e) *Any other applicable city, state or federal regulations, policies or plans, except  
15 those standards proposed for modification.*

16 8. Criterion met. There is no evidence of noncompliance with any other  
17 government requirements that have not already been addressed.

18 **PTMC 17.32.100(A)(2):** *Utilities and other public services necessary to serve the  
19 needs of the proposed PUD shall be made available, including open spaces, drainage  
20 ways, streets, alleys, other public ways, potable water, transit facilities, sanitary  
21 sewers, parks, playgrounds, schools, sidewalks and other improvements that assure  
22 safe walking conditions for students who walk to and from school;*

23 9. Criterion met. The criterion is met for the reasons identified in Finding of  
24 Fact No. 6.

25 **PTMC 17.32.100(A)(3):** *The probable significant adverse environmental impacts of  
26 the proposed PUD, together with any practical means of mitigating adverse impacts,  
have been considered such that the proposal will not have an unacceptable adverse  
effect upon the quality of the environment, in accordance with Chapters 19.04 PTMC  
and 43.21C RCW;*

10. Criterion met. The criterion is met for the reasons identified in Finding of  
Fact No. 5.

**PTMC 17.32.100(A)(4):** *Approving the proposed PUD will serve the public use and  
interest and adequate provision has been made for the public health, safety, and  
general welfare;*

1 11. Criterion met. The proposed project, subject to conditions of approval,  
2 will serve the public use and interest by developing approximately 40 acres of land in  
3 a comprehensive, coordinated manner that assures adequate and appropriate provision  
4 of public infrastructure in an urban growth area. It establishes open space areas,  
preserves wetland and develops both hard surface and soft surface non-motorized  
trails.

5 **PTMC 17.32.100(A)(5):** *The proposed PUD satisfies all criteria set forth in PTMC*  
6 *17.32.070 through 17.32.090, as applicable;*

7 12. Criterion met. As discussed below, the proposal meets the requirements  
8 of PTMC17.32.090. As Madrona Ridge PUD only seeks modified development  
standards , the remaining approval criterion referenced above are inapplicable.

9 **PTMC 17.32.100(A)(6):** *The proposed PUD will be superior to or more innovative*  
10 *than conventional development and will provide greater public benefit without*  
11 *additional probable significant adverse impacts to public health, safety or the*  
*environment, than available through the use of conventional zoning and/or*  
*development standards.*

12 13. Criterion met. The criterion is met for the reasons identified in Findings  
13 of Fact No. 5 and 7.

14 **PTMC 17.32.090(C):** *Basis for Approval of Alternative Development Standards.*  
15 *Approval of alternative development standards for PUDs differs from the variance*  
16 *procedure described in Chapter 17.86 PTMC in that rather than being based upon a*  
17 *hardship or unusual circumstance related to a specific property, the approval of*  
18 *alternative development standards proposed by a planned unit development shall be*  
*based upon the criteria listed in this section. In evaluating a planned development*  
*which proposes to modify the development standards of the underlying use zone, the*  
*city shall consider and base its findings upon the ability of the proposal to satisfy the*  
*following criteria:*

19 *(1) The proposed planned development shall be compatible with surrounding*  
20 *properties, especially related to:*

21 *a. Landscaping and buffering of buildings, parking, loading and storage*  
*areas;*

22 *b. Public safety;*

23 *c. Site access, on-site circulation and off-street parking;*

24 *d. Light and shadow impacts;*

25 *e. Generation of nuisance irritants such as noise, smoke, dust, odor, glare,*  
*vibration or other undesirable impacts;*

26 *f. Architectural design of buildings and harmonious use of materials;*

14. Criterion met. The criterion is met. As noted in the staff report, the  
proposal improves upon general public safety in an area that currently only has partial  
city standard facilities. Architectural design of buildings and harmonious use of

1 materials will be ensured through the application of CC&R's. The proposal  
2 otherwise has adequate facilities and creates no adverse impacts for the reasons  
3 identified in Findings of Fact No. 5 and 6.

4 *(2) The unique characteristics of the subject property;*

5 15. Criterion met. The criterion is met. The project site is unique in that it is  
6 extensively covered by wetlands and associated buffers. The Applicant has well  
7 integrated these features into the project site by using them for both buffering to  
8 adjoining uses, critical areas protection, and project open space. The open space of  
9 the project site is exceptionally unique in that it provides visual buffering on both  
10 sides of Rainier Street.

11 *(3) The unique characteristics of the proposed use(s);*

12 16. Criterion met. The criterion is met. The proposal provides for an  
13 extensive, unique trail system and an extensive amount of open space that provides  
14 project residents with meaningful recreational facilities as well as a natural setting in  
15 a highly developed environment.

16 The proposed PUD modifications are compatible with the overall design of the  
17 project site and its unique features. The private driveways serve a limited number of  
18 lots and an emergency vehicle turnaround is provided in them where required. The  
19 lot size reduction and setback modifications are appropriate given the Critical Area  
20 restrictions that encumber the site. The 45% lot coverage modification has been  
21 reviewed by the Applicants stormwater engineer and storm facilities sized  
22 appropriately for both the lots and new roadways.

23 *(4) The arrangement of buildings and open spaces as they relate to various uses  
24 within or adjacent to the planned development;*

25 17. Criterion met. The criterion is met for the reasons identified in  
26 Conclusions of Law No. 15 and 16.

*(5) Visual impact of the planned development upon the surrounding area;*

18 18. Criterion met. The criterion is met. As conditioned, the proposal provides  
19 for substantial buffering to adjoining uses as outlined in Finding of Fact No. 5A.

20 *(6) Public improvements proposed in connection with the planned development;*

21 19. Criterion met. The proposal provides for adequate and appropriate public  
22 facilities and improvements as determined in Finding of Fact No. 6.

23 *(7) Preservation of unique natural features of the property;*

1 20. Criterion met. The criterion is met. The notable unique natural features of  
2 the project site are its wetlands and the proposal preserves those features as required  
3 by the City's critical areas ordinance.

4 (8) *The public benefit derived by allowing the proposed alteration of development  
5 standards.*

6 21. Criterion met. The criterion is met for the reasons identified in Finding of  
7 Fact No. 7.

8 **Subdivision Criteria:**

9 **PTMC 18.16.060(A)(1):** *The proposed subdivision conforms to all applicable city,  
10 state and federal zoning, land use, environmental and health regulations and plans,  
11 including, but not limited to, the following:*

- 12 a. *Port Townsend Comprehensive Plan;*
- 13 b. *Port Townsend Zoning Code;*
- 14 c. *Engineering Design Standards;*
- 15 d. *Environmentally Sensitive Areas Ordinance (Chapter 19.05 PTMC):*

16 22. Criterion met. The criterion is met. As determined in prior conclusions of  
17 law, the proposal is consistent with all of the standards identified above.

18 **PTMC 18.16.060(A)(2):** *Utilities and other public services necessary to serve the  
19 needs of the proposed subdivision shall be made available, including open spaces,  
20 drainage ways, streets, alleys, other public ways, potable water, transit facilities,  
21 sanitary sewers, parks, playgrounds, schools, sidewalks and other improvements that  
22 assure safe walking conditions for students who walk to and from school;*

23 23. Criterion met. The criterion is met for the reasons identified in Finding of  
24 Fact No. 6.

25 **PTMC 18.16.060(A)(3):** *Conservation of existing trees, and/or the planting of new  
26 trees, shall be provided consistent with Chapter 19.06 PTMC, Article III, Standards  
For Tree Conservation;*

27 24. Criterion met. The criterion is met for the reasons identified in Finding of  
28 Fact No. 5C.

29 **PTMC 18.16.060(A)(4):** *The probable significant adverse environmental impacts of  
30 the proposed subdivision, together with any practical means of mitigating adverse  
31 impacts, have been considered such that the proposal will not have an unacceptable  
32 adverse effect upon the quality of environment, in accordance with Chapter 19.04  
33 PTMC and Chapter 43.21C RCW;*

1 25. Criterion met. As identified in Finding of Fact No. 5, a mitigated  
2 determination of non-significance (MDNS) has been issued for the project in  
3 conformance with Chapter 19.04 PTMC and Chapter 43.21C RCW. That review  
4 process included the required consideration of probable significant adverse  
5 environmental impacts.

6 **PTMC 18.16.060(A)(5):** *Approving the posed subdivision will serve the public use  
7 and interest and adequate provision has been made for the public health, safety, and  
8 general welfare.*

9 26. Criterion met. The criterion is met. As previously discussed, all  
10 significant adverse environmental impacts have been fully mitigated and several  
11 public benefits are associated with the project that would not be required of a standard  
12 subdivision. All infrastructure needs are also met for the project. For these reasons  
13 the criterion above is satisfied.

14 **PTMC 18.16.060(B):** *Notwithstanding approval of criteria set forth in subsection a  
15 of this section, in accordance with RCW 58.17.120, as now adopted and hereafter  
16 amended, the proposed subdivision may be denied because of flood, inundation or  
17 swamp conditions . . . .*

18 27. Criterion met. The criterion is met. There is no evidence of flood,  
19 inundation or swamp conditions.

#### 20 **Plat Vacation**

21 **RCW 58.17.212:** *.... When the vacation application is specifically for a county road  
22 or city or town street, the procedures for road vacation or street vacation in chapter  
23 36.87 or 35.79 RCW shall be utilized for the road or street vacation. When the  
24 application is for the vacation of the plat together with the roads and/or streets, the  
25 procedure for vacation in this section shall be used, but vacations of streets may not  
26 be made that are prohibited under \*RCW 35.79.030, and vacations of roads may not  
be made that are prohibited under RCW 36.87.130.*

*The legislative authority of the city, town, or county shall give notice as provided in  
RCW 58.17.080 and 58.17.090 and shall conduct a public hearing on the application  
for a vacation and may approve or deny the application for vacation of the  
subdivision after determining the public use and interest to be served by the vacation  
of the subdivision. If any portion of the land contained in the subdivision was  
dedicated to the public for public use or benefit, such land, if not deeded to the city,  
town, or county, shall be deeded to the city, town, or county unless the legislative  
authority shall set forth findings that the public use would not be served in retaining  
title to those lands...*

27 28. Criterion Met. The criterion quoted above for approval of a plat vacation is met  
28 by the proposal. The public use and interest is served by the vacation and associated  
29 replat as required by RCW 58.17.212. Vacation of the subdivision will enable a



1 greater number of lots in a manner that still conforms to the maximum density  
2 standards of the underlying zone. As such, the Growth Management Act policies  
3 encouraging urban densities and efficient use of infrastructure are better served with  
4 the vacation and associated replat, which is in the public interest.

4 **Critical Areas Permit:**

5 **PTMC 19.05.050B4:** *Review Criteria. The director may approve with conditions, or*  
6 *deny, any development proposal or regulated alteration in order to comply with the*  
7 *requirements and carry out the requirements of this chapter based on the following*  
8 *criteria:*

- 8 *a. The proposal does not pose an unreasonable threat to the public health, safety,*  
9 *or welfare on or off the development proposal site;*
- 10 *b. The proposal minimizes the impact on critical areas in accordance with*  
11 *mitigation sequencing in PTMC 19.05.060(A);*
- 12 *c. Any alterations permitted to the critical area are mitigated in accordance with*  
13 *mitigation requirements in PTMC 19.05.060(B);*
- 14 *d. The proposal is consistent with best available science and results in no net loss*  
15 *of critical area functions and values;*
- 16 *e. The proposal meets the criteria in other applicable regulations and standards.*

16 29. Criterion met. The criteria above are met. As outlined in Finding of Fact No.  
17 5B, the proposal is found to be consistent with the City's critical area regulations  
18 (Chapter 19.05 PTMC), includes no alterations to critical areas, and will result in no  
19 net loss of ecological function. Further, the City's critical area regulations are based  
upon best available science so conformance to those standards without modification  
must be construed as consistent with best available science.

20 **Type III General Permitting Criteria:**

21 **PTMC 20.01.235(D)(1):** *The development is consistent with the Port Townsend*  
22 *Comprehensive Plan and meets the requirements and intent of the Port Townsend*  
*Municipal Code;*

23 30. Criterion met. As previously discussed, the project satisfies all applicable  
24 development standards and comprehensive plan policies.

25 **PTMC 20.01.235(D)(2):** *The development is not detrimental to the public health,*  
26 *safety and welfare;*

1 31. Criterion met. Due to mitigation of all significant adverse environmental  
2 impacts and the provision of several public benefits, the project is not detrimental to  
the public health, safety and welfare.

3 **PTMC 20.01.235(D)(3):** *The development adequately mitigates impacts identified*  
4 *under Chapters 19.04 (SEPA) and 19.05 (Environmentally Sensitive Areas) PTMC;*

5 32. Criterion met. As previously determined, the proposal is consistent with  
6 SEPA and the City's critical areas ordinance.

7 **PTMC 20.01.235(D)(4):** *For subdivision applications, findings and conclusions*  
8 *shall be issued in conformance with PTMC Title 18 and RCW 58.17.110.*

9 33. The findings and conclusions have been issued in conformance with these  
10 applicable regulations.

## 11 DECISION

12 The proposed preliminary plat, PUD, street vacation and critical areas permit are all approved  
13 for the reasons identified in the Conclusions of Law, subject to the following conditions:

### 14 GENERAL

- 15 1. Development shall be carried out in substantial conformance with the revised  
16 preliminary Plat/Plat Vacation and PUD site plans, the PUD Narrative and  
17 Stormwater Report (Ex. A, B & D), and the preliminary Tree Conservation Plan  
(Ex. E) except where modified by these conditions of approval or by the  
subsequent Street and Utility Development permit (SDP). The Plat Vacation  
portion of this approval includes the alley in Blocks 2 and 3 of the Motorline  
Addition together with all of the 16<sup>th</sup> St. right-of-way.
- 18 2. All mitigations as set forth in the SEPA MDNS (Ex. I) are hereby considered  
19 conditions of preliminary Plat/ Plat Vacation and PUD approval.
- 20 3. The Madrona Ridge approval includes the requested PUD modifications set forth  
21 below:
  - 22 • Aside from Madrona Boulevard, all other public local access roadways would  
23 have 40' wide ROW's and a modified T-8 street section as shown in Ex. B. The  
24 arrangement of street trees may be flexed as part of the Street and Utility  
25 Development Permit process to achieve an attractive streetscape aesthetic and  
26 efficient driveway arrangement.
  - Three (3) new private driveways serving a total of 14 lots. The road section width  
in these driveways would be 20'.
  - Reduced minimum lot sizes with a 3,600 sq. ft. minimum.
  - Side yard setback reductions from a combined 15' to a minimum of 5' on each  
side except 10' if abutting a ROW.

- 1 • Front yard setback reductions down to 10' except where a garage door faces front in which case the front setback will be 20'.
- 2 • Maximum lot coverage permitted on all lots modified to allow 45%.
- 3 • Relief from Daylight Plane requirements for new residential structures as typically prescribed under PTMC 17.16.030D.

4 4. The three (3) alleys shown on the revised preliminary Plat plans (Ex. B) will be  
5 privately maintained by the adjoining owners and/or HOA but they must also be  
6 publicly accessible to non-motorized users where the driveways connect to open  
7 space trails. This maintenance obligation shall be placed into a set of Covenants,  
8 Conditions and Restriction (CCR's) and referenced in the resulting PUD  
9 Agreement.

10 5. An appropriate entity (e.g. a Homeowners Association; HOA) must be established  
11 as part of the final Plat/Plat Vacation and PUD review process and assigned  
12 responsibility for on-going long term maintenance, liability and tax responsibility  
13 of all on-site, non-public amenities including but not limited to stormwater  
14 facilities, open space Tracts and landscaping (including street trees and  
15 stormwater pond plantings), all non-hard surfaced trails which do not meet  
16 approved City standards, and privately maintained underground utilities. The  
17 approved responsible entity must be acceptable to the City DSD Director and  
18 referenced in all appropriate documents filed for recording that are associated  
19 with the final Plat/Plat Vacation

20 6. Tracts J thru O reserved for the ~~multi-use~~ Multi-Use pathway on the north side of  
21 Madrona Boulevard will be ~~dedicated as public right-of-way~~ maintained by the  
22 Madrona Ridge HOA. A minimum 5 ft. building setback from the referenced  
23 Tracts must maintained (totaling 15 ft of setback from Madrona Blvd. ROW  
24 which includes a 1 ft. separation from the edge of the Multi-Use Trail) and called  
25 out on the face of the Final Plat, the PUD Agreement and final CC&R's.  
26 ~~however,~~ as As with all sidewalks within the project, the abutting lot owners are  
responsible for cleaning of the non-motorized improvements per PTMC  
12.12.030.

7. Applicant's offer to convey Tract D/Storm Pond 4 and Open Space Tract E to the  
City is acceptable to the City, subject to certain terms. If both Tracts are  
conveyed to the City, an easement to the Madrona Ridge HOA shall be  
established to provide the HOA with maintenance access to the outfall pipe and  
infiltration trench serving Tract B/Storm Pond 2. Any easement needed for the  
Tract B/Storm Pond outfall and infiltration trench shall be prepared by the  
Applicant or Applicant's engineer for review and approval by the City and  
referenced on the face of the Final Plat.

8. In the event Tract E is not conveyed to the City, then the Tract D/Storm Pond 4  
area must be expanded by the Applicant to include that pond's outflow pipe and  
infiltration trench. Public Works engineering staff have agreed that Rainier Street  
runoff between 15<sup>th</sup> and 12<sup>th</sup> Streets can be accomplished via swales constructed

1 adjacent to the roadway. These will be made conditions of the Street and Utility  
2 Development (SDP) review and approval process.

3 9. The Applicant shall demonstrate to Public Works staff that adequate separation  
4 between the existing fiber optic improvements in Tract F is available to  
5 accommodate multiple utilities (i.e., the required 10” water main from the north  
6 line to 15<sup>th</sup> St.) If Tract F is unable to accommodate multiple utilities, the  
Applicant will need to propose an alternative route for the 10” water main  
acceptable to Public Works and complete that installation as part of the approved  
Street and Utility Development Permit (SDP).

7 10. The Applicant shall construct a shared Multi-Use pathway on the west side of  
8 Rainier St. so it is continuous from north of the Discovery Rd. roundabout near  
9 12<sup>th</sup> St. to 15<sup>th</sup> St. as offsite improvements along with Rainier St. Frontage  
improvements of sidewalk and a bike lane must also be installed across the entire  
project frontage between 15<sup>th</sup> St. and the north property line.

10 11. The Applicant’s request for a slightly modified T-8 road City standard ~~with~~  
11 ~~sidewalk and landscaping all on one side of all 40 ft. wide rights of way streets~~ is  
12 approved in concept as shown on the submitted plans (Ex. B). Final locations for  
13 on-street parking will be determined as part of the subsequent Street and Utility  
14 Development Permit (SDP) process. Staff will work with the Applicant to  
maintain flexibility with driveway placement to allow occasional parking on  
either side of the street for traffic calming.

15 12. Final Plat/Plat Vacation and PUD approval shall be presented by the Applicant as  
16 required by municipal code and shall indicate the precise location of all required  
17 dedications, easements and open spaces per these conditions of approval. Interior  
18 streets, sidewalks and trails within public easements shall be open to the public  
19 and signed accordingly at all times. All required infrastructure improvements as  
set forth in these conditions and the subsequent Street and Utility Development  
permits must be installed or bonded for prior to final Plat/Plat Vacation and PUD  
approval.

20 13. The Applicant shall have applied for final Plat/Plat Vacation and PUD approval  
21 within five (5) years of date preliminary approval.<sup>3</sup> With the final Plat/Plat  
22 Vacation and PUD submittal, the Applicant shall propose a name for the new  
roadway(s) to allow for review and approval by the appropriate public agencies  
(the City DSD, the Jefferson County Auditor and Assessor’s Offices.

23 14. A draft Property Use and Development Agreement (PUDA) shall be submitted by  
24 the Applicant (in electronic format) for review by DSD and Public Works a  
25 minimum of one month prior to submittal for final Plat/Plat Vacation and PUD  
approval. The final PUDA shall be approved by the City Council as part of their  
final approval for the project.

26 <sup>3</sup> RCW 58.17.140(3)(a)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

PRIOR TO ISSUANCE OF BUILDING PERMITS

15. The Applicant shall apply for and receive final Plat/Plat Vacation and PUD approval prior to the issuance of any building permits. To receive final Plat/Plat Vacation and PUD approval, all required improvements set forth in the subsequent Street and Utility Development permit (street, driveway/fire lane, utility) and the approved Final Landscaping Plan must be installed (with conveyance and acceptance by the City where applicable) or bonded for. The amount of the performance security for any bonded items shall be based upon the current cost estimate of all materials and construction costs, including applicable tax. The performance security shall consist of a performance bond in a form acceptable to the City Attorney and in an amount acceptable to the Director and consistent with city code. Cash deposited in an escrow account may also be accepted by the City. All required landscaping plantings shall be installed within six months of approving the performance security unless a longer period of time is agreed to by the DSD Director. The preliminary landscaping plan shall be revised to include 10-foot landscaping along the western property line as identified in Conclusion No. 7 of the staff report if not already included in the landscaping plan.

OTHER LANDSCAPING-RELATED CONDITIONS

16. Prior to issuance of a Street and Utility Development permit (SDP) for the project, the applicant shall prepare and submit a Final Landscaping and Tree Conservation Plan (TCP) for review and approval by the DSD Director. The use of canopy cover calculations for the project is permitted for the TCP per PTMC 19.06; however, as a Planned Unit Development (PUD) some modest commitment to tree planting on each individual lot as building permits are issued is warranted. The submitted Final Landscaping and TCP must be prepared with sufficient detail on specific plant species, sizes, spacing and quantities to allow for adequate review by DSD. It must also include a proposed irrigation plan that will be installed as part of the installation. The submitted plan must be prepared using a scale capable of being read without magnification of either the plan text or planting area illustrations. The Final TCP must include ~~actual planting calculations necessary for each resulting residential lot as required by PTMC 19.06~~ a commitment to planting at least one (1) tree unit credit (t.u.c.) per residential lot. A notation on the face of the final Plat/Plat Vacation map as required by PTMC 19.06 will provide future purchasers with reference to the resulting TCP requirements

17. All required landscaping shall be continually maintained in a healthy growing condition by the Homeowner Association. Dead or dying trees, shrubs or groundcover shall be replaced immediately, and the planting areas shall be routinely maintained. Revisions to the approved Landscaping Plan may also be required if the Director determines that the installed landscaping has failed to perform as designed.

1  
2 18. For landscaping approved within the adjoining street rights-of-way and/or within  
3 public easements or surrounding the 4 storm ponds, the Applicant shall provide a  
4 3-year financial guarantee for their survivability. Trees or other approved  
5 plantings that die or become diseased within the guarantee period shall be  
6 replaced and shall initiate a subsequent 3-year period starting on the date of  
7 replacement.

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

PRIOR TO ROADWAY, PATHWAY AND INFRASTRUCTION  
CONSTRUCTION

19. To ensure compliance with City Engineering Design Standards, together with the public and private street and utility installations required by this decision, the following plans must be prepared and submitted with a completed application for a **Street and Utility Development Permit (SDP)**. These plans shall be in substantial in conformance with the preliminary drawings submitted as part of the application (Ex. B) except where modified by thee approval conditions. These plans must be submitted, reviewed and approved by City engineering staff, and constructed or bonded for prior to final approval of any phase of the development.

- a. **Engineered plans for the public streets, private driveways and fire lane turnarounds** serving this project including but not limited to the location of all driveways, turn around areas, sidewalks , and drainage facilities.
- b. **Engineered plans for water service and sewer service** for the project including provisions for fire hydrant(s) and compliance with Condition . **Tract F:** Utility easement from the north, west of Lot 145, that presently contains a fiber optic line. Staff notes this utility easement was intended to be occupied by a 10” water main running north to south through the site (Ex. F) that is called for in the City’s Water System Plan (WSP). If Public Works staff determines there is inadequate separation between the fiber optic improvements and the preferred water main route to accommodate multiple utilities in Tract F, the Applicant will need to propose an alternative route for the 10” water main that is acceptable to Public Works.
- c. A **final engineered stormwater drainage plan and report** including construction drawings complying with the requirements of the Puget Sound Stormwater Management Manual and the Port Townsend Engineering Design standards must be submitted to DSD and approved by the Public Works Department prior to issuance of any building permits. Said plan and report shall include detailed operation and maintenance (O & M) provisions for the completed facilities which will become a responsibility of the Madrona Ridge HOA to ensure. Once approved by City engineering staff, the O&M provisions must be formatted by the applicant (or their engineer) in a manner which facilitates their incorporation into the required Planned Unit Development Agreement (PUDA) and CC&R’s.
- d. A **final engineered non-motorized trail plan** meeting all applicable requirements of City-adopted plans (Non-Motorized Transportation and Engineering Design Standards) and the plans approved by this decision. The non-motorized trail constituting the City’s future Loop Trail system (in 15<sup>th</sup> St. to

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Rainier and along the north side of Madrona Blvd.) shall be paved and meet the standards of the Parks Recreation and Open Space Plan. All other trails shall be maintained by the Homeowners Association. Conditions related within and around wetland buffers also apply – See Below Section on CRITICAL AREA PERMIT CONDITIONS

The Final Non-Motorized Plan shall include a continuous pedestrian connection on the west side of Rainer St. between the Rainier/Discovery roundabout and the project south property line at 15<sup>th</sup> St. Staff has recommended that the shared Multi-Use pathway on the west side of Rainier St. be constructed by the Applicant so it is continuous from north of the Discovery Rd. roundabout near 12<sup>th</sup> St. to 15<sup>th</sup> St. as offsite improvements along with the proposed Rainier St. frontage improvements of sidewalk and a bike lane across the entire project frontage between the north property line and 15<sup>th</sup> St. Staff also recommends installation of a crossing to the east side of Rainier St. at 15<sup>th</sup> St. which is already improved asphalt Multi-Use pathway.

20. Street lighting shall be dark sky compliant and minimized in conformance with the City's Street lighting policy (Ordinance 3271).

CONDITIONS RELATED TO THE PLAT/PLAT VACATION

21. The applicant shall provide a mylar reproduction of the Plat/Plat Vacation to DSD for review and approval (5 paper copies and one electronic .pdf version) as part of the final Plat/Plat Vacation and PUD approval process. Said mylar shall contain the acknowledged signatures of all parties having an ownership interest in the subject property as evidenced by a plat certificate prepared by a local title company. Said plat certificate, or any update provided, shall be less than 30 days old. The approved Plat/Plat Vacation shall not become effective until the mylars required for recording have been filed with the Jefferson County Auditor. While the City will assist in recording the Plat/Plat Vacation mylar, the Applicant is responsible for all fees associated with recording. All property taxes due and owing on the subject property must be paid in full prior to obtaining the signature of the Jefferson County Treasurer. The location of critical areas and their buffers shall be depicted on final mylars.

OTHER/ONGOING CONDITIONS

- 22. No road approaches onto Madrona Blvd. are permitted unless otherwise approved by the Public Works Dept. Lots 21, 30, 39, 59 through 68, 91, 92, 97, 105, 113, 121, 129, 137 and 167 shall all gain vehicular access via the project's side streets.
- 23. Future occupancy of any units shall be subject to all applicable provisions of the Port Townsend Municipal Code (PTMC), including zoning, subdivision and the Engineering Design Standards.
- 24. Four (4) existing and recorded easements encumber the site (AFN 240372, 312280, 449206, 596561) and are shown on the submitted site plans (Ex. B).

- 1 25. AFN 240372 contains a fiber optics line runs north to south through the western  
2 portion of the site. Circumstances surrounding this easement and the need for  
3 water system improvements in the vicinity were described in Condition 17.b. As  
4 shown, this easement would also render two (2) proposed lots (Lots 53 and 64)  
5 unbuildable unless those improvements are relocated or the 2 lots reconfigured.  
6 The Applicants bears responsibility to work with the underlying beneficiary of  
7 this fiber optic easement to arrange for it's relocation, otherwise these 2 lots must  
8 be eliminated or reconfigured within the Plat.
- 9 26. As a public easement, AFN 596561 will be converted to dedicated right-of-way  
10 along 15<sup>th</sup> St. and can be extinguished as such as part of the final Plat/Plat  
11 Vacation and PUD approval process. Similarly, AFN 449206 - which is a private  
12 access & utility easement can be released by the underlying owner during final  
13 project processing.
- 14 27. AFN 312280 is a 40' wide exclusive access and utility easement running along  
15 the southwest project boundary. This easement appears to benefit other properties  
16 outside of the Plat/Plat Vacation. The preliminary Plat map indicates this  
17 easement will be extinguished. Fortunately, AFN 312280 does not encumber any  
18 of the proposed residential lots; however, as part of final Plat/Plat Vacation and  
19 PUD processing, the Applicant must demonstrate all easement beneficiaries have  
20 agreed to it being released and/or extinguished or any conflicting improvements  
21 must be relocated outside of the easement area.
- 22 28. If the proponent proposes to add any development signage, it may be necessary to  
23 obtain a sign permit. Please contact the DSD Department for signage  
24 requirements prior to ordering, fabricating or installing any signs.

#### CRITICAL AREA PERMIT CONDITIONS

- 25 29. A Monitoring and contingency plan will be required to ensure success of the re-  
26 seeding of the wetland buffer. The applicant shall post a performance bond in the  
amount of 120 percent of the expected cost. Mitigation shall not be implemented  
until after the department approves the site mitigation and monitoring plan. The  
applicant shall notify the department when mitigation is installed, and monitoring  
is commenced and shall provide the city with reasonable access to the mitigation  
for the purpose of inspections during the monitoring period.
30. All construction activities shall comply the Engineering Design Standards and  
employ Best Management Practices to control erosion/sedimentation.
31. Applicants shall indicate erosion control measures on the site construction plan or  
stormwater control management plan, as appropriate for the project. These  
requirements shall be in place following the preconstruction meeting outlined in  
PTMC [19.05.040\(F\)\(1\)\(k\)\(I\)](#) and shall be reviewed and approved prior to clearing  
and grading.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

32. The trail proposed around Wetland C-3 must be located to the outer 25% of this wetland’s buffer. All constructed trails must be field located in such a way to avoid impacting any trees and limit impacts to soil, hydrologic features, shrubs, and habitat features.

Dated this 28th day of March 2022.

Phil Olbrechts  
Phil Olbrechts  
City of Port Townsend Hearing Examiner

**Appeal Right and Valuation Notices**

This land use decision is final and subject to appeal to superior court as governed by Chapter 36.70C RCW. Appeal deadlines are short and procedures strictly construed. Anyone wishing to file a judicial appeal of this decision should consult with an attorney to ensure that all procedural requirements are satisfied.  
Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.