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

IN RE:

FULLER DESIGNS, INC.,

Applicant.

HEARING NO: CU-21-001, ST-21-001

FINDINGS, CONCLUSIONS, AND
DECISION

Project Name:

JACKSON VILLA EXPANSION 4

SUMMARY OF DECISION

The Applicant's request for an approval of a Conditional Use is **GRANTED** subject to conditions. The Applicant's request for an approval of Site Plan is **GRANTED**.

SUMMARY OF RECORD

Request

Applicant, Fuller Designs, Inc., proposes to develop the Subject Property and build 21 duplexes and a single 23 plex with parking and playground.

Hearing Date

An open record hearing was held before the Hearing Examiner of the City of Centralia on October 14, 2021.



1 **Materials**

2 Prior to the hearing, the Hearing Examiner received the following documentation:

- 3 1. Agenda for Hearing Examiner;
- 4 2. City of Chehalis Staff Report;
- 5 3. Permit Application, Applicant’s Narrative, Preliminary Civil Plans and Drainage Report
- 6 created by Fuller Designs, and Traffic Impact Analysis by Heath and Associates;
- 7 4. Geotech Report and Addendum created by All American Geotechnical, Inc.;
- 8 5. Critical Areas Report created by Loowit Consulting Group, LLC;
- 9 6. Affidavit of Publication and Notice of Application;
- 10 7. Notice of Public Hearing;
- 11 8. SEPA Checklist and Routing Slip;
- 12 9. Amended MDNS;
- 13 10. Lewis County Comments;
- 14 11. Letter from Aaron Fuller to James Buzzard dated October 13, 2021 (Applicant’s
- 15 Response to City Staff Report).

16 During the open record hearing, the Hearing Examiner received a copy of the following:

17 Development Review Committee Agenda; Applicant Pre-Submission Conference Application;

18 letter from Aaron Fuller to City of Chehalis Community Development dated September 18,

19 2020; Average Hourly Volumes of traffic at Subject Property (4-22-2-13 – 4-26-2013); and

20 Affidavit of Publication of Open Public Hearing.

21 **Testimony**

22 At the open record hearing, Tammy Baraconi (Chehalis Community Development)

23 presented on behalf of the City and Erin Hillier (Chehalis City Attorney) presented on behalf of

24 the City. The Hearing Examiner also received testimony from the City of Chehalis Engineer on

25 behalf of the City.

26 The Applicant, Fuller Designs, Inc., appeared and presented testimony through its’

President, Aaron Fuller, P.E. The Hearing Examiner also received testimony from Daniel Hawes

of Sunquest Construction, Inc. (Project Contractor).

The Hearing Examiner held the Open Public Meeting open until October 21, 2021 at 5:00

pm for the sole purpose of receiving any supplemental written testimony from the City and/or the



1 Applicant. Prior to the deadline of October 21, 2021 at 5:00 pm, the Hearing Examiner received
2 the following supplemental written testimony:

- 3 1. City of Chehalis Supplemental Information dated October 15, 2021;
- 4 2. Conditional Use/PUD and Variance Application;
- 5 3. Letter from Aaron Fuller to James Buzzard dated October 21, 2021;
- 6 4. Second Letter from Aaron Fuller to James Buzzard dated October 21, 2021;
- 7 5. Letter from Aaron Fuller to Tammy Baraconi dated March 3, 2021;
- 8 6. Letter from Pat Anderson (Lewis County Community Development) to SEPA
9 Administrator dated June 17, 2021;
- 10 7. Letter from Megan Sathre (Lewis County Community Development) to SEPA
11 Administrator dated October 6, 2021.

12 **NOW THEREFORE**, upon consideration of the testimony and materials submitted, the
13 Hearing Examiner enters the following Findings and Conclusions

14 **FINDINGS**

- 15 1. Notice of Application and Notice of Hearing appears to have been properly given to the
16 public pursuant to the Chehalis Municipal Code (hereinafter "CMC").
- 17 2. The Subject Property is located at the corner of 2400 Block of Jackson Highway and
18 Kennicott Road (Lewis County Parcel No. 010799001000), and is partially legally
19 described as: Section 03 Township 13N Range 02W PT LT 8 SE RD BLK 1
RICHARDT'S RPLT BLK 4-6 PARCUVIA ADD PRCL B BL-09-148 335384.
- 20 3. The Subject Property is currently undeveloped, with access from Kennicott Road.
- 21 4. Proposed is 21 duplexes, a single 23 plex, and appropriate parking. A playground or park
22 space is also proposed.
- 23 5. Utilities and services are adjacent to the Subject Property.
- 24 6. Public water and sewer service will be extended from the City of Chehalis.
- 25 7. Applicant is not the owner of the Subject Property. The Subject Property is owned by
26 Lakewood Investors, LLC. Applicant is a consultant for the Owner, and Applicant has
requisite authority to act on behalf of the Owner.



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8. The Subject Property is located within the City’s Urban Growth Area within Lewis County and is zoned RUGA.
9. Applicant is before the Hearing Examiner for approval of a Conditional Use. However, Applicant denies a Conditional Use is required and rather the project is a Permitted Use not subject to conditions.
10. SEPA is applicable. With mitigation, the proposed use will comply with applicable site plan review requirements and will not have a significant environmental consequence when compared with other uses in the RUGA zone. The project adequately mitigates impacts identified through the SEPA review process.
11. The proposed use of the subject property will not be significantly detrimental to health, safety, or general welfare of the persons residing or working in the neighborhood.
12. The location, size, and functional characteristics of the proposed use are compatible and will have minimal impact on the livability and development opportunities in the neighborhood, and are harmonious to the surrounding area.
13. The proposed use will not be detrimental or injurious to the property and improvements in the neighborhood or to the general welfare of the city.
14. The proposed use is consistent with the economic development goals of the Growth Management Act.
15. The proposed use is consistent with the City of Chehalis Comprehensive Plan and the purpose of the RUGA zone.
16. The proposed use, as applied for, is conditionally permitted under the Chehalis Municipal Code.
17. The Subject Property is suitable for the proposed use.
18. The requested conditional use is timely, considering the adequacy of transportation systems, public facilities and services.
19. The proposed use meets density requirements of the CMC.
20. The physical size, location and placement of the development on the Subject Property does not have an impact on any critical resource or flood plain. The Applicant proposes mitigation to impact on wetland area located on the Subject Property.
21. The project makes adequate provisions for water supply, storm drainage, sanitary sewage disposal, emergency services, and environmental protection to ensure the project is not detrimental to public health or safety.



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22. Public access and circulation including nonmotorized access, as appropriate, are adequate to and on the site.
 23. Adequate setbacks and buffering will be provided.
 24. The requested conditional use and site plan should be granted subject to conditions.
 25. To the extent not fully set forth herein, the Hearing Examiner incorporates those Findings found in the remainder of this Document.

8 9 **CONCLUSIONS**

To the extent not fully set forth herein, the Hearing Examiner incorporates those Conclusions found in the remainder of this Document.

10 **Jurisdiction**

11 The City of Chehalis Hearing Examiner has jurisdiction over the parties hereto. The
12 Hearing Examiner has subject matter jurisdiction over Applicant's request for a conditional use.
13 Pursuant to RCW 36.70B.060(3), the Hearing Examiner has subject matter jurisdiction over site
14 plan approval.

15 **Criteria for Conditional Use**

16 Chapter 17.09 CMC sets forth the criteria for issuance of a Conditional Use Permit.

17 CMC 17.09.185 states:

- 18 A. The City's policy is to mitigate the impacts of conditional uses through special
19 conditions or approval. Where impacts cannot be mitigated effectively, the
20 review authority shall deny the application. A conditional use may be
21 approved or modified only when all of the following criteria are met:
- 22 1. The use is listed as a conditional use in the master use table in
23 Chapter 17.78 CMC, Use/Occupancy;
 - 24 2. Is suitable for the proposed site considering size, shape, location,
25 topography, existence of improvements and natural features;
 - 26 3. Is timely, considering the adequacy of transportation systems, public
facilities and services existing or planned for the area affected by the use;
 4. The location, size, and functional characteristics of the proposal are such
that it can be made reasonably compatible with and have minimal impact
on the livability and development opportunities in the neighboring area;



- 1
- 2 5. Is consistent with the applicable goals and policies of the Chehalis
- 3 comprehensive plan and the purpose of the underlying zone;
- 4 6. Complies with all applicable site plan review requirements; and
- 5 7. Does not have significant environmental consequences when compared
- 6 with other permitted uses in the underlying zone which cannot be
- 7 mitigated through conditions of approval.
- 8 B. The review authority may impose conditions of approval as necessary to
- 9 protect the public interest, achieve compliance with the Chehalis
- 10 comprehensive plan, or to mitigate any adverse impacts resulting from
- 11 approval of uses or impacts subject to this chapter.
- 12 C. The review authority, on its own motion, may initiate proceedings consistent
- 13 with the procedures provided in the Chehalis Municipal Code, to revoke land
- 14 use approval for noncompliance with the requirements of this title or
- 15 conditions of approval listed in the final decision approving the conditional or
- 16 nonconforming use or development.

Criteria for Site Plan

17 Chapter 17.09 CMC sets forth the criteria for site plan.

18 CMC 17.09.130 states:

19 The purpose of a site plan review is to help ensure that new development activities do not adversely affect the public health, safety and welfare of residents of Chehalis, and that new development activities are compatible with existing patterns of development and the provisions of the Chehalis comprehensive plan. All required site plans shall be approved by the DRC.

- 20 A. A site plan review shall be required for all proposed development activities in
- 21 the residential (R-1, R-2, R-3, R-4, and R-UGA) and the commercial and
- 22 industrial zones (EPF, C-O, C-N, C-G, C-F, CBD, I-L, and I-H), unless
- 23 waived in writing by the city. Single-family homes are exempt from formal
- 24 DRC approval but must still submit a site plan consistent with subsection (B)
- 25 of this section. Development that does not require a building permit is
- 26 exempt from this requirement.
1. In addition to a site plan review, proposed development activities located within the special districts must also comply with CMC Title 17, Division IV, Special Districts.



- 1 2. Development activities subject to a site plan review shall be determined by
2 the city and shall include new construction, modifications to existing uses
3 or structures that increase the size of the building or the intensity of the
4 use, and/or changes of use.
- 5 3. The site plan review shall include the whole site, including subsequent
6 phases of development without regard to existing or proposed lot lines.
- 7 4. A site plan review permit is separate from and does not replace other
8 required permits such as a conditional use permit or a shoreline substantial
9 development permit. A site plan review may be combined and reviewed
10 concurrently with other permits and approvals, as determined by the city.
- 11 5. The site plan review must be conducted prior to, or with the approval of
12 the city concurrent with, the review of any required building permit or
13 clearing and grading permit applications.

14 B. A complete site plan review application shall be submitted in a format
15 prescribed by the city and may include, but is not limited to, the following on
16 plans that are drawn to scale:

- 17 1. The location and dimensions of the lot(s).
- 18 2. Existing topography and natural features.
- 19 3. Proposed grading and drainage facilities, including areas to be preserved
20 or protected for the implementation of low impact development
21 stormwater features in accord with the provisions of the Chehalis
22 Engineering Design Manual.
- 23 4. The footprint of existing and proposed structures, proposed building
24 heights, proposed building setbacks, and the proposed uses.
- 25 5. The location of existing and proposed roads, access plans, parking
26 facilities, loading areas, curbs, drains, paving, hydrants, sign and light pole
locations, walls, fences, walks, approaches, and proposed landscaping
plans.
6. The location of existing and proposed water, storm, and sanitary sewer
lines and facilities.
7. The nature, location, and dimensions of environmentally sensitive areas,
shorelines, or floodplain areas and their associated buffers, if any, on or
adjacent to the site.
8. All required technical reports prepared by experts with demonstrated
qualifications in the area(s) of concern.



1 9. Any additional information deemed necessary by the City.

2 C. The city may approve a proposed site plan in whole or in part, with or without
3 conditions, if all of the following findings of fact can be made in an
4 affirmative manner:

5 1. The project is consistent with the Chehalis comprehensive plan and meets
6 the requirements and intent of the Chehalis Municipal Code, including the
7 type of land use and the intensity/density of the proposed development.

8 2. The physical location, size, and placement of the development on the site
9 and the location of the proposed uses within the project minimize impacts
10 to any critical resource or floodplain area to the greatest extent possible or
11 are compatible with the character and intended development pattern of the
12 surrounding properties.

13 3. The project makes adequate provisions for water supply, storm drainage,
14 sanitary sewage disposal, emergency services, and environmental
15 protection to ensure that the proposed project would not be detrimental to
16 public health and safety.

17 4. Public access and circulation including nonmotorized access, as
18 appropriate, are adequate to and on the site.

19 5. Adequate setbacks and buffering have been provided. Any reduction to
20 setbacks or buffer widths is the minimum necessary to allow for
21 reasonable economic use of the lot and does not adversely impact the
22 functional value of the critical resource area or adjoining land uses.

23 6. The physical location, size, and placement of proposed structures on the
24 site and the location of proposed uses within the project are compatible
25 with and relate harmoniously to the surrounding area.

26 7. The project adequately mitigates impacts identified through the SEPA
review process, if required.

 8. The project would not be detrimental to the public interest, health, safety,
or general welfare.

D. Authorization of a site plan review shall be valid for one year after the
effective date and shall lapse at that time unless a building permit has been
issued.

1. The city may extend the site plan review one time for an additional year if
it finds that the regulations on which the site plan review is approved have
not changed substantially.



1 2. Knowledge of expiration date and initiation of a request for extension of
2 approval time is the sole responsibility of the applicant. The city shall not
3 be held responsible for notification of expirations. All requests for
4 additional time must be submitted to the community development
5 department at least 30 days prior to expiration of site plan approval.

6 Analysis

7 1. Conditional Use Permit:

8 The Applicant denies the proposed use is conditional under the CMC. Rather, Applicant
9 argues the proposed use (Condominiums) is a permitted use under the CMC.

10 Throughout the permitting process, Applicant has referred to the proposed use as
11 Condominiums, although there is disagreement between the City and Applicant whether the
12 proposed use was originally intended to be solely Condominiums or a mix of Condominiums and
13 traditional multi-family dwellings (apartments or rented units). Applicant also alleges the City
14 pressured the Applicant to apply for a Conditional Use rather than apply for Condominiums.
15 Applicant admits a conditional use was applied for to speed up the process.

16 Regardless, the process for applying for Condominiums has not been complied with. For
17 example, there are no covenants, conditions and restrictions, property owners' bylaws and
18 incorporation documents, or any other applicable restrictions or provisions in the record before
19 the Hearing Examiner. Further, there is no site plan/declaration that has been recorded, or that
20 will be recorded, in the record before the Hearing Examiner.

21 Applicant applied for a conditional use. The question of whether a conditional use is
22 currently before the Hearing Examiner. Nothing prohibits the Applicant from withdrawing the
23 current application and properly applying for Condominiums. If a conditional use is granted,
24 nothing prohibits the Applicant from seeking to create/convert the use to Condominiums.

25 2. Grant of Conditional Use Permit and Approval of Site Plan:

26 Applicant's Request for a Conditional Use is GRANTED, and Applicant's Site Plan is
APPROVED, subject to the conditions set forth herein.

3. City Staff Recommendation No. 1:

The City recommends the following condition: "All work shall be conducted in
accordance with the Geotech Report and addendum as submitted to the City staff on September
21, 2021." Applicant stipulates to this Condition. Accordingly, the Applicant's project is
subject to this Condition.



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4. City Staff Recommendation No. 2:

The City recommends the following condition: “If the Applicant is unsuccessful in obtaining permission from the US Army Corps of Engineers and the WA Dept. of Ecology for wetland banking mitigation, all work within the wetland areas and their identified buffers will be prohibited.” Applicant stipulates to this Condition. Accordingly, the Applicant’s project is subject to this Condition.

5. City Staff Recommendation No. 3:

The City recommends the following condition: “A site plan must be created showing the appropriate setbacks as identified in CMC 17.52.020.” Applicant stipulates to this Condition. Accordingly, the Applicant’s project is subject to this Condition.

6. City Staff Recommendation No. 4:

The City recommends the following condition: “A solid fence must be installed along adjacent to Kennicott Road and all interior lot lines.” Applicant disputes this this Condition, although Applicant states a fence will be installed the length of Kennicott Road.

This condition is granted as follows:

- A fence in compliance with CMC 17.52.040 shall be installed along all interior lot lines, excepting those areas of lot lines that pass through physical structures.
- A fence in compliance with CMC 17.52.040 shall be installed along the property line adjacent to Kennicott Road. The fence should be suitable to adequately buffer between the high density of the project and the low residential density of the Kennicott Road Neighborhood. The Hearing Examiner hereby reserves jurisdiction over this Condition. Applicant shall submit plans to the Hearing Examiner for review and approval or denial of a fence along Kennicott Road. Such plans shall provide for the intended material to be uses and the density of the fence.

7. City Staff Recommendation No. 5:

The City recommends the following condition: “The Traffic Impact Analysis must be updated to reflect more accurate field data and additional projects that have either been approved or are in the process of being approved.” Applicant disputes this condition. Applicant submitted a Traffic Impact Analysis which was conducted in December 2020. This TIP was submitted with the Applicant’s application. During the MDNS comment period, Lewis County requested an updated TIP to be done “using more realistic numbers”. Lewis County’s concern is the TIP in the record was conducted during COVID when traffic numbers were decreased and therefore may not accurately reflect normal conditions. Heath & Associates conducted the TIP. As stated in a letter dated October 11, 2021 (included with Applicant’s Response to Staff Report) by Heath & Associates:



1 “Our TIA was prepared in December of 2-2- during the COVID pandemic. To account
2 for the potential affects of COVID, page 6 in the TIA summarizes how adjustments to the
3 count numbers were applied. WSDOT’s COVID-19 Transportation System Performance
4 Multimodal Executive Summary showed traffic volumes in the general area were, on
average, 8% lower than pre-pandemic levels the day our counts were taken. Therefore,
the TIA applied a 10% increase to all count volumes to account for COVID.”

5 Based on the information available to the Hearing Examiner in the record, it appears
6 Applicant’s TIP adequately addressed the concerns of Lewis County. Therefore, an updated TIP
is not required. Accordingly, the Applicant’s project is not subject to this Condition.

7 8. City Staff Recommendation No. 6:

8 The City recommends the following condition: “Recommendations within the updated
9 Traffic Impact Analysis must be implemented by the developer.” Applicant disputes this
10 condition. Because an updated TIP is not required herein, this condition is not applicable.
Accordingly, the Applicant’s project is not subject to this Condition.

11 9. City Staff Recommendation No. 7:

12 The City recommends the following condition: “Half-street improvements including
13 curb, gutter, and sidewalk must be installed along Kennicott Road and Jackson Highway,
14 consistent with property boundaries.” Applicant disagrees with this condition.

15 Chapter 12.04 CMC sets forth the criteria for site plan.

16 CMC 12.04.110 states:

17 A. Frontage Improvements in General.

- 18 1. Any permit authorizing a development or redevelopment within
19 residential and commercial zones will require that the developer or
20 property owner be responsible for construction or installation of
21 frontage improvements in accordance with these standards. Frontage
22 improvements will not be required at locations where the health, safety,
or welfare of the general public or environment will be negatively
impacted.
- 23 2. Select areas of the city are designated for the mandatory installation of
24 frontage improvements with any development or redevelopment
25 project. Other areas of the city have been identified for deferral of
frontage improvements. These specific designations are identified
below.

26 B. Sidewalk, Curb and Gutter.



- 1 1. The installation of sidewalk, curb and gutter will be required of all
2 development projects with frontage on the following streets:
- 3 a. Cascade Avenue;
 - 4 b. Chamber of Commerce Way;
 - 5 c. Interstate Avenue;
 - 6 d. Louisiana Avenue;
 - 7 e. Market Boulevard;
 - 8 f. Mills Avenue;
 - 9 g. Newaukum Avenue (from Riverside Drive to the city limits);
 - 10 h. Parkland Drive;
 - 11 i. Riverside Drive (from Highway 6 to Newaukum Avenue);
 - 12 j. State Avenue (from Chamber of Commerce Way to West Street);
 - 13 k. 13th Street (from Parkland Drive to Market Boulevard);
 - 14 l. 20th Street;
 - 15 m. National Avenue;
 - 16 n. Kresky Avenue.
- 17
- 18 2. The improvements will be installed in such a manner as to provide
19 continuity for future frontage improvements from adjacent properties.
20 When properties are located at the end of a block, the sidewalk, curb
21 and gutter may be installed around the corner of the side street to a
22 logical point of discontinuation, as determined by the director of public
23 works.
- 24 3. Sidewalk, curb and gutter installation will be deferred for development
25 projects along all other streets in the city unless one of the following
26 criteria exists:
- a. There is existing sidewalk, curb and/or gutter adjacent to the
development property;
 - b. There is existing sidewalk, curb and/or gutter along the
development property frontage that is damaged or does not meet the
current standards;



1 c. The development property is within 250 feet of any school or public
2 park property.

3 C. Streetlights.

4 1. The installation of streetlights will be required of all development
5 projects with frontage on the following streets:

- 6 a. Chamber of Commerce Way;
- 7 b. Interstate Avenue;
- 8 c. Louisiana Avenue;
- 9 d. Main Street;
- 10 e. Market Boulevard;
- 11 f. Newaukum Avenue (from Riverside Drive to city limits);
- 12 g. Parkland Drive;
- 13 h. Riverside Drive (from Highway 6 to Newaukum Avenue);
- 14 i. State Avenue (from Chamber of Commerce Way to West Street);
- 15 j. 13th Street (from Parkland Drive to Market Boulevard);
- 16 k. National Avenue;
- 17 l. Kresky Avenue.

18 2. The improvements will be installed in such a manner as to provide
19 continuity for future frontage improvements along adjacent properties.
20 These accommodations may include the installation of conduit and
21 junction boxes along the extent of the frontage.

22 3. Streetlight installation will be deferred for development projects along
23 all other streets in the city, unless there are existing streetlights installed
24 along any adjacent properties.

25 D. Exceptions.

26 1. If, in the opinion of the director of public works, the existing frontage
features are properly installed, in good condition, operational, and not
hazardous to public health, safety, or welfare, the development will be
exempt from frontage improvement standards.



- 1 2. When frontage improvements are a continuation of existing
2 improvements that no longer meet current city standards, the proposed
3 improvements may be allowed to maintain continuity if approved by
4 the director of public works.
- 5 3. The following types of development will be exempt from the frontage
6 improvement requirements:
- 7 a. Any addition to and/or remodeling of a single-family residence or
8 duplex.
- 9 b. New single-family developments that are not part of contiguous,
10 multiple single-family lots under sole ownership or that do not
11 have existing frontage improvements abutting the property in
12 question.
- 13 c. Any conversion or change in use of a development where the area
14 being converted is less than 1,000 square feet and the change in
15 use is not likely to result in 25 percent more vehicle trips during
16 the peak traffic hours. Trip generation rates will be determined on
17 the basis of the methodology set forth elsewhere in these standards.
- 18 d. Any remodeling of an existing building or development if no
19 change in use or additional gross floor area results and the cost of
20 the improvements or alterations is less than 25 percent of the value
21 of the existing structures on the property.
- 22 e. Any cumulative addition of less than 1,000 square feet of gross
23 floor area to a building or development as it existed on January 1,
24 2000.

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E. Deferrals.

1. For all projects that are granted a deferral of any frontage improvement, the property owner of record will be required to enter into an agreement with the city to install the deferred improvements at some future date (refer to subsection (E)(4) of this section). This agreement will be recorded with the property to ensure the city's ability to enforce the deferral regardless of changes in property ownership and will be enforceable as allowed by law. The property owner will execute and record a covenant document, as supplied by the city, ensuring participation of the subject property owner(s) in the construction of frontage improvements. The agreement will be effective for a period of 10 years from the date of recording, as allowed by RCW 35.42.182.



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2. Any redevelopment project, regardless of location, that is necessitated by fire, flood, other natural disaster, or act of the public enemy will be granted a deferral from the installation of frontage improvements under the following conditions:
 - a. The redevelopment project is of the same size, type, and usage as existed on the property prior to the damage.
 - b. There are no negative impacts to the health, safety, or welfare of the public or environment that will be created or perpetuated by the delay of the frontage improvements.
 - c. If the property is located on a street requiring mandatory frontage improvements as defined in these standards, the deferral will be for a period of three years from the time of completion of the redevelopment project. At that time, the property owner will install the deferred improvements.
 - d. In certain circumstances it may not be appropriate to require the installation of frontage improvements at the time a development occurs. The director of public works may authorize a deferral of any or all required frontage improvements, as defined by these standards, provided one or more of the following conditions are met:
 - e. The design grade and alignment of the abutting street cannot be determined at the time of construction of the development.
 - f. The installation of frontage improvements required for the development would create or intensify a hazard to public safety or health.
 - g. The installation of required frontage improvements would be inconsistent with the city's long-range street or utility master plans.
 - h. The cost of the frontage improvement construction is greater than 25 percent of the entire development project cost, unless necessary to protect the health, safety, and welfare of the public or environment. (The costs will be calculated by the owner's representative and approved by the director of public works.)
 3. The city will initiate deferred frontage improvements under the following specific guidelines:
 - a. Deferred frontage improvements will be initiated by the city no sooner than three years from the date the deferral is granted, unless the property in question is part of a local improvement district



1 (LID) formed for the purpose of constructing the deferred
2 improvement or a health or safety issue comes to exist as a result
3 of the need for the deferred improvement.

- 4 b. If the city or other entity initiates a project in the vicinity of the
5 property where the improvement was deferred, the improvement
6 may be initiated if related to the work that will be performed.
- 7 c. The deferral is valid for a period of 10 years. If the improvement is
8 not initiated within that period, the deferral will lapse and the
9 property owner will no longer be bound by the conditions of the
10 deferral. A lapsed deferral does not exclude a property owner from
11 participation in an LID.

12 CMC 12.04.110(A)(1) states: "Any permit authorizing a development or redevelopment
13 within residential and commercial zones will require that the developer or property owner be
14 responsible for construction or installation of frontage improvements in accordance with these
15 standards." Here, the Subject Property is located within a residential zone (RUGA). The code
16 continues: "Frontage improvements will not be required at locations where the health, safety, or
17 welfare of the general public or environment will be negatively impacted." Here, there are two
18 locations proposed for half-street improvements: Kennicott Road and Jackson Highway.

19 CMC 12.04.110(A)(2) states: "Select areas of the City are designated for the mandatory
20 installation of frontage improvements with any development or redevelopment project. Other
21 areas of the City have been identified for deferral of frontage improvements." The Code
22 continues and specifically lists areas within the City limits of Chehalis where frontage
23 improvements are required. Kennicott Road and Jackson Highway are not listed as mandatory
24 areas of the City. Both Kennicott Road and Jackson Highway are not located within the City
25 limits of Chehalis.

26 CMC 12.04.110(A)(1) affirmatively states frontage improvements *will* be required within
residential zones. An exception is allowed where negative impacts will be created by such
improvements. Therefore, the beginning point of the analysis is frontage improvements are
required, and the second step of the analysis is to determine whether such frontage improvements
will create a negative impact. CMC 12.04.110(A)(2) affirmatively states frontage improvements
will be required in certain designated areas of the City. There is no further analysis. Therefore,
because the Subject Property is located within a residential zone, the analysis under CMC
12.04.110(A)(1) applies, and CMC 12.04.110(A)(2) does not.

Regarding Kennicott Road, it is located within a residential zone. Therefore, the first part
of the analysis under CMC 12.04.110(A)(1) is met. The second step of the analysis is to
determine whether such frontage improvements will have a negative impact. It is reasonable and
necessary to install "half-street improvements including curb, gutter and sidewalk" along
Kennicott Road consistent with property boundaries. Kennicott Road will be the location of the
ingress and egress for the property. Kennicott Road will be the location of a planned bus stop for
public and school transportation. Considering the planned density of the project, it is reasonable



1 to assume Kennicott Road will experience a significant increase in vehicle and pedestrian traffic.
2 The opposing side of Kennicott Road currently has curb, and it is unknown to the Hearing
3 Examiner whether the opposing side of Kennicott Road has gutter. No Sidewalk is located on
4 the opposing side of Kennicott Road. The Hearing Examiner does not agree with Applicant that
5 installation of such half-street frontage improvements along Kennicott Road would be a
6 detriment the public health and safety. To the contrary, half-street improvements along
7 Kennicott Road is reasonable and necessary to protect the public health and safety. The two-part
8 analysis of CMC 12.04.110(A)(1) is met.

9 Regarding Jackson Highway, it is located within a residential zone. Therefore, the first
10 part of the analysis under CMC 12.04.110(A)(1) is met. The second step of the analysis is to
11 determine whether such frontage improvements will have a negative impact. The area of
12 Jackson Highway where the Subject Property is located is in a period of growth. Numerous
13 multi-family developments have been developed or are in the process of being developed. It is
14 reasonable to expect an increase in vehicular and pedestrian traffic will be experienced. No other
15 portion of Jackson Highway in the immediate vicinity is developed with frontage improvements,
16 rather in the immediate vicinity there exists shoulders large enough for a vehicle to safely park
17 on the side of the road. Pedestrians utilize the shoulder to travel. The portion of the Subject
18 Property that affronts Jackson Highway is relatively small (in relation to the overall project).
19 The approximate length of the Subject Property along Jackson Highway is 180 feet
20 (approximation derived from Lewis County GIS Map). Jackson Highway speed limit for this
21 area is 35 mph, as opposed to 25-30 mph as the road approaches and eventually enters City
22 Limits. It is reasonable to assume this portion of Jackson Highway will be annexed into the City
23 in the future. On any given day, especially during good weather, numerous individuals use
24 Jackson Highway for walking, jogging, and bicycling. Contrary to the Applicant's assertion that
25 installation of frontage improvements along Jackson Highway would create a negative impact by
26 encouraging pedestrians to utilize Jackson Highway for walking, jogging and bicycling,
installation of frontage improvements would create a safe area for such pedestrians when
utilizing Jackson Highway. Pedestrians already utilize Jackson Highway, and it is reasonable to
expect pedestrians residing within the development on the Subject Property will do so as well.
Therefore, frontage improvements along Jackson Highway are reasonable and necessary to
protect the health and safety of the public that already utilizes Jackson Highway as well as those
individuals who will reside on the Subject Property when development is complete. The two-
part analysis of CMC 12.04.110(A)(1) is met.

21 Applicant argues that CMC 12.04.110(B)(3) allows for a deferral of frontage
22 improvements. This code section is not applicable. CMC 12.04.110(A) requires frontage
23 improvements in all residential zones, with possible exception. CMC 12.04.110(B)(1) requires
24 frontage improvements in certain designated areas, with no exception. CMC 12.04.110(B)(3)
requires deferral of frontage improvements for those areas not covered by CMC 12.04.110(A) or
(B)(1).

25 CMC 12.04.110(E)(3)(a),(b),(c),(d) and (e) set forth a number of exceptions, that if
26 applicable to the particular project, exempt the project from Frontage Improvements. None of
the listed exceptions apply to this particular project.



1 CMC 12.04.110(E)(3)(a),(b),(c) and (d) set forth criteria for allowing deferral of frontage
2 improvements. None of the criteria apply to this particular project except for (b) which has been
3 discussed herein above. If the Subject Property was going to be developed into a use which did
4 not create a dense residential concentration of individuals, and wherein vehicular and especially
pedestrian traffic were not logically expected to increase, a deferral would be reasonable and
appropriate. However, as discussed herein above, that is not the case.

5 Applicant argued there is past precedent with granting deferrals of frontage
6 improvements, and Applicant should be granted a deferral as well. As Hearing Examiner, I am
7 not aware of the past projects and circumstances leading to such a deferral. Regardless, as
Hearing Examiner I am bound to follow the code.

8 Accordingly, the Applicant's project is subject to this Condition.

9 10. City Staff Recommendation No. 8:

10 The City recommends the following condition: "More for a bus pull out must be
11 dedicated and shown on the civil plans. Construction of the actual bus pull out may be deferred
12 until Twin Transit adds Kennicott Road to its route." Applicant responds as this condition is
13 redundant as adequate space for a bus pull out is planned for. There is no material disagreement.
Accordingly, the Applicant's project is subject to this Condition.

14 11. City Staff Recommendation No. 9:

15 The City recommends the following condition: "Road access on County Roads must be
16 150 feet from intersections." Applicant responds as this condition is redundant as conforming
17 criteria is shown on the applicable maps and plans. There is no material disagreement.
Accordingly, the Applicant's project is subject to this Condition.

18 12. City Staff Recommendation No. 10:

19 The City recommends the following condition: "All roads are in the jurisdiction of Lewis
20 County. Road approach permits and civil plans for the half-street improvements must be
21 approved by Lewis County." Excepting Applicant's argument regarding half-street
improvements, Applicant stipulates to this Condition. Accordingly, the Applicant's project is
subject to this Condition.

22 13. City Staff Recommendation No. 11:

23 The City recommends the following condition: "Private and public survey monuments
24 shall be maintained. If destroyed they must be replaced as per WAC 332-120-040. Applicant
25 stipulates to this Condition. Accordingly, the Applicant's project is subject to this Condition.

26 14. City Staff Recommendation No. 12:



1 The City recommends the following condition: "All work shall be conducted in
2 accordance with the Geotech Report and addendum as submitted to City staff on September 21,
3 2021." Applicant stipulates to this Condition, although this condition is redundant as the same is
4 identical to Condition No. 1 above. Accordingly, the Applicant's project is not subject to this
5 Condition.

6 15. City Staff Recommendation No. 13:

7 The City recommends the following condition: "If the Applicant is unsuccessful in
8 obtaining permission from the US Army Corp of Engineers and the WA Dept. of Ecology for
9 wetland banking mitigation, all work within the wetland areas and their identified buffers will be
10 prohibited." Applicant stipulates to this Condition, although this condition is redundant as the
11 same is identical to Condition No. 2 above. Accordingly, the Applicant's project is not subject
12 to this Condition.

13 16. City Staff Recommendation No. 14:

14 The City recommends the following condition: "A site plan must be created showing the
15 appropriate setbacks as identified in CMC 17-52.020." Applicant responds as this condition is
16 redundant. This condition is identical to Condition No. 3 above. Accordingly, the Applicant's
17 project is not subject to this Condition.

18 17. City Staff Recommendation No. 15:

19 The City recommends the following condition: "A solid fence must be installed along
20 adjacent to Kennicott Road and all interior lot lines." Applicant responds as this condition is
21 redundant. This condition is identical to Condition No. 4 above. Accordingly, the Applicant's
22 project is not subject to this Condition.

23 18. City Staff Recommendation No. 16:

24 The City recommends the following condition: "All garbage bins and dumpsters must be
25 contained in an enclosure to minimize public view." Applicant stipulates to this Condition.
26 Accordingly, the Applicant's project is subject to this Condition.

27 **DECISION**

28 Based on the information and testimony presented to me, the Applicant's request for an
29 approval of a Conditional Use is **GRANTED** subject to conditions as set forth herein above.
30 The Applicant's request for an approval of Site Plan is **GRANTED**.

31 **NOTICE**

32 The decision of the Chehalis Hearing Examiner herein constitutes a Land Use Decision
33 as defined under Chapter 36.70C RCW. Accordingly, the aggrieved party has a right of appeal



1 to the Lewis County Superior Court by way of Petition filed within twenty-one (21) days of
2 issuance of this Land Use Decision.

3 DATED this 1 day of November, 2021.



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6 JAMES M.B. BUZZARD
7 City of Chehalis Hearing Examiner
8 Pro Tem

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