

Memorandum

To: Joe Turner, City of Woodland Land Use Hearings Examiner

From: LeAnne M. Bremer, P.C.

Subject: Logan's Landing Site Plan Approval Appeal (WLD-2023-006)

Date: January 25, 2024

The purpose of this Memorandum is to provide additional evidence and argument on Appeal Issue #3.

Introduction

Finding 5 on page 4 states:

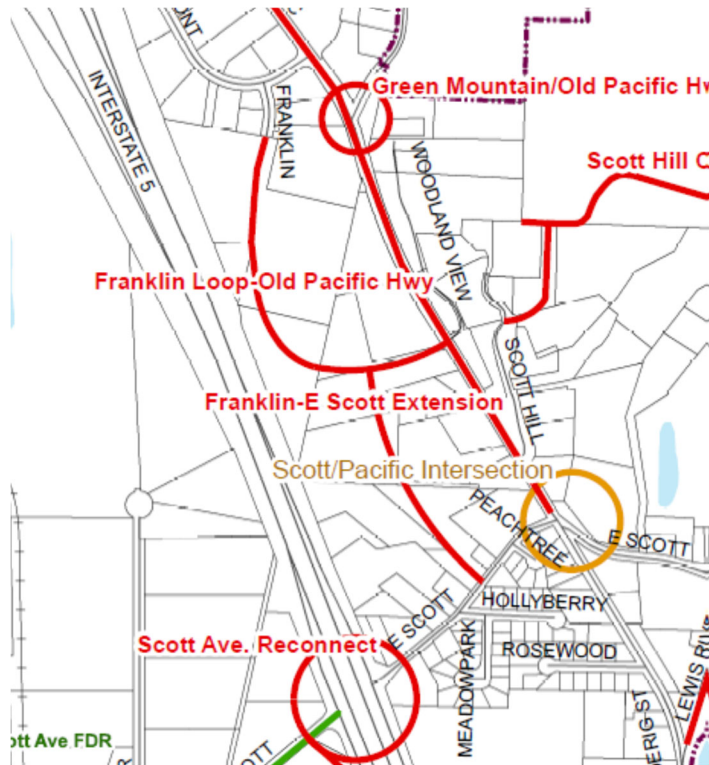
Finding 5: Frontage improvements along Old Pacific Highway will require construction of half-street improvements, attached sidewalk, landscaping, and street lighting consistent with City of Woodland Engineering Standards (Standards) and applicable Woodland Municipal Code (WMC). The Franklin Street extension and any private roads and driveway approaches shall be designed per the Standards and WMC. A condition is added that all improvements in the public right-of-way shall be completed in accordance with the Standards and WMC. Additionally, dedication of Right-of-Way shall comply with the Standards and WMC. (See Condition #3.)

Condition 3 states:

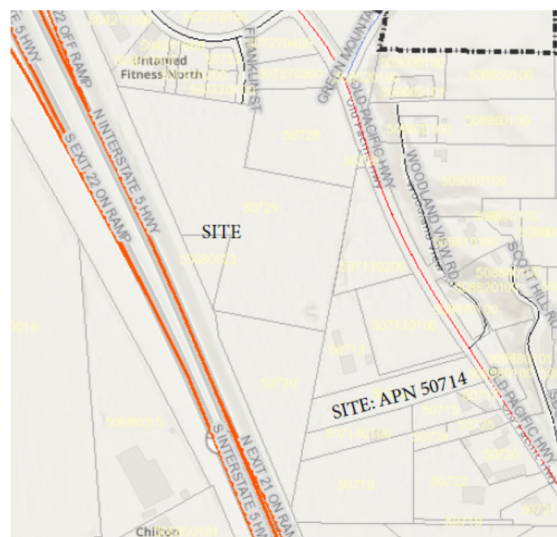
3. All improvements in the public right-of-way shall be completed in accordance with City of Woodland standards per Title 12. This will include street trees and improvements along Old Pacific Highway.

Appellant challenged both the finding and the condition.

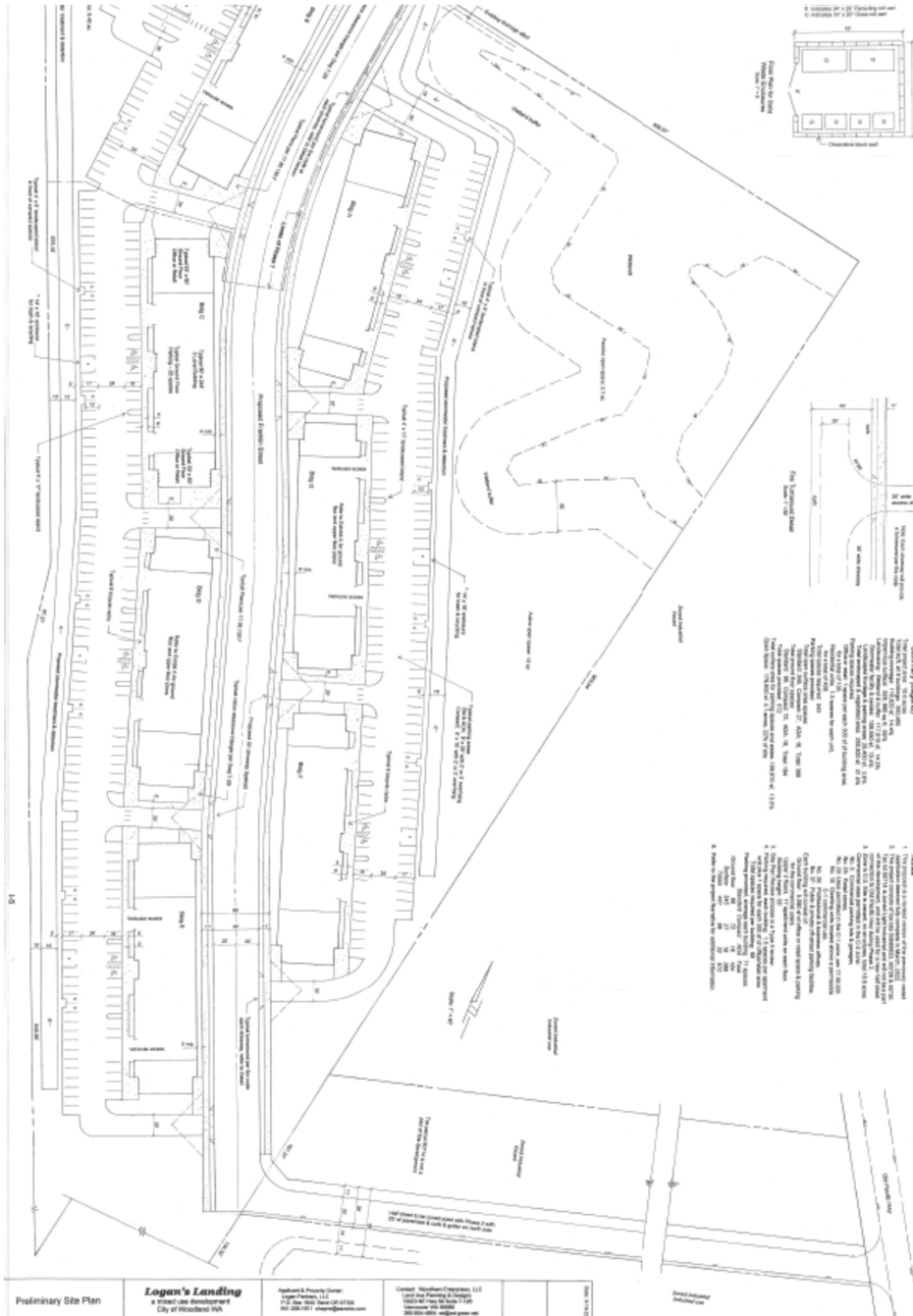
As background, in the City's 6-year transportation plan, the City identifies the Franklin Loop-Old Pacific Highway and the Franklin-E Scott Extension as potential projects, but no funding is identified for either project, as the Appeal Staff Report notes on page 8.



To compare this map to the project site, see this map:



Appellant objects to the requirement that it construct full half-street improvements across APN 50714. Appellant will be providing a portion of the Franklin Street extension (north-south) through its entire development consistent with the 6-year plan:



Appellant proposes that the east-west connection along APN 50714 be an emergency access road until that parcel is developed.

According to the Logan’s Landing Traffic Impact Analysis prepared by Heath & Associates, Inc. dated July 31, 2023 (TIA), on page 5, Appellant’s primary access to the site will be to and from the north to Franklin and then Belmont Loop. Figure 4 in the TIA shows the trip distribution and assignment. Table 3, recreated here, summarizes the projected trips:

Table 4: Project Trip Generation

Trip Type	AWDT	AM Peak-Hour Trips			PM Peak-Hour Trips		
		In	Out	Total	In	Out	Total
Total Trips	3160	82	106	188	159	143	302
Internal Link Reduction ²	-420	-6	-4	-10	-34	-31	-65
Pass-By Reduction ³	-384	-9	-9	-18	-21	-21	-42
Total New Primary	2356	67	93	160	104	91	195

The City of Woodland has adopted an LOS D standard. According to Table 5 in the TIA, no intersection impacted by the proposed development will have a LOS less than LOS C. The traffic engineer concludes that the “proposed development is shown to minimally impact the surrounding roadway system.”

The cost to complete the half-street improvements along APN 50714 is \$543,180. See Attachment A.

Argument

1. Code. The Woodland Municipal Code does not require cross-circulation as many municipal codes do. Nor do the City’s engineering standards require cross-circulation specifically. Section 2.06 of the engineering standards¹ addresses right-of-way to be deeded for streets “as required,” but there is no independent requirement for dedication or construction of the street required in this case. Specifically, Section 2.06.D. requires dedications for future streets but only for subdivisions.

In addition, Section 2.11 refers to street frontage improvements, which could provide the basis for the improvement to APN 50714’s frontage along Old Pacific Highway, if legally supportable.

¹ See:

https://www.ci.woodland.wa.us/sites/default/files/fileattachments/public_works/page/2951/engineering_standards.pdf

Lastly, the City issued a SEPA Determination of Nonsignificance with no conditions to support the contested street improvement.

In sum, the only adopted code or standards related to the required half-street improvement, where a street does not exist today, is the portion of APN 50714 abutting Old Pacific Highway. As noted in the appeal letter, no development is proposed on APN 50714 other than an emergency access, and Appellant is agreeable to deferring this improvement until APN 50714 is developed. The requirement that Appellant construct a half million dollar improvement that is not needed to serve the development, especially after Appellant is extending Franklin Street through the site, north to south, at considerable expense is grossly disproportionate to the impact of the development. The traffic study confirmed that the proposal will not degrade the LOS below standards, there are no site distance issues, and there are no other transportation impacts that need mitigation, including a full half-street improvement along APN 501714.

2. Case law. As the Hearings Examiner is well aware, the disproportionality argument rests primarily on two United States Supreme Court cases and a Washington state case that provide the legal framework for analyzing the issue.

*i. Burton v. Clark County.*² With regard to the cross-street requirement, the seminal case in Washington arose out of Clark County, where Division II of the Court of Appeals struck down a cross-street requirement. The *Burton* analysis can also apply to the frontage improvement requirement. In *Burton*, Lance Burton proposed a three-lot short plat. Clark County imposed a condition requiring Mr. Burton to dedicate a right-of-way through his site and build the road, including curbs and sidewalks, which would stub at his eastern property line. This road would not connect to any existing or planned road on the property to the east. Mr. Burton challenged this exaction, and this challenge ended up at the Court of Appeals.

In reviewing the case, the Court of Appeals relied on federal constitutional law, discussed below, and developed a useful tool in consolidating the language of the various opinions into at least four questions that must be answered to test the constitutionality of an exaction.

Accordingly, in order for the City to impose an exaction under this authority, the record must:

- Identify a public problem or problems that the exaction is designed to address;
- Show that the development for which a permit is sought will create or exacerbate the identified public problem. i.e., there must be a relationship ("nexus") between the development and the identified public problem;

² 91 Wn. App. 505 (1998).

- Show that the proposed condition or exaction (the proposed solution to the identified public problem) tends to solve, or at least to alleviate, the identified public problem; and
- Show that its proposed solution to the identified public problem is "roughly proportional" to that part of the problem that is created or exacerbated by the proposed development.

Therefore, under the facts of this case, the record must demonstrate that:

- There will be increased traffic from this development that requires cross-circulation and frontage improvements along the undeveloped portion of the site;
- That the increased traffic generated from this development will cause or exacerbate the lack of cross-circulation and frontage improvements;
- That requiring the applicant to provide a public street through the site and frontage improvements will tend to solve, or at least to alleviate, the public problem caused by the development; and
- That the cost of complying with the standard is "roughly proportional" to the impact of this development on vehicular travel.

ii. Nollan and Dolan

Under the U.S. Supreme Court's decisions in *Nollan v. California Coastal Comm 'n*,³ and *Dolan v. City of Tigard*,⁴ the City may impose an exaction as a condition of approval only if it serves a legitimate public purpose, there is an essential nexus between the exaction and the impacts of the development, and the cost of the exaction is roughly proportional to the impact of the development based on an individualized determination. The City has the burden of proof to show a condition complies with these requirements. In the absence of such a showing, an exaction imposed by a condition of approval is an uncompensated taking of private property in violation of the 5th Amendment to the U.S. Constitution.

Before analyzing the question of whether rough proportionality exists to support an exaction attached to a development permit, the City must first find nexus: a connection between the exaction and purpose of the exaction. For instance, a development could increase the number

³ 483 U.S. 825, 107 S. Ct. 3141 (1987).

⁴ 512 U.S. 374, 114 S. Ct. 2309 (1994).

of trips through a nearby intersection, so there is a connection between a jurisdiction requiring an improvement to the intersection and an impact of the development. This is nexus, but this is just the first step in the inquiry. In *Nollan*, the Supreme Court ruled that a beachfront easement across private property would do nothing to further the stated purpose for the easement to preserve views from the road on the other side of the house.

Here, as in *Nollan*, the requirement to build a cross-street on-site is not needed to address any documented impact of the development. As Appellant's traffic engineer concluded, the proposed development will have minimal impact on the City's transportation system. Appellant is constructing a major street through its site, all intersections will operate at LOS C or better, and there are no site distance issues. The proposed emergency access across APN 50714 will address safety concerns.

As an alternative basis for striking the requirement, the next step is an analysis of rough proportionality as first explained by the U.S. Supreme Court in *Dolan v. City of Tigard*.⁵ After establishing a nexus, then, under rough proportionality, the decision-maker needs to determine whether the degree of the exaction demanded by the City's permit condition bears the required relationship to the projected impact of the proposed development. Degree is often expressed in terms of the nature and extent of the improvement and its costs.

Similar to nexus, rough proportionality requires an analysis of whether an exaction will reasonably achieve the purpose behind it. To address this, the court in *Dolan* explained that no precise mathematical calculation is required, but the City must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development.⁶

In sum, under *Dolan's* rough proportionality analysis, the City has the burden to prove, through an individualized determination, that the exaction is related both in nature and extent to the proposed development by taking into account such factors as:

- the cost of the exaction;
- whether public access is allowed; and
- the likelihood the exaction will solve the cross-circulation problem/carry out its purpose.

Under that analysis, the constructed road in this case is not justified because there is no public problem that the exaction is designed to address and the cost to comply is grossly disproportionate to the nonexistent impact. The City has not put forth any evidence to support this exaction.

⁵ 512 U.S. 374, 114 S. Ct. 2309 (1994).

⁶ 512 U.S. 374, at 391.

iii. RCW 82.020.020.

This statute prohibits the City from requiring an improvement of land for the public benefit unless the City can demonstrate that the improvement is reasonably necessary as a direct result of the proposed development to which the dedication of land and improvement is to apply. In *Isla Verde International Holdings, Inc. v. City of Camas*,⁷ the Washington Supreme court explained:

RCW 82.02.020 does not permit conditions that satisfy a "reasonably necessary" standard for all new development collectively; it specifically requires that a condition be "reasonably necessary as a direct result of the proposed development or plat." (Emphasis added).⁸

The fact that the City would be requiring a public road through the site that the project does not need demonstrates that the road goes well beyond mitigating a direct of impact of the development; it provides a public amenity at the property owner's expense. As the court did in *Isla Verde*, the City should "reject the . . . argument that it satisfies its burden under RCW 82.02.020 merely through a legislative determination "of the need for subdivisions to provide for open space set asides ... as a measure that will mitigate a consequence of subdivision development."⁹ In other words, just because there may be a public purpose for cross-circulation, it is not always defensible if the full half-street improvement does not mitigate an impact of the development.

In sum, APN 50714 is not yet slated for development, so a requirement for half-street improvements along a future street that connects Franklin Street with Old Pacific Highway on Tax Parcel No. 50714, and along the parcel's frontage on Old Pacific Highway would not be proportional to the impacts of the development. A 20-foot wide temporary access road in compliance with the fire code should be adequate emergency use until development occurs on APN 50714.

Response to Appeal Staff Report

Staff issued an Appeal Staff Report dated January 24, 2024. Nothing Staff has stated changes the above analysis. Staff makes the following points:

⁷ 146 Wn.2d 740 (2002).

⁸ *Id.* At 761.

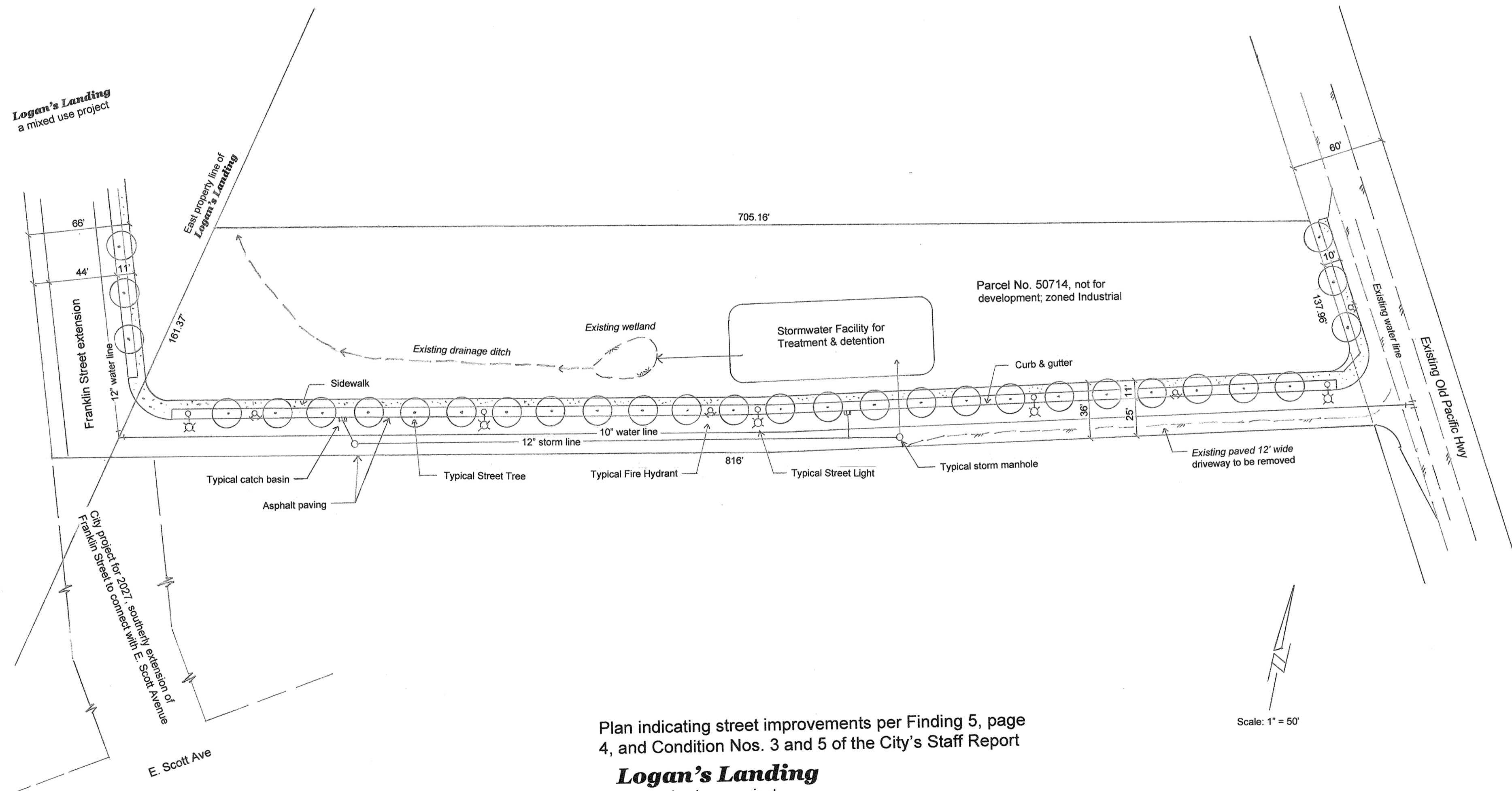
⁹ *Id.*

1. The revised site plan shows a half-street design. Response: the Appellant is agreeable to providing the second access to full City standards when APN 501714 is developed with uses, which is why it is shown.
2. This development triggers the need for emergency vehicle access as well as City street improvements. Response: see above analysis. The Appellant is willing to provide the emergency access now.
3. Even the emergency access will have critical area impacts so the property is being developed. Response: Staff already agreed to analyze these impacts prior to approval of the final site plan and engineering review.
4. Staff argues that the fully improved secondary access is required by code. Response: it is not. See above analysis.
5. The development requires two access points. Response: the code does not require this, there are no LOS deficiencies with one primary access, and there will be a secondary emergency access.

Conclusion

Appellant respectfully requests that Condition 3 be revised to exclude any requirement to make half-street improvements related to Tax Parcel No. 50714 along a future street and along the frontage with Old Pacific Highway.

ATTACHMENT A



Plan indicating street improvements per Finding 5, page 4, and Condition Nos. 3 and 5 of the City's Staff Report

Logan's Landing
a mixed use project

City of Woodland WA

Scale: 1" = 50'

Preliminary Cost Estimate for Street Improvements for the future half street connection between Franklin Street and Old Pacific Highway

Logan's Landing, a mixed use project
City of Woodland WA

<i>Item</i>	<i>Quantity</i>	<i>Unit Cost</i>	<i>Total Cost</i>
Construction entrance	Lump sum		\$ 5,000
Silt fence	1,740 lf	3.60	6,260
Stripping & stockpile	1,470 cy	3.00	4,410
Grading	1,300 cy	5.80	7,540
10" water line	840 lf	78.00	65,520
Fire hydrant	4 ea	7,760.00	31,040
12" storm pipe	410 lf	87.00	35,670
Granular backfill	1,250 lf	55.00	68,750
Storm manhole	2 ea	4,700.00	9,400
Catch basin	2 ea	2,800.00	5,600
Stormwater treatment & detention	6,780 sf	6.00	40,680
Curb & gutter	890 lf	18.00	16,020
Concrete sidewalk & ADA ramps	4,520 sf	12.00	54,240
Asphalt removal	5,660 sf	2.00	11,320
Asphalt & rock base	20,890 sf	6.80	142,050
R/W landscaping	5,340 sf	3.00	16,020
Street trees	27 ea	180.00	4,860
Street lights	5 ea	3,760.00	18,800
			Total \$ 543,180

Total does not include taxes or any contingencies.

Quantities are based on preliminary plans.

Costs are based upon current unit prices, and are subject to change, and not guaranteed.

This Preliminary Cost Estimate was prepared by
Ed Greer, ICET, Manager of Wyndham Enterprises, LLC

Date: January 10, 2024

Exhibit B