



December 17, 2019

Greetings:

**Subject: State and Water Mixed Use
File Number 19-1844**

The enclosed decision of the Olympia Hearing Examiner hereby issued on the above date may be of interest to you. This is a final decision of the City of Olympia.

In general, any appeal of a final land use decision must be filed in court within twenty-one (21) days. See Revised Code of Washington, Chapter 36.70C, for more information relating to timeliness of any appeal and filing, service and other legal requirements applicable to such appeal. In particular, see RCW 36.70C.040.

Please contact the City of Olympia, Community Planning and Development Department, at 601 4th Avenue East or at PO Box 1967, Olympia, WA 98507-1967, by phone at 360-753-8314, or by email cpdinfo@ci.olympia.wa.us if you have questions.

Sincerely,

Kenneth Haner
Program Assistant
Community Planning and Development

Enclosure:

1 BEFORE THE CITY OF OLYMPIA HEARINGS EXAMINER

2 IN RE:) HEARING NO. 19-1844
3 URBAN OLYMPIA IX, LLC)
4) FINDINGS OF FACT,
5) CONCLUSIONS OF LAW
6) AND DECISION

7 **APPLICANT:** Urban Olympia IX, LLC

8 **REPRESENTATIVES:**

9 Mike Kershisnik
10 Ron Thomas
11 Thomas Architecture Studio
12 525 Columbia Street S.W.
13 Olympia, Washington 98501

14 **SUMMARY OF REQUEST:**

15 A Shoreline Substantial Development Permit, a Shoreline Conditional Use Permit, and land use
16 approval to construct a five-story mixed-use building in the Urban Intensity shoreline
17 jurisdiction.

18 **LOCATION OF PROPOSAL:**

19 114 Water Street N.W., Olympia, Washington.

20 **SUMMARY OF DECISION:**

21 The Shoreline Substantial Development Permit, Shoreline Conditional Use Permit, and proposed
22 use are **approved** subject to amended conditions requested by City Staff.

23 **BACKGROUND**

24 The Applicant proposes to construct a five-story mixed-use building commonly referred
25 to as "State and Water" consisting of four upper floors of apartment units over a ground floor of
retail and restaurant uses and tenant-related parking. The project site is located at 114 Water
Street N.W. at the southeast corner of the intersection of State Avenue and Water Street N.W.

1 The site currently contains a parking lot. Located across the street, on the north side of State
2 Avenue, is the similar "Laurana" project currently under construction by the same developer.

3 A portion of the site lies within 200 feet of Budd Inlet and the project therefore requires a
4 Shoreline Substantial Development Permit as well as land use approval. In addition, the project
5 includes Non-Water-Oriented Commercial Uses within 100 feet of the Ordinary High Water
6 Mark of Budd Inlet and therefore requires a Shoreline Conditional Use Permit. The Laurana
7 project across the street had identical permitting requirements.

8 And, like the Laurana project, the project site is located in the Urban Waterfront Housing
9 (UW-H) zoning district. Its designation in the City Shoreline Master Program is Urban Intensity
10 while its land use designation in the Comprehensive Plan is Residential Mixed Use with High
11 Density Neighborhood Overlay.

12 The project site is bounded by State Avenue to the north and Water Street to the west.
13 The public amenities of Percival Landing are located on the west side of Water Street and
14 continue north. Across State Avenue is the Laurana project and, further north, City-owned
15 parking areas and other public uses. South and east of the project is an eclectic mix of
16 commercial uses, downtown housing and parking areas. The general neighborhood is presently
17 undergoing a dramatic conversion to new mixed-use buildings containing ground floor
18 commercial and retail uses and upper story residential uses, with at least four such projects
19 currently under construction within short distances of the project site.

20 The project proposes to eliminate the existing parking areas and construct a new five-
21 story mixed use building with a total of 60 apartment units on the second through fifth floors;
22 rooftop deck amenities for the building's residents; ground floor retail/restaurant area of 2,968
23 square feet, plus 39 new parking stalls intended for the building's residents. Other notable
24 features include outdoor restaurant seating located along wide sidewalks (19-22 feet) and public
25 sidewalk benches, all intended to enhance the property's proximity to the nearby shoreline. In

1 addition, a new crosswalk with flashing beacons will allow pedestrian crossing across State
2 Avenue at the northwest corner of the site.

3 Prior to the public hearing I undertook an independent site visit to examine the project
4 site and all surrounding land uses.

5 The public hearing commenced at 6:30 p.m., on Monday, December 9, 2019, in the City
6 Council Chambers in the City Hall. The City appeared through Cari Hornbein, Senior Planner
7 along with other members of City Staff. The Applicant appeared through its architects, Mike
8 Kershisnik and Ron Thomas. A verbatim recording was made of the public hearing and all
9 testimony was taken under oath. Documents considered at the time of the hearing were the City
10 Staff Report (Exhibits 1 through 17), as well as one additional exhibit (Exhibit 18) presented by
11 City Staff during the hearing. Exhibit 18 consists of correspondence to/from the Nisqually
12 Indian Tribe resulting in proposed changes to the language found in Condition 13 of project
13 approval.

14 Ms. Hornbein began her testimony by noting several small corrections to the information
15 contained in her Staff Report:

16 ● On page 9 under the paragraph entitled "Development Standards - Table 6.02" the
17 last line of the paragraph should read: "District's height limit for an overall height of 83 feet" (not
18 "108 feet").

19 ● On page 10 the paragraph entitled "Shoreline Uses, OMC 18.20.620 - Table 6.1"
20 the third line should read: "The project also requires a Shoreline Conditional Use Permit because
21 the structure is located . . . " (not "plaza").

22 ● On page 10 the paragraph entitled "Public Access OMC 18.20.450-.480" the fifth
23 line should read: "Recommendation includes conditions regarding timing of structure
24 completion, recording of public access . . . " (not "plaza").

1 ● On page 11 the paragraph entitled "View Protection OMC 18.20.500-.504" the
2 third line should read: "Building within the shoreline jurisdiction will not exceed the maximum
3 height allowed in the zoning district (65 feet) . . . " (not "35 feet").

4 Ms. Hornbein explained that, following preparation of her written Staff Report, the
5 Nisqually Tribe requested enhanced archaeological monitoring during construction. The City
6 agreed with the Tribe's request and has therefore asked that its proposed Condition No. 13 be
7 modified as follows:

8 "A Monitoring and Inadvertent Discovery Plan shall be prepared and submitted
9 with the construction permit application(s). The plan shall provide for
10 professional on-site monitoring during ground-disturbing activity, to include
11 Tribal representatives if they desire. The plan shall also describe the actions to be
12 taken by the project proponent and site crew in the event that archaeological
13 resources are uncovered during the course of project work. The plan shall be
14 completed and approved prior to issuance of any construction permits or
15 commencement of any site work, and a copy of the plan maintained on-site
16 throughout construction. OMC 18.12.140" See Exhibit 18.

17 Ms. Hornbein focused most of her testimony on the project's need for a Substantial
18 Development Permit and a Shoreline Conditional Use Permit. The City believes that the
19 project, as conditioned, complies with the City's Comprehensive Plan, the City's Shoreline
20 Master Program (SMP) and shoreline regulations, and the State Shoreline Management Act
21 (SMA). In recognition of the project's proximity to the shoreline, the project has been designed
22 with wider than normal sidewalks to serve as a promenade and to facilitate outdoor seating,
23 including outdoor restaurant seating. All parking has been moved to the rear of the building, out
24 of public site, and outside of the shoreline jurisdictional area. The proposed crosswalk across
25 State Avenue is intended to facilitate pedestrian traffic past the site north to the Percival Landing
area and its many shoreline amenities.

 Ms. Hornbein acknowledges that the project is subject to the City's View Corridor
protections and that it has been found to comply with these requirements. The project is also

1 within 1,000 feet of Budd Inlet and is therefore subject to the City's Critical Areas ordinance, but
2 the Washington Department of Fish and Wildlife (WDFW) has determined that a Habitat
3 Management Plan (HMP) will not be required on the grounds that the site is already developed
4 and contains no fish or wildlife habitat (Exhibit 14). The City therefore waives the requirement
5 for an HMP.

6 Ms. Hornbein notes that the site is in a Sea Level Rise Flood Damage Area. The finished
7 floor elevation is proposed to be 14.3 feet. As the floor elevation sits below an elevation of 16
8 feet, the lowest floor must be protected from flooding. In response, the building is being
9 constructed with 2 foot sills and will also be subject to "dry flood proofing methods" to be
10 determined at time of building permit application.

11 The site is located in the Downtown Exempt Parking Area and is therefore exempt from
12 any required parking for its residential tenants. It also has less than 3,000 square feet of gross
13 leasable commercial area and is therefore exempt from any minimum parking for retail patrons.
14 Nonetheless, the project proposes the construction of 39 parking stalls on the ground floor, some
15 of which will be covered. It is the developer's intention to dedicate them to the residents use,
16 leaving business patrons to park off-site.

17 At the conclusion of Ms. Hornbein's testimony, the Hearing Examiner inquired as to
18 whether consideration had been given to any possible queuing problems for traffic along State
19 Avenue resulting from the proposed crosswalk. In response, Jeff Fant of City Staff explained
20 that the City's traffic engineers had considered this possibility and concluded that the queuing of
21 traffic would not be problematic.

22 The Hearing Examiner also inquired of Ms. Hornbein as to whether the City had any
23 concerns over the proposed rooftop deck and the possibility of objects somehow going over the
24 building's parapet and landing on public sidewalks or streets below. Ms. Hornbein deferred this
25

1 question to the Applicant's architect who explained that the building has been designed with
2 taller parapets to prevent this from happening.

3 Following Ms. Hornbein's testimony Mr. Kershisnik testified on behalf of the Applicant.
4 He first explained that the Applicant has no objection to any of the City's proposed conditions of
5 project approval including the revised Condition No. 13. He reiterated Ms. Hornbein's
6 observations that the project has been designed with the shorelines regulations in mind, noting in
7 particular the location of all parking to the rear, out of sight and away from the shorelines area.

8 At the conclusion of Mr. Kershisnik's testimony the hearing was opened for public
9 testimony. The only person wishing to testify was Bob Jacobs. Mr. Jacobs had earlier provided
10 written comments during project review (Exhibit 16). In his testimony Mr. Jacobs reiterated the
11 concerns expressed in his earlier written comments. He noted that, while the developer (Walker
12 John) has been responsible for a number of quality new projects in the downtown, and should be
13 commended for those projects, he does not believe that this project is of the same benefit to the
14 City, and that it should be denied. Mr. Jacobs has three primary objections to the project:

15 ● Mr. Jacobs believes that the proposed crosswalk is "nutty". He notes that the
16 developer did not want the crosswalk and had it imposed by the City; that the traffic at its
17 location is much too intense and will certainly lead to pedestrian accidents; and that the site is
18 already well enough served by two other pedestrian crosswalks within short distances of the
19 project. Mr. Jacobs believes that the need to provide for pedestrian movement should be found
20 secondary to the need to protect pedestrians from likely accidents.

21 ● Mr. Jacobs notes that the project proposes no significant setback in the location of
22 the building from the street, nor any "step back" in its upper floors. The end result is a five-story
23 vertical wall in close proximity to the street, all occurring within shorelines jurisdiction. By
24 comparison, similar buildings positioned along the east bank of West Bay, including Percival
25 Plaza, the new "Harbor Heights" building and the "Laurana" building, were all designed with

1 upper stories that are stepped back from the shoreline. The design of these buildings increases a
2 sense of openness near the shoreline, and provides an increased enjoyment of the shoreline
3 environment. Mr. Jacobs asks that this project be redesigned to provide a similar step back in its
4 upper stories.

5 ● Mr. Jacobs feels that the public access provisions of the project are woefully
6 inadequate. He notes that the only public benefit of the project is a somewhat wider sidewalk
7 with some outdoor seating. By comparison, the new Laurana project offers a much greater
8 publicly accessible area on its waterward side. Mr. Jacobs adds that a tremendous opportunity
9 for public access would have been provided through public use of the rooftop deck for viewing,
10 but instead the rooftop will only be accessible by tenants.

11 In addition to these primary concerns, Mr. Jacobs also questioned whether the proposed
12 floodproofing for the building was intended for all four sides, as it sounded as if the developer
13 only intended to floodproof the two sides of the building facing City streets.

14 In response to Mr. Jacobs' objections, Ms. Hornbein replied that the project had
15 undergone careful examination by City Staff to assure its compliance with shorelines regulations.
16 She acknowledges that other buildings nearby have been designed with stepped back upper
17 floors but that nothing in the City's regulations requires this design and that, overall, the City is
18 satisfied with the building's design relative to its location in shorelines jurisdiction. She also
19 acknowledged that the Laurana project has a greater amount of public access on its waterward
20 side but, at the same time, it has very limited public sidewalks along State and Columbia. In
21 other words, Laurana was allowed narrower sidewalks in exchange for greater public access near
22 the water. By comparison, this project will have sidewalk areas that are twice as wide as
23 Laurana's along both State and Water Streets, thereby creating a public access area with public
24 seating, dining accommodations and more open views of the waterfront. In other words, each of
25 these new projects satisfies the demands of the City's Master Program through different means.

1 Ms. Hornbein agreed with Mr. Jacobs that the rooftop deck could have served as a useful
2 public amenity, but after careful review it was concluded that access by the public posed
3 significant security/safety issues.

4 Ms. Hornbein deferred to Jeff Fant for further response to Mr. Jacobs' concerns about the
5 crosswalk. Mr. Fant explained that if the crosswalk is not imposed there will certainly be
6 significant numbers of pedestrians who will attempt to cross State at this location but without the
7 protections afforded by the enhanced crosswalk, and the proposed crosswalk is the least risky
8 way of accounting for pedestrians desirous of gaining access to the Percival Landing area.

9 In conclusion to the City's reply, Ms. Hornbein acknowledged that this project is the first
10 one to truly test the City's vision for intended development near the shoreline. The City gave
11 significant consideration to what the City's regulations mean when they ask for projects to
12 provide public access within the shorelines area. The City concludes that "public access" is not
13 necessarily direct physical access to the shoreline. Indeed, many properties, including this one,
14 have no direct access to the shoreline. Where direct physical access is not possible, some other
15 form of "access" must be provided, such as visual access. This project has been designed to
16 offset its lack of physical access to the shoreline by providing greater visual access, that is by
17 enhancing areas along the street level that allow the public to enjoy the shoreline from this
18 property.

19 ANALYSIS

20 Mr. Jacobs' concerns about the project, as always, are well informed and thoughtful. He
21 correctly notes that the design of this project differs sharply from other nearby projects within
22 shorelines jurisdiction, including the Harbor Heights and Laurana projects currently under
23 construction, in that it imposes tall, steep, vertical walls on its waterward side, thus reducing the
24 openness and aesthetics of the shoreline. In addition, the project's only real concession to public
25 access is a wider than normal sidewalk with some public seating. Mr. Jacobs is correct in noting

1 that this project's recognition of the shoreline, and its degree of public access, are not as great as
2 other nearby projects. In response, however, the City correctly notes that its shorelines
3 regulations do not impose any specific design criteria, and it is therefore not possible to conclude
4 that this project's public amenities are insufficient. Indeed, the project will provide graceful
5 promenades along two streets with more direct access to Percival Landing, thus bringing the
6 shoreline amenities closer to downtown.

7 It would be hard to disagree with Mr. Jacobs that the project's public amenities are
8 somewhat disappointing, at least in comparison to other projects, but that is not the standard for
9 project approval. I concur with the City that the project, as conditioned, recognizes the need for
10 public access within the shorelines jurisdiction and satisfies the City's shorelines and other
11 regulations.

12 Mr. Jacobs is also correct that the proposed crosswalk across State Street is worrisome as
13 it is located at a point of hectic, intense traffic. But the City is correct that the alternative of no
14 crosswalk at this site is even more worrisome as it would leave unprotected the significant
15 number of pedestrians likely to cross the street at this location.

16 In summary, I share all of Mr. Jacobs' concerns but nonetheless conclude that the project
17 satisfies its shorelines responsibilities and complies with all other development regulations.

18 Accordingly, I make the following:

19 **FINDINGS OF FACT**

20 General Findings.

21 1. The Applicant, Urban Olympia IX, LLC, requests a Shoreline Substantial
22 Development Permit, a Shoreline Conditional Use Permit, and land use approval to construct a
23 new five-story mixed-use building with four floors of apartment units over ground floor
24 commercial uses and project parking. The project also includes widened sidewalks, public
25 seating and outdoor dining areas State and Water Streets.

1 2. Any Findings of Fact contained in the foregoing Background or Analysis Sections
2 are incorporated herein by reference and adopted by the Hearing Examiner as his own Findings
3 of Fact.

4 3. City Staff has determined that the project is exempt from a SEPA Threshold
5 Determination. OMC 14.04.065.E.3.

6 4. Notification of the public hearing was mailed to the parties of record, property
7 owners within 300 feet and recognized neighborhood associations, posted on the site and
8 published in The Olympian in conformance with Olympia Municipal Code 18.78.020.

9 5. City Staff recommends approval of the requested permits and land use subject to
10 conditions set forth in the Staff Report with revisions to proposed Condition No. 13 as noted in
11 the Background Section.

12 6. The Applicant does not oppose the City's proposed conditions of project approval.

13 7. The Staff Report, at pages 1 through 4, contain additional Findings relating to the
14 property, the project, and the review undertaken by City Staff prior to the public hearing,
15 including neighborhood meetings, Design Review Board Review and staff review. The Hearing
16 Examiner has reviewed those Findings and adopts them as his own Findings of Fact.

17 Findings Relating to the City's Comprehensive Plan.

18 8. The Staff Report, at pages 4 through 7, contain Findings relating to project's
19 consistency with the general provisions of the City Comprehensive Plan. City Staff finds that the
20 project is consistent with Goal GL1 and Policies PL1.2, 1.3 and 1.5; Goal GL9, Policies PL9.1;
21 Goal GL12 and Policies PL12.5, 12.6, 12.7 and 12.9; Goal GT1 and Policies PT1.4 and 1.5; Goal
22 GT9 and Policy PT9.2; Goal GT14 and Policy PL14.1; Goal GT24 and Policy PL24.1, 24.3 and
23 24.4. The Hearing Examiner has reviewed those proposed Findings and adopts them as his own
24 Findings of Fact.
25

1 Findings Relating to the City's Shoreline Master Program (SMP).

2 9. The project lies within 200 feet of the shoreline and is therefore subject to the
3 shorelines regulations. The west two-thirds of the site is within 200 feet of the shoreline. See
4 page 2 of the Staff Report.

5 10. The Staff Report, at pages 7 and 8, contain Findings relating to the project's
6 consistency/compliance with the City's Shoreline Master Program (SMP) within the City's
7 Comprehensive Plan. City Staff finds that the project, as conditioned, complies and furthers the
8 applicable goals and policies of the Shoreline Master Program through the development of mixed
9 use projects that provide visual public access to the shoreline; locate parking behind the building
10 and outside shorelines jurisdiction; and maintain views of the water along the project's frontage
11 and adjacent residential areas. City Staff further finds that the project is consistent with Policies
12 PN 12.3.A, PN 12.11.C, PN 12.14.A, PN 12.14.B, PN 12.15.B, PN 12.19.B, PN 12.24.A, PN
13 12.27.E, and PN 12.27.F. The Hearing Examiner has reviewed these Findings and adopts them
14 as his own Findings of Fact.
15

16 Findings Relating to Shoreline Management Regulations.

17 11. In addition to compliance with the Shoreline Master Program, the project must
18 also be in compliance with the Shoreline Master Program regulations, Chapter 18.20 OMC for
19 both Shoreline Substantial Development Permits, OMC 18.20.210 and Shoreline Conditional
20 Use Permits, OMC 18.20.230.
21

22 12. The project exceeds thresholds set forth in WAC 173-27-040 and therefore
23 requires a Shoreline Substantial Development Permit.
24
25

1 13. As a Mixed Use Development, the project must also have a Shoreline Conditional
2 Use Permit as the structure is located within 100 feet of the Ordinary High Water Mark of Budd
3 Inlet.

4 14. The Staff Report, at pages 10 through 12, contain Findings relating to the project's
5 compliance with Shoreline Master Program Regulations found in Chapter 18.20 OMC. City
6 Staff finds that the project, as conditioned, complies with the requirement for no net loss of
7 shoreline ecological functions and processes, OMC 18.20.410; complies with the Critical Areas
8 requirements of OMC 18.20.420 and Chapter 18.32 OMC; makes appropriate provisions for
9 parking, and the location of parking, as required by OMC 18.20.440; and satisfies the
10 requirements for public access in OMC 18.20.450-.460 for the reasons set forth in the
11 Background Section and in earlier Findings of Fact.
12

13 15. City Staff also finds that the project, as conditioned, satisfies the requirements of
14 view protection found in OMC 18.20.500-.504 and complies with the view protection standards
15 in OMC 18.110.060. No portion of the building within the shoreline jurisdiction will exceed the
16 maximum height allowed in the UW-H zoning district.

17 16. City Staff further notes that the project provides for wider sidewalks which will
18 result in broader view corridors and which will offset the proposed building's height and lack of
19 step back on the upper floors.
20

21 17. City Staff also finds that the project also complies with the water quality
22 requirements of OMC 18.20.510; and with the development standards of OMC 18.20.620 Tables
23 6.2 and 6.3.

24 18. The project includes a restaurant on the ground floor. A restaurant is considered a
25 "Water Enjoyment Use" per WAC 173-27-020. Such uses are allowed if there is no net loss of

1 shoreline ecological function, does not have adverse impacts on other shoreline areas, public
2 access, and design compatibility; and is designed and operated in a manner that meets the
3 definition of a Water Oriented Use. City Staff finds the restaurant to be a Water Oriented Use as
4 defined in WAC 173-27-020 due to its orientation toward the water and the provision for outdoor
5 seating with views to the water. City Staff therefore finds that the project complies with the
6 Water Oriented Commercial Use and Development Standards found in OMC 18.20.663.

7
8 19. In addition to the restaurant, the project proposes other retail uses on the ground
9 floor. Retail uses are considered a Non-Water Oriented Use and are allowed only if part of a
10 Mixed Use Development that includes Water Oriented Uses, provides public access, and
11 shoreline enhancement/restoration. City Staff finds that the project satisfies the first two
12 requirements and that it need not satisfy the requirement for restoration/enhancement since the
13 property does not directly abut the shoreline. Staff therefore concludes that the project, as
14 conditioned, satisfies the requirements for Non-Water Oriented Commercial Use and
15 Development pursuant to OMC 18.20.667.

16 20. Residential development within shorelines jurisdiction must be designed to
17 preserve the aesthetic character of the shoreline and minimize view obstructions. OMC
18 18.20.690. City Staff finds that the project, as conditioned, satisfies this regulation and that
19 shoreline aesthetics were considered when designing the form, materials and colors of the
20 building and in providing for wider sidewalks and public seating to enhance viewing
21 opportunities.
22

23 21. City Staff finds that all utility facilities/lines will be located so as to avoid impacts
24 to shoreline ecological functions and minimize conflicts with existing and planned uses. OMC
25 18.20.170.

1 22. In summary, City Staff finds that the project complies with all Shoreline Master
2 Program regulations found in Chapter 18.20 OMC. The Hearing Examiner has reviewed those
3 Findings and adopts them as his own Findings of Fact.

4 Other Findings.

5 23. The project site consists of three individual lots currently used for parking. The
6 project will require that these lots be consolidated prior to building permit issuance. Permit
7 approval is conditioned on lot consolidation.

8 24. The project is subject to Tree, Soil and Native Vegetation Protection and
9 Replacement Standards contained in Chapter 16.60 OMC. The City's Urban Forrester has
10 reviewed the application and found that, as conditioned, the project will comply with the
11 requirements of this chapter. Existing street trees will be removed and replaced as part of
12 frontage street improvements as shown in Exhibit 5 and various other site maps in the Staff
13 Report.

14 25. The property is located in a sea level rise flood damage area as designated on
15 official City maps.

16 26. The project's finished floor elevation is proposed to be 14.3 feet.

17 27. Pursuant to Chapter 16.80 OMC, project's within the Sea Level Rise Flood
18 Damage Area having a lowest floor elevation of less than 16 feet must either be elevated, have
19 dry floodproofing, or must otherwise be protected with other acceptable floodproofing methods
20 as approved by the City to an elevation of 16 feet or greater.

21 28. The project will meet the requirements of Chapter 16.80 through the use of two
22 foot sills on the first floor coupled with the use of dry floodproofing methods as approved by the
23 City during building permit review.

1 29. The Applicant confirms that dry floodproofing methods will be used on all sides
2 of the building.

3 30. The project site is located within the UW-H zoning district and must comply with
4 all of its developmental standards. OMC 18.06.080 Table 6.01.

5 31. The project's proposed mix of residential, restaurant and retail uses are all allowed
6 uses in the UW-H zoning district.

7 32. The UW-H zoning district has no minimum setbacks. The project proposes
8 setbacks of 19 to 22 feet from the street edge to allow for greater public access; public seating
9 areas, outdoor dining areas and greater public visual access of the shoreline.

10 33. The building height, as measured to the roofline, will be 60 feet. Overall building
11 height including parapets and rooftops will be 70 feet. The maximum building height in the
12 UW-H zoning district is 65 feet together with an additional 18 feet for roof structures and
13 architectural features, or a total of 83 feet. The project is therefore in compliance with the
14 maximum building heights for the UW-H zoning district. Table 6.02; OMC 18.06.100
15 Figure 6-2.

16 34. In the UW-H zoning district, 100% of the site can be impervious, and 100%
17 building and impervious coverage is allowed. Proposed impervious coverage is approximately
18 98%. This complies with the design regulations.

19 35. The City Staff has identified the site as having high potential for cultural
20 resources.

21 36. The Department of Archaeology and Historic Preservation (DAHP); the Squaxin
22 Island Tribe and the Nisqually Tribe have submitted written comments requesting careful
23 archaeological monitoring during site disturbing activities together with an Inadvertent
24
25

1 Discovery Plan. In response to these concerns City Staff has proposed a revised Condition No.
2 13 for project approval, addressing the concerns of DAHP and the tribes.

3 37. The project is located at the intersection of State Avenue and Water Street. Both
4 of these streets are designated Pedestrian A Streets and are subject to the provisions found in
5 Chapter 18.16 OMC. City Staff notes that the intent of these regulations is to enhance the
6 pedestrian environment through a variety of measures including maximum setbacks, minimum
7 street wall heights, canopies, blank wall limitations, well defined building entrances and
8 attractive street edges.

9
10 38. City Staff finds that the project satisfies the requirements of Chapter 18.16 OMC
11 by expanding setbacks to the street beyond minimum requirements to retain water views and
12 provide pedestrian plazas. As designed, the project will enhance pedestrian walkways, maintain
13 views of Budd Inlet, the Olympic Mountains and the Capitol Dome, provide public benches;
14 allow for outdoor restaurant seating while still maintaining pedestrian movement, and allow for
15 these public areas to serve in a manner similar to a public plaza. The Hearing Examiner has
16 reviewed those Findings and adopts them as his own Findings of Fact.

17 39. The project is located within 1,000 feet of Budd Inlet which has the potential for
18 important habitat and species and the project is therefore subject to the requirement of a Habitat
19 Management Plan (HMP).

20 40. Pursuant to OMC 18.32.325, the City can waive the requirement for an HMP after
21 consultation with WDFW.

22 41. WDFW has concluded that there is no need for an HMP as the site is already
23 developed and contains no fish or wildlife habitat. The City therefore waives the requirement for
24 an HMP.
25

1 42. City Staff finds that the project, as conditioned, complies with the requirements of
2 Chapter 18.36 OMC for landscaping with the final landscape plan to be approved at the time of
3 engineering permit review.

4 43. The site is located in the Downtown Exempt Parking Area. The project is
5 therefor exempt from any requirement for residential parking.

6 44. Commercial buildings with less than 3,000 square feet of gross leasable area are
7 also exempt from the City's parking requirements. The project proposes 2,968 square feet of
8 gross leasable area and is therefore exempt from any parking requirements for commercial uses.
9

10 45. Although the project is otherwise exempt from any parking requirements, the
11 Applicant has proposed 39 parking stalls for use by tenants.

12 46. The project must provide bicycle parking pursuant to OMC 18.38.100 Table
13 38.01. The project proposes 44 long term bicycle parking spaces and 6 short term spaces, all
14 intended for residential units. No bicycle parking is required for restaurant or retail uses. City
15 Staff finds that the project, as conditioned, complies with both vehicular and bicycle parking
16 standards set forth in Chapter 18.38 OMC.

17 47. The project has undergone design review by the Design Review Board pursuant to
18 Chapter 18.100 OMC. The Board recommended approval with conditions. Final design review
19 will occur prior to building permit issuance.

20 48. The project is also subject to compliance with the Engineering Design and
21 Development Standards (EDDS). City Staff finds that the project is generally compliant with the
22 EDDS.
23

24 Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:
25

1 **CONCLUSIONS OF LAW**

2 1. The Hearing Examiner has jurisdiction over the parties and the subject matter.

3 2. Any Conclusions of Law contained in the foregoing Background, Analysis or
4 Findings Sections are incorporated herein by reference and adopted by the Hearing Examiner as
5 his Conclusions of Law.

6 3. The requirements of SEPA have been met.

7 4. A Shoreline Substantial Development Permit is required for the proposed use of
8 this site.

9 5. A Shoreline Conditional Use Permit is also required for the proposed use of this
10 site.

11 6. The site's designation in the Shoreline Master Program is Urban Intensity.

12 7. The project, as conditioned, complies with the policies and regulations of the
13 SMP, including those policies specifically identified in the Findings of Fact for the Urban
14 Intensity Shoreline.

15 8. The project, as conditioned, complies with the overall goals of the SMP to
16 develop the full potential of Olympia's shoreline in accordance with the unusual opportunities
17 presented by its location to the City and surrounding areas, its natural resource values, and its
18 unique aesthetic qualities offered by water, topography, views, and maritime character; and to
19 develop a physical environment which is both ordered and diversified and which integrates
20 water, shipping activities, and other shoreline uses within the structure of the City while
21 achieving a net gain of ecological function.

22 9. The project, as conditioned, is consistent with the City Comprehensive Plan,
23 including those goals and policies identified in the Findings of Fact.
24
25

1 10. The project, as conditioned, complies with all Shoreline Master Program
2 regulations contained in Chapter 18.20 OMC.

3 11. The project, as conditioned, is:

4 a. Consistent with the Shoreline Master Program;

5 b. Does not interfere with the normal public use of the shoreline;

6 c. Is compatible with existing and planned uses in the area and with uses
7 planned for under the Comprehensive Plan and Shoreline Master Program.

8 d. Will not cause any significant adverse impacts to the shoreline to occur;
9 and

10 e. The public interest will not suffer any substantial determine effect.

11 12. The project, as conditioned, complies with the Tree, Soil and Native Vegetation
12 Protection and Replacement requirements of Chapter 16.60 OMC.

13 13. The project, as conditioned, complies with the Sea Level Rise Flood Damage
14 Prevention requirements of Chapter 16.80 OMC.

15 14. The project, as conditioned, complies with the requirements for Commercial
16 Districts found in Chapter 18.06 OMC.

17 15. The project, as conditioned, complies with the Cultural Resource requirements of
18 OMC 18.12.120.

19 16. The project, as conditioned, complies with the requirements of the Pedestrian
20 Street Overlay District found in Chapter 18.16 OMC.

21 17. The project, as conditioned, complies with the requirements for landscaping under
22 18.36 OMC.

1 18. The project, as conditioned, satisfies the requirements for vehicular and bicycle
2 parking set forth in Chapter 18.38 OMC.

3 19. The project, as conditioned, complies with the Olympia Unified Development
4 Code.

5 20. The project, as conditioned, complies with the Critical Areas requirements of
6 Chapter 18.32 OMC and OMC 18.20.420.

7 21. The project, as conditioned, complies with the Engineering Design and
8 Development Standards (EDDS).

9 22. The requested Shoreline Substantial Development Permit, Shoreline Conditional
10 Use Permit, and land use should be **approved** subject to the conditions recommended by City
11 Staff.
12

13 **DECISION**

14 The Applicant's request for a Shoreline Substantial Development Permit, Shoreline
15 Conditional Use Permit, and land use approval shall be **approved** subject to the following:

16 **CONDITIONS**

17 1. Development shall be substantially as shown on the architectural site plan (Sheet
18 A-101, dated November 6, 2019).

19 2. Construction pursuant to the Shoreline Substantial Development and Conditional
20 Use Permits shall not begin prior to 21 days from the date of filing as defined in RCW
21 90.58.140(6) and WAC 173-27-130, or until review proceedings initiated within 21 days from
22 the date of such filing have been terminated.

23 3. Per WAC 173-27-090(2), construction activities shall commence within two years
24 of the effective date of the Shoreline Development and Conditional Use Permits. The local
25

1 government may authorize a single one-year extension based on reasonable factors, if a request
2 for extension has been filed before the expiration date and notice of the proposed extension is
3 given to parties of record and the Department of Ecology.

- 4 4. The following conditions apply to public access provided under OMC 18.34.450:
- 5 a. Public access provisions shall run with the land and be recorded via a legal
6 instrument such as an easement prior to certificate of occupancy;
 - 7 b. Public access areas shall be constructed and available for public use at the
8 time of occupancy;
 - 9 c. Signage shall be installed in conspicuous locations indicating the public's
10 right of access and hours of access; and
 - 11 d. Maintenance of the public plaza shall be the responsibility of the property
12 owner, unless an accepted public or non-profit agency assumes
responsibility through a formal agreement recorded with the Thurston
County Auditor.

13 5. All structures that come in contact with water shall be constructed of materials
14 that will not adversely affect water quality. If wood pilings are used, they shall not be treated
15 with creosote, copper, chromium, arsenic or pentachlorophenol, unless the Applicant
16 demonstrates at the time of building permit review that there are no feasible alternatives. OMC
17 18.20.510C and D.

18 6. Bicycle parking shall meet the standards of OMC 18.38.220(c). All bike parking
19 locations shall be shown on permit plans and clearly demonstrate compliance with these
20 standards. Signage shall be provided in all locations where the customer entry is more than 50'
21 from the required bicycle parking space or when the required bicycle parking space cannot be
22 seen from building entrances.

1 7. The Applicant shall submit for detail design review prior to or at the time of
2 building permit submittal. The following items, required by the Design Review Board at the
3 time of concept review, shall be addressed:

- 4 a. Provide types and cut sheets of all exterior building lighting; under
5 canopies, at building entries, at the parking garage entry, pedestrian scale
6 bollards, etc. Consider canopy cover with translucent or transparent
7 material that allows natural light to reach the sidewalk. OMC 18.110.080
8 b. Provide design options for the proposed artwork installation on the north
9 façade. OMC 18.110.090
10 c. Provide design details of the parking structure entrance from State
11 Avenue, and details of pedestrian access to the building within the parking
12 lot/structure. OMC 18.120.110
13 d. Provide details of lighting within the parking structure. Avoid fixtures
14 that create glare for pedestrians and motorists at the street level and
15 surrounding residential units. OMC 18.110.160
16 e. Provide design detail of the hardy panel and windows on the south
17 elevations. The level of articulation on the south elevation should be more
18 consistent with that on the north and west elevations. OMC 18.110.140

19 8. Artwork is proposed in lieu of glazing as required in OMC 18.110.090, Basic
20 Commercial Design Criteria. Design options are to be included in materials submitted for detail
21 design review as noted under Condition 7. The final design shall be incorporated into plans
22 submitted for building permit review, and installed prior to Certificate of Occupancy.

23 9. A final landscape plan, prepared in accordance with OMC 18.36, shall be
24 submitted for review and approval at the time of engineering permit application submittal, and
25 address the following items:

- a. Depict all utility lines, hydrants, poles, mechanical equipment, etc., on the
 landscape plan. Where conflicts occur, adjust the location of trees and/or
 these elements;

- 1 b. Parking lot landscape islands shall be provided at the end of every public
2 parking row located outside the building footprint. Each island must meet
3 minimum standards of OMC 18.36.180 and contain a tree (providing
4 canopy), shrubs, and groundcover; and
- 5 c. Include a cost estimate for the purchase of plants (trees, shrubs, and
6 groundcover), labor for installation, and three years of maintenance.

7 10. Signs shall comply with OMC 18.43 and require a separate sign permit
8 application.

9 11. Pursuant to OMC 18.40.080.C.7, construction activity detectable beyond the site
10 boundaries shall be restricted to the hours between 7:00 a.m. and 6:00 p.m.

11 12. If contamination of soil or groundwater is encountered during site work and
12 construction, the Applicant shall notify the Department of Ecology's Environmental Report
13 Tracking System Coordinator for the Southwest Regional Office at 360-407-6300.

14 13. A Monitoring and Inadvertent Discovery Plan shall be prepared and submitted
15 with the construction permit application(s). The plan shall provide for professional on-site
16 monitoring during ground-disturbing activity, to include Tribal representatives if they desire.
17 The plan shall also describe the actions to be taken by the project proponent and site crew in the
18 event that archaeological resources are uncovered during the course of project work. The plan
19 shall be completed and approved prior to issuance of any construction permits or commencement
20 of any site work, and a copy of the plan maintained on-site throughout construction. OMC
21 18.12.140

22 14. A professional archaeological desktop survey of the project area shall be
23 conducted and submitted to the City prior to permit application. The City will make the survey
24 available to DAHP and concerned tribes for review and acceptance prior to any ground
25 disturbing activities. OMC 18.12.030

1 15. Concerned tribes shall be notified and given the opportunity to be present during
2 ground disturbing activities. OMC 18.12.030

3 16. Prior to issuance of construction permits, the Applicant shall submit a traffic
4 control plan detailing how pedestrian and vehicular traffic will be routed around and through the
5 project, including what impacts to the streets and sidewalk system will occur during construction
6 of the building.

7 17. The Applicant shall submit detailed engineering design plans meeting the
8 Engineering Design and Development Standards current at the time of submission to the
9 Community Planning and Development Department for detailed technical review, approval and
10 permitting.

11 18. A rapid flashing beacon system for a new crosswalk, located across State Avenue
12 east of its intersection with Water Street, shall be installed.

13 19. The following minimum roadway lane widths shall be provided:

14 a. State Street: two twelve-foot travel lanes and two eight-foot parking
15 lanes.

16 b. Water Street: One eight-foot parking lane, and three travel land with the
17 following widths: (1) left lane - eleven feet, (2) center lane - ten feet, and
18 (3) right lane - twelve feet.

19 20. Prior to engineering permit submittal, Section 10 of the Drainage Design Report
20 shall be corrected to indicate that all site-generated stormwater will be discharged to the City's
21 dedicated stormwater system on State Street.

22 21. The Applicant shall apply for and receive a stormwater general permit from the
23 Department of Ecology prior to any site work.

1 22. The condition of the existing alley structural section shall be assessed for
2 expected impacts from site construction; restoration shall be in accordance with EDDS 4B.160.

3 23. The general layout and access for solid waste storage and collection shown on
4 Sheets SW-01, SW-02, dated May 6, 2019, and Sheets A-102, A-102.1 and A-102.2, dated
5 May 8, 2019 complies with EDDS Chapter 8, Waste Resources. The following conditions shall
6 be noted on the civil drawings or in a separate document signed by the Applicant:

- 7
- 8 a. Building management/staff shall be responsible for placement of all
9 containers - recycle, cardboard and organics - in accessible locations noted
10 both in the final concept design review plans and annotated site plan.
 - 11 b. Waste Resources may require the building owner/manage to adjust/refine
12 container location and orientation after service is established.
 - 13 c. The compactor enclosure shall have a clear opening at the doorway of at
14 least 12 feet wide. The ceiling height at the door header shall be at least
15 14 feet.
 - 16 d. Grease barrels and/or containers shall not be collocated with solid waste,
17 whether for garbage, recycle, or organics.

18 24. A vegetation maintenance bond (or other assurance) shall be provided following
19 City acceptance of the landscape installation including street trees before issuance of the
20 Certificate of Occupancy. The bond amount shall be 125% of the cost estimate submitted with
21 the Landscape Plan and approved by the City.

22 25. Bonds or other allowable securities will be required by the City to guarantee the
23 performance of work within the subject site and right-of-way, or maintenance of required public
24 infrastructure intended to be offered for dedication as a public improvement. See both EDDS
25 Section 2.030.F and Volume 1 Section 2.6.1 of the 2016 DDECM for more information.

 26. The Boundary and Topographic Survey, Sheet SV-1, shall be revised to comply
with WAC 332-130-145. See attached exhibit for specific items to be included on the survey.

1 27. The Applicant shall apply for a lot consolidation to create a single lot. The lot
2 consolidation map shall be recorded with Thurston County prior to issuance of the building
3 permit.

4 28. The project shall adhere to IFC and IBC codes current at the time of permit
5 application.

6 29. An Underground Fire Line(s) permit shall be submitted at the time of building
7 permit application.

8 30. The project will be reviewed under the International Building Code (IBC),
9 International Mechanical Code (IMC), International Fuel Gas Code (IFGC), Washington State
10 Energy Code (WSEC), Uniform Plumbing Code (UPC), and ICC A117.1 as adopted and
11 amended by the State of Washington at the time of building permit submittal. Structural plans
12 must be accompanied by design calculations and be stamped and signed by a Washington State
13 licensed engineer.

14 31. Electrical vehicle charging stations shall be provided in compliance with the 2015
15 IBC, Washington State Amendment Section 427.

16 32. The project shall comply with OMC 16.80, Sea Level Rise Flood Damage
17 Reduction.

18 33. A geotechnical report shall be provided at the time of building permit submittal.

19 34. The number of trees, tree species, tree locations, and the fee in lieu of meeting the
20 minimum tree density on site shall be determined at the time of engineering permit review.

21 35. Street trees proposed by the Applicant to be planted on the adjacent parcel
22 (address) will count toward the minimum tree density requirement for the subject parcel.

23
24
25 OMC 16.60.080.c

