

1 **BEFORE THE HEARING EXAMINER FOR THE CITY OF MONROE**

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RE: Eaglemont VII Preliminary Plat & PRD PLPRD2019-02	FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION TO THE CITY COUNCIL
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6 **SUMMARY**

7 MainVue WA LLC requests preliminary plat and planned residential development
8 (PRD) approval for the subdivision of 9.54 acres into 46 lots at 13202 Chain Link Road
9 and 13107 197th Ave SE. It is recommended that the City Council approve the
10 preliminary plat and PRD applications with the conditions listed at the end of this
11 Recommendation. A detailed evaluation of all project impacts is outlined in Finding
12 of Fact No. 5, located at pages 4-10 of this recommendation.

13 As the Council members are likely aware, the City Council repealed PRDs in 2019.
14 The PRD under review is one of the last, if not the last, PRD vested under those
15 repealed PRD standards. Happily, it is also one of the better results of the former PRD
16 process, with an extensive amount of open space comprising a neighborhood park
developed with a half basketball court, tot lot and trails. In exchange for these and
other amenities, the Applicant is entitled to a density bonus under PRD standards. The
maximum number of homes authorized by the R4 zoning district for the project site
without PRD approval is 38. The Applicant has used the PRD process to increase the
number to 46.

17 The open space that makes the PRD distinctive is primarily located in Tract A, along
18 the Chain Lake Road frontage of the project site. The tract has a total open space gross
19 area of 70,527 square feet (1.65 acres), which includes 42,520 square feet of usable
20 open space. The useable open space includes the basketball court and tot lot. The
21 Applicant will also install a ten foot wide area-wide trail connection along the project
frontage as well. City staff will also be reviewing the individual home design during
building permit review to ensure that the homes are of high quality as required by PRD
standards.

22 The proposal has triggered some detailed written comment from Steven Hoffman on
23 behalf of the Eaglemont Homeowner's Association, Ex. 20, 21 and 25, Susan Davis,
24 Ex. 24 and Taylor Niehues, Ex. 26. Their concerns are evaluated in Finding of Fact
5G-I, pages 6-10 of this Recommendation.

25 Mr. Hoffman relayed concerns of noncompliance with topsoil and fill requirements for
prior Eaglemont divisions. He conducted a sampling of lots in Eaglemont Divisions 1-
5 as well as two lots in Sky View Ridge and found topsoil and fill levels significantly
less than required. A condition of approval requires the Applicant to email notice to

1 Mr. Hoffman on behalf of the Eaglemont HOA of pending final building permit
2 inspections so that the HOA can monitor enforcement of the City's topsoil/fill
3 requirement standards.

4 Ms. Davis and her husband own lots on the western side of 197th Ave SE. She also has
5 an easement across half of the width of 197th. 197th is one of the proposed access points
6 to the proposal. Ms. Davis noted that 197th was originally approved as an emergency
7 access road and built to that standard. Bollards were supposed to be installed but they
8 never were and the road was ultimately used as an access road to other Eaglemont
9 divisions. Ms. Davis also correctly identified that the 197th intersection with Chain
10 Lake Road had site distance problems. Staff concurred that it doesn't meet current site
11 distance standards. To correct these deficiencies the Applicant will be dedicating some
12 of its project site to install two eleven foot wide travel lanes without any encroachment
13 into the Davis easement. The amount of pavement width will be increased from 14 to
14 23 feet and the Applicant will add a six and a half foot landscape bed and a five foot
15 sidewalk. The Applicant will also correct the sight distance deficiencies.

16 Mr. Niehues raised a number of concerns as a neighboring property owner residing on
17 the opposite side of Chain Lake Road. The most significant issue he raised was that
18 some proposed improvements may be within a buffer to a wetland located on his
19 property. As outlined in Finding of Fact No. 5I, this Recommendation concludes that
20 the peer review conducted by the City on the Applicant's wetland analysis sufficiently
21 establishes that the wetland buffers will not extend onto the project site.

22 **ORAL TESTIMONY**

23 A computer generated transcript of the proceeding accompanies this recommendation
24 as Appendix A. Concerns of the public are summarized as follows, with references to
25 the transcript for those wanting a more detailed rendition:

Steven Hoffman, neighbor and retired civil engineer, submitted several exhibits and
presented testimony on the failure of past Eaglemont phases to comply with stormwater
best management practices(BMPs). He doesn't have any problems with the proposal
and finds it to be well designed. He has an issue with lack of enforcement of the BMPs.
Tr. p. 22-23.

Susan Davis and her husband own four parcels on the west side of 197th Ave, which
will be one of the access points to the project site. She and her husband own an
easement over the western half of 197th. She noted that 197th was supposed to be
limited to emergency access for prior divisions of Eaglemont. There were supposed to
be bollards installed to limit it to emergency use but that never happened. Traffic has
increased tremendously over the years and the road has not been improved to
accommodate that. The ability to make improvements is limited by the fact that half
of the road width is in unincorporated Snohomish County. She also noted that there
was a site distance problem at the intersection of 197th and Chain Link Road, but
understands that bushes will be trimmed to provide for better visibility. She thinks
that's an appropriate solution. She has put together a docketing application with the

1 developer's engineer to Snohomish County to have the entirety of the road placed
2 within the City's urban growth area. The UGA has to be expanded so that the entirety
3 of the easements for 197th can be annexed into the City and 197th can be developed
4 under one set of road standards. She noted that the 197th provides the only access to
Chain Link Road other than Rainier View Drive, so Rainier View Drive would be a
bottleneck without 197th. Tr. 24-25.

5 Ellysa Britt, neighbor residing off of 132nd St., testified that she had never expected
6 132nd (another access point to the proposal) to extend into another Eaglemont division.
7 She stated that when she bought her home she'd been told there would be Eaglemont
8 Divisions I-VI, but no one was expecting a seventh division. She was concerned about
9 wear and tear on 132nd and that small children often played on that street. She was
10 worried about construction traffic in particular. She noted that Chain Lake Elementary
is not performing up to standards without the added 50 families accommodated by the
proposal. She noted that she's happy to see improvements being made to 197th because
all her neighbors use that road and don't use Rainier View. She noted that no one was
aware that 197th was supposed to be just for emergency access.

11 EXHIBITS

12 Exhibits 1-19 in the "Hearing Examiner Exhibit List" accompanying the April 1, 2021
13 updated staff report were admitted into the record. The following exhibits were also
admitted into the record:

14 Exhibit 20: March 29, 2021 letter from Steve Hoffman

15 Exhibit 21: March 30, 2021 Hoffman addendum

16 Exhibit 22: April 1, 2021 Memo from Michael Swenson

17 Exhibit 23: April 1, 2021 Memo from Nancy Rogers

18 Exhibit 24: April 1, 2021 email with attachments from Susan Davis

19 Exhibit 25: March 31, 2021 second addendum from Steven Hoffman

20 Exhibit 26: March 31, 2021 email from Taylor Niehues

21 FINDINGS OF FACT

22 **Procedural:**

23 1. Applicant. The applicant is MainVue WA, LLC, ATTN: Lisa Cavell, 1110 112th
24 Ave SE, Suite 202, Bellevue, WA 98004.

25 2. Hearing. A virtual Zoom hearing was held on the applications on April 1, 2021 at
10:00 am, Zoom Meeting ID No. 89830920158.

Substantive:

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2 3. Site Proposal/Description. The Applicant is requesting preliminary plat and
3 planned residential development (“PRD”) approval for the subdivision of 9.54 acres
4 into 46 lots at 13202 Chain Link Road and 13107 197th Ave SE.

4 4. Characteristics of the Area. The project site is surrounded on all sides by single-
5 family development zoned R4 except for the northern side of the project, which is in
6 unincorporated Snohomish County and zoned Rural 5-acre. The subject site contains
7 an existing single-family residence and associated appurtenances. The existing
8 structures are proposed to be demolished.

7 5. Adverse Impacts. There are no adverse impacts associated with the development.
8 A mitigated determination of non-significance was issued for the proposal on February
9 25, 2021. The primary focus in subdivision review is adequacy of infrastructure and
10 as determined in Finding of Fact No. 6 the proposed subdivision will be served by
11 adequate infrastructure. There are no critical areas on the project site – the City had
12 both a wetland/stream evaluation, Ex. 16A, and geotechnical evaluation, Ex. 13,
13 conducted and no critical areas were found in either report.

12 6. Adequacy of Infrastructure/Public Services. The project will be served by adequate
13 infrastructure and public services. As detailed in Page 2-3 and 11-12 of the staff report, staff
14 have found all applicable level of service standards for services and facilities to be met.
15 Adequacy is more specifically addressed as outlined below:

14 A. Water and Sewer Service. The proposal will be served by adequate and appropriate
15 water and sewer service. The City of Monroe will provide water, sewer and stormwater
16 service. As noted in Page 11 of the staff report, there is sufficient capacity available
17 in the City’s public water and sanitary sewer system to serve the proposed
18 subdivision. All lots will connect to the City’s water and sewer system. Sanitary
19 sewer and water lines will be constructed in the proposed public rights-of-way in
20 accordance with the City’s Public Works Design and Construction Standards. The
21 conceptual utilities plan was admitted as Exhibit 12.

19 B. Fire and Police Protection. The proposal will be adequately and appropriately
20 served by fire and police protection. Fire protection will be provided by Snohomish
21 County Fire District No. 7. Police protection will be provided by the City of Monroe
22 Police Department. The police chief and fire marshal did not cite any concerns
23 when they reviewed the proposal. The recommendations of the Fire District have
24 been incorporated into the conditions of approval.

23 C. Drainage. The proposal will be adequately and appropriately served by
24 stormwater facilities. Stormwater runoff will be collected and conveyed via an
25 underground pipe network into two detention vaults located in Tract A. Water
quality treatment will be provided by media filter system for the north detention
facility and wet vault for the south detention facility. The system is designed

1 pursuant to the requirements of the Department of Ecology’s 2012 Stormwater
2 Management Manual for Western Washington (SWMMWW) as amended in 2014.

3 D. Parks/Open Space. The proposal exceeds the park and open space requirement
4 required of planned residential developments and thus provides appropriate and
5 adequate parks and open space.

6 Pursuant to MMC 18.84.080(A)(1), a PRD located within the R4 zone must
7 dedicate a minimum area of 900 square feet of usable park and recreational open
8 space per base dwelling unit. The Applicant is requesting to subdivide the subject
9 site into 46 single-family residential lots. Based on the 38 allowed base units, a
10 minimum useable open space dedication of 34,200 square feet is required (.79
11 acres). Within Tract A, the applicant is providing a total open space gross area of
12 70,527 square feet (1.65 acres), which includes 42,520 square feet (.98 acres) of
13 useable open space and park. Within Tract B, the applicant is providing a total open
14 space area of 4,211 square feet. Tract B provides a landscaping buffer between the
15 proposed plat and the adjacent properties. Within Tract C, the applicant is providing
16 a total open space gross area 7,796 square feet (.18 acres). This area lies within a
17 PSE easement and will be a continuation of an existing open space are within other
18 Eaglemont subdivisions. The proposal exceeds the minimum required dedication
19 of 900 square feet per base unit. Pursuant to MMC 18.84.080(I)(2), “[a]ll park and
20 **recreational usable open space shall be three-fourths acre or larger.**” Tract A
21 provides a useable open space with an area greater than three-fourths of an acre.

22 E. Schools. The proposal is served by adequate and appropriate school facilities.
23 Impacts to the Monroe Public Schools and the Snohomish School District in the
24 form of additional students are addressed through mitigation programs. The City of
25 Monroe has adopted the Monroe and Snohomish School District 2018 - 2023
Capital Facilities Plan, and imposes impact fees for schools in accordance with the
plan and MMC Chapter 3.50. School mitigation fees require a standard fee amount
per dwelling unit as a condition of residential development within the city. School
impact fees are based on the amount in effect at the time of payment.

RCW 58.17.110(2) requires the City to make a finding that the proposed
subdivision assures “safe walking conditions for students who only walk to and
from school.” Students will be bussed from the development to Park Place Middle
School and Monroe High School by the Monroe School District. Most grade school
students will be bussed to Chain Lake Elementary School. The public streets
created within the subdivision generally include sidewalks on all sides of the street
where residential lots front public roadways as well as a sidewalk along the property
frontage adjacent to the north of Chain Lake Rd SE.

F. Streets and Traffic. The proposal will provide for adequate and appropriate
streets and traffic mitigation.

Two access points to the subdivision are proposed by extensions of 132nd Place SE
and 133rd Street SE from the Eaglemont Division 3 plat. Widening of 197th Ave

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SE along the NW boundary of the plat will provide direct access to Chain Lake Road.

Internal access to individual lots will be provided by new public roads. The width of the proposed right-of-way will be 60 feet. The proposed right-of-way configuration accommodates two 10-foot wide drive aisles, an 8-foot wide parking lane, 7-foot wide planter strips, and 5-foot wide sidewalks. A 60-foot wide right-of-way will allow for planter strips and sidewalks on both sides. These public road sections are in conformance with the City’s Public Works and Design Construction Standards.

The Applicant will be required to dedicate right-of-way for streets as shown on the proposed preliminary plat map. Frontage improvements, including curb, gutter, sidewalk and street trees will be provided for all public streets within the subdivision. Frontage improvements along Chain Lake Road SE include curb and gutter, a landscape strip with street trees, and a ten (10) foot wide trail along the entire length of the property frontage. The trail will connect to a City trail system planned to begin construction later in 2021. Traffic control devices and street signs shall be installed prior to final plat approval, and all public roads within the subdivision shall be constructed in accordance with the City’s Public Works Design and Construction Standards and installed by the developer to the satisfaction of the City prior to final plat approval.

Impacts to the City’s transportation system are mitigated through the collection of traffic mitigation fees. In accordance with the City’s traffic impact fee program under MMC Chapter 3.54, impact fees require a standard fee amount per dwelling unit as a condition of residential development within the City. Traffic impact fees will be paid in accordance with MMC Chapter 3.54 and will be based on the amount in effect at the time of payment.

The Applicant has prepared a traffic report, Ex. 15, that assess impacts on level of service on affected intersections. The report found that the proposal would not lower level of service for any of the studied intersections.

G. **Susan Davis Traffic Concerns.** In Ex. 24, Susan Davis raised several concerns over 197th Ave. SE, specifically the road was not designed to serve as a public access point and that it has some sight distance issues.

Ms. Davis correctly notes that 197th Ave SE was originally designed to serve as an emergency access point for other divisions of Eaglemont. The original plan was to place bollards at its south end to limit it for that purpose. As an emergency access road, the road was not designed to meet the City’s public road standards and was only required to conform to International Fire Code fire access standards. The bollards were never installed and the road was used as another access point for other Eaglemont divisions. 197th Ave SE is still a private road and the Davis family has an easement over the western half of that road. To exacerbate matters, the City’s urban growth area and City limits extends down the middle of the width of 197th

1 Ave SE. This subjects half of the 197th easement area to County standards and the
2 other half to City standards.

3 To address the 197th Ave SE design issues, the Applicant is proposing to
4 significantly improve the road. The Applicant will dedicate property on its side of
5 197th to enable the widening of the pavement from 14 feet to 23 feet without
6 encroaching into the Davis easement. This will enable two travel lanes in opposite
7 directions that are each 11 feet wide. As testified by Mr. Gathmann, the travel lanes
8 will be as wide as they are anywhere in the City. The Applicant will also be
9 providing a six and a half foot landscape bed and a five foot sidewalk. However, as
10 noted by Ms. Davis, the street will still not otherwise meet the City's street design
11 standards. According to Mr. Gathmann, the City's street standards require that the
12 street width be 36 feet with street parking on either side. The proposed street width
13 is only 23 feet with no street parking². Mr. Gathmann testified that he anticipates
14 that once additional development occurs in succeeding years (presumably on the
15 Davis properties to the west) that the road will be further improved to fully meet
16 City standards.

17 Ms. Davis was also concerned with site distances. City staff is in agreement that the
18 proposal does not conform to current site distance standards. Site distance issues
19 were addressed in the Applicant's traffic study, Ex. 15. The report concluded that
20 site distance issues can be resolved by the removal of some vegetation that is
21 apparently incorporated into the proposed 197th Ave SE improvements⁴. City staff
22 agreed with this resolution.

23 Ms. Davis pointed out that the entrance to a private driveway serving several of her
24 properties is located on 197 Ave SE just a few feet south from the 197th/Chain Lake
25 Road intersection. The location of the driveway is shown in an aerial photograph
accompanying Ms. Davis' written comments. In response, the Applicant's
transportation engineer, Michael Swenson, identified that PM peak hour traffic
along 197th Ave SE is minor and will not increase significantly as a result of the
project. From this he concluded that "*no operational impacts are anticipated for
the subject driveways.*" Given Mr. Swenson's qualifications as a professional traffic
operations engineer and the lack of any professional or staff opinion to the contrary,
it is determined that the proximity of Ms. Davis' driveway to the 197th Ave SE/Chain

22 ² There was no street standard modification request consolidated with this PRD review
23 and the record does not reflect that any modification has been granted by City staff.
24 Presumably such a modification has been granted since Tom Gathmann testified in
25 favor of the proposed road design. If not, nothing in this Recommendation should be
construed as an approval of a modification to the City's street standards. The Applicant
is expected to acquire formal approval of any modification to street standards that are
necessitated by the proposed street design.

⁴ In case the removal of the shrubs is not clearly incorporated into the proposed project
design, this recommendation has added a condition that expressly requires the removal.

1 Lake Road intersection will not create any adverse operational impacts to the road
2 network.

3 Ms. Davis pointed out that the traffic study didn't take into account the fact that
4 Chain Lake Elementary School is near 197th and that numerous people will take this
5 road for that reason. Mr. Swenson's response was that elementary school traffic
6 wouldn't have any significant impact on PM peak hour traffic. That response
7 doesn't directly resolve Ms. Davis' concern, because it is AM peak hour, not PM
8 peak hour that is at issue. The City's engineering standards, specifically Section 3-
9 8 Table B, identify that traffic studies should assess AM peak hour congestion levels
10 in addition to PM levels. AM levels are not addressed in the traffic study and Mr.
11 Swenson did not make any conclusions as to how elementary school traffic would
12 affect AM peak hour levels. However, the overall AM peak hour trip generation for
13 the project is only 33 trips, compared to 44 for the PM peak hour. Further, the PM
14 peak hour level of service⁵ for the 197th/Chain Lake intersection is at LOS B and the
15 City's adopted standard is LOS D. Given that the proposal, located adjacent to 197th,
16 is anticipated to generate significantly less AM peak hour traffic than PM peak hour
17 traffic, it is reasonable to conclude that other development in the vicinity currently
18 does the same and that, therefore, the AM peak hour LOS for the 197th/Chain Lake
19 intersection is also B or better. Nancy Rogers also testified that most students in the
20 project area are bussed to the elementary school. From this information it is
21 reasonable to conclude that elementary school traffic will not result in a precipitous
22 decline from AM LOS B to LOS E.

23 H. Steve Hoffman Topsoil Concerns. Steve Hoffman, a retired professional
24 engineer, on behalf of the Eaglemont Homeowners Association, submitted several
25 letters outlining his finding that prior divisions of Eaglemont have failed to conform
to required City stormwater best management practices (BMPs) that generally
require an eight inch layer of topsoil on all residential lots, parking strips, public
pathways, parks/open space and stormwater management facilities. Mr. Hoffman
noted that numerous complaints have been made about the absence of topsoil
throughout the Eaglemont divisions. He took soil samples on one lot in each of
Eaglemont Divisions I-V as well as two lots in Sky View Ridge. He found that in
lawn areas the amount of topsoil only averaged 3.0 inches, well below the required
8 inches. Mr. Hoffman found similar noncompliance issues with the fill
requirements for the soil located beneath the topsoil.

Tom Gathmann, senior City of Monroe engineer, testified that Mr. Hoffman had
accurately identified the topsoil and fill requirements for City subdivisions. He
declined to comment on whether the Applicant had failed to comply with the BMPs
as alleged by Mr. Hoffman. He noted that enforcement of the BMPs is beyond the

⁵ "Level of service" as explained in detail in Appendix A to the traffic study, Ex. 15, is
a measure of traffic congestion with Level of Service A being the least traffic delay and
Level of Service F being the most.

1 scope of preliminary plat review and is addressed during building permit review for
2 the residential lots. Mr. Gathmann confirmed that no additional conditions are
3 necessary to ensure enforcement, since the City already has enforcement tools
4 available to it in its building and code enforcement codes. The Applicant noted that
5 the only issue pertinent to preliminary plat review regarding the topsoil issue was
6 whether the sizing of stormwater facilities was dependent upon the soil infiltration
7 capacity of the required topsoil. The Applicant's stormwater engineer testified that
8 the stormwater facilities are not sized on the presumption that the required topsoil
9 provide some infiltration capacity.

10 Mr. Hoffman's detailed analysis in Ex. 20, 21 and 25 show that the City has
11 historically been very good about documenting conditions requiring conformance
12 to topsoil BMPs. Consequently, the failure to comply with those standards is
13 unquestionably subject to the City's code enforcement process as identified in
14 MMC 15.01.090. No additional conditions of approval of the proposal are
15 necessary to augment that enforcement authority. However, it is also recognized
16 that the City may have not enforced these requirements in past divisions. It is
17 further recognized that the Eaglemont Homeowners Association represented by Mr.
18 Hoffman has a valid interest in ensuring that those standards are enforced for all
19 Eaglemont divisions. **For this reason, a condition of approval is recommended
20 requiring the Applicant to notify Mr. Hoffman on behalf of the Eaglemont
21 Homeowner's Association of all requests for final inspections for building
22 permits of the homes for Division VII. This condition should help the
23 homeowner's association to monitor compliance and enforcement of the
24 stormwater BMPs identified by Mr. Hoffman in his project comments.**

25 I. Niehues Wetland/Brown Road Comments. Taylor Niehues submitted an
email dated March 31, 2021 expressing concern over improvements to Brown
Road, impacts to a wetland on his property, and aesthetic impacts. As testified by
Mr. Gathmann, the proposal doesn't involve any improvements to Brown Road so
the Brown Road concerns are not applicable. The proposal is also not found to
adversely affect Mr. Niehues' wetland because all improvements will be made
outside the wetland boundaries. Aesthetic impacts are adequately addressed by the
project open space.

On the wetland issue, Mr. Niehues included in his email an image from Snohomish
County's critical areas map. As depicted on the map, if the wetland on the Niehues
property has a 200 foot buffer, the buffer would extend a few feet onto the project's
Chain Lake road frontage and potentially into Tract A of the project site.

In contrast to what is depicted on the County image provided by Mr. Niehues, the
Applicant's wetland consultant concluded in Ex. 16A that the wetland was located
530 feet from the project site and noted that since the maximum applicable buffer
would be 200 feet that the project would not extend into the buffer. The City had
this assessment peer reviewed by Perteet, who concluded in Ex. 16B that the

1 wetland buffer would not extend onto the project site. Perteet included in its review
2 the Snohomish County mapping identified by Mr. Niehues.

3 In evaluating the conflicting evidence presented on wetlands, it must be recognized
4 that the Applicant's wetland consultant only stated that the maximum required
5 wetland buffer would be 200 feet. The 200 foot buffer only applies to the City's
6 most significant and fragile wetlands. The consultant did not make any
7 determination on what the likely applicable buffer would be. It must also be
8 recognized that the wetland mapping from the County only provides the general
9 location of wetlands, which can change over time and must be confirmed by a site
10 visit. As noted in Snohomish County Code Section 30.62A.210, "[w]hile the
11 county maintains some maps of wetlands and fish and wildlife conservation areas,
12 they are for informational purposes only and may not accurately represent all such
13 areas."

14 Given all of the factors above, the Perteet evaluation is considered the most
15 compelling. Perteet did both a site visit and reviewed Snohomish County's wetland
16 maps. In its expertise, Perteet concluded that the wetland buffer from the Niehues
17 property would not encroach onto the project site. Perteet was hired by the City
18 (likely at Applicant expense) to peer review the Applicant's wetland analysis.
19 Perteet did not identify whether a 200 foot buffer or a lesser one would apply at the
20 location. However, as previously noted, Perteet was hired to do peer review, which
21 means it was working for the City and not the applicant. Given Perteet's objectivity
22 and its thorough evaluation of the wetland issues, it is concluded that its evaluation
23 compels a finding that the Niehues wetland buffer does not extend onto the project
24 site.

25 On the aesthetic issue, Mr. Niehues was concerned about the appearance of the
density authorized by the PRD from Chain Lake Road. However, as discussed in
Finding of Fact No. 7 below, Tract A provides a significant aesthetic buffer between
the residential development and Chain Lake Road. Compared to residential
subdivisions that are permitted outright, the proposed PRD will likely have less
aesthetic impact to views from Chain Lake Road and properties located further to
the north.

7. Superior Design. The PRD provides a better and superior design to that which would
be required by the City's subdivision criteria. As testified by staff, no open space is
required for a standard subdivision. As outlined in Finding of Fact 6D, the proposal
provides for an extensive amount of open space that includes a neighborhood park with
a half basketball court, trails and a tot lot. The open space is also well located along the
project's frontage along Chain Lake Road. In this regard the open space reduces the
aesthetic impact of the additional density to the residents of the City by providing views
of heavily landscaped open space as opposed to the numerous new homes that comprise
the development site. Individual home design will also be checked against PRD design

standards during building permit review to assure that the homes are of high quality design.

During the hearing staff also identified that another better/superior design feature was that the Applicant will develop a ten foot wide trail along the Chain Lake Road frontage that will link to a trail system under development that extends into the heart of the City. The trail certainly qualifies as a significant project amenity. However, it's somewhat unclear that this amenity is an "extra" that would not be required of a standard subdivision. If the site were developed as a standard subdivision, the City likely could require the applicant to install the trail as a SEPA condition. Whether the City would have done so in practice is unknown.

CONCLUSIONS OF LAW

Procedural:

1. Authority of Hearing Examiner. As outlined in Conclusion of Law No. 1 to the Kestral Ridge PRD hearing examiner recommendation, Ex. 19, the hearing examiner has the authority to hold hearings and make recommendations on consolidated preliminary plat/PRD applications. The City Council makes the final decision on such applications after closed record review.

Substantive:

2. Zoning and Comprehensive Plan Designation. The project site is zoned Residential 4 Dwelling Units Per Acre (R4). The Comprehensive Plan land use designation is Low Density Single Family Residential.

3. Review Criteria and Application. The Applicant vested its application prior to the City's Unified Development Code by Ordinance No. 005/2019, specifically a complete application vested the project on April 15, 2019. The review criteria in place on the date of vesting apply to the project. Specifically, subdivision criteria are governed by former MMC 17.12.030(H). PRD standards are governed by former MMC 18.84.080. In addition, MMC 21.50.030(C) imposes standards that apply to all development reviewed by the hearings examiner. Applicable code provisions are quoted below in italics and applied through corresponding Conclusions of Law.

Subdivision Criteria

MMC 17.12.030(H): ... *The hearing authority shall inquire into how the public interest of future residents of the preliminary plat are to be served by the subdivision and its dedications. It shall determine if provisions are made to protect the public health, safety and general welfare by the provision of open spaces, drainage ways, streets, alleys, other public ways, water supplies, sanitary waste, parks, playgrounds, sites for schools*

1 *and school grounds and shall consider all other relevant facts and determine whether*
2 *the public interest of the future residents of the subdivision will be served by the*
3 *dedications therein:*

- 4 *1. The hearing authority shall consider if the proposed subdivision conforms to the*
5 *comprehensive plan and the Shoreline Master Program;*
- 6 *2. The hearing authority shall consider the physical characteristics of a proposed*
7 *subdivision site and may recommend disapproval of a proposed plat because of*
8 *improper protection from floods, inundation or wetland conditions;*
- 9 *3. All identified direct impacts must be mitigated or meet concurrency as set forth*
10 *in MMC Title 20.*

11 4. The criterion is met. Adequate and appropriate provisions are made for infrastructure
12 and there are adequate and appropriate public services available as determined in
13 Finding of Fact No. 6. Beyond infrastructure and public service needs, the project
14 adequately provides for the public health, safety and general welfare because there are
15 no significant adverse impacts associated with the proposal as determined in Finding
16 of Fact No. 5 and the proposed infill serves to satisfy the City's obligations to
17 accommodate its growth population targets assigned by Snohomish County under the
18 GMA. The project is consistent with the comprehensive plan as outlined in the staff
19 report and also for the reason that the proposal provides for residential development
20 with design features that assure its compatibility with surrounding residential uses. The
21 project is more than 200 feet from any shoreline of the state or associated wetland and
22 is, therefore, not subject to the jurisdiction of the Shoreline Management Act. The site
23 is not in a floodplain. There are no critical areas on the project site. The proposal meets
24 all applicable level of service standards as determined in Finding of Fact No. 6.

25 **Universal Permitting Criterion**

MMC 21.50.030(C): *Required Findings. In drafting a recommendation, the hearing
examiner shall address the following, as required in the findings of fact:*

- 1 *1. The development is consistent with the comprehensive plan and meets the*
2 *requirements and intent of this code.*
- 3 *2. The development makes adequate provisions, if appropriate, for open space,*
4 *drainage ways, streets and other public ways, transit stops, water supply, sanitary*
5 *wastes, parks and recreation facilities, playgrounds, sites for schools and school*
6 *grounds.*
- 7 *3. The development adequately mitigates impacts identified under Chapters 17.12,*
8 *18.84, and 20.04 MMC, and the sensitive area guidelines adopted by resolution.*
- 9 *4. The development is beneficial to the public health, safety and welfare and is in*
10 *the public interest.*
- 11 *5. The development does not lower the level of service on the following public*
12 *facilities and services below the minimum standards established within the*
13 *comprehensive plan:*
 - 14 *a. Potable water;*

- b. Wastewater;
- c. Storm water drainage;
- d. Police and fire protection;
- e. Parks and recreation;
- f. Arterial roadways; and
- g. Public schools.

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If the development results in a level of service lower than those set forth in the comprehensive plan, the development may be approved if improvements or strategies to raise the level of service above the minimum standard are made concurrent with the development, subject to the requirements of Chapter 20.06 MMC.

6. The area, location, and features of land proposed for dedication are a direct result of the development proposal, are reasonably needed to mitigate the effects of development, and are proportional to the impacts created by the development.

5. The criterion is met. As noted in Finding of Fact No. 6, the proposal does not lower level of service standards for public services below adopted levels. The proposal is also consistent with the comprehensive plan as outlined at page 5 of the staff report. As conditioned, there are no significant adverse impacts associated with the proposal as determined in Finding of Fact No. 5. Since there are no significant adverse impacts associated with the proposal and the proposed infill helps to accommodate GMA required growth targets, the proposal is beneficial to public health, safety and welfare and is in the public interest. The streets required for dedication are necessary to provide safe access to the lots proposed by the subdivision and are, therefore, needed to mitigate the effects of the proposal. As the dedicated right of way is only necessary because of the proposed development and will be primarily used by vehicles accessing or departing the proposed subdivision, the required right of way is proportional to the impacts created by the development.

PRD Criteria

MMC 18.84.120(A): *The city shall⁹ approve a preliminary development plan if the plan meets the following criteria:*

⁹ Curiously, MMC 18.84.120(A) mandates approval of a PRD without reference to compliance with MMC 18.84.080, which sets additional requirements for PRDs. The staff report contains a detailed analysis of compliance with MMC 18.84.080. Although compliance with MMC 18.84.080 is arguably not required for approval of the PRD given the “shall” language of MMC 18.84.120(A), it is concluded that the PRD complies with MMC 18.84.080 for the reasons identified in the staff report. Further, satisfying the requirements of MMC 18.84.080 is construed as a pre-requisite for a determination that the PRD provides for superior design, as mandated by MMC 18.84.120(B). Compliance with MMC 18.84.080 is also mandatory for the Applicant’s requested PRD density bonus.

1 A. *The PRD is in accordance with the comprehensive plan; and*

2 6. The criterion is met. As previously concluded, the PRD is consistent with the
3 comprehensive plan.

4 **MMC 18.84.120(B):** *The PRD accomplishes a development that is better than that*
5 *resulting from traditional development and provides a net benefit to the city. A net*
6 *benefit to the city may be demonstrated by the following:*

- 7 1. *Conservation of natural features and sensitive area,*
- 8 2. *Placement, style or design of structures,*
- 9 3. *Recreational facilities,*
- 10 4. *Interconnected usable open space,*
- 11 5. *Provision of other public facilities,*
- 12 6. *Aesthetic features and harmonious design, and*
- 13 7. *Energy-efficient site design and/or building features.*

14 7. The criterion is met. As determined in Finding of Fact No. 7, the PRD provides for
15 better design.

16 **MMC 18.84.120(C):** *The PRD will be served by adequate public facilities including*
17 *streets, fire protection, water, storm water drainage, and sanitary sewer for acceptable*
18 *waste controls, as demonstrated by the submittal and review of plans for such facilities*
19 *as described under MMC 18.84.060; and*

20 8. The criterion is met. As determined in Finding of Fact No. 6, the proposal is served
21 by adequate public facilities as required by the criterion above.

22 **MMC 18.84.120(D):** *The proposed landscaping within the PRD's perimeter is*
23 *superior to that normally required by the city; and*

24 9. The criterion is met. The PRD will provide a 10-foot landscape buffer along the
25 eastern perimeter as required by MMC 18.10.140 Table A - Note 15 when abutting a
standard subdivision or different zoning district. Other divisions of Eaglemont abut
the project site to the south and west, so no landscaping perimeter is provided or
required along those sides. Chain Link Road abuts the project site to the north, but in
any event street trees and other landscaping in Tract A provides for landscaping on that
side. Other than the street trees no perimeter landscaping for the proposal would be
required for a standard subdivision, so the perimeter landscaping provided by the
Applicant is superior to that normally required by the City.

1 **MMC 18.84.120(E):** *At least one major circulation point is functionally connected to*
2 *a public right-of-way; and*

3 10. The criterion is met. All the interior roads ultimately connect to exterior public
4 roads.

5 **MMC 18.84.120(F):** *The open space within the PRD is integrated into the design of*
6 *the project rather than an isolated element; and*

7 11. The criterion is met. Tract A is within walking distance of all proposed lots and
8 the lots all have uninterrupted sidewalk access to the open space. In point of fact, as
9 shown in the landscaping plans, Tract A has three access points from the subdivision
10 and 197th Ave SE. See Ex. 11.

11 **MMC 18.84.120(G):** *The PRD is compatible with the adjacent development; and*

12 12. The criterion is met. The PRD is compatible with adjacent development. All of
13 the surrounding properties are developed with single-family residences and the
14 property abutting to the south and west are other divisions of Eaglemont. The density
15 of the residential development is more than that of the proposal on the north side of the
16 project because that property is located in unincorporated Snohomish County with a
17 zoning designation of Rural Acre-5, however that use is separated and buffered from
18 the project site by Chain Link Road and the Tract A open space and street trees. The
19 property abutting to the east is developed with a lower density but is buffered by a
20 perimeter landscaping strip. With the landscaping and open space proposed and/or
21 required of the Applicant, the proposal is fully compatible with surrounding
22 development.

23 **MMC 18.84.120(H):** *Undeveloped land adjoining the PRD may be developed in*
24 *coordination with the PRD; and*

25 13. The criterion is met. The criterion is not mandatory and there is no indication in
the record of any adjoining development that could be coordinated with the project.

MMC 18.84.120(I): *The PRD is harmonious and appropriate in design, character and*
appearance to the existing or intended character of development in the immediate
vicinity; and

14. The criterion is met. For the reasons identified in Conclusion of Law No. 12, the
proposal is harmonious and appropriate in design etc. with surrounding development.

MMC 18.84.120(J): *Roads, streets and sidewalks, existing and proposed, comply with*
the standards and requirements of this chapter and the Monroe Municipal Code; and

1 15. The criterion is met. City public works staff have reviewed the plat drawings and
2 found the proposed design for streets and sidewalks to be consistent with applicable
City standards.

3 **MMC 18.84.120(K):** *Each phase of the PRD, as it is completed, shall contain the*
4 *required parking spaces, open space, recreation facilities, landscaping, and utility area*
planned for that phase.

5 16. The criterion is met. The proposal is not phased. To the extent that the division
6 is considered a phase of the multi-division Eaglemont project, the division under review
7 will provide all required infrastructure as contemplated by MMC 18.84.120(K) upon
completion. No work is deferred for another division.

8 **RECOMMENDATION**

9 The proposed preliminary plat and PRD are found to be consistent with all applicable
10 development regulations for the reasons identified in the Conclusions of Law above
11 with adherence to the conditions of approval below. It is recommended that the City
Council approve the Eaglemont VII preliminary plat and PRD applications subject to
12 the following conditions:

- 13 1. All improvements shall be constructed in accordance with the approved
14 preliminary plat map with the date stamp of February 1, 2021, received by the
15 City February 5, 2021. Minor modifications of the plans submitted, as
described in MMC 22.68.040(G), may be approved by the Zoning
16 Administrator or his/her designee if the modifications do not change the
Findings of Fact or the Conditions of Approval.
- 17 2. Final engineering drawings depicting the street improvements, water and
18 sewer improvements, and drainage design shall be submitted to the City's
Public Works Director for final review and approval before issuance of any
19 grading permits. The street, water and sewer, and drainage improvements
shall be designed in accordance with the City's most current Public Works
Design and Construction Standards.
- 20 3. The project shall implement all of the applicable recommendations contained
in the following technical reports submitted to the City:
 - 21 a. Conceptual Stormwater Site Plan, prepared by Barghausen Consulting
Engineers, Inc., dated January 29, 2021 (Exhibit 14).
 - 22 b. Geotechnical Report, prepared by Earth Solutions NW, LLC, dated
October 3, 2017, updated January 29, 2021 (Exhibit 13).
 - 23 c. Removal of shrubs at north side of 197th Ave SE to improve site distance
24 as contemplated in Transportation Impact Analysis, prepared by
Transpogroup, dated January 2021 (Exhibit 15).

25 **CLEARING AND GRADING**

1. A comprehensive erosion and sedimentation control plan to ensure
appropriate on-site and off-site water quality control shall be developed and

1 implemented for all construction activities. The Best Management Practices
2 outlined in the 2014 DOE Stormwater Management Manual for Western
3 Washington shall be incorporated into the design. At a minimum, the plan
4 shall include the following elements:

- 5 a. Exposed soils shall be stabilized and protected with straw, hydro-seeding
6 or other appropriate materials to limit the extent and duration of exposure;
- 7 b. Disturbed areas shall be protected from storm water runoff impacts
8 through the use of silt fence. Other means of filtration of storm water
9 runoff and for limiting erosion/sedimentation such as check dams, and
10 sediment traps may be required and are recommended.
- 11 c. Clearing and grading activities during the winter-wet season are allowed
12 subject to additional control measures as required by the City and/or
13 Department of Ecology, including without limitation any and all
14 applicable permitting and approval requirements.

9 **STORM DRAINAGE IMPROVEMENTS**

- 10 1. The stormwater system design and stormwater discharge shall utilize the Best
11 Management Practices of the 2014 DOE Stormwater Management Manual for
12 Western Washington.
- 13 2. Stormwater pollution prevention measures shall be employed per the
14 approved Stormwater Pollution Prevention Plan and as necessary to ensure
15 appropriate on-site and off-site water quality control. Site runoff during
16 construction shall be handled and treated as to quantity and quality impacts by
17 utilizing Best Management Practices, as defined in the 2014 DOE Stormwater
18 Management Manual for Western Washington.
- 19 3. The developer shall obtain a General Construction Stormwater NPDES Permit
20 from the WA Department of Ecology (DOE) prior to beginning construction.

17 **ROAD IMPROVEMENTS**

- 18 1. Frontage improvements along Chain Lake Road shall include curb, gutter,
19 sidewalk, street trees, and traffic control signage and striping per the City's
20 most current Public Works Design and Construction Standards. All internal
21 plat public roads shall be designed and constructed in accordance with the
22 City's most current Public Works Design and Construction Standards;
23 including traffic control devices, and are to be installed by the developer to the
24 satisfaction of the City Engineer prior to final plat application.
- 25 2. Offsite road improvements to 197th Ave SE are on private lands, and adjoin
lands located in the County and, therefore, the 197th Ave SE improvements are
not required to meet the City's standards for public roads. These improvements
shall include a minimum of 22 feet of pavement along with 1.5 feet of curb and
gutter, 6.5 feet of planter, 5 feet of sidewalk and street trees in substantial
conformance with Exhibit 12.
- 3. The offsite road connection to 132nd Place SE shall require the dedication of
tract lands in the Eaglemont 3 plat as a public right-of-way, as shown on
Exhibit 3. The applicant shall be required to dedicate, conveying from the
owner those tract lands, and the deed of dedication may be provided to the City

1 at any time prior to final plat approval. Prior to final plat approval, the
2 applicant shall at its sole expense ensure that such tract lands are dedicated or
3 otherwise deeded, as applicable, to the City for public right-of-way use.

3 **LANDSCAPING**

- 4 1. Street trees shall be provided per the approved landscape plan. Street trees
5 shall be planted when a street frontage is fully owner occupied and as directed
6 by the City of Monroe. The City will coordinate tree plantings to the most
7 favorable time of the year for plant survival. All street frontage
8 landscaping/irrigation improvements shall be bonded until such time that
9 housing construction is completed and bonded work may be completed
10 without risk of construction damage.
- 11 2. Irrigation is required for all street trees and newly planted vegetation. The
12 applicant shall construct said irrigation system as consistent with a City-
13 approved irrigation plan.

10 **FIRE**

- 11 1. The following requirements shall be adhered to during construction and
12 completed before occupancy of any structure in accordance with the 2015
13 International Fire Code:
 - 14 a. Fire hydrants shall be provided in accordance with city standards and the
15 direction of the Fire Marshal
 - 16 b. Fire Hydrants shall be installed as per fire flow and spacing requirements
17 specified for the type of development with regards to distances to
18 structures;
 - 19 c. Fire hydrants shall be equipped with four (4) inch quarter-turn Storz
20 adapters;
 - 21 d. An access route, for firefighting apparatus, must be provided at the start
22 of construction. Minimum access route requirements include a 20' width,
23 13'6" vertical height clearance, and the ability to support a load up to
24 75,000 pounds;
 - 25 e. All buildings must be addressed visibly and legibly from the road. When
buildings are not visible from the street, appropriate provisions must be
made to identify clearly which road or drive serves the appropriate
address including private roads.
 - f. No parking signs shall be indicated on all street in this project and shall
be signed or marked as directed by the Fire Marshal, for all streets with a
width less than 28' wide and within turnaround areas.

23 **FEES**

- 24 1. Prior to approval of the final plat, all landscaping associated with the plat shall
25 require the submittal of an acceptable warranty surety to warrant all required
landscaping improvements against defects in labor materials for a period of 24
months after acceptance of those improvements by the City. The warranty

1 amount shall be equal to fifteen (15) percent of the costs of the improvements,
2 as determined by the Zoning Administrator.

- 3 2. Prior to approval of the final plat, the developer shall submit an acceptable
4 warranty surety to warrant all required public improvements, installed, against
5 defects in labor and materials for a period of 24 months after acceptance of
6 those improvements by the City. The warranty amount shall be equal to
7 fifteen (15) percent of the costs of the improvements, as determined by the
8 Public Works Director. The surety shall be submitted to and approved by the
9 City of Monroe and executed prior to final plat approval.
- 10 3. School, park, and traffic impact fees assessed in accordance with MMC
11 Chapters 3.50, 3.52, and 3.54, respectively, shall be required and paid at the
12 rate in effect at the time of building permit issuance.
- 13 4. The water system capital improvement charge, in accordance with MMC
14 Section 13.04.025, shall be required and paid prior to building permit
15 issuance.
- 16 5. The wastewater system capital improvement charge, in accordance with MMC
17 Section 13.08.272, shall be required and paid prior to building permit
18 issuance.

11 **FINAL PLAT**

- 12 1. Prior to Final Plat approval, all improvements shall be installed, inspected, and
13 approved or bonded pursuant to MMC 22.68.040D1a. All improvements shall be
14 constructed in accordance with the approved engineering plans and preliminary
15 plat map. Minor modifications of the plans submitted may be approved by the
16 Zoning Administrator if the modifications do not change the Preliminary Plat
17 Findings of Fact and/or Conditions of Approval.
- 18 2. All lot corners shall be installed with rod and cap or other City-approved survey
19 method prior to Final Plat approval.
- 20 3. All existing and proposed easements and maintenance agreements shall be clearly
21 shown and labeled on the final plat.
- 22 4. The following note shall appear on the face of the Final Plat Map: “The
23 Homeowners Association is responsible for maintaining, in a uniform manner, all
24 landscaping and irrigation within all commonly owned Tracts and easements.”
- 25 5. As this plat includes a dedication, the following Waiver of Claims for Damages
Statement shall appear on the face of the Final Plat Map:

*This dedication includes conveyance of roads, tracts, utility and storm drainage
infrastructure, and other areas of right-of-way intended for public use and/or
ownership as shown on or otherwise referenced by the plat. The [insert name
here] hereby waives all claims against the City of Monroe and/or any other
governmental authority for damages which may occur to the adjacent land as
a result of the construction, drainage and maintenance of such facilities and
improvements.*

6. If the final plat contains dedication of land for public purposes, it shall contain the
following statement:

1 *Know all men by these presents that (name of developer) do hereby declare this*
2 *plat and dedicate to the public forever all roads and ways and other public*
3 *property shown hereon, and the use thereof for any and all public purposes,*
4 *with the right to make all necessary slopes for cuts and fills, and the right to*
 continue to drain the roads and ways over and across any lot or lots, where
 water might take a natural course, in the original reasonable grading of the
 roads and ways shown hereon.

5 *Following original reasonable grading of roads and ways hereon, no drainage*
6 *waters on any lot or lots shall be diverted or blocked from their natural course*
7 *so as to discharge upon any public road rights-of-way, or to hamper proper*
8 *road drainage. Any enclosing of drainage waters in culverts or drains or*
9 *rerouting thereof across any lot as may be undertaken by or for the owner of*
 such lot shall be done by and at the expense of such owner, but only after
 approval by the city engineer.

- 10 7. The final plat shall provide space for the approving signatures of the zoning
 administrator, city engineer, and the mayor. The city clerk shall attest the
 signatures.
- 11 8. The title block on the final plat map shall have the names of all the legal owners
12 of the property named on the plat and the name of the surveyor/engineering firm
 which prepared the final plat map.
- 13 9. An Auditor's Certificate shall be shown on the final plat map.
- 14 10. The following are required to be shown on the face of the final plat map:
- 15 d. Surveyor Certificate;
 - 16 e. Correct legal description of all lots as set out in Chapter 58.17 RCW;
 - 17 f. Owners Statement;
 - 18 g. All new easement(s) over the property, their legal description(s) and
 associated dedication block(s);
 - 19 h. Recording block/Certification blocks for City approval;
 - 20 i. North arrow;
 - j. Certification of Payment of Taxes and Assessments;
 - k. Auditor's Certificate; and
 - l. The survey control scheme, monumentation, basis of bearing and
 references.

21 **MISCELLANEOUS**

- 22 1. Preliminary plat approval shall be effective for a maximum time period of five
23 years upon which a final plat that meets all conditions of the preliminary plat
24 approval must be submitted, in accordance with MMC 22.68.040(A)(5)(c)
- 25 2. If applicable, at the time of final plat submittal the developer shall submit a
 group mailbox plan, approved by the U.S. Post Office, to the Planning
 Department for final addressing.
3. Mail routes, including mailbox types and locations, shall be approved by the
 Postmaster prior to construction.

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4. The developer shall submit a copy of the final plat to the Snohomish County Assessor's at 3000 Rockefeller Avenue, Everett, WA 98201-4060 for recording.
5. All construction equipment, building materials, and debris shall be stored on the applicant's property, out of the public right-of-way. In no case shall the access to any private or public property be blocked or impinged upon without prior consent from the affected property owners and the City of Monroe.
6. If at any time during clearing, grading and construction the streets are not kept clean and clear, all work will stop until the streets are cleaned and maintained in a manner acceptable to the Public Works Director.
7. Pursuant to MMC 6.04.055(B)(1), construction noise is not allowed Monday through Friday between the hours of 8 P.M. and 7 A.M., and from 8 P.M. and 9:00 A.M. on the weekend.
8. All signs, if any, shown on the approved plans for the subdivision are for illustrative purposes only. Pursuant to Monroe Municipal Code 22.50, a sign permit must be obtained for the placement of any non-exempt signage. An application for a sign permit shall include an approved site plan specifying the location of all signs.
9. The developer and contractor shall attend a pre-construction meeting with City staff to discuss expectations and limitations of the project permit before starting construction.
10. The Applicant (or Applicant's successor in interest) shall notify Steve Hoffman on behalf of the Eaglemont Homeowner's Association of all requests for final building permit inspection for the homes to be built upon Division VII. The notice shall be provided to Mr. Hoffman within one business day of making the request to the City. Notice shall be provided to the email address provided by Mr. Hoffman to the Applicant. This condition may be modified upon mutual agreement between Mr. Hoffman and the Applicant.

Dated this 12th day of April 2021.



Phil A. Olbrechts

City of Monroe Hearing Examiner