



Pierce County

Office of the Pierce County Hearing Examiner

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STEPHEN K. CAUSSEUX, JR.
Pierce County Hearing Examiner

June 24, 2020

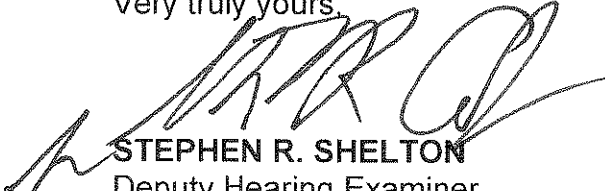
Ichijo USA Co. Ltd.
Attn: Randy Barnett
1406-140th Place N.E., Suite 104
Bellevue, WA 98007-3941

**RE: MAJOR AMENDMENT TO APPROVED PRELIMINARY PLAT/
PLANNED DEVELOPMENT DISTRICT: NICOLINA MEADOWS
Application Numbers: 915704, 915723, 915707**

Dear Applicant:

Transmitted herewith is the Report and Decision of the Pierce County Hearing Examiner regarding your request for the above-entitled matter.

Very truly yours,


STEPHEN R. SHELTON
Deputy Hearing Examiner

SRS/jjp

cc: Parties of Record

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OFFICE OF THE HEARING EXAMINER

PIERCE COUNTY

REPORT AND DECISION

CASE NO.: MAJOR AMENDMENT TO APPROVED PRELIMINARY PLAT/
PLANNED DEVELOPMENT DISTRICT: NICOLINA MEADOWS
Application Numbers: 915704, 915723, 915707

**PROPERTY OWNER/
APPLICANT:** Ichijo USA Co. Ltd.
Attn: Randy Barnett
1406-140th Place N.E., Suite 104
Bellevue, WA 98007-3941

AGENT: Azure Green Consultants
Attn: Paul Green
409 East Pioneer, Suite A
Puyallup, WA 98372

PLANNER: Robert E. Jenkins, Current Planning Supervisor

SUMMARY OF REQUEST:

The applicant requests a Major Amendment to the November 19, 2013, approval of a Preliminary Plat / Administrative Design Review (ADR49-09) / Shoreline Substantial Development Permit (SD5-09) for an original 62 lot single-family detached subdivision to make the following changes and additions:

1. Reconfigure the street and lot layout of the single-family lots south of Clover Creek, and reduce the number of lots from 62 to 60;
2. Eliminate the eastern access onto 20th Avenue Court East and reorient the access to the west with two roadway connections into the approved plat of Brookdale PDD;
3. Increase minimum and average lot sizes from 5,600 and 6,903 square feet to 5,952 and 8,902 square feet;
4. Add seven single-family lots north of Clover Creek, in place of a future development tract. The northern lots would also connect into the approved plat of Brookdale PDD to the west;
5. Onsite recreation area is being increased from 26,145 square feet in three tracts to 46,323 square feet on one tract;
6. Wooded open space is proposed to be reduced from 117,385 square feet to 104,165 square feet;

7. Wetland and wetland buffer area is being increased from 382,012 to 398,500 square feet; and
8. The 52,468 square foot storm drainage facility tract is being eliminated and replaced with roadside and home infiltration trenches.

The encroachment tract on the south end of the plat will be retained. The driveway access to Brookdale Road East for the three single-family out-parcels will be maintained as an easement, rather than a separate tract. The Planned Development District (PDD) is being requested to reduce interior yard setbacks from ten to five feet. The plat will access Brookdale Road East on the north and 152nd Street East on the south by way of the road network in the approved but not yet constructed Brookdale PDD plat to the west. The plat will be served by public roads, public water, and sewer utilities. The site is located at the 14600 Block and approximately 180 feet south of Brookdale Road East and 175 feet north of 152nd Street East, in the SW 1/4 of Section 15, and NE 1/4 of Section 22, T19N, R3E, W.M., in Council District No. 5.

SUMMARY OF DECISION: Request granted, subject to conditions.

DATE OF DECISION: June 24, 2020

PUBLIC HEARING:

After reviewing the Planning and Public Works Staff Report and examining available information on file with the application, the Examiner conducted a public hearing on the request as follows:

The hearing convened on May 20, 2020, at 2:02 p.m.

Parties wishing to testify were sworn in by the Examiner.

The following exhibits were submitted and made a part of the record as follows:

- | | |
|-------------------|--|
| EXHIBIT 1 | - Planning and Public Works Staff Report |
| EXHIBIT 2 | - Application |
| EXHIBIT 3 | - State Environmental Policy Act (SEPA) |
| EXHIBIT 4 | - Agency Comments |
| EXHIBIT 5 | - Notice and Routing Documents |
| EXHIBIT 6 | - Land Use Advisory Commission (LUAC) |
| EXHIBIT 7 | - Reports and Studies |
| EXHIBIT 8 | - Site Information |
| EXHIBIT 9 | - Site Plans |
| EXHIBIT 10 | - Power Point Presentation |
| EXHIBIT 11 | - Bill Lynn May 19, 2020 Amendments to Conditions |
| EXHIBIT 12 | - Robert E. Jenkins Response to Proposed Amendments |

The Minutes of the Public Hearing set forth below are not the official record and are provided for the convenience of the parties. The official record is the recording of the hearing that can be transcribed for purposes of appeal.

ROBERT E. JENKINS appeared and presented the Planning and Public Works Staff Report and Power Point on behalf of Pierce County, which is hereby incorporated by this reference.

BILL LYNN appeared on behalf of the applicant and generally agreed with and supported the Staff Report and conditions of approval therein. He also presented and supported the numerous revisions to various conditions which he had submitted prior to the hearing (see Exhibit No. 11) and to which Pierce County agreed to and supported (see Exhibit No. 12). He also stated that the conditions agreed to included Condition 29 (formerly listed as No. 45) that would address the concerns of the Washington State Department of Ecology (DOE) regarding the adjacent proximity of the proposed development to the toxic cleanup site on the former Brookdale Golf Course if contamination of soil or groundwater was suspected or discovered during the Nicolina development. However, Mr. Lynn then requested the Examiner delete in its entirety Condition 28 (a) and (b) (previously listed as No. 44) (see Exhibit 11) which was the DOE request to require submittal of evidence and analysis to determine the proposed development property soil and groundwater are not contaminated by the adjoining toxic cleanup site on the former Brookdale Golf Course. To support this request, he noted the following:

- The proposed major amendment is a review of the previous conditions of the November 19, 2013 approval of the plat which did not include the requirement for testing prior to the issuance of a site development permit.
- Although in a letter dated September 12, 2019, DOE had suggested that the County require sampling to determine if contamination existed from the toxic site, the County did not include it in the MDNS for the Nicolina development. In a letter dated April 13, 2020, DOE then recommended that the County revise the MDNS to include the sampling and evaluation to which the County declined but agreed to recommend Condition No. 28(a) and (b).as a condition of approval of the major amendment. Mr. Lynn stated that DOE's authority is to regulate toxic site cleanups and not to set conditions of plat approval which is in the province of the County. He stated that DOE's recommendation should not be included because the contamination on the Brookdale site was limited to the tee areas and greens and not in the other areas such as the fairways and the chemical composition of such contaminates are not given to migration. Mr. Lynn then opined that there are no formalized standards for the applicant to follow nor a process to appeal such a DOE recommendation and that it is inappropriate to "merge" DOE and County processes.

PAUL GREEN then appeared on behalf of the applicant and stated that he has overseen the applicant's voluntary cleanup on the tee and green areas of the Brookdale site and that pursuant to testing there is no basis to find that the chemicals DOE is concerned about would migrate to the Nicolina site. He did state that the applicant has met the Pierce County requirements for a grading and clearing permit for the Brookdale site but that DOE in the December 10, 2019 letter has expanded the testing to require additional chemicals to be sampled and analyzed.

ROBERT E. JENKINS reappeared and confirmed the County's agreement to numerous conditions but opposed the deletion of Condition 28.

No one spoke further in this matter and the Hearing Examiner took the matter under advisement. The hearing was concluded at 3:06 p.m.

NOTE: A complete record of this hearing is available in the office of the Pierce County Planning and Public Works.

FINDINGS, CONCLUSIONS, AND DECISION:

FINDINGS:

1. The Deputy Hearing Examiner has admitted documentary evidence into the record, heard testimony and has taken this matter under advisement.
2. On November 19, 2013, Hearing Examiner Stephen K. Causseaux had rendered a Decision approving the Nicolina Meadows Preliminary Plat/Administrative Design Review (ADR49-09)/Shoreline Substantial Development Permit (SD5-09).
3. The preliminary plan approval was extended from November 19, 2018 to November 19, 2020, by the Washington State Legislature through Great Recession related legislation.
4. The applicant submitted a complete application for the Major Amendment to the Preliminary Plat of Nicolina Meadows and PDD to Pierce County on July 29, 2019. The preliminary plat, PDD, and related applications are subject to the policies and development regulations and zoning classifications in effect on that date.
5. Pursuant to the State Environmental Policy Act (SEPA) and the Pierce County Environmental Regulations (Pierce County Code, Chapter 17.08), a Mitigated Determination of Nonsignificance (MDNS) was issued on March 30, 2020, with a comment period ending on April 13, 2020. Comments were received from the Washington Department of Ecology, which will be addressed below. No appeals were filed.

6. The mitigation measures in the March 30, 2020 MDNS are as follows:

- The Nicolina Meadow lots north of Clover Creek shall be required to construct left-turn lanes on all approaches of the intersection Brookdale Road East and Chesney Road East per Pierce County Standards with turn pocket lengths designed to accommodate the 20-year projected traffic as provided by Pierce County and shall provide an illumination system on Brookdale Road East. In addition, the new left-turn lane on the east approach of the Brookdale Road East / Chesney Road East intersection shall be extended as a Two-Way Left Turn Lane (TWLTL) beyond the required turn pocket, connecting into the existing TWLTL to the east. These turn lanes shall be constructed and approved by Pierce County prior to occupancy of the first 5 homes within Brookdale PDD Phase 1 or Nicolina Meadows north of Clover Creek.
- The Nicolina Meadow lots south of Clover Creek shall be required to construct a TWLTL and provide an illumination system on 152nd Street East at the Chesney Road East extension intersection (approximately 13th Avenue East) per Pierce County Standards. This TWLTL shall be constructed and approved by Pierce County Planning and Public Works prior to occupancy of the first 5 homes within Brookdale PDD Phase 2 or the Nicolina Meadow lots south of Clover Creek.
- A new secondary arterial roadway known as the Chesney Road East extension between Brookdale Road East and 152nd Street East shall be constructed and approved by Pierce County prior to occupancy of the 191st unit within the combined Brookdale PDD (Phases 1 & 2) and the Nicolina Meadows Plat. Construction and approval of the new Chesney Road East extension shall include construction of traffic signal systems to Pierce County standards, at both the Brookdale Road East/Chesney Road East and the 152nd Street East/Chesney Road East intersections.
- The Nicolina Meadows Plat shall pay all appropriate and required TIFs at the time of building permit application.
- The Nicolina Meadow lots north of Clover Creek shall be required to construct left-turn lanes on all approaches of the intersection Brookdale Road East and Chesney Road East per Pierce County Standards with turn pocket lengths designed to accommodate the 20-year projected traffic as provided by Pierce County and shall provide an illumination system on Brookdale Road East. In addition, the new left-turn lane on the east approach of the Brookdale Road East / Chesney Road East intersection shall be extended as a Two-Way Left Turn Lane (TWLTL) beyond the required turn pocket, connecting into the existing TWLTL to the east. These turn lanes shall be constructed and approved by Pierce County prior to occupancy of

the first 5 homes within Brookdale PDD Phase 1 or Nicolina Meadows north of Clover Creek constructed and approved by Pierce County Planning and Public Works prior to occupancy of the first 5 homes within Brookdale PDD Phase 2 or the Nicolina Meadow lots south of Clover Creek.

- A new secondary arterial roadway known as the Chesney Road East extension between Brookdale Road East and 152nd Street East shall be constructed and approved by Pierce County prior to occupancy of the 191st unit within the combined Brookdale PDD (Phases 1 & 2) and the Nicolina Meadows Plat. Construction and approval of the new Chesney Road East extension shall include construction of traffic signal systems to Pierce County standards, at both the Brookdale Road East/Chesney Road East and the 152nd Street East/Chesney Road East intersections.
- The Nicolina Meadows Plat shall pay all appropriate and required TIFs at the time of building permit application.

7. Public and Legal Notice:

- *August 15, 2019*: Notice of Application and Notice of Public Meeting, was sent to property owners within a radius of 300 feet, but not less than two parcels deep, around the exterior boundaries of the subject property.
- *August 18, 2019*: The site was posted with a Public Notice sign, confirmed with a Declaration of Posting.
- *September 18, 2019*: A Rescheduling Notice, was sent to property owners within a radius of 300 feet, but not less than two parcels deep, around the exterior boundaries of the subject property.
- *October 23, 2019*: Legal Notice was published in the official County newspaper (The News Tribune), advertising the public meeting to be held by the Parkland-Spanaway-Midland Advisory Commission.
- *May 6, 2020*, Legal Notice was published in the official County newspaper (*The News Tribune*), advertising the hearing to be held by the Pierce County Hearing Examiner.
- *May 7, 2020*: Public Notice of the Examiner's Hearing was sent to property owners within a radius of 300 feet, but not less than two parcels deep, around the exterior boundaries of the subject property, and to parties of record and interested parties.

8. The Parkland-Spanaway-Midland Advisory Commission (PSMAC) heard the proposal at their regularly scheduled meeting on November 6, 2019. A quorum of five members was present as were 10 members of the public. A motion was made to recommend approval of the proposal as presented and passed unanimously.
9. The applicant has a possessory ownership interest in two, abutting, generally rectangular parcels of property located in the 14600 Block and approximately 180 feet south of Brookdale Road East and 175 feet north of 152nd Street East, in the

SW 1/4 of Section 15, and NE 1/4 of Section 22, T19N, R3E, W.M., in Parkland area of unincorporated Pierce County, Council District No. 5. The parcels are oriented in a north-south direction, contain a total of 30.7 acres, vary in width from 661 feet along the south property line to 582 feet along the north property line, and measure approximately 2,200 feet in length.

10. The site is bordered on the north by a mobile home park, on the east, north of the creek, by a wetland mitigation site owned by Pierce County Public Works, on the east, south of Clover Creek, by urban density single-family homes, on the west by the Brookdale PDD Plat and on the south by urban density single-family homes.
11. The project site is divided into two parts by Clover Creek, which flows westerly through the site. The northern portion of the project site, approximately 40% of the total site, is relatively level and slopes gently toward Clover Creek. This area is characterized by a large mixed stand of Douglas fir and Oregon white oak trees, with a mostly grassy pasture understory. Old outbuildings are located within this stand of trees. A large, mostly open, wetland and floodplain area lies to the north of Clover Creek. The south portion of the project site rises moderately away from Clover Creek and then is relatively level. This area includes three single-family out-parcels. The area immediately south of the creek is characterized by western red cedar cluster and wetland vegetation next to the creek. To the south is a sanitary sewer line that runs east-west. South of the sewer line is a large stand of Douglas fir and some cedar with significant clusters of Oregon white oak in the eastern portion of the site and individual oaks throughout. A fairly dense forest understory is also present. To the south of this woodland is an open area that was used as lawn and landscape area by two of the out parcels and includes isolated fir, oak, and ornamental trees. The southernmost portion of the project site is characterized by a thick stand of Douglas fir trees.
12. The site is located within the Residential Resource (RR) zone. The properties to the north, west, and east, north of Clover Creek, are zoned Residential Resource (RR). The properties to the east, south of Clover Creek, and to the south are zoned Moderate Density Single-Family (MSF).
13. The proposed amendment would reduce the lots south of Clover Creek from 62 to 60 and increase the lots north of the Creek from five to seven.
14. The proposed density of three dwelling units per net developable acre is consistent with the allowed density range of one-three dwelling units per net acre in the RR classification. There are 22.19 net developable acres. The applicant is now proposing 67 single-family dwelling units (3.1 dwelling units per net developable acre.) In exchange for an additional five single-family lots and to reduce interior yard setbacks of all lots from ten feet to five feet, the applicant is proposing to develop a 1.06 acre (46,323 square feet) park and oak retention tract in the southern end of the plat for active and passive recreation and a 2.39 acre

(104,165 square feet) passive recreation and tree preservation tract in the northeast corner of the plat. The proposed recreation exceeds the minimum requirement of .76 acre (33,500 square feet) of total recreation with 0.19 acre (8,375 square feet) to be active recreation access.

15. The proposed revised road layout for the plat provides access to Brookdale Road East on the north and 152nd on the south by way of the road network in the approved but not yet constructed Brookdale PDD plat to the west. This revision will eliminate the traffic disruptions that the original access to the east would have caused. The plat will be served by public roads. The proposal would have a more beneficial impact than the original Preliminary Plat approval.
16. The revised plat slightly increases the amount of natural open space areas being preserved and eliminates and replaces the large 52,468 square foot storm drainage facility with roadside and home infiltration trenches.
17. The amendment increases the size of the wetland and wetland buffer area from 382,012 to 398,500 square feet over the original preliminary plat approval. The project site contains Clover Creek which is a Type F1 stream. Although a 150 foot undisturbed buffer is required on both sides of the Cree, the buffer in a portion of the southwest area is allowed to stop at the edge of the easement for an existing public sanitary sewer.
18. Based on the Findings Nos 12-17 above, the proposal is consistent with the applicable land use policies, zoning classifications and development regulations of the Pierce County Comprehensive Plan and the Parkland-Spanaway-Midland Communities Plan subject to the recommended conditions of approval and mitigating measures of the MDNS.

- (1) **PIERCE COUNTY COMPREHENSIVE PLAN (PCCP):**
Land Use Element: provide the stability and integrity of residential neighborhoods and provide urban level facilities and services prior to or concurrent with development;
Moderate density single-family classification: 1 to 3 units per acre in the Residential Resource zone classification;
Open space is an integral part of an area's infrastructure and should be provided concurrent with development with a minimum percentage of public open space.
Environmental Element: retain and protect native vegetation in public and private development; water quality and quantity to be maintained or improved by protecting aquifers and surface waters; fish and wildlife habitat is to be maintained.
Cultural Resources Element: protect cultural resources.

(2) PARKLAND-SPANAWAY-MIDLAND COMMUNITIES PLAN (PSMCP):

Land Use Element: Residential densities in the Moderate Density Single Family (MSF) designation should vary depending on the natural constraints, the type of development, proximity to facilities and services, and surrounding densities; Carefully control residential development activities in the Urban Growth Area on sites that have been identified as open space in the Comprehensive Plan Open Space/Greenbelt Map through implementation of a Residential Resource zone.

Community Character and Design Element: Cultural resources to conserve and interpret the heritage of the Parkland, Spanaway, and Midland communities so that their citizens can be aware of connections with the past.

Environment Element: Retain and keep free and open existing Natural drainage courses to pass storm runoff through any development or use activity instead of encasing the surface water runoff into a piped stormwater conveyance system; Provide additional protection to improve the quality of surface water bodies in the area (e.g., Spanaway Lake, Clover Creek, and Spanaway Creek).

19. The November 2013 approval did not require a Planned Development District. The Examiner's decision to approve a preliminary development plan for the proposed PDD is based upon the criteria set forth in PCC 18A75.050J and findings thereon:

- (1) The proposed development is in substantial conformance with the PCCP and the PSMCP subject to recommended conditions of approval and mitigating measures as the density of 3 dwelling units per net developable acre is consistent with the allowed density range of 1-3 dwelling units per net acre in the RR classification.
- (2) The exceptions from the standards of the underlying district to provide the addition of five lots and the reduction in interior yard setbacks are warranted by the design and amenities incorporated in the development plan and program, specifically the increase in recreation area provided and in compliance with PCC 18A.5.050-1. In exchange for an additional five single-family lots and a reduction of interior setbacks from 10 to 5 feet the applicant is proposing to increase the amount of on-site recreation area by 20,178 square feet over the original approval. Title 18J requires 33,500 square feet of total active and passive recreational open space. It also requires 8,375 square feet of the 33,500 square feet of open space to be active recreation. The applicant is proposing a 46,323-square foot park and oak retention tract in the southern portion of the plat and a 104165-square foot passive

recreation and tree preservation tract in the northern portion of the plat. The requested reduction in interior setbacks from 10 to 5 feet triggers the requirements of Table 18A.75.050-1. This table requires that the plat include public roads, incorporate fire protection requirements, including sprinklers, and include architectural components.

- (3) There are no exemptions or deviations being requested from road standards as the roads will be public.
 - (4) The proposal is in harmony with the surrounding area as noted below under no. (6), compatibility within the area.
 - (5) There is no indication that the system of ownership and means of developing and maintaining native and recreational open space will be not be accomplished in a suitable manner.
 - (6) The approval of the major amendment will result in a beneficial effect upon the area which could not be achieved under the current zoning and development regulations that apply to the property. The revised plat will provide a more accessible road layout than the original and will eliminate the traffic disruptions that the original access to the east would have caused. The revised plat also slightly increases the amount of natural open space areas being preserved and will eliminate the large storm drainage facility and proposed additional recreational area.
 - (7) There is no indication that the proposed development or units thereof will not be pursued and completed in a conscientious and diligent manner.
 - (8) Adequate provisions have been made for sidewalks, curbs, gutters and street lighting as sidewalks will be provided along both sides of plat roads and streetlights will be required, per code.
20. Requests for a cultural resource survey were submitted by the Nisqually and Puyallup Indian Tribes and the Washington Department of Archaeology and Historic reservation due to high probability of uncovering cultural and archaeological resources on the site. No additional more specific information was provided. The area along and to the north of Clover Creek would be undisturbed
21. The Examiner will require a condition of approval to require a survey of the northern seven lot portion of the plat adjacent to the Clover Creek floodplain prior to approval of any site development permit and notes this approach is consistent with Current Planning Policy CP2020-01.
22. Also, the Examiner will include a condition that will require the applicant to comply with the "Inadvertent Archaeological and Historic Resources Discovery Plan" that Pierce County developed with the assistance of DAHP.
23. In a September 12, 2019 letter, the Toxic Cleanup Program at the Washington State Department of Ecology requested that an evaluation of the site be done to determine the extent of any toxic contamination from the old Brookdale Golf Course

to the immediately adjacent west of the Nicolina site.

24. On behalf of the applicant and in response to the DOE request, "Environmental Partners" submitted a letter dated September 19, 2019 providing testing results of the Brookdale site and noting that "simple proximity to the Former Brookdale Golf Course Site does not equate to contamination or the threat of contamination." Specifically, "It is EPI's opinion that there is not a realistic potential for the known impacts on the Former Brookdale Golf Course Site to have resulted in impacts to the Nicolina Meadows PPD Project." EPI noted that the Brookdale site is impacted only with two chemicals that exceed cleanup levels and which were only found in the tees and greens of the golf course where they were directly applied. Also, these chemicals are not mobile and remain where they are applied as they are highly insoluble in water and are absorbed into the carbon of the topsoil.
25. The Brookdale site has a Voluntary Cleanup Program which has resulted in Pierce County Development Engineering Department approving the removal of the contaminated material from the tees and greens on that site. However, DOE does not concur that sufficient remedial investigation has been completed at the site and that additional analytical data results and evaluation of" nitrates/ phosphates, arsenic, ethylene dibromide and diazinon is necessary.
26. The DOE concern for contamination has risen after the 2013 approval of the Nicolina PDD and therefore may be addressed during this Major Amendment review; furthermore, at this time the concern for contamination has not been not fully resolved as the plat is located on property where shallow soil, groundwater and wetlands may be contaminated from the Brookdale site. Pierce County concurred with Ecology's request and included it as recommended condition of approval to the Major Amendment/ PPD. After review, the Examiner adopts the recommendation of Pierce County.

CONCLUSIONS:

1. The Hearing Examiner has the jurisdiction to consider and decide the issues presented by this request.
2. The applicant has demonstrated that the proposal is consistent with all applicable policies, codes and regulations. Therefore, the request for the Major Amendment to the approved Preliminary Plat and for the Planned Development District should be approved subject to the following conditions of approval:
 1. A final plat meeting all requirements of the preliminary plat shall be submitted to the Pierce County Hearing Examiner for approval within the time periods specified in RCW 58.17.140. Extensions of time to submit a final plat shall be as authorized in PCC 18F.40.070 Preliminary Plats - Time Extensions.

2. The SEPA mitigating measures set forth in the Mitigated Determination of Nonsignificance (MDNS) issued by the Pierce County Responsible Official on March 30, 2020, are hereby made conditions of approval as set forth hereinafter. Provided, however, that said mitigating conditions are not subject to change by the major amendment process, but must be changed by the Responsible Official through the SEPA process.
3. All required landscaping shall be installed prior to final plat approval unless performance bonds or other appropriate security are approved by the County. Acceptance of performance bonds or other security in place of installation shall be at the discretion of the County based on the scale of the project, phasing, etc. The Department shall be contacted to perform an Accessory Element Inspection of installed landscaping, irrigation, and retained vegetation. There is an additional fee for an Accessory Element Inspection.
4. A note shall be added to the face of the final plat stating: "Development within this plat shall be subject to all conditions of Major Amendment to Preliminary Plat/PDD approval."
5. A note shall be added to the face of the final plat stating that: "Effective impervious cover on each lot shall not exceed 35%, unless an engineering justification has been reviewed and approved by Development Engineering, per Section 18E.50.040.A."
6. Lots 1-10 shall have a 20-foot setback and a 6-foot solid board fence along the southern boundary with the encroachment tract.
7. Street trees shall be provided at a rate of 1 per 30 lineal feet internal plat frontage. If the applicant decides to utilize the provisions of Policy CP2014-07, a note shall be added to the face of the final plat.
8. Bus waiting area meeting the requirements of Section 18J.15.080.P.3. shall be provided by the applicant at a location(s) and design to be determined in consultation between the Franklin Pierce and Bethel School Districts and the applicant. If the parties cannot agree, the matter will be referred to the Hearing Examiner for resolution.
9. Prior to the application for the first single-family building permit, the applicant shall provide a palette of building designs that comply with the fire protection and aesthetics and architecture requirements of Table 18A.75.050.

10. Sprinklers shall be required per Table 18A.75.050-1 unless otherwise agreed to between Central Pierce Fire and Rescue and the applicant.
11. The applicant shall conduct a cultural resource survey of the northern seven lot portion of the plat adjacent to the Clover Creek floodplain prior to approval of any site development permit.
12. The applicant shall refer to the Pierce County Inadvertent Archaeological and Historic Resources Discovery Plan (attached as an appendix), in the event that any ground-disturbing or other project related activities to this development, or in any future development, of protected cultural materials (e.g., bones, shell, antler, horn or stone tools) are discovered.
13. All trees shown on the tree conservation plan, last revised on October 15, 2010, as to remain shall also be shown on the face of the final plat. A note shall be added to the face of the final plat stating as follows:

As identified in the tree conservation plan prepared by Washington Forestry Consultants, Inc., and last revised on October 15, 2010, no understory shrub or groundcover shall be removed from native open space Tracts A or B, unless approved by Planning and Public Works. Trees within Tracts A, B and C and shown to remain shall not be removed and replaced unless determined to be diseased or dangerous only as set forth in Section 18J.15.130.C.4. Tree removal shall be consistent with the approved tree conservation plan. Failure to comply with the approved tree conservation plan constitutes a violation of Section 18J.15.030 and other applicable Pierce County regulations.
14. A final tree conservation plan shall be submitted for review and approval prior to issuance of any site development permit. The tree conservation plan shall demonstrate that a minimum of 666 tree units are being retained or planted within the plat.
15. The following conditions of the November 19, 2013, preliminary plat approval shall continue to apply to the Major Amendment/PDD:
 - A. Prior to the issuance of any permits on this site (site development) or the initiation of any grading, clearing, filling, or vegetation removal, the project shall complete the requirements necessary to obtain approval and shall obtain Final Critical Area Approval.
 - B. The Oregon White Oak trees that are being conserved pursuant to Section 18E.40.040 C.1.b. shall be protected before and after site development and construction through adherence to the requirements

of Section 18E.40.040 C.2.

- C. The stormwater facilities for this development shall be designed to minimize impacts to water quality and quantity, and wetland and buffer habitat. All stormwater shall be pretreated prior to its release into a natural system (wetland) and all stormwater facilities shall be located outside of wetlands and wetland buffers. A copy of the stormwater plans and calculations shall be submitted to and reviewed by the Development Engineer in conjunction with the Environmental Biologist for this project prior to the issuance of the Site Development Permit or Final Approval.
- D. Any person filling or altering a wetland must comply with all other local, state, and federal regulations and obtain relevant permits. This includes the U.S. Army Corps of Engineers (Corps) and the Washington State Department of Ecology (DOE). It is the sole responsibility of the applicant to contact the other jurisdictions and secure any and all other permits required for this proposed project.
- E. The following notes shall be included on the face of the final plat:
 - "Notice: This site lies within a wetland and fish and wildlife habitat conservation area, as defined within Title 18E Pierce County Code. Restrictions on use or alteration of the site may exist due to natural conditions of the site and resulting regulations."
 - "The wetland and critical fish and wildlife habitat areas approval for this formal plat was recorded at the Pierce County Auditor's office on _____(date), recording number _____."
 - "The on-site wetlands were delineated by Sewall Wetland Consulting, Inc. and survey located by Apex Engineering, PLLC."
- F. All grading and filling of land must utilize only clean fill, i.e. dirt or gravel. All other materials, including waste concrete and asphalt, are considered to be solid waste and permit approval must be obtained through the TPCHD prior to filling.
- G. Asbestos containing material must be removed prior to demolition and disposed in accordance with the requirements of the Puget Sound Clean Air Agency, Washington State Department of Labor and Industries, and the TPCHD.

- H. All demolition material, including but not limited to, wood waste, sheetrock, roofing material, and concrete, must go to a licensed solid waste handling or disposal facility.
- I. All wells that will not be included in the public water system for this project must be properly "Decommissioned" per WAC (173-160) prior to final application approval. The TPCHD must be contacted 48 hours prior to any decommissioned activity at the site.
- J. Utility easements shall be provided on the face of the final plat, which are necessary to the provision of water, power, sewer, natural gas, and mail delivery to the lots within the subdivision. The affected purveyors should be contacted prior to development of the final plat for their specific easement requirements.
- K. Operation of equipment and associated materials in the construction of the project has the potential to result in generating dust. Impacts to neighboring properties shall be controlled by frequently watering the site as necessary to prevent the travel of dust.
- L. A final park plan for the recreation tracts, to be submitted for review and approval prior to final plat approval for whichever phase they are located in, shall incorporate recreational facilities which address needs of both children and teenagers/ adults, i.e., playgrounds/tot lots, and sport courts. The park plan shall also include seating associated with the recreational facilities, turf areas of sufficient size for informal play, and trees sufficient to provide shade for the various park activities. The park plan shall include:
 - a) a minimum size of 5,000 square feet;
 - b) a grass area for informal play, to be hydroseeded or sodded with a grass mix suitable for informal athletic use and overlain over a suitable base of soil amendment;
 - c) recreational facilities for children, i.e., a "tot lot" or similar playground feature, unless a note is placed on the final plat stating that: "All lots shall be restricted to residents in which a least one member of the family or an individual is age 55 or over and no member of the household is under 18 years of age";
 - d) all-weather recreational features for teenagers and adults, i.e., a multi-purpose sport court, series of exercise stations, gazebo, jogging trail, etc.;
 - e) a minimum 42-inch wide, paved pedestrian path, pervious or

- impervious, shall connect the recreational facilities, i.e., tot lot, gazebo, sport court, etc., with the plat sidewalk;
 - f) an on-site water line provided for maintenance of each park tract by the home owners association or a designated caretaker; and
 - g) additional permitted amenities and features may be added to the recreation facility at the discretion of the developer or subdivision home owners association.
- M. If a tot lot/playground is the form of children's recreational facility to be provided, it shall comply with the following standards:
- a) The playground shall be provided with a minimum of one (1) outside toy of durable weather resistant construction;
 - b) the construction and placement of play toys shall be constructed in accordance with the Consumer Product Safety Commission's (CPSC) "Handbook for Public Playground Safety", available at www.cpsc.gov/cpscpub/pubs/325.pdf, or manufacturer's specifications. At a minimum, outside toys shall be connected to the ground with posts mounted in concrete or another permanent method. An outside toy play area shall be covered with a minimum of six (6) inches of approved material. The play area shall extend beyond the edge of the farthest reaching outside toy element by a minimum of five (5) feet in all directions and shall be contained within a bordering material. Prior to acceptance of the tot lot/playground, the applicant shall provide a letter or other documentation to the Planning Department indicating that the tot lot/playground was constructed consistent with the standards of the CPSC or the manufacturer.
 - c) the surface surrounding the tot lot/playground area shall be smooth, without loose rocks, depressions, holes, hills, or sight-obscuring vegetation; and
 - d) a minimum of two (2) benches of durable weather resistant construction material shall be provided adjacent to the outside toy location.
- N. If a sport court is the form of teenager/adult recreational facility to be provided, the sport court shall comply with the following standards:
- a) the facility shall include a 4 inch thick concrete pad a minimum of 46X36 feet in size;
 - b) the pad will serve as a multiple use recreation surface for sports and other neighborhood activities;
 - c) a sturdy outdoor basketball backboard and hoop (with net)

- shall be mounted with the backboard 3 feet inside the edge of the concrete pad at mid-point on one of the 46 foot long sides of the pad;
 - d) a minimum of one (1) benches of durable weather resistant construction material shall be provided adjacent to the sport court; and
 - e) the surface surrounding the recreation pad area shall be smooth, without loose rocks, depressions, holes, hills, or sight-obscuring vegetation.
- O. All tree protection and erosion control measures shall be installed prior to grading, clearing, or other vegetation removal.
- P. Prior to final plat approval of the first phase of Nicolina Meadows, the portion of rear yards of Lots 15-22 of Brooktree Second Addition, encroaching into the plat boundary of Nicolina Meadows, shall be conveyed individually to Lots 15-22 of Brooktree Second Addition.
- 16. Site Development Plans must be submitted to the Development Engineering Section.
- 17. All work associated with stabilizing slopes and other disturbed areas shall be in accordance with Ordinance 2015-48s, Title 17A, Construction and Infrastructure Regulations – Site Development and Stormwater Drainage.
- 18. All public roads within and providing access to this plat must conform to Ordinance 2018-102s, Title 17B, Construction and Infrastructure Regulations – Road and Bridge Design and Construction Standards.
- 19. The 100-year flood limits must be accurately shown on the site development plans and final plat mylars. Encroachments, filling, new construction, and substantial improvements within the floodway shall be prohibited.
- 20. All lots must access off internal plat roads.
- 21. A Plat Agreement to Maintain Stormwater Facilities and to Implement a Pollution Source Control Plan will be required. This document will include stormwater pollution prevention best management practices that must be incorporated into the project stormwater facility in accordance with Pierce County 96-47, Title 11, Illicit Stormwater Discharges.
- 22. Additional hydrants are required to be installed. A separate water system permit is required and shall be final approved prior to final plat approval. Prior to final plat approval the water system shall be reviewed, approved, installed, and as-builts and flow tests provided to FPB.

23. The subject property is located within the Pierce County Sewer Service area and is within the Comprehensive Urban Growth Area (CUGA).
24. The subject property is within 300 feet of an existing accessible sanitary sewer which has sufficient capacity to accommodate the proposed development on the subject property.
25. The proposed development on the subject property is required to connect to sanitary sewer.
26. All on-site and off-site sanitary sewer improvements required by the County to provide sanitary sewer service for this development shall be designed and constructed at the applicant's expense and must conform to the latest revision of the PCC Chapter 13, the Pierce County Sanitary Sewer Standard Plans, Checklists and Specifications, the Pierce County Sanitary Sewer Standard Details Manual, the Pierce County General Sewerage Plan, and the Pierce County Sewer Division's comprehensive sewerage strategies as defined by the Pierce County Wastewater Utility Manager.
27. Final plat road names shall be per those shown on the road names document in the document tab of the preliminary plat application.
28. Since the Nicolina Meadows PDD project is located immediately adjacent to the Former Brookdale Golf Course Toxic Cleanup Site (Facility/Site ID Number 7758, Cleanup Site ID 14894), the following actions are required prior to issuance of a site development permit:
 - a. Sufficient evidence and analysis to determine that the property of the Nicolina Meadows proposed development is not likely impacted by or part of the former Brookdale Golf Course toxic cleanup site shall be submitted to Planning and Public Works and the Washington State Department of Ecology for review.
 - b. Documentation shall include analytical sampling of shallow soil and groundwater at the proposed development and shall address cancer-causing chemicals known to have been released at the former Brookdale Golf Course toxic cleanup site and other possible hazardous substances such as arsenic, ethylene dibromide, and diazinon discussed in the Department of Ecology's December 10, 2019 opinion for the former Brookdale Golf Course toxic cleanup site.
29. If contamination above an established cleanup level is suspected, discovered, or occurs during the proposed residential and commercial development, testing of the potentially contaminated media must be

conducted in accordance with the requirements of the Model Toxics Control Act Regulation (WAC 173-340 or "MTCA"). If contamination is discovered, it will be reported as required under MTCA (WAC 173-340-300 through the Washington Department of Ecology Environmental Report Tracking System Coordinator for the Southwest Regional Office (SWRO) at (360) 407-6300. The applicant will comply with the requirements of MTCA during the performance of all redevelopment activities. For assistance and information about subsequent cleanup and to identify the type of testing that will be required, contact Eva Barber with SWRO, Toxics Cleanup Program at the phone number provided above.

30. Erosion control measures must be in place prior to any clearing, grading, or construction. These control measures must be effective to prevent stormwater runoff from carrying soil and other pollutants into surface water or storm drains that lead to waters of the state. Sand, silt, clay particles, and soil will damage aquatic habitat and are considered to be pollutants. Any discharge of sediment-laden runoff or other pollutants to waters of the state is in violation of Chapter 90.48 RCW, Water Pollution Control, and WAC 173-201A, Water Quality Standards for Surface Waters of the State of Washington, and is subject to enforcement action.
31. The decision set forth herein is based upon representations made and exhibits, including plans and proposals submitted at the hearing conducted by the hearing examiner. Any substantial change(s) or deviation(s) in such plans, proposals, or conditions of approval imposed shall be subject to the approval of the hearing examiner and may require further and additional hearings.
32. The authorization granted herein is subject to all applicable federal, state, and local laws, regulations, and ordinances. Compliance with such laws, regulations, and ordinances is a condition precedent to the approvals granted and is a continuing requirement of such approvals. By accepting this/these approvals, the applicant represents that the development and activities allowed will comply with such laws, regulations, and ordinances. If, during the term of the approval granted, the development and activities permitted do not comply with such laws, regulations, or ordinances, the applicant agrees to promptly bring such development or activities into compliance.

DECISION:

The request for the Major Amendment to an Approved Preliminary Plan and Planned Development District for Nicolina Meadows is hereby granted subject to the conditions contained in the Conclusion above.

ORDERED this 24th day of June, 2020.



STEPHEN R. SHELTON
Deputy Hearing Examiner

TRANSMITTED this 24th day of June, 2020, to the following:

PROPERTY OWNER/ Ichijo USA Co. Ltd.
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Parkland-Spanaway-Midland Advisory Commission (PSMAC)

PIERCE COUNTY PLANNING AND PUBLIC WORKS
PIERCE COUNTY BUILDING DIVISION
PIERCE COUNTY DEVELOPMENT ENGINEERING DEPARTMENT
PIERCE COUNTY PUBLIC WORKS AND UTILITIES DEPARTMENT
TACOMA-PIERCE COUNTY HEALTH DEPARTMENT
FIRE PREVENTION BUREAU
PIERCE COUNTY PARKS AND RECREATION
PIERCE COUNTY COUNCIL
PIERCE COUNTY RESOURCE MANAGEMENT
PIERCE COUNTY CODE ENFORCEMENT

**CASE NO.: MAJOR AMENDMENT TO APPROVED PRELIMINARY PLAT/
PLANNED DEVELOPMENT DISTRICT: NICOLINA MEADOWS
Application Numbers: 915704, 915723, 915707**

NOTICE

1. RECONSIDERATION:

Any aggrieved party or person affected by the decision of the Examiner may file with the Department of Planning and Land Services a written request for reconsideration including appropriate filing fees within seven (7) working days in accordance with the requirements set forth in Section 1.22.130 of the Pierce County Code.

2. APPEAL OF EXAMINER'S DECISION:

The final decision by the Examiner may be appealed in accordance with Ch. 36.70C RCW.

NOTE: In an effort to avoid confusion at the time of filing a request for reconsideration, please attach this page to the request for reconsideration.