

## **Reconsideration Conditions for Tehaleh**

1. An updated Development Agreement for implementation of the Planned Unit Development approval of the Cascadia-Tehaleh Employment Based Planned Community (EBPC) shall be prepared for review and approval by the Director of Planning and Land Services within 90 days of Hearing Examiner approval of this Major Amendment. The Development Agreement shall include the elements set forth in Subsections 18A.75.080.N. and P (found in Exhibit N of the current 1999 Development Agreement).
2. The Development Agreement shall be consistent with, and incorporates as an exhibit and by reference, all conditions contained in the Hearing Examiner approval of this Major Amendment and include revisions made to the current Development Agreement since 1999. The Development Agreement shall be approved after the Director finds that it conforms with the conditions in this Major Amendment decision. Changes to the wording of new and/or replacement Development Agreement language found in the conditions of this Major Amendment may be permitted when drafting the revised Development Agreement when such changes improve readability and clarity of intent. Any significant change to the intent of the wording in the approved conditions of approval will require input from the Hearing Examiner. Any disagreements regarding whether the Development Agreement conforms to the Major Amendment decision or the broader Cascadia-Tehaleh EBPC approvals may be brought to the Hearing Examiner for resolution.
3. Issuance of this land use approval does not guarantee that permits from the Building and Development Engineering Divisions of Planning and Land Services, the Pierce County Public Works Department, the Tacoma-Pierce County Health Department, the Washington State Department of Ecology, and other departments and agencies will be approved.
4. Compliance with the fire code and fire flow and emergency vehicle access requirements in effect at time of application for building permits is required.
5. Fire flow shall be provided as prescribed in PCC 17C.60.160 for all subdivisions and for construction of any residential or commercial structure. Installation of mains and hydrants require a permit from the Pierce County Fire Marshal.

6. Emergency Vehicle Access shall be provided for all residential or commercial structures in accordance with PCC 17C.60.150 and shall be reviewed upon application for building permit.
7. Lots for residential or commercial construction shall be addressed and accessed by public roads. Alleys or alleyways shall not be the only access to any lot.
8. Prior to the issuance of any permits within the Amended Phase I Area (site development) or the initiation of any grading, clearing, filling, or vegetation removal the project(s) shall complete the requirements necessary to obtain Final Wetland Area and Regulated Fish and Wildlife Species and Habitat Conservation Area Approval for each proposed development.
9. Wetland signage will be required to be installed prior to the issuance of the Final Wetland Area and Regulated Fish and Wildlife Species and Habitat Conservation Area Approval for each proposed development within Amended Phase I.
10. The applicant must comply with all other local, state, and federal regulations and obtain relevant permits. This includes the U.S. Army Corps of Engineers 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.
11. The Mitigation Agreement between East Pierce Fire & Rescue and NASH Cascadia Verde, LLC, as successor entities to Pierce County Fire Protection District-East and the Cascadia Development Corporation, shall remain in full force and effect, unless modified by the parties.
12. The current Dedication Agreement between East Pierce Fire & Rescue and Newland Communities, as successor entities to Pierce County Fire Protection District-East and the Cascadia Development Corporation, for a future fire station, currently proposed for the east side of Cascadia Blvd. E. and Canyon View Blvd. E., shall remain in full force and effect until a successor agreement between the parties is executed.

The following changes are made to conditions of approval of the PUD decision and the Development Agreement as follows:

- A. Language in the Recitals and Sections 1 through 9 of the Development Agreement shall replace references to previous ownership groups with the ownership groups in place at the time the updated Development Agreement is prepared.

- B. Sections 1.2 (Phase 1 Conceptual Plan), 1.2.1 (Location and Density of Residential Development), 1.2.2 (Location and Type of Employment), and Section 1.2.3 (Open Space and Recreational Facilities) shall be updated to reflect the land use changes approved through this Major Amendment and reflected in the applicable updated Exhibits to the Development Agreement.
- C. The language of Section 1.3.1 (Sewer Facilities) of the Development Agreement is hereby replaced to read as follows:

*The EBPC is within the service area of Pierce County Public Works & Utilities in accordance with the Pierce County Unified Sewer Plan as approved by the Pierce County Council and WA State DOE. The Project will be served by a public sewer system owner and operated by Pierce County Public Works & Utilities which will connect into an onsite Wastewater Treatment Plant constructed by NASH and owned/operated by Pierce County. The phasing of the onsite WWTP, and interim treatment systems, is described in more detail in Section 4.1.3.A*

- D. Section 1.3.2 (Stormwater Facilities) of the Development Agreement shall be revised to refer to the original master drainage plan as well as the 2013 amendments to the Cascadia-Tehaleh Master Drainage Plan.
- E. Section 1.3.3 (Domestic Water Facilities) of the Development Agreement shall be revised to refer only to a permanent on-site WWTP and shall clarify how Class “A” treated effluent will be used in Tehaleh.
- F. Section 1.3.4 (Schools) of the Development Agreement is hereby replaced to read as follows:

*The majority of the Phase I area is within the boundaries of the Sumner School District and a limited area in the eastern and western portion of Phase I is within Orting School District. The Sumner School District has constructed an elementary school in Phase I (Donald Eismann Elementary). NASH has cooperated with the Sumner School District in identifying a second school site in Phase 1 (the “Second School Site”) and the Second School Site has been approved for that land use. In the event that NASH and Sumner School District do not reach agreement on the conveyance of the Second School Site in Phase I, NASH*

*shall have the right to make application to modify the land use plan in the future. NASH agrees to continue to cooperate with Sumner School District in evaluating specific locations for school sites and in evaluating impacts upon Sumner School District associated with conveyance of such school sites. The Overall Conceptual Plan shows additional potential school sites.*

- G. Section 1.3.4 (Fire Protection) of the Development Agreement is hereby replaced to read as follows:

*The project site is within East Pierce Fire District (EPFD). NASH will dedicate a site for a fire station and will cooperate with EPFD in evaluating the specific location of a fire station site and the timing of station construction, in relation to the specific development stages of the Project. In addition, NASH will provide for fire impact mitigation in accordance with the Hearing Examiner's approval.*

- H. Section 1.3.6 (Other Public Facilities and Infrastructure) of the Development Agreement is hereby replaced to read as follows:

*Phase I will obtain electrical and natural gas service from Puget Sound Energy, telephone service from Century Link and cable television service from Comcast. If and when available, other utilities could provide services during the life of the project (such as internet service, wireless communication, alternate energy sources, etc.).*

- I. Section 1.4 (Transportation System) of the Development Agreement is hereby replaced to read as follows:

*Primary vehicular access to and from the Phase I area will be from the north via the existing 198th Avenue E. Access to and from SR-410 will initially use the existing South Prairie Rd/200th Ct./199th Avenue/104th Street/192nd Avenue/Rhodes Lake Road route to connect to 198th Avenue E. At a later point in Phase I, a more direct route connecting 198th Avenue and 199th Avenue will be developed. Phase I will include more than 6 miles of on-site arterial/feeder roadways to accommodate internal project access and circulation needs. The main internal roadway in Phase I, "Cascadia Boulevard," will begin an interconnected arterial road system to be completed in later phases of development. All new roadways will be constructed to the*

*proposed road development standards described in 4.1.1. below.*

- J. Sections 1.6.2 (Phase 1), 1.6.3 (Phase II) and Section 1.6.4 (Phase III) of the Development Agreement shall be updated to reflect the land use changes approved through this Major Amendment and reflected in the applicable updated Exhibits to the Development Agreement.
- K. The language of Section 3.0 (Allowed Uses), Section 3.6 (Exempted, Temporary and Accessory Uses), Sections 3.7 to 3.74 (In-Home Businesses), Section 3.9 (Accessory Dwelling Unit) and Section 3.12 (Telecommunication Towers and Wireless Facilities) of the Development Agreement will be revised to reflect the content of the revised Exhibits "I - Z" approved through this Major Amendment approval.
- L. Section 4.1.1.A (Public Roads) and Section 4.1.1.B (Private Roads) of the Development Agreement is hereby replaced to read as follows with a new Section 4.1.1.A. (Roads and Non-Motorized Facilities):

All on-site and off-site public and private road improvements constructed by Tehaleh or their successors or assigns shall comply with Pierce County Ordinance 2010-70S, Titles 17A and 17B, with the following approved exceptions:

- The master trail/walkway system can be located either within or adjacent to road right-of-way (ROW). If within ROW, trail ownership and maintenance shall be in accordance with the "License for the Use of County Rights-of-Way within Cascadia for the Installation of Certain Improvements."
- *Pedestrian facilities adjacent to arterial roads can be considered walkways for design purposes.*
- *Pedestrian facilities adjacent to arterial roads will not be considered shared use paths for design purposes, unless specifically designated as such on a County Wide Plan.*
- *Cascadia retains the right to utilize the following road sections:*
  - *Asphalt Concrete Raised Edge or Barrier Curb in those areas where the proposed densities will result in more of a rural setting than typically found in urban areas. These curb types may only be used with prior approval of the County Engineer.*
  - *Cement Concrete Traffic Curb and Gutter (for all road classifications).*
  - *Cement Concrete Rolled Curb (for all Local Road classifications).*
  - *Open drainage road section (ditch or swale) (for Arterial Roadways and low density residential).*

- *Landscaping, landscaping features, irrigation, signage, lighting, electrical and telemetry control systems, and other approved improvements are allowed within public ROW in accordance with the ROW License agreement executed between NASH and Pierce County.*
- *The design speed for Cascadia Boulevard through the limits of Phase 1 and for 198th Avenue E. accessing Cascadia shall be 40 mph.*
- *Street parking may be permitted along feeder roads, in areas adjacent to alley loaded lots that front the feeder road and other public facilities (such as parks), only with the prior approval of the County Engineer. If approved by the County Engineer, a formal deviation to the road standards will not be required. Specific location and configuration of street parking will be reviewed during the processing of development permits.*
- *The ROW width within Preliminary plat neighborhoods can be reduced to a minimum of 0.5 ft. behind back of sidewalk where a buffer strip is proposed between the back of curb and the sidewalk and where a utility easement is provided behind the sidewalk to provide access and maintenance.*
- *Connectivity (PC Rd Std 2-1.5) – At the discretion of the County Engineer, deviations to the connectivity standards may be granted without going through the formal deviation process.*

*Landscaping, Irrigation and other features in Public ROW*

*LANDSCAPING (PLANTS, TREES, SHRUBS, FLOWERS, ETC.), LANDSCAPING FEATURES (HARDSCAPE SURFACES, PATHS, PLAZAS, BENCHES, ETC.), IRRIGATION SYSTEMS, SIGNAGE, LIGHTING, ELECTRICAL AND TELEMTRY CONTROL SYSTEMS, AND OTHER APPROVED IMPROVEMENTS ARE ALLOWED WITHIN PUBLIC ROW IN ACCORDANCE WITH THE AGREEMENT EXECUTED BETWEEN NASH AND PIERCE COUNTY ENTITLED “LICENSE FOR THE USE OF COUNTY RIGHTS-OF-WAY WITHIN THE PROJECT FOR THE INSTALLATION OF CERTAIN IMPROVEMENTS.”*

M. Section 4.1.1.B. (Private Roads) of the Development Agreement is hereby replaced to read as follows:

*NASH may, at its discretion, develop local access roads serving each proposed development as private roads. For purpose of this paragraph, a local access road is defined as a road with an average daily traffic (ADT) of less than 2,000. Changes to the requirements of this ordinance must be approved through the variance procedure contained therein.*

N. Sections 4.1.2.A. through 4.1.2.C (Stormwater Design and Construction Standards) of the Development Agreement is hereby replaced to read as follows:

Drainage plans and analysis shall comply with Pierce County Ordinance 2008-59S (2012 Storm & Site Manual) with the following approved exceptions:

- *Drainage control, location and design of drainage facilities are governed by the Cascadia Master Drainage Plan, as amended in 2013.*
- *The entire project boundary is defines as the “project site” for purposes of performance control, basin boundaries, release points, etc. Drainage Diversions. Internal drainage diversions between and within sub-basins, within the project site are expressly permitted, provided that the performance criteria outlined in the Project MDP is met.*
- *Storm drainage overflow, discharge and bypass pipelines are permitted to be constructed within wetland buffers as conveyance systems with the approval of the Director of Public Works and Utilities and the Department of Planning and Land Services.*
- *Closed depressions / pot holes located entirely within the project site and not identified as wetlands or other critical areas, are permitted to be filled, drained, eliminated, or otherwise removed from service provided that the infiltration functions of the closed depressions which are removed from service are compensated for within the project's system of infiltration facilities.*
- *Because all runoff within Tehaleh is infiltrated, no limits shall be placed on the amount of impervious surfaces or impervious coverage on individual lots, tracts or parcels within Tehaleh, provided that drainage facilities are sized to accept, or are enlarged to accept, the amount of impervious surfaces proposed within the affected tributary area.*

The following conditions apply to storm drainage in Phase I and to areas outside of Phase I that drain to the facilities in Phase I. NASH shall have a vested right to use the Phase I facilities as constructed for the areas they serve outside of Phase I, even if the County regulations pertaining to stormwater change before those areas are developed.

13. GENERAL REQUIREMENTS

*DRAINAGE PLANS AND ANALYSIS SHALL COMPLY WITH THE 2012 UPDATE TO THE 2008 STORMWATER & SITE DEVELOPMENT MANUAL ("THE MANUAL"), PIERCE COUNTY ORDINANCE 2008-59S , TITLE 17A AND 17B<sup>1</sup>, AND TITLE 18E -*

---

<sup>1</sup> Subject to exceptions noted in the Development Agreement

CRITICAL AREAS, EXCEPT AS MODIFIED BELOW AND HEREIN.

14. MASTER DRAINAGE PLAN

*DRAINAGE PLANS SHALL BE PREPARED IN ACCORDANCE WITH THE PROJECT MASTER DRAINAGE PLAN (MDP), DATED JANUARY 1998, AMENDED JULY 2013 (AS PART OF THE FIRST MAJOR AMENDMENT), OR SUBSEQUENT UPDATES, AND THE REQUIREMENTS OF THIS SECTION. STORMWATER RETENTION / DETENTION FACILITIES AND WATER QUALITY DESIGNS, AS REQUIRED IN THE MDP, SHALL BE INCLUDED IN THE FINAL DRAINAGE PLANS FOR EACH APPLICABLE DIVISION.*

*DRAINAGE FACILITY LOCATIONS ARE INTENDED TO BE CONSISTENT WITH PROJECT MDP. HOWEVER, NASH RESERVES THE RIGHT TO REVISE AND/OR RELOCATE FACILITIES BASED ON FUTURE DETAILED DESIGN STUDIES. THIS MAY INCLUDE INCREASING OR DECREASING THE TOTAL NUMBER OF FACILITIES AS WELL AS ALTERING THEIR LOCATION. REVISIONS TO THE FACILITY CONFIGURATION SHOWN IN THE PROJECT MDP WILL REQUIRE THE APPROVAL OF PIERCE COUNTY.*

A) *Project Site*

*The Project Site is defined as the boundary of the Cascadia Master Plan, Phases I, II and III, for stormwater management purposes.*

B) *Phasing*

*Construction of the Project storm drainage system will be phased. Phasing may include the phased construction of individual facilities and/or the construction of facilities for interim service (such as temporary drainage channels in lieu of permanent pipes, temporary infiltration facilities, etc.). Phasing plans will be subject to Pierce County approval prior to construction. The Project drainage system will at all times meet the performance standards outlined in the Project MDP and required by applicable Pierce County Code.*

C) *Wetlands / Wetland Buffers*

*Storm drainage overflow, discharge and bypass pipelines are permitted to be constructed within wetland buffers as conveyance systems when approved by the Director of Public Works and Utilities. The Department of Planning and Land Services shall also have the opportunity to review any such facilities proposed to be constructed within wetland buffers. Refer to Section 4.3.1 below for additional wetland development standards.*

*Small isolated wetlands may receive runoff from rear lot areas and roof drains where feasible and appropriate to minimize the expected reduction in effective tributary area caused by development. Runoff from these areas may be discharged to these smaller wetlands by infiltration into the*



buffer soils. During engineering design phase, each area shall be analyzed in context with the surrounding development to determine the appropriate amount of roof drainage, if any, to direct to a given wetland to maintain its pre-development hydrology.

D) *Closed Depressions*

*Closed depressions / pot holes located entirely within the project site, not identified as wetlands or other critical areas, are permitted to be filled, drained, eliminated, or otherwise removed from service provided that the infiltration functions of the closed depressions which are removed from service are compensated for within the project's system of infiltration facilities. Direct compensation for, or replacement of, lost storage volume is not required; however, lost storage volume will be accounted for by the design methodology for the regional stormwater control facilities. The infiltration functions of removed closed depressions shall be deemed to be compensated for if NASH's system of infiltration facilities recharge all runoff from the developed site area and no surface discharge occurs (except for sub-basin CC-9), as determined using the design storms and hydrologic methods outlined in Section 4.1.2.B.6). However, filling, grading and/or storm drainage improvements must be designed and constructed in a manner so that flood hazards, water velocities, or flood elevations on neighboring properties or the exception parcels will not exceed pre-development conditions for the design storm event.*

*Post development drainage rates and volumes into retained closed depressions are permitted to be increased provided the closed depressions are located entirely within the project site and the resulting post-development water elevation does not increase flood hazards, water velocities or flood elevations above pre-development conditions on neighboring properties or exception parcels for the design storm event. Infiltration and/or detention prior to discharge into onsite closed depressions are not required.*

*For those closed depressions, or portions of closed depressions, which are retained after grading and drainage improvements are complete, the 100-year floodplain will be determined for the design storm event. This 100-year floodplain will be shown on the appropriate final plat documents. No structures or road improvements will be permitted within the 100-year floodplain so designated. Storm drainage facilities will be permitted within the 100-year floodplain of retained closed depressions.*

- E) *Water Quality Treatment<sup>2</sup>*  
*Water quality treatment facilities will be provided prior to infiltration facilities or discharge of polluted stormwater into wetlands. Water quality treatment facilities will be designed in accordance with the requirements of the manual. The use of large wet ponds, designed in accordance with the manual, as the sole means of water quality treatment is expressly permitted in the project.*
- F) *Hydrologic Modeling*  
*As allowed by the Pierce County 2008 Storm Water Management Manual using the Western Washington Hydrology Model (WWHM)), or a site specific HSPF model can be used, at the option of NASH.*
- G) *Infiltration<sup>3</sup>*  
*Infiltration of all runoff from the developed site area (except for sub-basin CC-9) was a fundamental assumption for evaluating on- and off-site impacts to ground and surface water. Therefore, should the systems not perform as designed, either during construction or as determined by post-development monitoring, NASH will be responsible for enlarging the infiltration facilities, siting new infiltration facilities in addition to those shown in the plan, or otherwise redesigning the MDP infiltration facilities to achieve the goal of infiltrating the basins proposed in the plan. Land area near each proposed infiltration facility will be held in reserve for expansion of the facilities by plat conditions approved by Pierce County, until the initial two years of monitoring is completed for each facility and the monitoring shows that each facility is functioning as planned. If a facility is performing as expected at the end of the monitoring period as specified above, the land set aside shall be released for that facility.*  
*Infiltration facilities shall be designed in accordance with the performance criteria outlined in the Project MDP. This criteria specifies that infiltration facilities will be designed to accommodate total rainfall / runoff from the design storm event(s). Safety factors may be applied to the sizing of infiltration facilities. The magnitude of safety factors, if any, will be determined on a case by case basis for each facility. Safety factors will be based on design hydrologic methodology, tributary area, density of development, potential for downstream damage resulting from overflow and risk of overflow in relation to potential damage. Safety factors, at a minimum, shall meet the requirements of the*

---

<sup>2</sup> See Section 4.1.2.B.16 regarding Existing Storm Water Facilities

<sup>3</sup> See Section 4.1.2.B.16 regarding Existing Storm Water Facilities

*Manual.*

*Infiltration testing and the determination of design infiltration rates will be in accordance with the requirements of the Manual, unless otherwise approved by Pierce County. Infiltration is a key mitigation measure for both ground and surface water. Should the infiltration of all runoff directed to the proposed infiltration facilities fail to meet the design goals, the facilities shall be enlarged through the land set-asides provided above.*

*H) Detention Facilities / Wetland Fluctuation Control<sup>4</sup>*

*The primary purpose of detention facilities on the project site is to meter runoff into on- and off-site wetlands to control post-development wetland water level fluctuations. All detention facilities on the project site shall be designed to meet the wetland fluctuation criteria outlined below:*

*Water Level Fluctuations (WLF) -- limit mean monthly spring (February 1 through May 31) WLF to  $\leq 0.7$  ft (20 cm), if mean pre-development WLF is less than that, or limit increase in WLF to  $\leq 2$  in. (5 cm) if it is greater than that, where:*

*$Wlf = crest\ stage - [(stage\ at\ beginning\ interval + stage\ at\ end\ interval)/2]$*

*(as estimated by hydrologic modeling using a monthly interval)*

*Detention facilities shall be designed using the methods and performance criteria described in the project mdp. Detention facility design may include the diversion of runoff away from wetlands to meet wetland fluctuation criteria. Detention facilities need not be designed to the release rate criteria contained in the manual or to meet "natural flowrates or volumes". Specific release rate criteria will be developed for each facility on a case by case basis, at the time of development application. The basis for determining release rate criteria will be meeting the wetland water level fluctuation criteria noted above. (however, the release rate criteria for detention facility d-5 (sub-basin cc-9) will not exceed the release rate criteria specified in the manual.) Wetland fluctuations will be determined using the modeling method(s) as noted herein. Safety factors may be applied to the sizing of detention facilities. The magnitude of safety factors, if any, will be determined on a case by case basis for each facility. Safety factors will be based on design hydrologic methodology, tributary area, density of development, potential for downstream damage resulting*

---

<sup>4</sup> See Section 4.1.2.B.16 regarding Existing Storm Water Facilities

from overflow and risk of overflow in relation to potential damage. Safety factors, at a minimum shall meet the requirements of the manual.

I) *Drainage Diversions*

*The Project Site (Phases I, II and III) is hereby designated a single sub-drainage basin. Internal drainage diversions between and within sub-basins, within the project site are expressly permitted, provided that the performance criteria outlined in the Project MDP for infiltration facilities, detention facilities and wetland fluctuations are met.*

J) *Constructed Conveyance System Standards*

*All constructed conveyance systems shall be designed to the standards contained in the Manual. Those conveyance facilities draining tributary areas greater than 100 acres may be sized using the HSPF Method, or other alternate methods proposed by the applicant and approved by Pierce County.*

K) *Stormwater Overflow Facilities*

*Stormwater overflow facilities shall be designed for the 100-year developed undetained flow, or as otherwise approved by Pierce County based on further design analysis.*

L) *Flow Control Adjustability*

*All flow control structures for ponds and wetlands shall be designed to provide for retrofit with new controls should monitoring indicate that adjustment is necessary. For example, orifice and weir plates shall bolt on to allow for replacement or reworking. Other designs may be proposed for approval during engineering plan review.*

M) *Use of Infiltration Facilities During Construction*

*The infiltration facilities to be constructed on the project site are regional in nature and will serve a mixture of on-site residential, commercial and institutional land uses to be constructed over an extended time period. The Cascadia infiltration facilities are hereby permitted to be constructed, placed in service and utilized before and during the development of their respective tributary areas. Pierce County may require interim facility configurations. NASH will be responsible for facility maintenance during the interim service period.*

N) *Ownership and Maintenance*

*The ownership of retention / detention and conveyance facilities, or portions of retention / detention and conveyance facilities (such as control structures, overflows, dikes, channels, etc.), will be determined on a case by case basis at the time of individual development application review and approval. In general, it is envisioned that most facilities located outside of public ROW will remain in private*

ownership. Maintenance of those facilities, or portions of facilities, which remain in private ownership will be the responsibility of the Tehaleh Owners' Association (within Tehaleh) or other owner's association (within Parcel O), or other legal entity, as approved by Pierce County.

Facilities to remain in private ownership may be multi-use facilities incorporating parks, recreation, golf course and/or natural open space into the surface water management function of the facility. The design of those facilities, or portions of facilities, to remain in private ownership may deviate from the requirements of the Manual as necessary to accommodate their multi-use purpose, provided that at all times the facilities shall be designed, constructed and operated to meet the performance criteria outlined in this Development Agreement and the Project MDP. Design deviations necessary to accommodate private multi-use facilities will be subject to Pierce County approval, but such approval will not be unreasonably withheld. In the event that NASH and Pierce County cannot reach agreement on the appropriateness of specific design deviations: disputes regarding technical issues will be resolved by the technical equivalency procedures outlined in the Manual, disputes regarding permitted land use within facilities, landscaping, aesthetics, etc. will be resolved by the Pierce County Hearing Examiner.

Maintenance responsibilities for private facilities within public ROW will be subject to the provisions of the "License for the use of County Rights-of-Way within Cascadia for the Installation of Certain Improvements."

O) *Impervious Surface Limits*

Because all runoff within the project is infiltrated, no limits shall be placed on the amount of impervious surfaces or impervious coverage on individual lots, tracts or parcels within the project, provided that drainage facilities are sized to accept, or are enlarged to accept, the amount of impervious surfaces proposed within the affected tributary area.

P) *Existing Storm Water Facilities*

Detention Facilities D-3 and D-4, Retention Facility R-4, and the Phase 1A Master Drainage Conveyance system connecting these facilities were approved by Pierce County and constructed in 2005 thru 2008 under the provisions of the 1997 Pierce County Stormwater Management and Site Development Manual ("SWM Manual"). These facilities, including their tributary areas which are still under development, are vested to code that existed when they

were originally approved and no upgrades or revisions to bring them into compliance with new codes will be required. New storm facilities proposed after the date of this Development Agreement Amendment and not within the tributary area of existing facilities, shall comply with the 2012 update to the 2008 Stormwater & Site Development Manual ("the Manual"), Pierce County Ordinance 2008-59S.

Q) *Low Impact Development (LID)*

*The use of LID methods and facilities as outlined in the manual is at the sole discretion of NASH. LID features can be implemented on portions, divisions or phases of the project separately, without requiring LID on the project as a whole.*

15. Section 4.1.3 (Sewer Service) of the Development Agreement is hereby replaced to read as follows:

*Wastewater treatment and Sanitary Sewer Service will be provided by Pierce County Department of Public Works and Utilities in accordance with the Pierce County Unified Sewer Plan (approved 2010), Development Agreement for the Cascadia Wastewater Treatment Plant at Tehaleh - 4/17/13 (the "Agreement"); Pierce County Title 13 (Sewer Code), the Cascadia Master Sewer Plan (2013) and applicable Pierce County standards and specifications for the construction of sewer facilities:*

A. *Wastewater Treatment.*

1) *Wastewater Treatment will be provided in an onsite permanent wastewater treatment plant (WWTP) located on Parcel KK in future Cascadia Phase 2. The WWTP will be constructed in Phase 1 and expanded in stages over time as needed to meet growth demands and generally described below.*

a) *Stage 1 of the Cascadia Wastewater Treatment Plant at Tehaleh is a LOSS (large onsite septic system) constructed, accepted by Pierce County and placed in service in 2008. It is currently operational. It is authorized under WA State Waste Discharge Permit No. ST 6215 (first issued 2008; renewed 2013). This facility has a permitted capacity of 0.1 MGD.*

b) *Stage 1A is an interim package MBR WWTP located at the Tehaleh LOSS. It is authorized under Washington State Waste Discharge Permit No. ST 6215 and the "Agreement". This facility has a permitted capacity of up to 0.5 MGD and it will*

*be installed as needed to provide treatment while the permanent WWTP is being constructed.*

- c) Stage 2 is a permanent MBR WWTP located at the Tehaleh LOSS. It is authorized under Washington State Waste Discharge Permit No. ST 6215, the "Agreement", the Unified Sewer Plan and the Cascadia Master Sewer Plan. This facility has a permitted capacity of up to 0.5 MGD and it is currently under design and permitting.*
- d) Stage 2A will amend Washington State Waste Discharge Permit No. ST 6215 to increase the permitted capacity of the Stage 2 WWTP to 1.0 MGD.*
- e) Stage 3 will add additional capacity (membranes and related equipment) and amend Washington State Waste Discharge Permit No. ST 6215 to increase the capacity of the WWTP to 2.0 MGD.*
- f) Stages 1 through 3 of the Cascadia WWTP at Tehaleh were, or will be, constructed by the developer (NASHCV), at no cost to Pierce County, and dedicated to Pierce County under the terms of the "Agreement" which reserves appropriate capacity in the WWTP to NASHCV.*
- g) SEPA analysis and disclosure for Stages 1 through 3 of the Cascadia WWTP at Tehaleh is included in the original Cascadia EIS (Draft EIS dated March 1998 and Final EIS dated August 1998, collectively considered as the EIS), subsequent SEPA Addendums, including the SEPA Addendum for Amended Cascadia Phase 1 Proposal (August 2013) and the Facility Plan for Cascadia Wastewater Treatment Plant at Tehaleh (Oct. 2013).*
- h) Additional stages of WWTP expansion will be determined as necessary to meet project growth needs.*

**B. Wastewater Collection and Conveyance.**

*1) NASH will enter into utility extension agreements with Pierce County in accordance with Pierce County policy. NASH will comply with all terms and conditions of these agreements.*

*2) Wastewater collection service for the project will require the construction of onsite infrastructure improvements including trunk/interceptor sewer lines,*

*pump stations, etc. The exact size, location and characteristics of these facilities will be determined by NASH, subject to approval by Pierce County.*

*3) The location of major sewer infrastructure facilities is intended to be consistent with the Cascadia master sewer plan (2013). However, the right to revise and relocate facilities as necessary to provide the most efficient and cost effective service is reserved to NASH, subject to the approval of Pierce County.*

*4) The cost of all sewer infrastructure will be the responsibility of NASH (or its assigns). However, NASH may use latecomer fees, credits, offsets or other financing provisions to the extent allowed by law and approved by Pierce County.*

*5) The Cascadia sewer system will be phased as deemed appropriate by NASH and pierce county. This may include the construction of facilities for interim sewer service. The sewer system will at all times provide safe and reliable service and will comply with all applicable regulatory requirements. Any interim sewage treatment and disposal facilities will be designed to the performance standards contained in Pierce County Unified Sewer Plan (approved 2010), Development Agreement for the Cascadia Wastewater Treatment Plant at Tehaleh - 4/17/13 (the "Agreement"); Pierce County Title 13 (Sewer Code), the Cascadia Master Sewer Plan (2013) and applicable Pierce County standards and specifications for the construction of sewer facilities as may be and as regulated by the appropriate state or County administrative agency with jurisdiction over such facilities.*

*6) SEWER COLLECTION SERVICE IS SUBJECT TO THE FOLLOWING:*

- a) Approval by the Washington State Department's of Ecology and Health of sewer system plans and reports.*
- b) Approval by Pierce County to use County rights-of-way, as required to construct sewer improvements and provide the service authorized by this permit.*



- c) *Acquisition of all necessary easements across private property.*
- d) *Issuance by all local, State and Federal agencies of all required permits and approval needed to construct the major onsite and offsite improvements for the project.*

16. Sections 4.1.5 (Parks and Recreation Facilities) of the Development Agreement shall be updated to reflect the land use changes, particularly the elimination of the 16-acre equestrian center, approved through this Major Amendment and reflected in the new Exhibits E-1 through E-4 to the Development Agreement the detailed overall park plan required per this Major Amendment approval.
17. Section 4.2.1 (Density and Dimension) of the Development Agreement shall be updated to refer to the revised Phase 1 acreage and residential cap reflected in the revised Exhibits to the Development Agreement and otherwise approved through this Major Amendment approval.
18. To ensure a unified development approach, Section 4.2.2 (Design Guidelines) and 4.2.3 (Landscape Standards) of the Development Agreement shall be updated to reflect the role of the Tehaleh Design Manual in the implementation of the Tehaleh vision and overall conceptual plan described in Section 1.1 of the Agreement. Sections 4.2.2 and 4.2.3 shall include language that implements the following concepts:

The Tehaleh Design Manual shall include chapters with guidelines and standards covering residential, multifamily, commercial, industrial, and civic uses. The Design Manual's structure, format and subjects covered shall be more closely aligned to current design guidelines and standards included in the 2012 PCC Title 18J and which regulates similar uses throughout Pierce County. The relevant design related sections of Title 18J shall be used as a guide when developing the principles, purposes, and objectives contained in the Design Manual.

The design review process shall be outlined in the Tehaleh Design Manual including the process for the review and approval of deviations to design guidelines and standards. This process shall remain the same throughout Tehaleh, although multiple architectural review committees shall be acceptable.

All revisions and future additions to the Tehaleh Design Manual shall be reviewed and approved by Planning and Land Services prior to use in Tehaleh.

19. Section 4.3 to 4.3.4 (Critical Areas) of the Development Agreement shall be revised to include the following elements:
- A. **Wetlands (Section 4.3.1)** – Provisions of PCC Chapter 18E.30 in effect as of the effective date of the original Development Agreement in September 1999 shall continue to apply;
  - B. **Geologically Hazard Areas (Section 4.3.2)** – Chapter 18E.80 (effective July 16, 2012) shall apply, except that the 40% slope criteria shall continue to apply;
  - C. **Aquifer Recharge Areas (Section 4.3.3)** – The provisions of PCC Section 18E.50 shall not apply to the Cascadia EBPC because none of the three aquifer recharge area defining criteria have applicability to the Cascadia site;
  - D. **Fish and Wildlife Habitat Areas (Section 4.3.4)** – Provisions of PCC Chapter 18E.60 in effect as of the effective date of the original Development Agreement in September 1999 shall continue to apply;
  - E. **Volcanic Hazard Areas (New Section)** – New Chapter 18E.60 (effective July 16, 2012) shall apply (in the 2012 version of title 18E, fish and wildlife habitat is regulated in Chapter 18E.40.);
  - F. **Flood Hazard Areas (New Section)** – New Chapter 18E.70 (effective July 16, 2012) shall apply. Onsite potholes/closed depressions can be regulated as indicated in Section 4.2.1, Stormwater Design and Construction Standards, of the revised Development Agreement;
  - G. **Seismic (Earthquake) Hazard Areas (New Section)** – New Chapter 18E.90 (effective July 16, 2012) shall apply;
  - H. **Mine Hazard Areas (New Section)** – New Chapter 18E.100 (effective July 16, 2012) shall apply;
  - I. **Erosion Hazard Areas (New Section)** – New Chapter 18E.110 (effective July 16, 2012) shall apply.
20. Section 5.5 (Subdivisions) of the Development Agreement shall be revised and replaced as follows:
- Any property within Phase I may be divided through the review of a preliminary plat and recordation of a final plat, short plat or large lot. No SEPA review is required for Phase I subdivisions (except as provided in 8.1). Land division will be administered in accordance with Pierce County Title 18F, except that the time limitations for preliminary plat approvals shall continue to be processed in accordance with Title 16, Section 16.08.040, in effect at the time of initial project application (1997).*
21. Section 5.6 (Binding Site Plans) of the Development Agreement shall be revised and replaced as follows:

*The provisions of PCC Section 18F.60 in effect as of the effective date of the Amended Development Agreement (2013) shall apply to Phase I except as modified below. If the parties cannot agree, the matter will be referred to the Hearing Examiner for resolution.*

*Property within the Employment classification as approved by the Hearing Examiner of the Project may be divided through the recordation of a Binding Site Plan. There are no limitations on the number of parcels that can be created or their size, configuration or shape. In addition, Binding Site Plans can create vacant parcels. Only the Planning Director, Assessor-Treasurer, Auditor, as well as those with ownership interest in the property shall have signature blocks on the face of the Binding Site Plan. Binding Site Plans within Phase I are exempt from further SEPA review. The decision to approve or not approve a Binding Site Plan may be appealed to the Hearing Examiner.*

22. Section 6 to 6.1.4 (General Provisions and Applicable Law) of the Development Agreement shall be updated to reflect the re-vesting changes approved through this Major Amendment and reflected in the applicable updated Exhibits to the Development Agreement.
23. Sections 6.2.1, 6.3, 6.3.1 and 6.3.2 of the Development Agreement shall be replaced as follows with a new Section 8 (Modifications, Amendments and Revocations) as follows:

## **8. MODIFICATIONS, AMENDMENTS AND REVOCATION**

### **8.1 Modifications and Amendments - General**

*This Development Agreement, the Project Approval and any Subsequent Approval, including, but not limited to the land use plan elements or conditions of approval, may be amended or modified subject to the provisions below.*

#### **8.1.1 Minor Modifications**

*The Director need not process a minor modification as a “minor amendment” under PCC 18A.85.040, and may give a proposed minor modification a level of notice, circulation and review commensurate with the nature of the proposal, the extent of the modification, the potential impact on third parties, and the extent to which the modification necessitates review by other departments or agencies. The Director shall maintain a written list of approved minor modifications and shall provide that list to the Hearing Examiner at least annually. The Examiner shall determine if the proposal is consistent with the original decision, and shall advise the Director of any objection prior to the*

*Director's decision on the proposed modification.*

*Examples of minor modifications that do not require any substantial circulation and review include the following: (1) changes that address aspects of the development not specifically discussed by the hearing examiner decision and do not significantly alter the overall plan for the Project; (2) changes that resolve ambiguities in the hearing examiner's decision in a manner fully consistent with the intent of that decision; (3) changes that alter conditions of approval in minor ways that are fully consistent with the purpose of the prior condition; (4) changes that modify the site plan to alter road alignments so long as the change is consistent with applicable County standards and does not affect the connection to lands outside of the project boundary; (5) changes in the location of allees as long as the new location has similar characteristics to the prior location; and (6) changes that adjust the location of uses in such a way as to have no material impact on surrounding uses or the overall character of the development.*

#### 8.1.2 Amendment

*Other proposed changes, not falling within Section 8.1.1, shall be reviewed as follows: The Director may administratively approve minor changes to the Restated Agreement, including the Land Use Plan elements or conditions of approval under the procedures of PCC 18A.850.040 as minor amendments. Minor amendments are defined as those that do not increase the density by more than 10% of the total number allowed for the project or phase, those that do not decrease net residential density, those that do not increase impacts on transportation or the environment, and those that do not reduce buffers or open space. Amendments that do not qualify as minor shall be subject to the same procedures as the original application.*

### 8.2 Modifications and Amendments – Approvals Required

#### 8.2.1 Modifications and Amendments by NASH

*Modifications and Amendments by NASH as to property it owns within the Project shall not require the consent or approval of the owners of other property within the project, but notice shall be given as required by applicable Pierce County Code provisions.*

#### 8.2.2 Modifications and Amendments by Other Owners

*No major or minor modifications or amendments by owners other than NASH of property within the Project shall be processed or approved by Pierce County without the written approval of NASH submitted at the time of application.*

#### 8.2.3 Failure to Obtain NASH Approval

*Any modification or amendment that is approved without NASH's*

*consent under this paragraph, and would diminish the development rights of NASH as to parcels it owns, diminish the mitigation rights or credits held by NASH, either directly or indirectly increase the cost of development for NASH, or directly or indirectly add obligations or restrictions to parcels owned by NASH, shall have no impact on the rights or obligations of NASH.*

### 8.3 Revocation

*Revocation of this Restated Agreement, or any Subsequent Approval shall be processed pursuant to the Pierce County Code as it existed on the date of application for the PUD, June 23, 1997.*

1. Relocate and renumber Sections 6.4 to 6.11 and 6.13 to 6.20 of the Development Agreement (Section 6.12 shall be deleted) shall be renumbered as Sections 9.1 to 9.16 under a new Section 9 (General Provisions).
2. Sections 6.3, 6.3.1 and 6.3.2 of the Development Agreement shall be replaced as follows with a new Section 7 (Binding on Successors; Assignment):

## **7. BINDING ON SUCCESSORS; ASSIGNMENT**

### 7.1 Successors

*The parties acknowledge that development of the Project will involve sale and assignment of portions of real property within the Project to other persons who will own, develop and/or occupy those portions. This Development Agreement shall be binding upon and inure to the benefit of the successors and assigns of NASH and Pierce County, except that the special rights of NASH set forth in Paragraph 8, shall not be transferred to successors and assigns of NASH except in accordance with Paragraph 7.2. Any parcel within the Project sold to another party shall include the right to develop that parcel only in accordance with the Phase 1 Conceptual Plan (Exhibit C), and the other elements of the Project Approval in effect as of the date the parcel sale is closed. The purchasing party shall have the benefits and obligations of the Restated Agreement, including the right to have the Applicable Law described in Paragraph 6 applied to its Subsequent Approvals to develop its parcel.*

### 7.2 Assignment of Specific NASH Rights and Obligations.

*NASH shall have the right to assign or transfer all or any portion of its interests, rights or obligations under this Restated Agreement or in the Project, including the rights under Paragraph 8, to other parties acquiring an interest or estate in all or any portion of the Project, including transfer of all interests through foreclosure (judicial or non-judicial) or by deed in*

*lieu of foreclosure. Any such assignment must be in writing and specifically describe the interests, rights, or obligations of NASH that are being assigned to such other party. Consent by Pierce County shall not be required for any transfer of NASH's interests, rights or obligations under this Development Agreement or in the Project, but NASH shall give notice of such assignment to the County. Upon the transfer under this section, the transferee shall be entitled to the rights transferred and be subject to all obligations under this Development Agreement as to the rights transferred, and NASH shall be released of liability as to the rights and interests transferred.*

24. The original Exhibit "B" (Overall Conceptual Plan) to the September 8, 1999, Cascadia Development Agreement, last revised through the 2007 Second Minor Amendment, has been replaced with a revised Exhibit "B" – Tehaleh Overall Conceptual Master Plan, dated December 20, 2013.
25. The original Exhibit "C" (Phase 1 Conceptual Plan), last revised through the 2008 First Minor Modification, has been replaced with a revised Exhibit "C" – Tehaleh Phase 1 Conceptual Plan, dated January 14, 2014.
26. The original Exhibit "D" (Phase 1 Land Use Table), last revised through the 2006 First Minor Amendment, has been replaced with a revised Exhibit "D" – Tehaleh Phase 1 Land Use Table, dated December 20, 2013.
27. Exhibit "E" (Trails and Open Space Map), revised through the 2006 First Minor Amendment, and Attachment A to the "Infrastructure and Public Facilities Plan" found in Exhibit "M" relating to parks and recreation, which was replaced with the "Cascadia Phase 1 Master Park and Trail Schedule" and phasing plan dated December 15, 2006, per the 2007 First Periodic Review, were both revised through a July 9, 2012, PALS approval of a revised park and trail plan and improvement schedule known as the "Tehaleh Park, Trail and Landscape Improvements Schedule – Phase 1A", "Tehaleh Trails Phase 1A", and "Tehaleh Phase I Master Park and Trails Schedule", all dated March 19, 2012. All of the above previous changes to parks, trails and open space have been replaced with: a new Exhibit "E-1" – Tehaleh Phase 1 Master Park Plan; a new Exhibit "E-2" – Tehaleh Phase 1 Master Park Plan; a new Exhibit "E-3" – Tehaleh Phase 1 Master Park Plan; and a new Exhibit "E-4" – Tehaleh Phase 1 Master Trail Plan.
28. Prior to submittal of construction level design for an park or trail facilities identified in Exhibits E-1 through E-4, the applicant shall submit a more detailed overall park plan, similar in detail to that approved in 2012, that will guide the review of the park, trail and open space system in Phase 1 at the construction design level.

29. The original Exhibit "F" (Water Availability Letter) is revised to replace the March 8, 1999, water availability letter from Tacoma Water with an updated August 21, 2013, water availability letter from Tacoma Water.
30. Within 60 days after the approval of this Major Amendment, the applicant shall submit a replacement for the original Exhibit "G" (Cascadia Employment Based Planned Community Affordable Housing Plan) for review and approval by PALS. Amended Exhibit "G" shall meet the requirements of PCC 18.A.75.075.N.1b(5) ("The mechanisms to assure affordable housing are provided for a broad range of income levels"). Any disputes as to Exhibit "G" shall be resolved by the Hearing Examiner.
31. The original Exhibit "H" (Conditions of Approval) shall be replaced in the updated Cascadia-Tehaleh Development Agreement with a list of all formal land use approvals that implement the Cascadia-Tehaleh Employment Based Planned Community Planned Unit Development, beginning with the original June 18, 1998, decision of the Pierce County Hearing Examiner through this Major Amendment approval.
32. The original Exhibit "I" (Phase 1 Use Description, Table and Map) shall be replaced in its entirety with a new Exhibit "I-1" (Tehaleh Phase 1 Land Use Classifications) and, Exhibit "I-2" (Phase 1 Zone Classification Tables, Use Descriptions and Accessory and Temporary Uses) to bring Exhibit "I" of the Development Agreement into consistency with the format, use types and levels contained in P.C.C. 18A.33. Within 60 days after the approval of this Major Amendment, the applicant shall submit a replacement for the original Exhibit "I" for review and approval by PALS. The language of Section 3.0 (Allowed Uses) of the Development Agreement will be revised through agreement between the Applicant and PALS. Any dispute as to this matter shall be resolved by the Hearing Examiner.
33. Within 60 days after the approval of this Major Amendment, the applicant shall submit a schedule for the timing of required offsite road mitigation improvements that will replace the original Exhibit "L" (Timing of Proposed Mitigation Improvement –Revised), Exhibit "L-1" (Locations of Proposed Mitigation, Phase 1), Exhibit "L-2" (Bonney Lake Proposed Traffic System Improvements), Exhibit "L-3" (Pierce County - Traffic Engineering Design Year Proportionate Shares for Cascadia Phase 1 Rhodes Lake road/McCutcheon Road Corridor 112th St. E./214th Ave. E. Intersection), and Exhibit "L-4" (Pierce County – Traffic Engineering Design Year Proportionate Shares for Cascadia Phase 1 199th/199th Avenue E. Corridor). Any dispute regarding the replacement schedule shall be resolved by the Hearing Examiner.

34. The language of Section 4.4 to 4.4.6 (Traffic Mitigation Plan) shall be revised to reflect the contents of revised Exhibit “L” and provision of transit services shall be changed to earliest time feasible rather than a specific phase approval.
35. The original Exhibit “M” (Infrastructure and Public Facilities and Services Plan Elements) shall be revised to reflect infrastructure and public facilities and services mitigation obligations identified in the FEIS and/or the original PUD conditions of approval that are not otherwise specifically discussed in the revised Development Agreement or its other exhibits.
36. With the exception of Section 18A.25.200 through 18A.25.280 (Description of Use Categories), Section 18A.25.300 (Accessory Uses) and Section 18A.25.400 (Temporary Uses/Temporary Housing Units), the original Exhibit “N” (Pierce County Code – 18A) shall continue to apply.
37. Within 60 days after the approval of this Major Amendment, the applicant shall submit a set of sign regulations and/or sign design guidelines for review and approval by PALS. Any dispute as to these sign regulations and/or design guidelines shall be resolved by the Hearing Examiner.
38. Condition No. 129 of the original 1998 PUD decision shall be replaced as follows:

The EBPC shall be reviewed and evaluated by the Examiner and the Director of the Planning and Land Services Department at least every five years until buildout. The review shall address compliance with the conditions of approval. The review may also assess whether the development is well designed, contains a balance of uses, efficiently used public facilities and services, and provides adequate open space.

Required employment areas within any phase of development shall be dedicated prior to any non-infrastructure development occurring within the next phase of development. The requirement for dedication means that each area would:

- a) be set aside by notation on the Overall Conceptual Plan and conceptual plans for specific phases;
- b) be limited to County-approved employment uses by covenant; and
- c) have a County-approved schedule for timely construction of major infrastructure such as wastewater treatment facilities, regional storm ponds, water, power, and arterials with capacity to serve the dedicated areas.



The purpose of this requirement is to assure that the major infrastructure can be timely provided when opportunities are available to sell or lease land to individual employment users.

The County-approved schedule shall be completed within 90 days of the effective date of the Examiner's decision on the major amendment and include a timeline for completion of major infrastructure consistent with this requirement. Any dispute regarding the schedule shall be resolved by the Hearing Examiner.

39. The intent of this Report and Decision and Conditions of Approval is to maintain the status quo for the owner of Parcel O until the bankruptcy proceeding is resolved. Because the applicant for the Major Amendment, NASH Cascadia Verde, LLC, does not control Parcel O, and because the owners of Parcel O could not fully participate in this Amendment for the PUD, the Examiner's approval of the Major Amendment:
  - (a) shall not be interpreted or applied to Parcel O; and
  - (b) shall not be interpreted or applied in any way that would diminish the existing vesting, zoning, and land use rights associated with Parcel O under the existing County approvals and Development Agreement.
40. As described elsewhere in these Conditions, the Examiner's approval of the Major Amendment will be further revised in an amended Development Agreement. CRC and SFS shall have a 20-day opportunity to review the proposed amended Development Agreement prior to final approval and execution to assure that it includes provisions that expressly provide that the Major Amendment and amended terms of the Development Agreement shall not be interpreted or applied to Parcel O, and shall not be interpreted or applied in any way that would diminish the existing vesting, zoning, and land use rights associated with Parcel O under the existing County approvals and Development Agreement. The owner of Parcel O shall notify the Hearing Examiner and NASH, in writing, with either approval of the terms of the proposed Development Agreement that meet this paragraph or a request to revise the proposed Development Agreement to meet this paragraph. If the owner of Parcel O and NASH cannot reach agreement, then the Hearing Examiner shall consider the objections from the owner of Parcel O and a response from NASH and shall render a final decision on the proposed Development Agreement, including exhibits. This condition is purposefully drafted in broad terms so that the owner of Parcel O has a full opportunity to argue to the Examiner that the amended Development Agreement adversely affects its vesting, zoning and land use rights under the existing County approvals and Development Agreement, including any indirect effects on those rights.

41. Without limitation of the prior provisions, the terms of Condition 23 of this Major Amendment, including the proposed deletion of Development Agreement Sections 6.2.1, 6.3, and 6.3.2 and replacement with a new Section 8 including Sections 8.2.1, 8.2.2, and 8.2.3, do not apply as between the owners of Parcel O and NASH.
42. The owner of Parcel O may cause Parcel O to become subject to all, or portions of, this Major Amendment and to all, or portions of, the updated Development Agreement by submitting a letter to the County within three years of the date of approval of this Major Amendment. If no such letter is presented, then Parcel O shall remain subject to the EBPC Approvals and Development Agreement as described herein, meaning that the Major Amendment and amended terms of the Development Agreement shall not be interpreted or applied to Parcel O, and shall not be interpreted or applied in any way that would diminish the existing vesting, zoning, and land use rights associated with Parcel O under the existing County approvals and Development Agreement.