

BEFORE THE CITY OF OLYMPIA HEARINGS EXAMINER

IN RE:) HEARING NO. 21-1729
SMITH LAKE COVE REZONE.) FINDINGS OF FACT,
) CONCLUSIONS OF LAW
) AND RECOMMENDATION
) TO CITY COUNCIL

APPLICANT: Blackbird Smith Lake, LLC (as to a portion of the property)
City of Olympia Community Planning and Development
(as to the remainder)

SUMMARY OF REQUEST: Rezoning of up to 13 parcels totaling 121 acres, located south of Herman Street/37th and east of Wiggins Road, from R 4-8 to either R 4 or R-4CB.

PROJECT LOCATION:

North of Normandy Road S.E.; east of Wiggins Road and the Chambers Ditch; south of Herman Road/37th Avenue; and west of the Chehalis Western Trail, in the southeastern corner of the City limits.

SUMMARY OF DECISION:

The Hearing Examiner recommends to the City Council that the properties be rezoned to R-4CB.

BACKGROUND

The properties under consideration for rezoning are in the southeastern corner of Olympia's City limits and are currently zoned R 4-8. They are bordered to the south by the Shana Park neighborhood (outside of the City); to the west by large lot properties along Wiggins Road (again outside City limits); to the northwest by the "Chambers Ditch", a fish-bearing channel conveying water to Chambers Lake; to the north by Herman Road which then becomes 37th Avenue; and to the east by the Chehalis Western Trail and, further east, the City of Lacey. They are within an area referred to as the "Chambers Basin" which drains to Chambers Lake via the Chambers Ditch.

The area was annexed in 2006. In 2008 the City established a new, unique zoning designation for the property to the north, identified as R-4CB (Chambers Basin). This zoning designation is intended to provide special protection to that portion of the Chambers Basin lying north of the Chambers Ditch and Herman Road, including the area surrounding Chambers Lake. It recognizes the basin's high groundwater levels and environmental sensitivity and allows for lower residential density while increasing environmental protections. These protections include limiting areas of impervious surface and dedicating larger areas to rainwater dispersal.

1 When the R-4CB zoning designation was established in 2008 it was not applied to any
2 areas south of Herman Road and the Chambers Ditch. Instead, all remaining City property to the
3 south was designated as R 4-8. The reasons for this are not entirely clear. The City may have
4 believed that development at this intensity was possible, or it may have not wanted to reduce
5 density requirements to a larger area due to its impacts on the City's overall residential density.

6 At about the same time as the 2008 zoning designation, a moratorium was imposed on
7 much of the Chambers Basin to study the effects of development within the basin. This
8 moratorium continued until 2012. Studies confirmed that much of the basin is highly sensitive to
9 stormwater due to unusually high groundwater levels and flat topography, leading to poor
10 drainage and periodic flooding.

11 In 2013, the City had an opportunity revisit this issue during a discussion with Thurston
12 County over the potential rezoning of property immediately west of this area, located in the
13 County but within the City's UGA. The City recommended that this area be rezoned to R-4CB
14 but the County ultimately declined and retained a zoning designation of one residence per five
15 acres (believing it to be sufficiently equivalent to the City's R-4CB designation). There does not
16 appear to have been any discussion of rezoning the subject properties to R-4CB. In other words,
17 while staff was recommending that the adjoining County property be rezoned to R-4CB, it was
18 not recommending that these properties be rezoned to R-4CB.

19 Earlier this year the original applicant, Blackbird Smith Lake, LLC, applied to have its
20 three parcels rezoned from R 4-8 to R 4. Blackbird's parcels include approximately 49 acres.
21 They are located a short distance north of the Shana Park neighborhood and surround Smith
22 Lake on its west, north and east. Smith Lake is one of Olympia's many "kettle" lakes formed
23 during the last ice age. Of the City's many kettle lakes, Smith Lake is the least developed and
24 perhaps the healthiest of them. But like all kettle lakes, Smith Lake is highly sensitive to any
25 change in the flow of water into it.

After reviewing the Applicant's request for rezoning, City Staff reached the conclusion
that: (1) a larger area should be considered for rezoning; and (2) the more appropriate change to
its zoning designation would be to R-4CB rather than R 4. As a result, the "Applicant" for this
rezoning is now considered to be the City and the recommended zoning change is to R-4CB
rather than R 4.

The enlarged area under consideration for rezoning has perhaps three distinct areas:

- The aforementioned property owned by Blackbird consisting of 49 acres and surrounding Smith Lake to the west, north and east.
- The properties south of the Blackbird properties extending south to the City limits and the Shana Park neighborhood. This area primarily consists of a 6.2 acre parcel owned by the Shana Park Homeowner's Association located along the southern shore of Smith Lake. It serves as a buffer between the Shana Park Development and the lake and is restricted from any

1 development. There is also a thin slice of property owned by Thurston County along the east
2 side of Smith Lake, lying between the Shana Park greenbelt to the south and the Blackbird
3 property to the north. It serves as a spur trail from the adjoining Chehalis Western Trail to a
4 public lookout along the southeast shore of Smith Lake.

5 ● All remaining properties north of the Blackbird properties and south of the
6 Chambers Ditch and Herman Road/37th Avenue consisting of 7 parcels covering approximately
7 60 acres. A few of these parcels are also owned by Thurston County Parks and consist of
8 segments of the Chehalis Western Trail. In addition, there are 4 privately owned parcels ranging
9 in size from 6 to 21 acres. These parcels are undeveloped with the exception of a few single-
10 family residences.

11 In total, the area under consideration for rezoning consists of approximately 121 acres
12 and includes: the 3 parcels owned by Blackbird (49 acres); the Shana Park greenbelt (6 acres);
13 5 parcels owned by Thurston County Parks associated with the Chehalis Western Trail and/or the
14 spur to Smith Lake (15 acres); and 4 privately owned large parcels north of the Blackbird
15 properties (50 acres).

16 Apart from Smith Lake, the most noteworthy future of this area is its lack of development
17 and rural appearance.

18 Municipal water is available but there are no sewer lines in the area nor anywhere close
19 by. Extending sewers to this area will be difficult. There are also no public streets in the rezone
20 area. The City's 2030 Transportation Plan envisions a north/south road through the area
21 commencing at the current terminus of Normandy Drive and continuing northwesterly to a
22 connection with Wiggins Road. The Transportation Plan also envisions an east/west road
23 through this area, perhaps as an extension of the existing Fuller Lane, a private lane. If so, this
24 road would probably become 45th Avenue and extend from Wiggins Road east to the Lacey City
25 Limits.

History of the Rezoning Application.

18 This application for rezoning has had some unusual twists with the net result being that
19 what appeared to be agreement among all interested parties for a rezoning to R-4CB is not the
20 case. The following chronology will help explain:

21 ● The original applicant, Blackbird Smith Lake, LLC, applied to have its 3 parcels
22 surrounding Smith Lake rezoned to R 4.

23 ● Public response to this initial application was mixed. Notably, the Shana Park
24 HOA issued a response letter in which it "took no position" as to Blackbird's application for
25 rezoning to R 4.

1 Schauffler, Assistant Planner. The original Applicant, Blackbird Smith Lake, LLC, appeared
2 through Jim Peschek. A few members of the public were present but the only two to provide
3 testimony were John Sladek and Warren Devine, both residents of Shana Park and its HOA
4 officers. A verbatim recording was made of the public hearing and all testimony was taken
5 under oath. Documents considered during the hearing included the Staff Report and all
6 attachments along with all public comment received in advance of the hearing. The only
7 additional document presented was an additional written public comment from Scott and Cheryl
8 Christensen. All of these documents can be found at the City's website.

9 The public hearing was relatively short as the only testimony came from Mr. Schauffler of
10 City Staff; Mr. Peschek on behalf of Blackbird; and Mr. Sladek and Mr. Devine,
11 residents/representatives of the Shana Park neighborhood. Although the testimony was brief it
12 demonstrated significant differences of opinion among the interested parties.

13 The public hearing began with the testimony of Mr. Schauffler of City Staff. He
14 confirmed that the City is now the Applicant for an enlarged application to rezone this entire area
15 to R-4CB. The original application was brought by Blackbird seeking to rezone its three parcels
16 from R 4-8 to R 4 but the City decided that rezoning a larger area was more appropriate, and that
17 the more appropriate rezoning would be to R-4CB.

18 There has been some confusion as to just how large this expanded rezoning area is.
19 Page 1 of the Staff Report suggests that the expanded rezoning area contains 178 acres, while
20 Page 2 of the Staff Report identifies it as containing 118 acres. Mr. Schauffler says that both of
21 these numbers are in error and that the correct acreage is approximately 121 acres.

22 Although the City has become the Applicant seeking this rezoning, City Staff are not
23 entirely comfortable with it. Mr. Schauffler would prefer that the property retain its R 4-8 zoning
24 designation as it is most in keeping with the City's requirement to develop its remaining unused
25 properties at an urban intensity. Nonetheless, Mr. Schauffler concedes that if the property is not
26 rezoned it is unlikely to see development as its environmental limitations will prevent
27 development at the R 4-8 level. Thus, for any development to occur it must be at sufficiently
28 low densities to avoid upsetting the delicate environmental balance in this portion of the
29 Chambers Basin. While Mr. Schauffler would prefer the area to remain zoned R 4-8, he
30 recognizes the need for it to be downzoned to allow at least some development without causing
31 environmental harm.

32 While the original application for rezoning by Blackbird requests R 4 zoning, the City's
33 application asks that the entire area be rezoned to R-4CB in order that the area enjoy the same
34 zoning designation as all of the adjoining properties to the north, creating a common zoning
35 designation for all portions of the Chambers Basin within City Limits. In addition, it would
36 maximize environmental protections by reducing impervious surfaces and increasing areas
37 dedicated to stormwater dispersal. In other words, it would best assure that any development in
38 the area not increase neighborhood flooding or cause harm to Smith Lake.

1 Mr. Schaufler acknowledges that any rezoning must satisfy the five criteria found in
2 OMC 18.59.050. He asserts that the proposed zoning change to R-4CB satisfies all five criteria:

3 **Criteria A:** The rezone is consistent with either the Comprehensive Plan including the
4 Plan's Future Lane Use Map best described in OMC 18.59.055 or with a concurrently approved
5 amendment to the Plan.

6 **Answer:** Mr. Schaufler asserts that the R-4CB zoning is consistent with the City's
7 Comprehensive Plan's Goals and Policies, especially those associated with environmental
8 protection, and would be consistent with the area's designation as "Low Density Neighborhood"
9 on the Future Land Use Map.

10 **Criteria B:** The rezone will maintain the public health, safety or welfare.

11 **Answer:** Mr. Schaufler believes that the rezone will be beneficial to the public health by
12 maximizing protection to the environment from any development. Site specific actions to
13 maintain the public, health, safety or welfare will be required and addressed as part of any future
14 development.

15 **Criteria C:** The rezone is consistent with other development regulations that implement
16 the Comprehensive Plan.

17 **Answer:** Mr. Schaufler finds that the rezone is consistent with City's other
18 environmental and development regulations implementing the Comprehensive Plan, and again, is
19 consistent with the Future Land Use Map.

20 **Criteria D:** The rezone will result in a district that is compatible with adjoining zoning
21 districts; this may include providing a transition zone between potentially incompatible
22 designations.

23 **Answer:** The rezone will result in this area having the same zoning designation as all
24 other areas of the Chambers Basin within City Limits and will create a common density that best
25 protects the basin's sensitive environmental. This common zoning designation will also be
consistent with the zoning of property to the west located in the County but within the City's
UGA.

Criteria E: Public facilities and services existing and planned for the area are adequate
and likely to be available to serve potential development allowed by the proposed zone.

Answer: As previously noted, public water is currently available to the area. Public
sewer is not available and unlikely to be extended to the area, but development at reduced
intensity could allow for on-site systems to address both wastewater and stormwater needs.

1 Upon questioning from the Hearing Examiner Mr. Schaufler acknowledged that the
2 proposed rezoning is not consistent with all aspects of the City's Comprehensive Plan. Most notably:

3 • It is not consistent with the City's goal to develop unused properties at levels of
4 urban intensity sufficient to ensure housing for the City's population forecast. This imposes a
5 greater duty on the City's remaining unused property to develop at more intensive levels.

6 • It does not satisfy the Plan's goals and policies for equity and social justice. The
7 small number of allowed residential units will significantly increase their cost and make them
8 unaffordable for much of the City's population. This is inconsistent with City goals to have all
9 neighborhoods share in the responsibility for affordable housing.

10 • Low density housing will not promote the extension of municipal utilities,
11 especially sewer.

12 But the Comprehensive Plan acknowledges that its goals and policies will sometimes be
13 in conflict and not all of them can be achieved at the same time. The proposed rezoning is driven
14 by the Plan's paramount goals for environmental protection at the cost of inconsistency with
15 goals for development at urban intensities; equitable housing opportunities and expansion of
16 public utilities. Mr. Schaufler concludes that the importance of protecting a critical and highly
17 sensitive environment causes this rezoning to be consistent with the Comprehensive Plan despite
18 these conflicts.

19 Mr. Schaufler adds that the proposed rezoning is likely to be consistent with the
20 Comprehensive Plan's goals for a highly connected street system. As noted earlier, the City's
21 2030 Transportation Plan identifies both north/south and east/west connectors through the area to
22 provide much needed improvements to traffic flow. If this area remains undeveloped the streets
23 are not likely to be constructed. By allowing the area to be zoned less intensively, development
24 - and streets - become more likely. Mr. Schaufler confirmed that any development of these
25 properties will be required to make street improvements as envisioned in the Transportation Plan.
Thus, reducing residential density should actually increase the likelihood of improved street
connections.

Following Mr. Schaufler's testimony, Jim Peschek spoke on behalf of the original
Applicant, Blackbird Smith Cove, LLC. Mr. Peschek began by reminding the Hearing Examiner
that Blackbird was the original Applicant for a rezoning to R 4 and that its preference remains a
rezoning of its property to R 4. He added that the property is simply not developable at its
current R 4-8 designation and that development will only occur if it is rezoned to either R 4 or
perhaps R-4CB, although Blackbird continues to request that it be rezoned to R 4.

Mr. Peschek presented an engineering diagram for an earlier project proposed for
Blackbird's property. This project, given the name "Poet's Cove" was submitted in 2008 and
proposed 129 residential units consistent with the property's R 4-8 zoning and would have had

1 tightly clustered residential units near the shores of Smith Lake. The project was not pursued for
2 a number of reasons but Mr. Peschek acknowledges that, had it been pursued, it would have met
3 overwhelming environmental challenges that would have precluded its approval. Mr. Peschek
4 believes this would be true for any project proposed for the site under the current R 4-8 zoning
5 designation. Indeed, he believes that the environmental studies undertaken in the basin confirm
6 that the area should never have been zoned R 4-8 and that lesser density is essential for any
7 development.

8
9 Blackbird first began looking at seeking rezoning in 2017 but encountered a number of
10 roadblocks including the City's ongoing updates of its Transportation and Utility Plans as well as
11 its Critical Areas Ordinance. Once these plans and regulations were updated Blackbird resumed
12 its application for rezoning in about 2020.

13
14 Mr. Peschek acknowledges that the R 4 and R-4CB zoning designations are fairly similar.
15 Most notably, neither one imposes a minimum number of units per acre and so either one would
16 allow for the type of development envisioned by Blackbird. The key difference between the two
17 is in their engineering requirements. These differences are highlighted in Attachment 10 to the
18 Staff Report which offers a side-by-side comparison of the two zoning designations. Apart from
19 a few differences in permitted uses, the key difference are with maximum building coverage
20 (35% for R 4, only 6% for R-4CB) and maximum impervious surface coverage (35% for R 4,
21 only 6% for R-4CB but increased to 18% if associated with a drainage disbursal tract). In
22 addition, R-4CB imposes a minimum open space area of at least 65% of the lot for drainage
23 disposal. The R 4 zone has no similar requirement. The net effect of these differences is that a
24 residential unit in the R-4CB zone will be much more limited in allowed building coverage and
25 impervious surfaces while also obligated to dedicate at least 65% of the lot to drainage disbursal.
These requirements translate to significant limitations on accessory buildings (ADU's, garages,
etc.) as well as on driveways, parking areas, patios, etc.

Mr. Peschek believes these limits are unnecessary in light of the improved regulations
found in the City's updated Critical Areas Ordinance and stormwater regulations. Stated slightly
differently, Mr. Peschek believes that the R 4 zoning will allow for greater development
opportunities without risking environmental degradation, as the City's other environmental
regulations will assure adequate protection. In other words, he believes the R-4CB zoning to be
unnecessarily rigid and formulaic while the R 4 zoning allows greater flexibility yet still ensures
environmental protection through the City's other regulations.

Mr. Peschek makes the additional argument that environmental studies of the Chambers
Basin suggest that high groundwater/flooding problems in the basin are not as severe in the
upper (southern) portion of the basin. He therefore argues that the restrictions imposed under the
R-4CB zoning are appropriate north of the Chambers Ditch/Herman Road but less appropriate in
this area.

1 Mr. Peschek believes it is important to note that Blackbird's property will bear most of
2 the responsibility for the proposed north/south and east/west road connections. The amount of
3 property to be dedicated to these roads, coupled with the substantial set asides for Smith Lake,
4 other wetlands and buffers, will severely limit the amount of remaining developable area. The
5 limitations imposed under R-4CB will significantly increase the burdens on that remaining area.
6 Mr. Peschek believes these burdens to be too great and hints that Blackbird may simply choose
7 not to develop if its property is rezoned to R-4CB.

8 Following Mr. Peschek's testimony the hearing was opened for public comment. Only
9 two individuals asked to speak, John Sladek and Warren Devine. Mr. Sladek and Mr. Devine
10 had both provided earlier written comments and their testimony was largely a restatement of
11 these earlier written comments. Mr. Sladek is a civil engineering professor while Mr. Devine is
12 a retired scientist and both provided articulate, well-reasoned comments. Both also serve on the
13 HOA for Shana Park. And in addition to his comments relating to the project, Mr. Devine has
14 prepared a short treatise on the ecology of Smith Lake that should be recommended reading for
15 all who have an interest in the area's development.

16 As earlier noted, when Blackbird first applied for rezoning to R 4 the Shana Park
17 Neighborhood responded by not taking a position on this application. This was the result of the
18 neighborhood concluding that it did not have enough information on which to make a more
19 complete recommendation. Then, later, when the City enlarged the rezoning application to
20 include Shana Park's greenbelt and to request that all areas be rezoned to R-4CB, the Shana Park
21 HOA issued a new letter "strongly supporting" the rezoning of the Shana Park greenbelt to
22 R-4CB while also supporting the rezoning of the remaining properties to R-4CB. The Shana Park
23 HOA believes that any development in the area raises three key issues:

- 24 1. **Access**. The residents of Shana Park do not want an extension of Normandy
25 Drive into the properties to the north despite the City's 2030 Transportation Plan
proposing this connection. Shana Park defends its position partly on the road's impacts to
wetlands and buffers but primarily due to a desire that this area's traffic not come through
its neighborhood. The HOA believes that a rezoning of the area to R-4CB will minimize
development and thus reduce the need for a street connection to Normandy Drive.
2. **Flooding**. The HOA notes that the entire area has unusually high groundwater
levels and is subject to flooding, with several Shana Park lots having experienced
flooding on at least two recent occasions. The neighborhood believes that the R-4CB
zoning designation will best ensure development at a sufficiently low enough density,
and with sufficient safeguards, to prevent any worsening of current flooding problems.
3. **Environment**. The Shana Park Neighborhood wishes to see Smith Lake
protected and remain a location for diverse wildlife. The neighborhood believes that the
R-4CB zoning designation will best protect these resources and maximize open spaces
and natural areas.

1 Upon learning that Blackbird wishes to continue pursuing its requested rezone to R 4, not
2 R-4CB, Mr. Devine and Mr. Sladek expressed opposition to any rezoning other than R-4CB.

3 Mr. Devine and Mr. Sladek also reiterated the neighborhood's position that it will resist
4 any effort to connect the area's roads to Normandy Drive and Shana Park, no matter what zoning
5 designation it has.

6 Although Mr. Sladek and Mr. Devine were the only members of the public to testify,
7 other individuals residing in the area had provided earlier written comments. Most of these
8 comments were of a similar nature, that is, they expressed a strong desire to see Smith Lake and
9 its environment protected; they are concerned about the potential worsening of area flooding;
10 and they do not want their streets burdened with additional traffic. For these reasons they are
11 generally opposed to development but consider the R-4CB zoning to be the best alternative to
12 minimize its impacts.

13 Following the public testimony, Mr. Schaufler responded briefly to the testimony of Mr.
14 Peschek and Blackbird's request for rezoning to R 4 rather than R-4CB. He repeated his earlier
15 testimony that the only reason the City supports a downzoning is because of the area's
16 environmental sensitivity. If the City is going to rezone due to its environmental sensitivity, it
17 should rezone to a designation (R-4CB) that fully recognizes and protects its unique
18 environmental challenges. Mr. Schaufler also suggests that Blackbird wants it both ways: it
19 wants its properties to be downzoned because of environmental challenges but doesn't want to be
20 downzoned to a designation intended to most fully address these challenges. City Staff
21 continues to believe that if downzoning is appropriate the R-4CB designation is the better choice.

22 ANALYSIS AND FINDINGS

23 **A. Is the rezone consistent with either the Comprehensive Plan including the 24 Plan's Future Land Use Map or with the concurrently approved amendment to the Plan? 25 OMC 18.59.050(A)**

City Staff recommends rezoning to R-4CB on the basis that the proposed downzoning is
consistent with the City's Comprehensive Plan, especially its provisions relating to
environmental protection. Unfortunately, this conclusion is reached without much actual
discussion of the Plan's goals and policies. If the rezoning is to be approved, there must first be a
stronger case for its consistency with the Comprehensive Plan.

As the City Council well knows, "consistency with the Comprehensive Plan" does not
require total consistency or the absence of any inconsistency. Even the Plan itself recognizes
this:

"At times, goals or policies may seem to be in conflict with each other. For
example, a goal to increase density may seem to be in conflict with the goal to
preserve open space. Or a goal to increase tree canopy may seem to be in conflict

1 with the goal to increase solar energy access. Over the next 20 years, the complex
2 challenges and opportunities we face as a community will often require us to
3 strike a balance between different goals and policies to provide the best outcome
4 for the community as a whole. Thus, individual goals and policies should always
5 be considered within the context of the entire Plan." (Introduction, at page 7)

6 The Plan begins with several vision statements that may help inform this rezoning
7 decision:

8 "Olympians expressed that they are willing to accept growth *as long as our*
9 *environment and sense of place is preserved.* That means protecting the places
10 and culture that we recognize as 'Olympia', even if those things are a little
11 different for each of us. It also means focusing on our community values and
12 vision as we grow." (Introduction, at page 13)

13 "Increased growth in Olympia is anticipated. Citizens need to integrate the:
14 quality of new residences, demographics, likely places of residence, housing
15 typology, and prevention of rural and city sprawl. . . ." (Introduction at page 15)

16 "As we grow, Olympia will become a higher density city and our land and water
17 supplies will need to support more people. We can take advantage of growth as a
18 tool to reshape our community into a more sustainable form; *to do so we must*
19 *balance growth, use our resources wisely, and consider the carrying capacity of*
20 *the land.*" (Introduction, at page 16)

21 Similarly, the Community Values and Vision portion of the Plan also helps inform this
22 rezoning decision:

23 "Olympians value our role as stewards of the water, air, land, vegetation and
24 animals around us, *and believe it is our responsibility to our children and*
25 *grandchildren to restore, protect, and enhance the exceptional natural*
environment that surrounds us." (Community Values, at page 21)

"Well-implemented neighborhood sub-area planning will help us determine
unique neighborhood assets to protect and enhance; *where and how to increase*
density and retain greenspace; and develop safe and convenient access to
everything from grocery stores to schools, neighborhood parks, community
gardens and neighborhood gathering places." (Community Values, at page 23)

The portion of the Plan devoted to the Natural Environment frequently speaks to the
issues raised in this rezoning question:

1 "Our community recognizes that natural resources are precious and limited, and
2 that our growing population will test those limits. Our ability to meet several key
3 challenges will define how well we manage our natural environment in the
4 coming decades.

4 Key Challenges:

5 ● A growing population will put more pressure on these resources; to
6 remove trees, to replace natural land surfaces with roads, buildings, and parking
7 lots, *and to encroach onto environmentally sensitive area.*

7 "As Olympia continues to grow, it will be essential to reach a careful balance
8 between planning for growth and maintaining our natural environment."
(Page 44)

9 "As a key land steward, the City's role is to encourage and regulate new
10 development and land management practices in a way that minimizes negative
11 environmental impacts by:

11 ● Carrying out the State's Growth Management Act's requirement that City's
12 plan for anticipated population growth by accepting the need for denser
13 development so that larger expanses of rural land can be preserved.

14 ● Encouraging low impact development

15 ● *Identifying land at greatest risk for preservation, enhancement, and
16 stewardship to support a diversity of wildlife habitat and species."*

16 In keeping with this vision, several goals and policies for the Natural Environment have a
17 bearing on this rezoning:

18 GN1 Natural resources and processes are conserved and protected by Olympia's
19 planning regulatory, and management activities.

20 PN1.1 Administer development regulations which protect
21 environmentally sensitive areas, *drainage basins*, and wellhead
22 areas.

22 PN 1.3 *Limit development in areas that are environmentally
23 sensitive*, such as steep slopes and wetlands. Direct development
24 and redevelopment to less sensitive areas.

24 PN1.4 Conserve and restore natural systems, such as wetlands
25 and stands of mature trees, to contribute to solving environmental
issues.

1 PN1.6 *Establish regulations and design standards for new*
2 *developments that will minimize impacts to stormwater runoff,*
3 *environmentally sensitive areas, wildlife habitat, and trees.*

4 GN6 Healthy aquatic habitat is protected and restored.

5 PN6.2 Maintain or improve healthy stream flows that support a
6 diverse population of aquatic life.

7 PN6.4 Use regulations and other means to prevent a net loss in the
8 function and value of existing wetlands, while striving to increase
9 and restore wetlands over the long term.

10 PN6.8 Evaluate expanding low impact development approaches
11 Citywide, such as those used in the Green Cove Basin.

12 The portion of the Plan dedicated to Land Use and Urban Design reminds us that "how
13 we choose to live within, and how we alter, our landscape is critical to our quality of life, and to
14 whether that quality of life can be sustained and improved. . . . Our community seeks to:
15 establish land use patterns that ensure residential densities sufficient to accommodate 20 years of
16 population growth." (Page 70)

17 With this vision in mind, the goal and policies for Land Use include:

18 GL1 Land use patterns, densities and site designs are sustainable and support
19 decreasing automobile reliance.

20 PL1.1 Ensure that new development is built at urban densities or
21 can be readily modified to achieve those densities; and require that
22 development lacking municipal utility service be designed to cost
23 effectively transform when services become available.

24 PL1.2 Focus development in locations that will enhance the
25 community and have capacity and efficient supporting services,
*and where adverse environmental impacts can be avoided or
minimized.*

GL16 The range of housing types and densities are consistent with the
community's changing population needs and preferences.

GL16.1 Support increasing housing densities through the well designed, efficient,
and cost effective use of buildable land, *consistent with environmental constraints
and affordability.*

1 PL16.2 Adopt zoning that allows a wide variety of compatible
2 housing types and densities.

3 PL16.4 Disburse low and moderate income and special needs
4 housing throughout the urban area.

5 PC16.5 Support affordable housing throughout the community by
6 minimizing regulatory review, risk, time and cost, and removing
7 unnecessary barriers to housing, by permitting small dwelling units
8 accessory to single-family housing, and by allowing a mix of
9 housing types.

10 Goals and policies relating to Streets may also provide some guidance:

11 "A city with a well connected network of smaller streets helps create a better city
12 for walking, biking, riding the bus and driving. This 'connectivity' creates a
13 human-scale environment. Whether people are walking, biking, or driving, their
14 routes are shorter. Transit riders can get to their stops more easily. A well-
15 connected street grid provides direct and efficient access for all types of service
16 vehicles including transit buses, delivery trucks, and emergency vehicles."
17 (Page 134)

18 "There can be challenges with making street connections. Topography in
19 environmentally sensitive areas can make connections infeasible. Some street
20 connections and the resulting changes to traffic patterns have the potential to
21 affect neighborhood character or disproportionately impact some residents. The
22 City will balance decisions about the value of a street connection with potential
23 impacts to the unique geography, character or historical context of a residential
24 neighborhood." (Page 135)

25 GT 4 The street network is a well-connected system of small blocks, allowing
short, direct trips for pedestrians, bicyclists, transit users, motorists, and service
vehicles.

PT4.10 Require new developments to connect to the existing
street network and provide for future street connections to ensure
that grided street system is built concurrent with development.

PT4.14 Build a dense grid of local access and collector streets to
provide motorists with multiple ways to enter and exit
neighborhoods instead of using arterial streets for trips within the
neighborhood.

PT4.18 Plan and identify street connections in undeveloped areas
to ensure they are eventually connected.

1 In addition to the visions, goals and policies cited above, it must be remembered that the
2 rezoning area lies within a larger area designated as a "Low Density Neighborhood" in the Plan's
Future Land Use Map. The Plan describes "Low Density Neighborhoods" as:

3 "Primarily single-family detached housing and low rise multiple-family housing,
4 in densities ranging from twelve units per acre to one unit per five acres
depending on environmental sensitivity of the area. Where environmental
5 *constraints are significant, to achieve minimum densities extraordinary clustering*
6 *may be allowed when combined with environmental protection. Barring*
7 *environmental constraints, densities of at least four units per acre should be*
8 *achieved. . . . Specific zoning and densities are to be based on the unique*
characteristics of each area with special attention to stormwater drainage and
aquatic habitat. . . ."

9 The proposed rezoning to either R 4 or R-4CB is not consistent with all of the goals and
10 policies identified above. In particular, it is inconsistent with the visions, goals and policies
11 requiring the City to plan for anticipated population growth by accepting the need for denser
12 development (PL1.1) or with the City's desire that low and moderate income and special needs
13 housing be distributed throughout the urban area (PC16.4). But apart from a few such
14 inconsistencies, the proposed rezoning is generally consistent with all of the other above cited
15 visions, goals and policies as well as the area's designation as Low Density Residential in the
16 Plan's Future Land Use Map. The Plan frequently and consistently prioritizes the protection of
17 the environment over increased development as evidenced by the many italicized provisions
18 above. There is little question that the Plan envisions lower residential densities - even
19 extremely low residential densities - if deemed necessary to protect an unusually fragile
20 environment. Earlier studies have proven this area to be unusually fragile and in need of
21 protection. The proposed rezoning is therefore consistent with the Comprehensive Plan.

22 Rezoning to either R 4 or R-4CB would be consistent with the Plan, but rezoning to
23 R-4CB would be *more* consistent as it would best ensure the environmental protection that
24 justifies the extremely low residential density.

25 **B. Will the rezoning maintain the public health, safety or welfare? OMC
18.59.050(B)**

26 This requirement is a frustrating one as it is highly subjective and without measurable
27 standards.

28 From one perspective, it could be argued *any* rezoning to a lower density will not
29 maintain public health, safety or welfare for the simple reason that it will allow a large
30 undeveloped area to be more easily developed, albeit to low density levels. The mere act of
31 development, especially in environmentally sensitive areas, could be argued to be injurious to the
32 public welfare. But this argument would effectively deny the landowners the use of their
33 properties and perhaps effect a taking. Such approach would be inconsistent with the
34 Comprehensive Plan and unconstitutional without just compensation.

1 If the goal of the zoning designation is, instead, to achieve *reasonable* development in a
2 manner consistent with the Comprehensive Plan, then rezoning the area to either R-4CB or R 4
3 would help maintain the public health, safety or welfare, as either would allow the possibility of
4 development but at levels that minimize possible harm to the area's fragile ecosystem. Once
again, the R-4CB, zoning designation would better protect the public's interest but at the expense

5 **C. Is the rezone consistent with other development regulations that implement
6 the Comprehensive Plan?**

7 I agree with Mr. Schaufler that the requested rezoning is consistent with the City's other
8 environmental and development regulations implementing the Comprehensive Plan and is
consistent with the Future Land Use Map.

9 **D. Will the rezone result in a district that is compatible with adjoining zoning
10 districts?**

11 Rezoning the area will make its zoning compatible with all property to the north, having a
12 zoning designation of R-4CB, and with property to the west in the City's UGA (having a zoning
13 designation of R1-5). Rezoning will cause the area to be less compatible with zoning of
properties to the south and east (in the County or in Lacey) but these properties do not have the
same environmental challenges and compatibility is therefore less of an issue. In total, rezoning
will result in a district that is compatible with adjoining zoning districts.

14 Of the two proposed zoning designations, R-4CB would be *more* compatible as it would
15 establish a common zoning designation for the Chambers Basin in City limits. This will provide
16 for a more equitable application of development regulations in the region, with all properties
within the basin receiving like treatment.

17 **E. Are public facilities and services existing and planned for the area adequate
18 and likely to be available to serve potential development allowed by the proposed zone?**

19 Municipal water is presently available to the site and its availability is unaffected by the
20 area's zoning. Municipal wastewater and stormwater facilities are not available nearby and
21 highly unlikely to be made available. Indeed, it is their lack of availability that has largely
22 precluded any development under the current R 4-8 zoning designation. Rezoning to R 4 or
23 R-4CB will allow for the possibility of individual or small-scale systems in lieu of extensions of
municipal mains. Rezoning will also increase the likelihood of development which, in turn, will
cause the construction of desired new streets providing area connectivity. Rezoning will
therefore assist in assuring that public facilities and services are likely to be available to serve
potential development.

1 **SUMMARY**

2 I concur with City Staff that rezoning to either R 4 or R-4CB will satisfy each of the five
3 criteria found in OMC 18.59.050 for the reasons set forth above.

4 I further concur with City Staff that, between the two options for rezoning, R-4CB is the
5 preferred option as it is:

- 6 1. Most consistent with the Comprehensive Plan and its paramount goal of
7 protecting the natural environment;
- 8 2. Most likely to maintain the public health, safety or welfare; and
- 9 3. Most compatible with adjoining zoning districts, especially the adjoining
10 R-4CB district to the north.

11 I do not find anything wrong in rezoning to R 4 but simply find that it is less preferred for
12 the reasons stated. As noted earlier, Blackbird asserts that environmental studies have suggested
13 less fragility to this portion of the upper Chambers Basin as compared to the lower basin to the
14 north, but no evidence was submitted to support this claim. Clear evidence in support of this
15 claim might provide greater support for a rezoning to R 4. In the absence of such evidence,
16 however, the R-4CB designation remains the preferred one.

17 Lastly, Blackbird has suggested that the City's recent updates to its stormwater, critical
18 areas, and other environmental regulations lessen the need for the rigid requirements currently
19 found in the R-4CB zoning. The Council may want to separately review these requirements to
20 confirm their continuing benefit.

21 DATED this 5th day of NOVEMBER, 2021.

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Mark C. Scheibmeir
City of Olympia Hearing Examiner