



City of Tacoma
Planning and Development Services
Department
747 Market St, Room 345
Tacoma, WA 98402

NOTICE OF DECISION

Date of Decision: June 7TH, 2016

Appeal Period Ends: June 21st, 2016

Decision Effective: June 22nd, 2016

Decision: Approved

Proposal: Critical Area Verification for jurisdictional determination of wetland.

Applicant: Thorne Road Investors LLC

Location: 1424 Thorne Rd, Parcel 6965000530.

Application No. LU16-0003

For further information regarding the application, **log onto the website at <http://tacomapermits.org> and select "Message Board"**. The case file may be viewed in Planning and Development Services, 747 Market Street, Room 345.

Appeal Procedures:

Reconsideration: Any person having standing may request reconsideration of the Director's decision, based upon errors of procedure or fact, by submitting a request in writing to Planning and Development Services at the address below.

Appeal to Hearing Examiner: Any aggrieved person or entity may appeal to the Hearing Examiner by filing a written Notice of Appeal and submitting the filing fee of \$320.90 to the Hearing Examiners Office (747 Market St, Room 720) which contains the following:

- A brief statement showing how the appellant is aggrieved or adversely affected
- A statement of the grounds for the appeal, explaining why the appellant believes the administrative decision is wrong.
- The requested relief, such as reversal or modification of the decision.
- The signature, mailing address and telephone number of the appellant and any representative of the appellant.

THE FEE SHALL BE REFUNDED TO THE APPELLANT SHOULD THE APPELLANT PREVAIL.

Staff contact: Shannon Brenner, Environmental Specialist, 747 Market St, Room 345, (253) 591-5482, sbrenner@cityoftacoma.org

Environmental Review: In accordance with the State Environmental Policy Act (SEPA) administered under the Washington Administrative Code (WAC) 197-11-800 and the City of Tacoma Environmental regulations administered under TMC Chapter 13.12, the Environmental Official has reviewed this project and determined that the project is exempt from SEPA provisions.



City of Tacoma
Planning and Development Services Department
747 Market St, Room 345
Tacoma, WA 98402

NOTICE OF LAND USE DECISION



City of Tacoma
Planning and Development Services
Report And Decision

**CRITICAL AREA VERIFICATION
PERMIT FOR:**

FILE NO. LU16-00003

Thorne Road Investors LLC
815 NW Lofall Rd.
Poulsbo, WA 98370-9208

SUMMARY OF REQUEST:

Critical Area Verification to determine jurisdictional status of a wetland located on the project site.

LOCATION:

1424 Thorne Rd, Parcel 6965000530

SUMMARY OF DECISION:

The Critical Area Verification is **approved**.

NOTES:

The appeal period on this decision closes **June 21st, 2016** and the effective date of this decision is the following business day, provided no requests for reconsideration or appeals are timely filed as identified in APPEAL PROCEDURES of this report and decision.

The Director has jurisdiction in this matter per TMC 13.05.030. The applicant bears the burden of proof to demonstrate the proposal is consistent with the provisions of the TMC, the applicable provisions and policies of the City's *Comprehensive Plan*, and other applicable ordinances of the City.

**FOR ADDITIONAL INFORMATION CONCERNING THIS LAND USE PERMIT PLEASE
CONTACT:**

Shannon Brenner
Planning and Development Services
747 Market Street, Room 345, Tacoma, WA 98402
253-591-5482 | sbrenner@cityoftacoma.org

SUMMARY OF RECORD

The following exhibits and attachments constitute the administrative record:

Attachments:

- A. Existing Conditions graphic with data points prepared by Soundview Consultants dated December 23, 2015.

Exhibits:¹

- A. Wetland and Fish and Wildlife Habitat Assessment Report by Soundview Consultants LLC dated December 22, 2015.
- B. No objection comment letter from Tacoma-Pierce County Health Department's Environmental Health Program dated March 9, 2016.

The Director enters the following Findings and Conclusions of Law based upon the applicable criteria and standards set forth in the *Tacoma Municipal Code (TMC)*, the policies of the *Comprehensive Plan*, as well as the attachments and exhibits listed above.

FINDINGS

Proposal:

1. The applicant has requested a Critical Area Verification to determine jurisdictional status of a wetland located on the site as allowed under the *Critical Areas Preservation Ordinance*, TMC 13.11.
2. The future development of the site is not being reviewed under this application. This review is limited to the jurisdictional determination of the wetland and any future use is not a consideration when making a jurisdictional determination.

Project Site:

3. The project site is located at 1424 Thorne Road, Tacoma, WA 98421 (Parcel Number 6965000530).
4. Several field visits were conducted during April and May of 2016 by Shannon Brenner, Environmental Specialist with the City of Tacoma. All accessible areas on and within 300 feet of the site were investigated. The surrounding area was investigated to verify if buffers from off-site critical areas, if present, would extend on to the site.
5. Greenbrier Rail Services occupies the site and provides reconditioned rail wheel sets. Their facility includes a building, rail line and yard used for wheel storage and employee parking. The site is surrounded by industrial and commercial uses.
6. The site is generally flat and mostly paved or gravel. The improved portions of the site drain to existing storm water facilities.

¹ All Exhibits are contained in Planning and Development Services Department File No. CAP2015-40000260137 and are referenced and incorporated herein as though fully set forth.

7. The southwest corner of the site is forested and vegetated with a variety of mostly native or naturalized species of both wetland and upland ecology. Vegetation includes black cottonwood, birch, hardhack and slough sedge. Past review of this vegetated area concluded that a portion of the area met the necessary criteria to be a regulated wetland and was estimated to be 7,439 square feet in size. This was the only critical area found on the site.
8. The site is located 1,600 feet or more from any State shoreline or fish-bearing water. No wildlife was observed during site visits, but it is expected that wildlife common in urban areas and the Port of Tacoma, such as small mammals and birds, use the vegetated area. There are no nesting or breeding sites and there was no evidence of federal or state listed species or habitat.

Additional Information:

9. The City of Tacoma Govme website and several state and federal inventories were also reviewed to determine if there are any known habitats or critical areas that have been previously identified on the site. There are no inventoried federal or state species or habitat for the site.
10. The City's Environmental Specialist (ES) Shannon Brenner conducted an extensive review of the site and assessment report provided by the applicant. Mrs. Brenner participated in prior assessments of this property and considered those findings in this determination.
11. Pursuant to the State Environmental Policy Act (SEPA) WAC 197-11 and the City's Environmental Code, the City of Tacoma, acting as lead agency, has determined that this project is exempt from the threshold determination requirements of SEPA.

Notification and Comments:

12. Procedural requirements for Critical Area Verifications are subject to provisions of the City's land use permit procedures under TMC Chapter 13.05. Notice of application for the Critical Area Verification was transmitted to several reviewing agencies and City departments for review and comment on March 1, 2016.
13. Written notice was sent to all owners of property within 100 feet of the site as indicated by the Pierce County Assessor/Treasurer's records, the neighborhood council, and qualified neighborhood groups allowing at least 14 days for comment. A public information sign was posted at the site within 7 days of the complete application notice.
14. One comment was received from the Tacoma Pierce County Health Department and stated they had no objections.

Applicable Regulations:

15. Critical Area Verification requests are subject to the provisions of the City's *Critical Area Preservation Ordinance* under TMC 13.11, and must be conducted in accordance with the most current federal manual and regional supplements. The property owner's assessment and City staff review were conducted using the most recent federal manual and regional supplement. (Note: This application is vested under the TMC Chapter 13.11 which went into effect January 1, 2016.)

16. As no development is proposed at this time, the request is consistent with the zoning and intensity designations for the site.

Technical Review:

17. A wetland determination relies on the presence of indicators for three parameters: hydric soils, wetland hydrology, and hydrophytic vegetation and the site was assessed for all three.
18. The previously identified wetland consists of a shallow irregular shaped depression within the vegetated area on the project site. A ditch runs through the vegetated area as well (not the wetland) but does not provide a source of water to or drain water from the wetland. This ditch is not a new alteration and was present when past reviews of the wetland were conducted.
19. The applicant's assessment claims the area appears to have been created to manage stormwater. After numerous site visits and review of historical photos, the ES cannot find any conclusive evidence that the area was created or maintained to convey or store stormwater. The Port of Tacoma was created by filling mud flats with dredge spoils and other material to create uplands and it is not uncommon for undeveloped areas to have irregular topography from the placement of fill material. When undeveloped and unmaintained, these areas become vegetated over time and the dredge spoils used to create the uplands often contain silts and fine material that retain water resulting in the formation of wetlands. Because it is unclear that this is a created and managed stormwater facility, this was not a consideration for this determination.
20. The applicant's assessment states that the area lacks indicators of wetland hydrology required for a wetland determination. Indicators of wetland hydrology were found during the City's prior review of the area, but this review was conducted outside of the growing season during periods of higher rain fall. Evidence of wetland hydrology should be present in the growing season during normal rainfall. For this review, staff conducted three separate site visits during the growing season to identify if there are any indicators of wetland hydrology.
21. Soil and vegetation were also assessed during the site visits and staff generally agrees with findings provided in the applicant's assessment report. The main issue of concern for this review was the absence of hydrologic indicators and the ES's review focused on this issue.
22. The applicant's assessment also states that recent paving and upgrades of the site's stormwater system may have altered patterns of surface flow that supported the wetland. The City reviewed the prior upgrades to the stormwater conveyance under a separate permit and spot elevations were provided to determine what portions of the site, if any, drained to the wetland. That information demonstrated that the area to be directed to the stormwater system was not draining to the wetland. The site and surrounding area are generally flat and there are no obvious drainage patterns. In reviewing prior wetland reviews it was unclear at that time as well, how much of the surrounding area, if any, was flowing to the wetland.
23. The U.S Army Corps of Engineers' regional supplement provides additional methods for assessing wetland indicators for sites that have been altered due to recent disturbances or lack indicators due to seasonal or annual variability. This criterion was considered by the ES in her review. The ES also considered secondary indicators of hydrology such as the FAC-neutral test and evidence of water marks, drift deposits, and surface cracks.

24. Wetlands are ponded or saturated during the growing season in most years but may not become ponded or saturated during droughts or years with drier than normal weather. For these reasons, the ES conducted site visit during the growing season in April and May of 2016 during a period of normal precipitation. The first site visit was conducted following a period of higher than normal precipitation when it was expected that indicators of wetland hydrology should be present and were not.
25. Prior review of the wetland in 2008 by GeoEngineers was conducted in the winter during heavy rain when most of the area was saturated and visual observation of standing water or saturation in soil pits was not a reliable indicator. Because of this, the review relied more heavily on the presence of hydric soils and hydrophytic vegetation utilizing the FAC-neutral test with other secondary indicators to establish the extent of the wetland. As stated above, the FAC-neutral test was utilized in this review.
26. More than one soil pit was dug during the site visits and in all there was no standing water or saturation observed. Vegetation in some of the sample plots passes the FAC-neutral test, but there were no additional indicators of hydrology present as required when using the FAC-neutral test. It was also found that the soil colors present at the site no longer reflect those found in the 2008 investigation. Slough sedge is and was present in 2008, but it should also be noted that the area vegetated by sedge has noticeably decreased in size based on photographs taken during the 2008 investigation.
27. Site visits conducted during the growing season and immediately following a wetter-than-normal period have established the site lacks primary or secondary indicators of hydrology. Because of the absence of hydrologic indicators, recorded changes in the area, and lack of conclusive evidence of significant human alteration of surface flows, the ES concludes that the previously identified wetland does not meet the criteria for a wetland determination and is not a jurisdictional wetland.

CONCLUSIONS²

1. The administrator concludes that the assessment presented by the applicant and confirmed by the City's Environmental Specialist, conforms to the provisions of TMC 13.11 and current federal manuals and regional supplements. See Finding 15.
2. The previously identified wetland does not meet the criteria of a jurisdictional wetland and is not regulated by the City of Tacoma. See Findings 17 through 27.

² Conclusions are based up on the applicable criteria and standards set forth in the *Tacoma Municipal Code* (TMC), the policies of the *Comprehensive Plan*, and the attachments and exhibits listed herein. Any conclusions of law hereinafter stated which may be deemed a finding of fact herein is hereby adopted as such.

DECISION

Based upon the above findings and conclusions, the Critical Area Determination is **approved**.

Advisory Notes:

The below notes are meant to provide additional information to the applicant. These notes are not conditions of the approval.

1. This approval does not establish if the wetland or any other portion of the site is under the jurisdiction of other federal or state agencies. It is the burden of the applicant to inquire with those agencies concerning any regulations or restrictions. This review does not substitute or satisfy the requirements of obtaining a jurisdictional determination from the US Army Corp of Engineers.
2. This approval does not approve or vest any future development or regulated activity, and is limited to verification and concurrence with the information provided regarding the presence of critical areas.

Endangered Species Act Warning:

The holder of this approval is responsible for compliance with the applicable provisions of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531 et seq.), and this approval includes no representation or warranty of ESA compliance.

ORDERED this 7th day of June, 2016



PETER HUFFMAN
DIRECTOR, PLANNING AND
DEVELOPMENT SERVICES DEPARTMENT

FULL DECISION TRANSMITTED by first class mail to:

Thorne Road Investors LLC, 815 NW Lofall Rd., Poulsbo, WA 98370-9208
Soundview Consultants LLC, 2907 Harborview Drive, Gig Harbor, WA 98335

SUMMARY OF DECISION TRANSMITTED via first class and interoffice mail to the following:

All property owners with 100 feet of the subject site

NOTE: Pursuant to *RCW 36.70B.130*, you are hereby notified that affected property owner(s) may request a change in valuation for property tax purposes consistent with Pierce County's procedure for administrative appeal. To request a change in value for property tax purposes you must file with the Pierce County Board of Equalization on or before July 1st of the assessment year or within 30 days of the date of notice of value from the Assessor-Treasurer's Office. To contact the board, you may call 253-798-7415 or by e-mail at www.co.pierce.wa.us/boe.

APPEAL PROCEDURES

Any request for RECONSIDERATION and/or any APPEALS must be submitted in the applicable manner as outlined below on or before June 21st, 2016.

RECONSIDERATION:

Any person having standing under the ordinance governing this application and feeling that the decision of the Director is based on errors of procedure or fact may make a written request for review by the Director within fourteen (14) days of the issuance of the written order. This request shall set forth the alleged errors, and the Director may, after further review, take such further actions as deemed proper, and may render a revised decision. A request for RECONSIDERATION of the Director's decision in this matter must be filed in writing to the staff contact listed on the first page of this document.

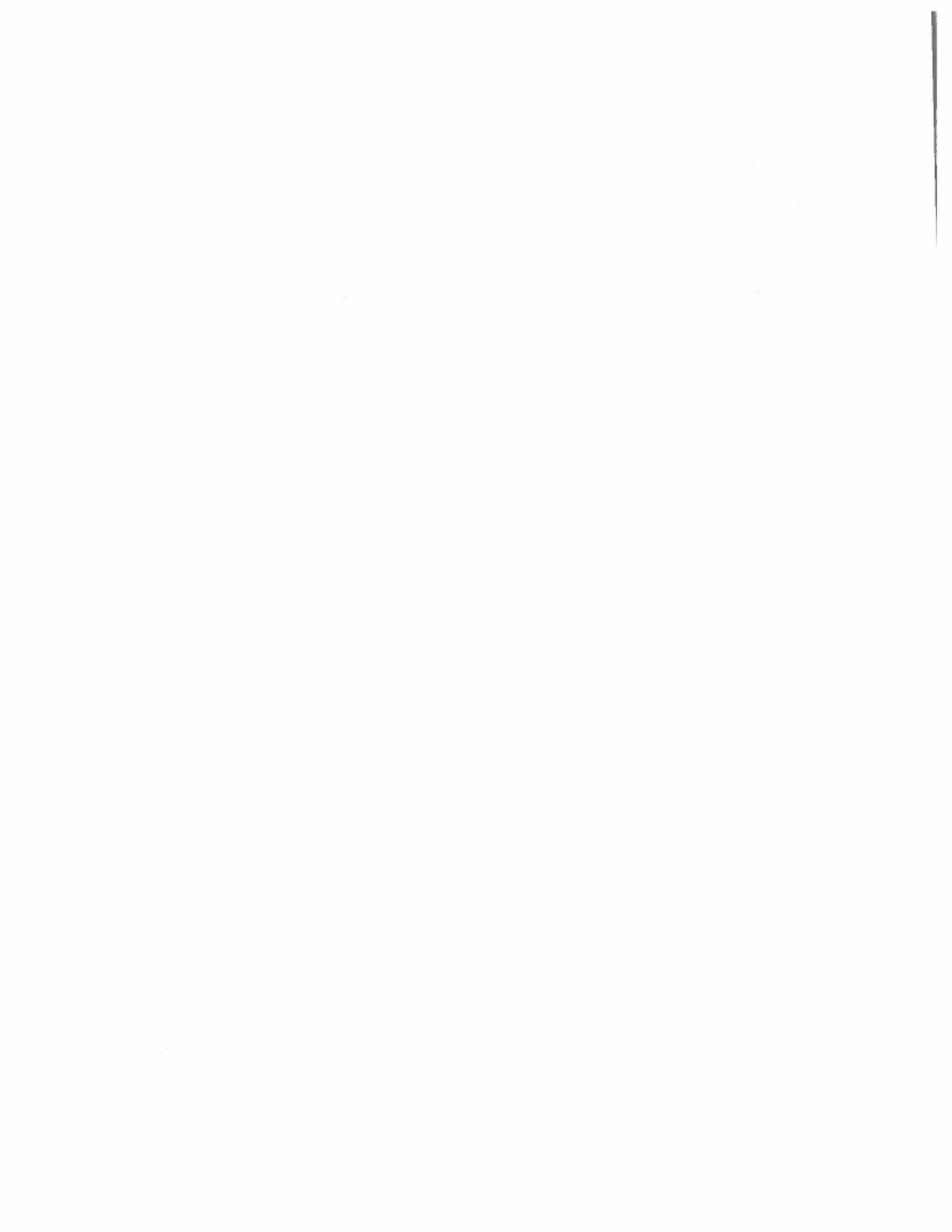
APPEAL TO HEARING EXAMINER:

Any decision of the Director may be appealed by any aggrieved person or entity as defined in Section 13.05.050 of the *Tacoma Municipal Code*, within fourteen (14) days of the issuance of this decision, or within seven (7) days of the date of issuance of the Director's reconsideration decision, to appeal the decision to the Hearing Examiner.

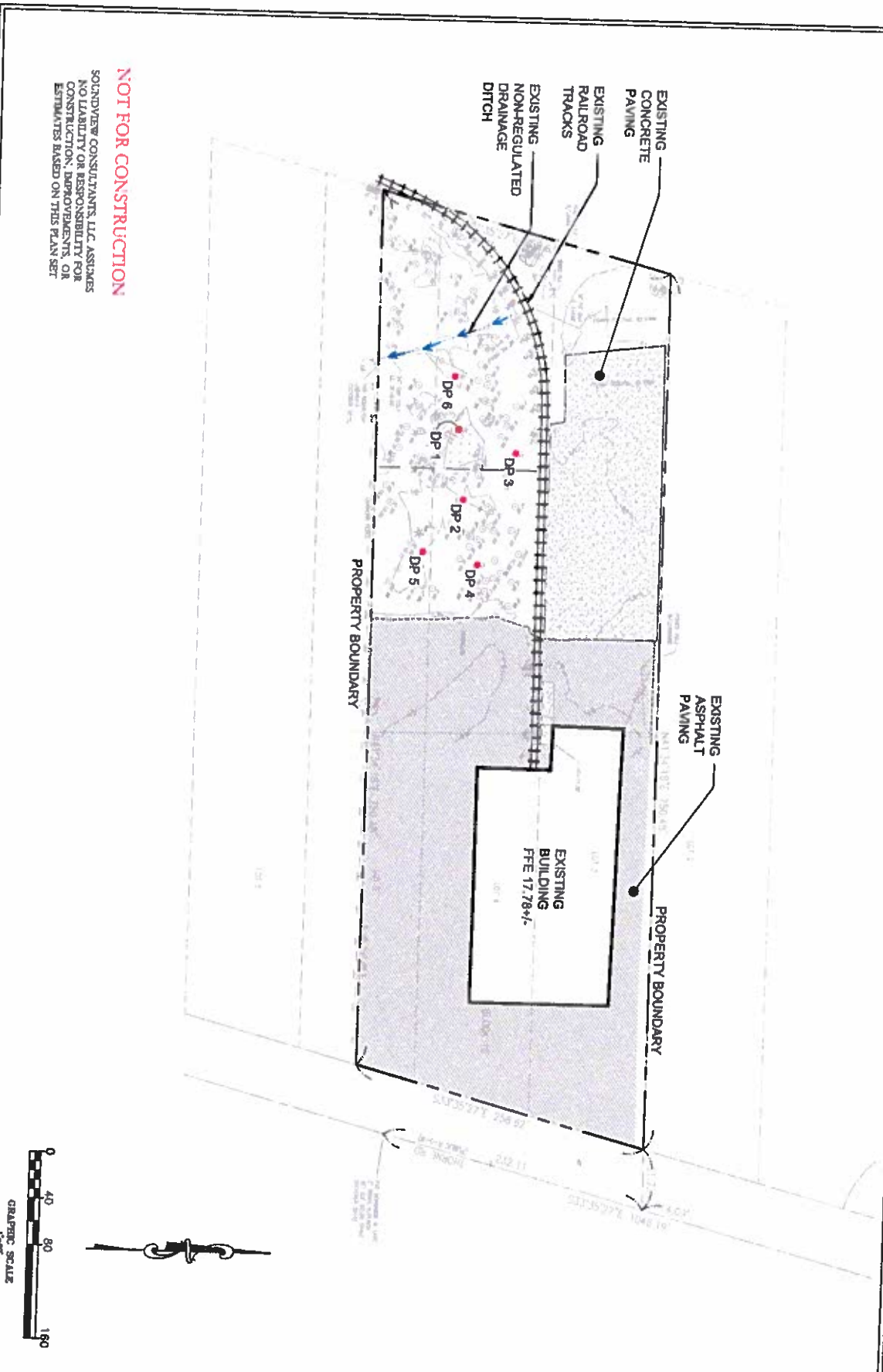
An appeal to the Hearing Examiner is initiated by filing a Notice of Appeal accompanied by the required filing fee of **\$320.90**. Filing of the appeal shall not be complete until both the Notice of Appeal and required filing fee has been received. **THE FEE SHALL BE REFUNDED TO THE APPELLANT SHOULD THE APPELLANT PREVAIL.** (Pursuant to Section 2.09.020 of the *Tacoma Municipal Code*, fees for appeals shall be waived for qualifying senior citizens and persons who are permanently handicapped who are eligible for tax exemption because of financial status.)

The Notice of Appeal must be submitted in writing to the Hearing Examiner's Office, Seventh Floor, Tacoma Municipal Building, and shall contain the following:

- (1) A brief statement showing how the appellant is aggrieved or adversely affected.
- (2) A statement of the grounds for the appeal, explaining why the appellant believes the administrative decision is wrong.
- (3) The requested relief, such as reversal or modification of the decision.
- (4) The signature, mailing address and telephone number of the appellant and any representative of the appellant.



THORNE ROAD PROJECT - EXISTING CONDITIONS



NOT FOR CONSTRUCTION

SOUNDVIEW CONSULTANTS LLC ASSUMES NO LIABILITY OR RESPONSIBILITY FOR CONSTRUCTION, IMPROVEMENTS OR ESTIMATES BASED ON THIS PLAN SET.

THORNE ROAD PROJECT
 1242 THORNE ROAD
 TACOMA, WASHINGTON

THE QUARTER 42 OF SECTION 34,
 TOWNSHIP 21N, RANGE 03E, W.M.

Soundview Consultants
 Environmental, Natural Resource, and Land Use Consultants

2907 Harborview Drive
 Gig Harbor, WA 98335

Office: 253.514.8952
 Fax: 253.514.8954

www.soundviewconsultants.com

SOURCES:

18115 32nd AVENUE SOUTH
 KENT, WA 98032
 (425) 751-5222
 (425) 751-4240 FAX

THE DIGITING LINE PLANNING, MAPPING, ENVIRONMENTAL SERVICE

DATE: 12/23/2015
 JOB: 1359.0001
 BY: DS
 SCALE: SEE GRAPHIC

SHEET 1 OF 2

