

**FINDINGS, CONCLUSIONS AND DECISION  
OF THE HEARING EXAMINER OF THE CITY OF OLYMPIA  
AND PRO TEMPORE HEARING EXAMINER  
OF THE CITY OF TUMWATER**

**CASE NO:** 08-0095 (Conditional use permit for implementation of updated master plan for South Puget Sound Community College and related variance)

**APPLICANT:** South Puget Sound Community College

**SUMMARY OF REQUEST:**

The Applicant requests a conditional use permit for new construction to implement its master plan and a setback variance for two of the proposed new buildings.

**LOCATION OF PROPOSAL:**

South Puget Sound Community College campus: Thurston County Assessor's Tax Parcel Nos. 12828110500, 73406100100 and 12828130300 in Sections 27 and 28, T18N, R2W, W.M.

**SUMMARY OF DECISION:**

The conditional use permit is granted, with conditions.

The variance is granted.

**HEARING AND RECORD:**

The hearing on this request was held before the undersigned Hearing Examiner on January 8, 2009. The record was held open until January 21, 2009 for the submittal of supplemental evidence.

At the hearing, the following individual testified under oath:

Brett Bures, Associate Planner for the City of Olympia  
Community Planning and Development Department  
837 7th Avenue S.E., P.O. Box 1967  
Olympia, WA 98507

Nancy McKinney  
South Puget Sound Community College Vice President for  
Administrative Services  
2011 Mottman Road SW  
Olympia, WA

Barney Mannsavage  
SRG Partnership  
101 Yesler Way  
Seattle, WA

Doreen Gavin, P.E.  
AHBL  
2215 N. 30<sup>th</sup>  
Tacoma, WA

At the hearing, the following exhibits were admitted as part of the official record of these proceedings:

Exhibit 1. Staff Report by Olympia Community Planning and Development Department for Case No. 08-0095, prepared by Brett Bures on December 31, 2008. This Exhibit includes the 17-page Staff Report and Attachments A through Z identified on Page 17 of the Staff Report.

Exhibit 2. E-mail sent January 12, 2009 from Thomas Bjorgen to Parties and Staff, posing supplemental questions.

Exhibit 3. E-mail sent January 21, 2009 from Brett Bures to Thomas Bjorgen, with Department's responses to supplemental questions.

Exhibit 4. E-mail sent January 21, 2009 from Brett Bures to Thomas Bjorgen, modifying a response in Ex. 3.

Exhibit 5. E-mail sent January 21, 2009 from Brett Bures to Thomas Bjorgen, forwarding response by City of Tumwater.

Exhibit 6. Letter dated January 21, 2009, and e-mailed to the Hearing Examiner the same date, from Doreen S. Gavin to Thomas Bjorgen, with Applicant's responses to supplemental questions.

After consideration of the testimony and exhibits described above, the Hearing Examiner makes the following findings of fact, conclusions of law, and decision.

## FINDINGS OF FACT

### **A. Nature of the requested permits.**

1. South Puget Sound Community College (SPSCC) is a community college of the state of Washington, located in the cities of Olympia and Tumwater. The SPSCC Existing Campus drawing at Exhibit (Ex.) 1, Attachment (Att.) H shows the college property and the current configurations of buildings, parking, and other improvements on it. As shown on that drawing, a roughly wedge-shaped portion in the northeast corner and a roughly rectangular portion in the southwest corner lie in the city of Tumwater. Respectively, these portions are 6.8 and 8.3 acres in size. The remainder of the campus is in Olympia. The areas of campus lying in Tumwater are zoned General Commercial (GC). The areas of campus lying in Olympia are zoned Residential Single-family 4-8 (R 4-8).

2. In 1984 the city of Olympia issued the Applicant a conditional use permit for construction of campus buildings and other improvements pursuant to the Applicant's master plan in effect at that time. The Applicant has fully implemented the 1984 master plan, with the exception of one building which was removed from it. Test. of McKinney. In the period since 1984, the Applicant has also proposed a number of buildings which were not part of or not consistent with the 1984 master plan or conditional use permit. The Applicant has obtained separate conditional use permits for these buildings.

3. The Applicant has now prepared a new or updated long-term master plan to guide campus development in the future. The Applicant requests a conditional use permit to authorize the new projects in its updated master plan as conditional uses.

4. The Applicant also applied for a variance from city of Tumwater setback standards for two of the buildings proposed in the updated master plan, both of which lie in Tumwater. The variance application is at Ex. 1, Att. V.

5. As noted, the SPSCC campus lies in the cities of Olympia and Tumwater. The two cities have entered into the Interlocal Agreement at Ex. 1, Att. D, appointing the Olympia Hearing Examiner as the Tumwater Hearing Examiner *pro tempore* for the purpose of deciding the variance and the elements of the conditional use permit lying in the city of Tumwater.

### **B. Description of the improvements proposed in the conditional use permit.**

6. The general configuration of the development proposed in the updated master plan, and for which conditional use approval is sought, is shown in the SPSCC Long Term Master Plan drawing at Ex. 1, Att. H. The proposed new buildings and additions to existing buildings are shown in the rust color and are numbered on this drawing.

7. Ex. 1, Att. N, p. 3 shows proposed increases to the various parking lots, and two new four-floor parking structures, which are part of the Long Term Master Plan. The total increase shown is from the existing 1504 stalls to approximately 2242. However, Ex. 1, Att. G states that each specific development project will propose specific solutions at that time. Thus, the precise nature of future parking expansions is not known at this time

8. The Long Term Master Plan drawing at Ex. 1, Att. H and other application materials do not identify all building types or uses or the time of their construction. The Applicant states that this drawing and materials propose a general diagram of building sites, but not a specific development plan. Ex. 1, Att. G.

9. Existing campus buildings, including the science complex under construction, comprise approximately 449,839 gross square feet. The buildings proposed in the Long Term Master Plan would increase that gross square footage to a campus total of approximately 1,027,946.

10. Fall 2007 enrollment at SPSCC was approximately 4250 full time equivalent (FTE) students or 7458 by headcount. The Applicant estimates that the master plan could accommodate 7500 FTE students. Analyses submitted by the Applicant show that both the existing and planned ratios of square footage available to student FTEs are consistent with accepted standards. See Ex. 1, Att. G.

11. The campus is bordered by residential development on the south and on the northwest. To the east, the campus is bounded by Crosby Boulevard, with largely commercial development. To the north, except for the residential area to the northwest, the campus is bordered by Mottman Road with some commercial development. To the west, except again for the residential area to the northwest, the campus is bordered by some commercial development.

### **C. Compatibility with surrounding property and uses.**

12. The 1984 conditional use permit required a landscape buffer at least 30 feet in width around the perimeter of the campus, composed of "native vegetation whenever possible and densely planted evergreen trees to screen the adjacent properties from the . . . campus." Ex. 1, Att. O. The Applicant proposes to maintain this condition in the new master plan.

13. The new buildings and parking improvements in the new master plan are at least 100 feet from the property line. Ms. McKinney testified that the Applicant does not anticipate placing any new buildings within 100 feet of the property boundary, but wants to keep that option open.

14. The Applicant proposes to continue its practice of providing general outdoor site lighting throughout the campus to enhance personal safety and to allow easy navigation outside of daylight hours. Ex. 1, Att. C, p.10. This includes pedestrian areas, parking areas and other occupied outdoor areas. Id. The Applicant does not request authorization to install any night lighting of athletic playfields as part of this permit. Id. The College generally operates from 7 a.m. to 10 p.m. seven days a week and some interior building lighting may spill out after dark. Id.

15. A comparison of the Vicinity Map and the Long-Term Master Plan Map, each at Ex. 1, Att. H, and the projected parking expansions at Ex. 1, Att. N shows that the following master plan facilities are near residential areas bordering campus: Building 5, Building 9, Building 10, Parking Lot D, with its potential 4-story parking structure, Building 11, and Building 33.

16. The Applicant states that its outdoor lights will be designed to comply with Illuminating Engineering Society of North America footcandle requirements to minimize light trespass. Ex. 1, Att. C, p. 11. To further serve the end of compatibility with surrounding uses, this approval is conditioned to require that outdoor lights be shielded or directed so that their direct light is not visible from the nearby residential areas described in Part B of the Findings, above.

17. Of the parking lots located near the adjoining residential areas, Lot 29, Lot J, Lot A, and Lot F are not proposed for expansion under this conditional use permit. Ex. 1, Att. N, p. 3.

18. Lot D, however, is proposed to be almost doubled in capacity from 310 to 600 spaces through a four-story parking structure. Id. The Long-Term Master Plan Map, at Ex. 1, Att. H, shows that this expansion will occur only 100 feet from the southern property line and the Vicinity Map at Ex. 1, Att. H shows the apparent presence of residential development just over this property line. A 30-foot landscape zone lies between Lot D and these residences. No analysis was presented of the amount of increased noise this parking improvement might cause in nearby residential areas. No analysis was presented of the effect of headlight beams from this structure on nearby residences. No evidence was presented as to whether this doubling of capacity at Lot D would expose the nearby residences to increased vehicle fumes and exhaust.

19. The proposed master plan will increase traffic on streets serving the campus. The requirements to conduct traffic impact studies incorporated into this decision should prevent adverse effects of this traffic on nearby properties.

#### **D. Streams and other critical areas.**

20. The maps at Ex. 1, Att. H show a stream identified as Percival Creek

bisecting the campus in a north-south direction. This stream is a Type F (Type 3) stream.

21. The Department of Community Planning and Development (hereinafter Department) states that the stream referred to as Percival Creek on the campus is not subject to the state Shoreline Management Act (SMA). This consistent with the Canyon and Middle Reach Corridor Map in the Thurston Region Shoreline Master Program, which shows the segment of Percival Creek which is subject to the SMA as running in largely an east-west direction north of the campus. Thurston Regional Planning Council Map #0-1 (at Ex. 6), used in updating the Shoreline Master Program, similarly does not indicate that the creek segment crossing the campus is subject to the SMA.

22. An unnamed Type Ns (Type 5) stream runs through the northeast portion of the campus and discharges off-site into Percival Creek. According to a 1998 Report found at Ex. 1, Att. U, this stream does not support wetland conditions.

23. The evidence on wetlands, chiefly the map at Ex. 1, Att. H and the 2008 wetland report found at Ex. 1, Att. S, disclose three wetlands on the campus: a Category II wetland along Mottman Road in the northeast portion of the campus; a Category II wetland in the southwest corner of the site; and a Category III wetland lying just east of Percival Creek near the north boundary of the campus. According to the map at Ex. 1, Att. H, each of the Category II wetlands require a 100-foot buffer under both the Olympia and Tumwater Critical Area Ordinances (CAO), while an 80-foot buffer is required around the Category III wetland.

24. The Applicant states at Ex. 1, Att. G, that development which is part of this master plan and permit and which is on undisturbed land will be at least 200 feet from the segment of Percival Creek flowing through campus.

25. The Applicant states at Ex. 1, Att. C, p. 4 that development which is part of this master plan and permit may occur within 200 feet of the unnamed stream, but will comply with stream buffers in effect at the time of this application.

26. Proposed buildings 1 and 7, shown on the Long Term Master Plan drawing at Ex. 1, Att. H, would be constructed on currently undisturbed land. Test. of McKinney. Ms. McKinney testified that remaining proposed buildings would be located mostly on already impervious surfaces.

27. Existing buildings 28 and 34 were constructed closer than 200 feet, but further than 100 feet from Percival Creek. Test. of McKinney. No new buildings or building additions proposed in the new master plan or this conditional use permit are proposed within 200 feet of Percival Creek. Test. of McKinney. The Applicant would only construct buildings within 200 feet of the creek if the construction were within an existing building footprint or a buffer reduction were approved. Test. of McKinney.



28. The Applicant recognizes that additional parking will be needed for the expansion proposed in this application. Specific new parking facilities are not proposed at this time, but will be proposed in association with specific buildings at their construction phase. Ex. 1, Att. G. The Applicant states that parking structures may be needed and states that existing Lots D and H will be considered for them.

#### **E. Traffic.**

29. The development proposed for conditional use permit approval would increase enrollment at the College from the fall 2007 figure of approximately 4250 FTE to a projected 7500 FTE students. The latter figure is approximately equivalent to a student headcount of 10,000 to 12,000 students. This increase in enrollment would cause an accompanying increase in faculty and staff numbers.

30. This substantial increase in enrollment will increase the number of vehicular trips generated by the College. At this stage, no traffic impact analysis or other study has been carried out to evaluate the magnitude or effect of this increase on streets, roads or intersections. The Staff Report states that these analyses, and evaluations of needed streetside improvements, will be carried out in conjunction with each proposed development application. As part of this, Mr. Bures testified that a traffic scoping meeting will be carried out for the construction of each proposed building to evaluate its effect on transportation levels of service.

#### **F. Parking.**

31. The 2003 parking study found at Ex. 1, Att. P surveyed parking patterns, volume and capacity on the campus. Based on this study, the Department recommends that a ratio of .22 parking spaces per student, based on headcount, not FTE, be provided. The Department also recommends, based on the study, that ratio be reevaluated every ten years to ensure its continuing validity.

32. As found, specific new parking facilities are not proposed at this time, but will be proposed in association with specific buildings at their construction phase. Ex. 1, Att. G. The Applicant states that parking structures may be needed and states that existing Lots D and H will be considered for them.

33. The Applicant projects at this time an increase from 1504 to a range of 2200 to 2700 parking stalls for implementation of the master plan.

#### **G. Stormwater.**

34. The SPSCC campus is divided into the drainage subbasins shown in the Campus Basin map at Ex. 1, Att. J. This map also shows the existing stormwater facilities serving the campus.

35. The Stormwater Report found at Ex. 1, Att. J describes each of these subbasins, including the nature of surface water flow and the method of detention, if any. The points of discharge from these basins are less clear, but most, if not all, of the surface flow appears ultimately to discharge to Percival Creek.

36. In 1994 the city of Olympia adopted a new set of stormwater regulations through its 1994 Drainage Design and Erosion Control Manual. Between 1999 and 2005, the Applicant completed an extensive campus-wide upgrade or retrofit of its stormwater facilities, as required by the 1994 Stormwater Manual.

37. In 2005 the City adopted a new stormwater manual, which requires an additional upgrade of the College's stormwater system if certain thresholds are met.

38. Redevelopment of a site is defined by Vol. I, Section 2.3 of the 2005 Stormwater Manual as

"[o]n a site that is already developed, the creation or addition of impervious surfaces; the expansion of a building footprint or addition or replacement of a structure; structural development including construction, installation or expansion of a building or other structure; replacement of impervious surface that is not part of a routine maintenance activity; and land disturbing activities."

39. Those thresholds signaling when redevelopment of a site requires retrofitting the existing stormwater system to meet current standards are spelled out in detail in Vol. I, Section 2.4.2 of the 2005 Stormwater Manual. For this proposal, they appear to be summed in the statement that

"[o]ther types of redevelopment projects (Figure 2.3(b)) shall comply with all the Minimum Requirements for all impervious surfaces if the total of new plus replaced impervious surfaces is 5,000 square feet or more and the new impervious surfaces add 50% or more to the existing impervious surfaces within the project limits, or the valuation of proposed improvements – including interior improvements – exceeds 25% of the assessed value of the existing site improvements, minimum \$500,000. The square footage and improvement value thresholds shall be cumulative and include all projects permitted on or after January 1, 2000."

40. The Applicant expects that these thresholds will be exceeded at some point during implementation of the updated master plan, thus requiring existing stormwater facilities to be improved or upgraded to meet the standards of the 2005 Stormwater Manual. The Applicant's stormwater engineer believes that its facilities may be retrofitted to meet 2005 standards by taking the five measures set out on Ex. 1, Att. J, p. 7. The Applicant also stated that apart from this retrofitting of existing facilities, individual projects under the master plan could require additional stormwater facilities



under the 2005 Manual. Through these measures, the Applicant proposes to ensure that the development described in the master plan and subject to this permit complies with all applicable requirements of the 2005 Manual.

#### **H. Tumwater variance.**

41. As found above, a portion of the northeast portion of the campus lies in the city of Tumwater. Its zoning is General Commercial (GC). The zoning of the areas of the campus lying in Olympia is R 4-8.

42. The master plan proposes two new buildings, Nos. 1 and 7 on the Long-Term Master Plan map, which would straddle the boundary between the cities in the northeast part of campus. The buildings will be used for education in applied sciences technology.

43. Tumwater Municipal Code (TMC) 18.22.050 states that in the GC zone,

"[w]here any structures or portions of structures are adjacent to any residential zoning district, the minimum structural setback shall be twenty feet. Where structures are constructed over one story, the setback of the structure from the adjacent property line or lines shall be increased by ten feet for every story above the ground level story of the proposed new building, and shall be screened from view in accordance with Chapter 18.47."

44. The Olympia R 4-8 zone is residential. Therefore, this provision in the Tumwater Code would require Buildings 1 and 7 to be set at least 20 feet from the city boundary, thus preventing their proposed location straddling that boundary.

45. The uses proposed in both the Tumwater GC zone and the Olympia R 4-8 zone are the same: a state educational facility. In neither zone adjoining this city boundary are commercial or residential uses proposed.

46. Through the master plan and this conditional use permit, the Applicant is bound to restrict the uses on its campus to state educational.

47. There is no need to separate or buffer the educational uses occurring in the portions of the applied sciences technology buildings lying in Tumwater from the portions lying in Olympia.

48. The applied sciences technology buildings, Buildings 1 and 7, are proposed to be located in a rational configuration, which efficiently uses the available land in this portion of campus. Requiring them to be relocated so that one (or both) in the Tumwater portion were 20 or 30 feet from the city limits would deprive the Applicant of the use of otherwise available land and would likely require the shrinking of the facilities

to retain the perimeter buffers. On the other hand, this relocation and redesign would serve no purpose of the setback requirements, since, as noted, the uses are all the same. It is irrational to buffer a use or building from itself.

49. The Applicant did not create the jurisdictional division through its property or the setbacks imposed on the portion within Tumwater.

50. Other lands in the Tumwater GC zone with the same circumstances, including an approved master plan restricting uses to educational purposes, would be entitled to a similar variance.

51. As proposed and as conditioned, the buildings would observe applicable landscaping and other setback requirements. The variance would not be detrimental to the public welfare or interests and would have no adverse effects on surrounding properties, whether on or off the campus or in Tumwater or Olympia.

#### **I. Miscellaneous.**

52. The site size, recreation area, building size and other features of the proposed buildings and the site are set out in the Staff Report, Ex. 1 pp. 10-11.

53. The City of Olympia has domestic water system capacity to serve the needs of the College with full implementation of the master plan. The City may impose additional requirements to implement its water service as development applications are received.

54. The City of Olympia has sanitary sewer system capacity to serve the needs of the College with full implementation of the master plan. The City may impose additional requirements to implement its sewer service as development applications are received.

55. According to the engineers' report at Ex. 1, Att. K, sewage generated from existing and future buildings to the east of Percival Creek must be pumped to the public conveyance system in Mottman Road. The report notes that the volume handled by this pump station increases greatly, up to 405%, during heavy rain. Ex. 1, Att. K, p. 2. The report states this is due to stormwater intrusion into the sewer conveyance pipes. Id. The report calculates the increased load on the pump station with full implementation of the master plan and concludes that certain improvements to the pump station will be needed in the future to accommodate the increased volume. Id. Those improvements may await construction of the buildings which will necessitate them.

56. The report, however, does not appear to include the sometimes significant stormwater intrusion in its calculations of future volumes of sewage through the pump station. From a layperson's standpoint, it seems that the entire flow should be

considered in determining whether the pump station's capacity, measured in gallons per minute, will be exceeded. This, however, is a technical question which need not be answered at this point. This decision is conditioned to require the Department to consider whether intrusion volumes should be taken into account when future determinations are made concerning pump station capacity.

57. As shown by the tree report at Ex. 1, Att. L, well over the minimum number of tree units required at this time will be retained with full implementation of the master plan.

## **CONCLUSIONS OF LAW**

### **A. Applicable standards.**

1. In Olympia, schools are permitted in the R 4-8 zone only if a conditional use permit is issued. Olympia Municipal Code (OMC) 18.04.040, Table 4.01.
2. Conditional use permits in Olympia are subject to the standards set out in OMC 18.48.020 and .040. In summary, these provisions require that the use be compatible with other existing and potential uses in the neighborhood, that it be equivalent to other permitted uses in the same zone with respect to nuisance generating features, such as noise, odor, traffic and similar matters, and that it minimize hazards to life and property. Conditional uses must also comply with otherwise applicable provisions of Title 18 of the OMC governing land use. These standards are discussed in detail below.
3. Proposed conditional uses must also comply with other Olympia land use regulations that apply to it.
4. In Tumwater, state education facilities are permitted in the GC zone only if a conditional use permit is issued. TMC 18.22.040.
5. Conditional use permits in Tumwater are subject to the standards set out in TMC 18.22.040 and TMC 18.56.040. As with Olympia, the heart of these standards lies in the requirements to mitigate adverse effects on neighboring properties and to protect adjacent uses and the health, safety and general welfare. Conditional uses in Tumwater must also comply with other land use regulations that apply to it. These standards are discussed in detail below.
6. The variance requested from Tumwater setback regulations is governed by TMC 18.58.010 and 18.58.040, as discussed below.
7. The application for the conditional use permit characterizes it as an

amendment to the existing 1984 conditional use permit. See Ex. 1, Atts. A and B. Both the Applicant and the Department, though, take the position that the 1984 permit should be superseded. As found, the 1984 permit has been fully implemented. A number of its conditions have no application to the updated master plan. Therefore, it seems most economical, logically and legally, to deem the current application to be one for a new permit, which, as held below, will incorporate some of the conditions from the 1984 permit. To avoid raising any unnecessary questions about completed projects, the 1984 permit should not be deemed superseded or rescinded.

**B. Compatibility with surrounding property and uses.**

8. As noted, OMC 18.48.020 and .040 require that conditional uses be compatible with other existing and potential uses in the neighborhood, that they be equivalent to other permitted uses in the same zone with respect to nuisance generating features, such as noise, odor, traffic and similar matters, and that they minimize hazards to life and property.

9. In Tumwater, the basic standards for conditional use permits are found in TMC 18.56.040 and 18.56.090. The former provision states:

"[p]ermits for conditional uses shall stipulate restrictions or conditions which may include a definite time limit, provisions for front, side or rear yards greater than the minimum requirements of this title, suitable landscaping, off-street parking, and any other restrictions, conditions or safeguards that would uphold the spirit and intent of this title and mitigate any adverse effect upon neighborhood properties."

TMC 18.56.090 states:

"[a]ny conditional use shall meet the density regulations of the zone in which it is located, as well as the minimum conditions listed in the applicable sections of this chapter. The hearing examiner may impose any additional conditions deemed necessary to ensure the protection of adjacent uses, health, safety and general welfare."

The heart of each City's conditional use standards is the mitigation of adverse effects on surrounding uses and properties and assurance of the compatibility of the proposal with surrounding uses and properties.

10. The Applicant is requesting conditional use approval for a large expansion of its facilities over an extended period. The precise location, size and nature of proposed buildings and improvements are not yet known, although their general type and configuration is proposed. As found, the Applicant also considers its proposal a general plan, subject to change in the future. For example, the Applicant currently proposes no

new buildings within 100 feet of its property boundary, but asks to keep open the option of locating buildings within that area.

11. In these circumstances, we must identify what determinations on compatibility can be made at this time, and which must await a specific application showing the precise size, nature and location of actual buildings and improvements.

12. Turning to the former category, the proposed lighting, as conditioned, should not cause any adverse effects on nearby properties, with two exceptions. They are the potential four-story parking garage on the site of Lot D with the near doubling of parking capacity at that location and the four-story parking garage on the site of Lot H with the quintupling of parking capacity at that location. The evidence did not show whether headlight beams from cars using the Lot D structure would shine onto nearby residential lots or whether beams from cars using the Lot H structure would shine onto Mottman Road or property beyond it. The evidence did not show whether structural lighting from these parking garages would shine onto nearby properties. The evidence did not show whether the 30-foot landscape buffer would block any of these types of light, especially from near the top of the structures. Therefore, to assure compatibility, a parking structure may be constructed on Lots D or H only if a supplemental conditional use permit is issued for that structure.

13. With the same exceptions, noise generated by projects authorized by this permit should not cause any adverse effects on nearby properties. The evidence, though, did not show whether increased noise from four-story parking garages on the sites of Lots D or H and the great increases in parking capacity at those locations would adversely affect nearby residences or other properties. To assure compatibility, a parking structure may be constructed on Lot D or H only if a supplemental conditional use permit is issued for that structure.

14. Similarly, it cannot be determined at this stage whether fumes and exhaust from the increased capacity at the Lot D and H structures could create problems at nearby properties. For that reason, also, a supplemental conditional use permit will be required for those structures.

15. More generally, the 1984 conditional use permit contained three principal conditions designed to assure compatibility with surrounding uses:  
The first, already noted, required a

"perimeter landscape buffer of a minimum of 30 feet in width, which is comprised of native vegetation whenever possible and densely planted evergreen trees to screen the adjacent properties from the . . . campus."

The second condition required the College to

"fence the north and south property lines abutting residential subdivisions on the west side of Percival Creek so as to prevent pedestrian or vehicular traffic from entering the campus or leaving the campus through the subdivisions."

Ex. 1, Att. O.

The third condition required all buildings to be at least 100 feet from the property line, unless the permit were reconsidered.

16. With the increased campus development and activity accompanying this master plan, these requirements become even more important to assuring compatibility between the College and nearby uses. No evidence was offered to the contrary. Therefore, these conditions are included in this approval. Further, over the course of the 25 years since the 1984 approval, the required buffer and fence may easily have deteriorated. To address that possibility, this decision is conditioned to require the Applicant to examine the width and condition of the 30-foot perimeter buffer required in 1984. If this buffer in any location lacks the "native vegetation whenever possible and densely planted evergreen trees" sufficient to screen the adjacent properties from the . . . campus, the Applicant shall plant, monitor and maintain such vegetation. If this buffer in any location has been reduced to less than 30-feet in width, the Applicant shall restore the buffer to a width of 30 feet and shall plant, monitor and maintain such vegetation as just described. However, these requirements do not apply to any location where the perimeter buffer has been reduced to less than 30 feet pursuant to a prior permit or approval issued by either city.

17. For the same reasons, the Applicant should examine the fence along the "north and south property lines abutting residential subdivisions on the west side of Percival Creek", required by the 1984 permit, to ensure its integrity. If this fence is in poor repair or is absent in any location required by the 1984 permit, the Applicant shall repair or rebuild it according to customary construction standards.

18. Development proposed by the new master plan near the southern property line east of Percival Creek is to be at least 100 feet from that line and separated from it by a buffer in places significantly more than 30 feet in width. Therefore, there is no need to require construction of a fence east of Percival Creek, as the 1984 permit required west of it.

19. Finally, these Conclusions about compatibility and effects on nearby properties may no longer be valid if the location or nature of the proposed improvements are changed, an option which the Applicant expressly wishes to reserve.

20. Potential master plan changes in building height should not adversely affect



nearby properties as long as the heights comply with current standards. If those standards are changed to allow higher buildings, supplemental conditional use permit review will be required.

21. The effects of potential master plan changes on traffic and stormwater should be adequately mitigated through the requirement to carry out traffic analyses for each proposed building and the requirements concerning compliance with the stormwater manual. That leaves the potential effects of noise, light, fumes and similar impacts which could escape mitigation if the master plan here approved is changed without further review. These effects are all sharpened by proximity. As noted, the 1984 permit required all buildings to be at least 100 feet from the property line, unless the permit were reconsidered. The buildings proposed by this master plan are all at least 100 feet from a property line, but the Applicant asks for the option of placing buildings closer than 100 feet under this permit, apparently without further conditional use review. No evidence was offered that buildings within 100 feet of the property line are compatible with adjacent residences with an expanded college when they were not found compatible with a college at about half the size in 1984. For that reason, the 100-foot setback should be retained.

22. Further, it appears from the Long-Term Master Plan map at Ex. 1, Att H. that two parking lots, Lot A and Lot J, have been constructed within 100-feet of the exterior property line. No changes to either of these are lots are proposed. Lot J, however, is very close to adjacent residences to the west. Any increase in the capacity of that lot could jeopardize its compatibility with those residences. Therefore, any increase in its capacity must require an additional conditional use permit.

23. Next, as found and concluded above, a multi-story parking garage may cause increased light, noise and fumes on surrounding property. This decision concludes above that the two potential parking garages on Lots D and H will require supplemental conditional use permit before construction. For the same reasons, a supplemental conditional use permit should be required for parking garages at any other location, if the Applicant so proposes.

24. The above conclusions have attempted to address specific potential changes in the master plan which will require supplemental review. Other changes, too, could be significant enough to count as a new proposal, thus triggering additional conditional use permit review. There are no nicely quantifiable standards for determining when master plan changes in general require such new review. Instead, if the Department believes that any future changes to the master plan are potentially incompatible with surrounding uses, it may require a supplemental conditional use permit application.

25. As conditioned below, the master plan improvements authorized by this conditional use permit should not adversely affect surrounding uses and properties and



should be compatible with those uses and properties.

### **C. Traffic.**

26. As found, implementation of the master program would increase enrollment at the College from the fall 2007 figure of approximately 4250 FTE to a projected 7500 FTE students, or to a student headcount of 10,000 to 12,000 students. This increase in enrollment would cause a commensurate increase in faculty and staff numbers.

27. The Applicant and the Department propose that traffic impact analyses or other studies would be carried out in conjunction with each proposed development application to evaluate its effect on transportation levels of service. This approach should adequately evaluate traffic impacts and identify needed mitigation, as long as the following requirements are met.

28. A number of hearing examiner decisions have held over the past year that that an exemption from the requirement to prepare a traffic impact analysis (TIA) is not an exemption from concurrency requirements. The reasons for this conclusion are set out in the following Conclusions of Law in the Hearing Examiner decision on the Pattison Street Plat, No. 07-0120, August 21, 2008, which were also incorporated in the Hearing Examiner decision on the Kaiserwood Plat, No. 04-2602, October 29, 2008:

"RCW 36.70A.070 (6) (b) requires local jurisdictions subject to the Growth Management Act to adopt ordinances which prohibit development that causes the LOS on a locally owned transportation facility to decline below adopted standards, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development. Under this provision, "concurrent with the development" means that improvements or strategies are in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within six years. This requirement is commonly known as that of concurrency.

Olympia has complied with this requirement through the adoption of Chap. 15.20 OMC. The heart of this ordinance is OMC 15.20.050 H, which states that a finding of concurrency will be made only if the LOS of affected transportation facilities meets or exceeds the adopted minimum. Although not stated explicitly in this ordinance, its purpose of complying with RCW 36.70A.070 plainly implies that development cannot proceed without such a finding.

Nowhere in either RCW 36.70A.070 or Chap. 15.20 is there any exemption for projects falling below the threshold for preparing a TIA. OMC 15.20.060 (5) does exempt from the concurrency requirement

applications which are exempt under the State Environmental Policy Act (SEPA). This will surely exempt from concurrency some small projects which are also exempt from TIA preparation, but they are not exempted from concurrency because they are exempted from TIA preparation. Projects such as this, which are not exempt from SEPA but are exempt from TIA preparation, are still subject to the requirement of concurrency under RCW 36.70A.070 and Chap. 15.20 OMC."

29. This conclusion is even more important in a multi-stage proposal such as this. If each building were small enough to be exempted from TIA preparation and were therefore also exempted from concurrency review, then the considerable increase in traffic from the entire master plan would be unexamined and unmitigated through concurrency.

30. Thus, for each proposed building presented for construction approval, the Applicant or Department must determine the amount and route of new traffic from that building and its effect on the LOS of affected streets and intersections. If such LOS would be at a substandard level, then the building cannot approved under RCW 36.70A.070 (6) (b) "unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development." As noted, "concurrent with the development" means that "improvements or strategies are in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within six years." RCW 36.70A.070 (6).

31. This requirement does not demand a TIA for every building, but does require traffic analyses consistent with accepted standards to determine its effect on concurrency. In doing so, the traffic from each building or expansion must not be considered in isolation, but together with other projected development and pipeline projects, consistently with accepted standards.

#### **D. Streams and other critical areas.**

##### **1. Streams.**

32. OMC 18.32.435 requires that vegetation be maintained in a buffer 200 feet on either side of Type F (Type 3) streams. Thus, this buffer must be maintained around the tributary of Percival Creek running through the campus.

33. As found, the Applicant proposes no new buildings or additions to buildings within 200 feet of Percival Creek. The Applicant would only construct buildings within 200 feet of the creek if the construction were within an existing building footprint or a buffer reduction were approved. The Long-Term Master Plan shows also that the parking garage proposed on existing Lot D would be on existing impervious surfaces within 200 feet of the Creek.

34. OMC 18.32.415 states:

"The following alterations or commencement of the following activities shall be prohibited within a stream or "important riparian area" and its associated buffer; except as specified in 18.37.070, 18.32.420 - Exempt Uses and Activities, 18.32.425 - Administratively Authorized Uses and Activities, or 18.32.430 - Hearing Examiner Authorized Uses and Activities:

Any human action which changes the existing condition including, but not limited to...:

**G.** Paving;

**H.** Building of structures;

**I.** Demolition of structures".

35. Construction on an impervious surface or within a building footprint would involve the building or demolition of structures. Therefore, it is prohibited within 200 feet of Percival Creek under this provision unless falling within one of the exception in OMC 18.32.415, just quoted.

36. One of these exceptions, OMC 18.37.070 A, states that

"[e]xisting structures and uses which are located within a critical area or its buffer prior to the effective date of Chapter 18.32 may continue pursuant to the provisions of this Chapter."

OMC 18.37.070 C further provides that the

"portion of a parcel which contains existing structure, appurtenant structures, and related development as defined by OMC 18.37.070(A) and 18.37.070(B), shall be exempt from further review of OMC Chapter 18.32, except as provided in OMC 18.32.215. Expansion or additions of structures and uses listed in OMC 18.37.070(A) and 18.37.070(B) into undisturbed parts of the property which are within a critical area or its buffer will require a critical area review per OMC Chapter 18.32."

37. Chap. 18.32 OMC was enacted by Ordinance No. 6356, effective June 20, 2005. Therefore, under OMC 18.32.070 any structure or use "located" in the 200-foot buffer prior to that date may be rebuilt within its footprint or the footprint of related development as defined by OMC 18.37.070 A, B, and C. However, no construction or

other activity described in OMC 18.32.415 may take place outside such footprints unless a buffer reduction is obtained.

38. The proposed four-story parking garage on Lot D presents a more difficult issue under these standards. On one hand, the garage will be located on the existing parking lot, thus continuing the same use in the same footprint. On the other hand, the proposal would involve constructing a four-story building where a parking lot now lies, with a near doubling of the vehicular capacity and a potential marked increase of light and noise in the critical area. When a legal requirement may fairly be read in conflicting ways, the reading should be adopted which best achieves legislative intent as expressed in the goals and purposes of the legislation. With the potential damage to stream and stream buffer habitat from the increased light and noise from the parking garage, this conflict should be resolved in favor of critical area review. Therefore, the parking garage may be built within 200 feet of Percival Creek only if a buffer reduction is obtained under Chap. 18.32 OMC.

39. OMC 18.32.435 requires that vegetation be maintained in a buffer 150 feet on either side of Type Ns (Type 5) streams. Thus, the segment of the unnamed Ns stream in the northeast campus lying in Olympia is subject to a 150-foot buffer. I did not find any required stream buffers in the Tumwater Municipal Code. The Critical Area map at Ex. 1, Att. H, though, indicates that Tumwater requires a 50-foot buffer on either side of the unnamed Ns stream in its jurisdiction. The development proposed in the master plan lies outside these buffers around the unnamed stream.

40. As conditioned below, the master plan proposal complies with the current Olympia and Tumwater critical area ordinances concerning streams.

## **2. Wetlands.**

41. OMC 18.32.535 prescribes wetland buffers depending on the wetland's category and scores for habitat and water quality functions. Under this provision, a 100-foot buffer is required around the two Category II wetlands lying in Olympia. These are shown on the Critical Area map at Ex. 1, Att. H along Mottman Road in the northeast portion of the campus and in the southwest corner of the site. An 80-foot buffer is required around the Category III wetland lying near Percival Creek on the Critical Area map at Ex. 1, Att. H.

42. Wetland buffers in Tumwater are prescribed by TMC 16.28.170, relying on the wetland category, the functions and characteristics of the wetland, and the impact of the nearby land use. Under this formula, a 100-foot buffer is required around the Category II wetland along Mottman Road. The Wetland Report for the Category II wetland in the southwest corner, at Ex. 1, Att. R, does not contain the information needed to apply the formula of TMC 16.28.170 to this wetland. However, the Critical Area map at Ex. 1, Att. H states that a 100-foot buffer is required around this wetland

under the Tumwater ordinance.

43. The master plan proposes no development within 100 feet of either Category II wetland or within 80 feet of the Category III wetland.

44. The master plan proposal complies with the current Olympia and Tumwater critical area ordinances concerning wetlands.

### **3. Master plan modifications.**

45. As found, the Applicant wishes to retain the option of modifying the master plan in some respects without obtaining a new conditional use permit. Modifications which resulted in prohibited activities in critical area buffers would be illegal and therefore could not be allowed through this conditional use permit. This decision is conditioned to that effect.

### **E. Tumwater variance.**

46. The Applicant requests a variance from the setback requirements imposed in the Tumwater GC zone to allow it to locate new buildings Nos. 1 and 7 on the Long-Term Master Plan map in a way that straddles the boundary between Tumwater's GC zone and Olympia's R 4-8 zone. The details of the variance are set out in the Findings, above.

47. The requirements for variances in Tumwater are set out in two ordinance sections, TMC 18.58.010 and 18.58.040. The former section states:

"[w]here difficulties exist rendering compliance with the Zoning Ordinance impractical and such compliance would create unnecessary hardship to the owners or users of land or building the Hearing Examiner may grant a variance after due notice, and a public hearing. The variance procedure applies to mechanical problems, such as structure height, yard setbacks, parking requirements, etc."

For the reasons set out in the Findings, above, these requirements are met.

48. The latter section, TMC 18.58.040, states:

"A. A variance may be granted, after investigation, provided all of the following findings of fact exist:

1. That special conditions exist which are peculiar to the land, such as size, shape, topography, or location, not applicable to other lands in the same district, and that literal interpretation of the provisions of this title

would deprive the property owners of rights commonly enjoyed by other properties similarly situated in the same district under the terms of this title;

2. That the special conditions and circumstances are not the result of actions of the applicant;

3. That the granting of the variance requested will not confer a special privilege to the property that is denied other lands in the same district;

4. That the granting of the variance will not be materially detrimental to the public fare or injurious to the property of improvements of the vicinity and zone in which the subject property is situated; and

5. That the reasons set forth in the application justify the granting of the variance, and that the variance, if granted, would be the minimum variance that will make possible the reasonable use of the land."

B. In no event may a variance be granted if it would permit a use that would not be permitted as a primary, accessory or conditional use in the district involved."

49. Turning to these requirements individually, the first demands the presence of a "special condition" which is "peculiar to the land", such that literal interpretation of the setback provision would deprive the Applicant of rights commonly enjoyed by similarly situated other properties. Generally, a zoning district boundary is not the sort of condition that can justify a variance. If it were, then the restriction from which a variance is sought could be used in some cases to justify the variance itself. Here, however, the Applicant's property is bisected by a municipal boundary resulting in different zones. Further, the remaining land available for development on the campus significantly constrains the placement of needed buildings. These, together, should count as special conditions peculiar to the land for variance analysis.

50. As found, the Applicant conducts a community college on its property, including both sides of this municipal boundary. Through its statutory authorization, its master plan and this permit, the Applicant is committed to continue those educational uses. If the 20 to 30 foot setback under the TMC were applied, the Applicant would be forced to create an unbuildable strip of that dimension in the middle of its campus to buffer nonexistent commercial uses from nonexistent residential uses. This would deprive it of rights which would be commonly enjoyed by colleges without the jurisdictional division and would result in the absurd situation of buffering a use from itself. For these reasons, the first criterion in TMC 18.58.040 is met.

51. The Findings show that the remaining criteria in TMC 18.58.040 A are met.



52. Schools and educational facilities are allowed in the Tumwater GC zone and in the Olympia R 4-8 zone with conditional use approval. Therefore, the requirements of TMC 18.58.040 B, above are met.

53. The requested variance complies with applicable standards and should be approved.

#### **F. Stormwater.**

54. The Applicant proposes to retrofit or upgrade its existing stormwater facilities when required by the 2005 Olympia Stormwater Manual and to comply with any other applicable requirements from that Manual as construction proceeds under the master plan. With that, the improvements authorized by the updated master plan will comply with the 2005 Olympia Stormwater Manual.

55. The Applicant, understandably, does not wish to retrofit and upgrade its existing facilities potentially a third time if a future stormwater manual or set of regulations is adopted before full implementation of its master plan. To that end, the Applicant asks that development under this master plan be subject to the 2005 Manual, even if new or modified regulations are adopted before its full implementation.

56. The Applicant states that its new master plan outlines the College's long-term future capacity, without any specific date of completion. Ex. 1, Att. C, p. 1 and Ex. 1, Att. G. The timing of plan implementation would depend on need, growth and availability of funding. Ex. 1, Att. G. Thus, the Applicant is asking that the stormwater regulations applicable to its master plan development be frozen in their 2005 state for an indefinite period into the future. The legal issue is whether the law allows or requires this.

57. The state's vested rights doctrine is a sort of temporal choice of law doctrine, supplying the rules for determining which set of standards applies to a specific development application. The doctrine's basic rule is that an applicant has the right

"to have a land development proposal processed under the regulations in effect at the time a complete building permit application is filed, regardless of subsequent changes in zoning or other land use regulations."

Erickson v. McLerran, 123 Wn.2d 864, 868-68 (1994). To trigger this right, the application must be fully complete, RCW 19.27.095, and must comply with the standards it vests under. See Valley View v. Redmond, 107 Wn.2d 621, 638 (1987).

58. These vesting rules have been extended to subdivisions through RCW 58.17.033 and to certain other permits through cases such as Weyerhaeuser v. Pierce County, 95 Wn. App. 883 (1999). I am not aware of any reported state appellate



decision ruling on whether an application for a conditional use permit vests the applicant against future changes in stormwater regulations. However, two decisions in related circumstances suggests that it does.

59. First, Weyerhaeuser v. Pierce County, *supra*, held that a project for which a fully completed conditional use application was submitted was not subject to later-enacted wetland regulations. In reaching this conclusion, the Court relied on the facts that the conditional use application was complete and that it disclosed all its proposed effects on wetlands. Weyerhaeuser, 95 Wn. App. at 894. The Applicant here has done the same, *see* Ex. 5, pp. 2-3, and has shown that its proposal, with mitigation, will comply with the 2005 Manual.

60. Second, in Westside Business Park v. Pierce County, 100 Wn. App. 599 (2000), the held Court held that an application for short subdivision approval vested the applicant against future changes in stormwater regulations, even though the application showed only two vacant lots with no structural improvements, storm drainage facilities, roads or utilities. Westside, 100 Wn. App. at 601. The Court reached this conclusion, because it felt the County had been advised of the intended use and had accepted the application as complete.

61. These decisions indicate that this conditional use permit application vests the Applicant under the 2005 Stormwater Manual for its proposed master plan. However, one important distinction is that the proposals in Weyerhaeuser and Westside were for proposals which were planned to be completed within an identifiable time period. Here, the Applicant asks for a much more open-ended vesting of rights, extending for an indefinite time into the future.

62. In Erickson, *supra* at 873-74, the Court recognized that

"[d]evelopment interests and due process rights protected by the vested rights doctrine come at a cost to the public interest. The practical effect of recognizing a vested right is to sanction the creation of a new nonconforming use. A proposed development which does not conform to newly adopted laws is, by definition, inimical to the public interest embodied in those laws. If a vested right is too easily granted, the public interest is subverted."

The vested rights doctrine attempts to avoid this subversion of the public interest by balancing "the private property and due process rights against the public interest by selecting a vesting point which prevents "permit speculation", and which demonstrates substantial commitment by the developer . . ." *Id.* at 874.

63. This risk to the public interest is heightened when, as here, an applicant asks to be insulated from changes in the law for an indefinite period. If the Applicant's request were followed, no new stormwater regulations would apply to its proposal at any

point in the future, no matter how important to the public interest they may be. On the other hand, the central purpose of the doctrine of affording certainty to applicants is not served by subjecting the Applicant to a moving target of repeatedly retrofitting the same facilities as regulations change over the course of plan implementation.

64. The purposes of the doctrine can be best served, and its pitfalls best avoided, by holding this permit vested under the 2005 Stormwater Manual, subject to Hearing Examiner review every ten years. This review would take into account the level of master plan implementation, the changes to stormwater regulations in the last ten year period, the potential harm to public health and safety and to the environment from allowing future master plan implementation to proceed without complying with those changes, any new scientific or technical information on the effects of stormwater, and the cost of retrofits or upgrades to existing stormwater facilities needed to comply with such new regulations. The goal of this review would be to assure protection of public health and the environment consistently with updated scientific and technical information and considering new regulations, while minimizing the cost of upgrading stormwater facilities existing at that time.

#### **G. Other vested rights issues.**

65. The Weyerhaeuser and Westside decisions, supra, show that an application will vest only if it is complete and its effects in the area regulated, e.g. wetlands, have been adequately communicated to the local government. As also noted, an application vests only if it complies with the standards it vests under. See Valley View v. Redmond, 107 Wn.2d 621, 638 (1987).

66. The Applicant desires to be able to change the projects in its master plan without further conditional use review. Such changes could depart enough from the current application to take away its vesting under Weyerhaeuser, Westside and Valley View, as just discussed. Therefore, the Department should examine construction applications to determine if they deviate enough from the master plan to require a new vesting date. The Department may refer that determination to the Examiner, if it wishes.

67. As a further control of master plan changes, the ten-year review discussed above should also examine whether any changes in the plan yet to be implemented are significant enough to require a new vesting date.

68. The application of the vested rights doctrine to stormwater standards and changes to the master plan is discussed immediately above. Any future issues concerning the application of changes in other standards should also be determined under that doctrine.

#### **H. Essential public facilities.**

69. Community colleges are Type 2 essential public facilities in both Olympia and Tumwater. See OMC 18.04.060 W and TMC 18.56.260.

70. Each city's code prescribes procedural and substantive standards for essential public facilities. Mr. Bures testified that the Department only requires compliance with the procedural standards for new projects on vacant land. No differing interpretation was offered by Tumwater. The Department's interpretation is reasonable, is entitled to deference, and will be followed. This permit is for expansion and redevelopment of an existing facility. Therefore, the special procedural requirements for essential public facilities do not apply to it.

71. The proposed master plan meets the substantive requirements for essential public facilities in both OMC 18.04.060 W and TMC 18.56.260.

#### **I. Miscellaneous.**

72. As found, the development plan authorized by the 1984 conditional use permit has been implemented. Therefore, the conditions and requirements of the 1984 permit do not apply to this new master plan, unless specifically incorporated into this 2009 permit.

73. A number of the conditions in the 1984 permit are designed to assure compatibility with nearby uses and appear to be just as suited to that purpose now as in 1984. Those conditions are the requirement of a 30-foot perimeter landscape buffer, fencing the north and south property lines west of Percival Creek, and the requirement that proposed buildings be at least 100 feet from the exterior boundary line of the College property. Because they are reasonable measures to minimize potential adverse effects on adjacent properties, they are incorporated into this decision.

74. The remaining requirements and conditions of the 1984 permit are either moot or are covered by current regulations. Therefore, these other conditions are not incorporated.

75. Zoning and other land use standards which cannot be applied at this conditional use permit stage, such as but not limited to setbacks and landscaping, will be applied at the land use or construction permit stage for individual developments.

76. As conditioned below, implementation of the Applicant's updated master plan complies with provisions of the OMC and TMC governing conditional use permits. The requested conditional use permit should be approved, subject to the conditions below.

77. The requested setback variance complies with applicable standards and

should be approved.

## **DECISION**

A. The requested variance is approved.

B. The requested conditional use permit is approved, subject to the following conditions:

1. Recommended conditions 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 14 on pp. 15-16 of the Staff Report at Ex. 1 are incorporated by reference. Recommended condition 13 is incorporated with the introductory clause, "Subject to the conditions below,".
2. Outdoor lighting shall be designed to comply with Illuminating Engineering Society of North America footcandle requirements to minimize light trespass and shall be shielded or directed so that their direct light is not visible from the nearby residential areas described in Part B of the Findings, above.
3. No athletic field lighting shall be installed, unless a supplemental conditional use permit is issued.
4. A parking structure may be constructed on Lots D or H only if a supplemental conditional use permit is issued for that structure. A supplemental conditional use permit is also required for a multi-story parking structure at other locations on the campus.
5. The Applicant shall examine the width and condition of the 30-foot perimeter buffer required by the 1984 permit. If this buffer in any location lacks the "native vegetation whenever possible and densely planted evergreen trees" sufficient to screen the adjacent properties from the campus, the Applicant shall plant, monitor and maintain such vegetation. If this buffer in any location has been reduced to less than 30 feet in width, the Applicant shall restore the buffer to a width of 30 feet and shall plant, monitor and maintain such vegetation as just described. However, these requirements do not apply to any location where the perimeter buffer has been reduced to less than 30 feet pursuant to a permit or approval issued by either city.
6. The Applicant shall examine the fence along the "north and south property lines abutting residential subdivisions on the west side of Percival Creek", required by the 1984 permit, to ensure its integrity. If this fence is in poor repair or is absent in any location required by the 1984 permit, the Applicant shall repair or rebuild it according to customary construction standards. This requirement does not apply to any location where the fence has been removed or modified

pursuant to a permit or approval issued by either city.

7. No new buildings, structures or parking lots, or expansion to the same, shall be located within 100 feet of the exterior property line of the campus.

8. If standards are changed to allow buildings higher than those authorized at issuance of this conditional use permit, supplemental conditional use permit review shall be required for any building exceeding the heights now authorized.

9. Any increase in the capacity of Parking Lot J shall require a supplemental conditional use permit.

10. If the Department believes that any future changes to the master plan are potentially incompatible with surrounding uses, it may require a supplemental conditional use permit application on such changes.

11. For each proposed building presented for construction approval, the Applicant or Department shall determine the amount and route of traffic generated by that building and its effect on the level of service of affected streets and intersections. If such level of service would be at a substandard level, then the building shall not be approved unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development. As concluded, "concurrent with the development" means that "improvements or strategies are in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within six years."

12. This requirement to analyse traffic does not demand a traffic impact analysis for every building, but does require traffic analyses consistent with accepted standards to determine its effect on concurrency and levels of service. In doing so, the traffic from each building shall not be considered in isolation, but together with other projected development and pipeline projects, consistently with accepted standards.

13. Any structure or use located in the 200-foot buffer along Percival Creek prior to June 20, 2005 may be rebuilt within its footprint or the footprint of related development as defined by OMC 18.37.070 A, B, and C. However, no construction or other activity described in OMC 18.32.415 may take place outside such footprints unless a buffer reduction is obtained.

14. The proposed four-story parking garage on Lot D may be built within 200 feet of Percival Creek only if a buffer reduction is obtained under Chap. 18.32 OMC.

15. The master plan may not be modified to allow any activity in a critical area buffer in violation of the Tumwater or Olympia critical area ordinances, as applicable.

16. This permit is vested under the 2005 Stormwater Manual, subject to Hearing Examiner review every ten years. This review shall take into account the level of master plan implementation, the changes to stormwater regulations in the last ten year period, the potential harm to public health and safety and to the environment from allowing future master plan implementation to proceed without complying with those changes, any new scientific or technical information on the effects of stormwater, and the cost of retrofits or upgrades to existing stormwater facilities needed to comply with such new regulations. The goal of this review is to assure protection of public health and the environment consistently with updated scientific and technical information and considering new regulations, while minimizing the cost of upgrading stormwater facilities existing at that time.

17. This ten-year review shall also examine whether any changes in the master plan yet to be implemented are significant enough to require a new vesting date.

18. The Department shall examine construction applications to determine if they deviate enough from the master plan to require a new vesting date. The Department may refer that determination to the Examiner, if it wishes.

19. Zoning and other land use standards which cannot be applied at this conditional use permit stage, such as but not limited to setbacks and landscaping, will be applied at the land use or construction permit stage for individual developments.

20. When future determinations are made concerning pump station capacity, the Department shall consider whether intrusion volumes should be taken into account.

Dated this 9th day of March, 2009.

  
Thomas R. Bjorge  
Olympia Hearing Examiner

*Mailed 3-10-09*  
*N.L.*