

PNW INVESTORS LLC

September 23, 2023

City of Marysville
Community Development Department
501 Delta Avenue
Marysville, WA 98270

Attn.: Mr. Chris Holland, Planning Manager
Ms. Emily Morgan, Senior Planner

RE: PA22-040
87th & 40th PRD
Response to Technical Review #1

Dear Mr. Holland and Ms. Morgan:

On behalf of the 87th & 40th JV, this correspondence is written in response to the City's Technical Review #1 dated October 21, 2022 ("Technical Review #1 Memo").

Attached to this correspondence is separate correspondence from our civil engineer (Core Design Inc.) responding to the civil engineering, site design and planning issues set forth in Technical Review #1 Memo.

The purpose of this correspondence is to address summarize the attached resubmittal, and address certain issues in the Technical Review #1 Memo relating to the SEPA aspects of the project.

1. Application for Wetland Fill Permits. An application has been submitted to the Army Corps of Engineers for a Nationwide #25 Fill permit.

Please find a copy of the Army Corps application attached. In support of said application, (a) a cultural study has been performed on the site (in accordance with the requirements for said permit application) and (b) an NPDES Notice has been filed and published. Please find a copy of said documents, which we request be incorporated into the file for the Project's decision.

Application was made to Department of Ecology ("DOE") for wetland fill permits during October 2022. A copy of the application to DOE is attached.

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As the City is aware, the City requested that the 87th & 40th PRD resubmittal be withheld pending resolution of road interfaces with the Stevens Ridge PRD; this unfortunately has resulted in more than a year of delay for complete the 87th & 40th PRD's approval process, due primarily to the Stevens Ridge PRD's proponents unwillingness to provide the City with a site plan meeting the requested road connectivity to the 87th & 40th PRD and otherwise in conformance with City code (See our correspondence to the City dated 8-7-2023, incorporated herein by reference). Due to the lengthy delays in this resubmittal caused by actions beyond the Applicant's control, DOE has been unable to timely complete the wetland fill approval, as DOE requires the City to issue a SEPA determination prior to DOE rendering its wetland fill approval.

Given the issues identified above, DOE graciously extended the wetland fill permit's approval period by six (6) months, which now expires on or around mid-November 2023, if the City has not issued a SEPA decision. By DOE's internal regulations, no further extensions may be allowed pending the City's completion of SEPA determination.

The Applicant respectfully requests that the City complete the remaining necessary review process so as to enable issuance of a SEPA decision before November 1, 2023, so the Applicant does not have to go through further delay caused by having the current DOE wetland permit application terminated without prejudice and thus having to incur additional expenditures and delay in having the DOE wetland fill permit being re-applied for and processed a second time.

The Applicant will provide supplemental documentation to the City regarding the DOE wetland fill process, as such documentation is generated.

2. 40th Street NE CIP and 87th & 40th Roundabout. The City has established capital improvement projects ("CIP's") for the (i) creation of 40th Street NE between 83rd Avenue NE and 87th Avenue NE, (ii) the expansion of 87th Avenue SE to arterial standards; and (ii) the construction of a roundabout at the intersection of 87th Avenue NE and 40th Street NE. As City-sponsored CIP's, these capital improvement projects provide benefit to the greater Whiskey Ridge Subarea and the City. See *TIA* – the 87th & 40th Project will contribute approximately 3% of total traffic trips affecting the total CIP at build-out. The City has not elected to fund the construction of said road improvements.

While development of the Stevens Ridge Project (City File No. PA21-038 and the Havenwood Project (City File No. PA21-052) will provide dedication of land for the portion of 40th Street NE that is located within their property; said projects will not construct any portion(s) of 40th Street NE. Therefore, pending a legislative decision by the City to fund the construction of the CIP 40th Street NE will not be a functional through-road.

Traffic counts established by our traffic engineer (Kimley-Horn) do not justify the requirement for either (i) a primary East-West arterial to adequately service the Project's vehicular traffic or (ii) a roundabout at the intersection of 87th Avenue NE & 40th Street NE. Absent construction of the entire through-segment of 40th Street NE from 67th to 87th, the only east-west road design necessary to serve the 53 building lots on the portion of the 87th & 40th PRD Project South of 40th Street NE from a SEPA nexus and proportionality analysis basis is the construction of a 2-lane minor neighborhood road. *See attached memo from Kimley-Horn, which shows that a 1-lane roundabout adequately serves the 2035 model volumes provided by the City of Marysville for the intersection of 87th Avenue NE at 40th Street NE at build-out.*

Given that (i) the Project's traffic impacts do not justify construction of 40th Street NE as an arterial to provide access to the Southerly 53 building lots; and (ii) the City will not elect to fund the construction of the 40th Street NE CIP absent a legislative adoption of funding, it is appropriate, given SEPA nexus and proportionality doctrines, for the City to condition the development approvals for the 87th & 40th PRD Project in such a manner to fully compensate the Applicant for construction of the portion of the 40th Street Arterial CIP within the 87th & 40th PRD if the City is desirous of the Applicant constructing such improvements as part of the Project.

This compensation would include constructing the necessary storm detention that is attributable to the impervious surface created by the 40th Street CIP. We note that the attached site plan includes sufficient detention capacity for the portion of the 40th Street CIP within the Project.

A proposal was tendered to the City as of 6-27-2023 (incorporated into this resubmittal by reference), whereby the Applicant requested the City to condition the development approvals for the 87th & 40th PRD as follows:

- The Applicant will convey a portion of the 87th & 40th PRD Property to the City (as a condition of Final Plat Approval) in exchange for transportation mitigation fee credits for a) the 40th Street NE right-of-way and b) the area for the western half of 87th & 40th Roundabout, inclusive of required tapers, pursuant to MMC 22D.010.060.

Given the total SF of right-of-way dedicated (71,765 SF) and approximate per SF current Fair Market Value of right-of-way, the off-setting compensation for dedication of the required right-of-way is less than the Project's estimated total traffic mitigation. Therefore, absent provision of supplemental compensation from the City (in addition to credits against traffic mitigation fees once fully expended), the request to dedicate and build the portion of 40th Street NE through the Project would require additional compensation in order to create the nexus and proportionality required under SEPA, given that the Project will only impact 3% of the total trips on 40th Street NE at build-out.

- The remaining amount of any un-compensated road dedication (following reduction of traffic mitigation fees) and the invoiced cost of construction of the portion of the 40th Street NE CIP located through the Project would be off-set by means of a corresponding reduction in the cost of the Bonus Dwelling Unit credits acquired by the Project pursuant to MMC 22C.090.030.

This results in generally meeting the test of SEPA mitigation proportionality, and a nexus between the dedication of right-of-way and cost of construction of the CIP incurred by the Applicant, and the benefit derived by the City by the Applicant constructing this portion of the CIP.

Note: The Applicant's proposal to construct the portion of 40th Street NE through the Project in exchange for the credits identified above *does not include* construction of the CIP roundabout at the intersection of 87th Avenue NE and 40th Street NE. Constructing said round-about will require the City acquiring sufficient property on the East side of 87th to provide for the eastern half of the roundabout and public right-of-way.

The Applicant does not control said properties on the East side of said intersection and acquiring said properties is not within the Applicant's control. Therefore, the proposal to construct the 40th Street NE CIP improvements through the Project includes:

- (i) Dedication of right-of-way for 40th Street and such necessary tapers along 87th Avenue NE both North and South of 40th Street to allow for the western half of the 87th Roundabout; and
- (ii) A temporary intersection at 87th & 40th, with stop signs at the intersection of 87th Avenue NE and 40th Street, pending the City initiating funding for acquisition of right-of-way area on the East side of the intersection and constructing the roundabout.

It is the Applicant's understanding as of this writing that the City is considering this proposal, as set forth in the Applicant's 8-1-2023 correspondence. The attached site plans showing the incorporation of the 40th Street NE Arterial improvements (not including the construction of the 87th & 40th Roundabout), together with a temporary intersection at 87th & 40th are tendered on the condition that the City and Applicant reach agreement as to the mitigation measure proposed.

The Applicant respectfully reserves the right to withdraw the site plans and reconsider the site plan and application in the event that the City and Applicant cannot reach mutual agreement as to appropriate mitigation conditions.

3. Construction of Water System Improvements within 40th Street NE. It is understood from prior discussions with staff that the City intends to extend a 12” water main between 83rd Avenue NE and 87th Avenue NE to promote long-term adequacy of water pressure and fire flow at build-out of the Whiskey Ridge Subarea.

The attached plan set demonstrates the provision of a 12” water main within the Local Access Road to be constructed within the right-of-way to be conveyed to the City for 40th Street NE.

As no more than an 8” water main is necessary to service the 53 building lots on the South side of the 40th right-of-way, it is appropriate and reasonable that the City condition the PRD Approval with an off-setting credit to water connection fees for the over-sizing of said water main to 12” and any appurtenances thereto, as is the City’s normal and usual policy.

4. Construction of Sanitary Sewer System Improvements within 40th Street NE. We respectfully advise that the City’s request for extension of a sewer main within the 40th Street NE right-of-way is inconsistent with the need for such a sewer main, as follows:

- The highest topographic elevation on Whiskey Ridge is at the common boundary between the western boundary 87th & 40th PRD and the eastern boundary of the Havenwood Project and the Stevens Ridge Project.
- Sanitary sewer for the Stevens Ridge Project and the Havenwood project flows to the West; Sanitary sewer for the 87th & 40th PRD Project flows to the East.
- The sanitary sewer extension proposed on the attached site plans provide for cost-effective extension of Sanitary Sewer into the Southerly portion of the 87th & 40th PRD Project from 87th Avenue.
- For these reasons, there is no logical basis for the requirement to construct a sanitary sewer extension within the 40th Street NE right-of-way, as it is an unnecessary cost that provides zero utility to the City as well as unnecessary long-term maintenance costs.

Accordingly, we respectfully request that the requirement for such sewer main extension be removed. If somehow the City finds that the extension of sanitary sewer within 40th Street NE has SEPA and practical nexus, then due to the fact that it is fundamentally not needed as a means of developing the Property, the cost of constructing sanitary sewer within 40th Street NE should be credited against sewer connection fees.

5. Construction of Sanitary Sewer System Improvements within 85th Avenue NE. The attached site plans provide for westerly extension of sanitary sewer to 85th Avenue NE from Road A and Road B. The sanitary sewer servicing the housing units fronting on the East side of 85th Avenue NE is located within the alley and is acceptable per code. Therefore, there is

no reasonable basis to require the Applicant to construct sewer mains within 85th Avenue NE, excepting to stub sanitary sewer to the Westerly boundary of the 87th & 40th PRD Project.

Secondly, as discussed in Section 4 above, the Westerly Boundary of the 87th & 40th PRD Project is the topographic high-point and basin boundary. Sanitary sewer for the 87th & 40th Project flows to the East; Sanitary sewer for the Properties located adjacent to the West of the 87th & 40th Project flow to the West.

Accordingly, there is no benefit to the 87th & 40th PRD Project or the City to require the 87th & 40th Project to construct sanitary sewer mains with 85th Avenue NE. This utility requirement is appropriate burdened by the developer of the properties adjacent to the West at a later date.

Accordingly, we respectfully request that the requirement for such water main extension be removed. If the City deems such improvement necessary, then the Project's approvals must be conditioned upon a credit against water connection fees for the cost of construction of said water mains and appurtenances.

6. Construction of Water Mains Improvements within 85th Avenue NE. The attached site plans provide for westerly extension of water mains to 85th Avenue NE from Road B and Road A. The City has requested that a 25-foot dedication be provided for 85th Avenue NE. The proposed design is not able to accommodate required utility spacing or constructability for both sewer and water within 85th Avenue NE. Therefore, no water main is proposed within 85th Avenue NE.

Lots 70 through 73 are designed to have their water provided from the proposed water main on Road B, with a bank of four (4) water meters located just north of Lot 70. Individual service lines would run from the meters to Lots 70 through 73. Lots 74 through 77 will have water services provided from a bank of water meters connected to the water main within Road A, located just south of Lot 77.

Therefore, there is no reasonable basis for the City to require the Applicant to construct water mains within 85th Avenue NE, excepting to stub the water mains to the Westerly boundary of the 87th & 40th PRD Project, to ensure later extension of the Water system when the Property to the west is developed.

To provide for a water main within this portion of 85th Avenue NE, the Applicant will in the near future make application for subdivision / PRD of Tax Parcel #005907000-21101, which is adjacent to the west side of this road segment. This will allow completion of the water main requested by the City and can be conditioned upon the project as part of construction plans.

Ltr to Morgan, City of Marysville
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Thank you for your assistance and consideration. We look forward to working with staff to complete review of this application and proceed with finalization of the Traffic Concurrency Agreement, SEPA decision and PRD decision.

Best,



Michael Reid
Managing Director
MR/mr

cc: Brent Kirk, 87th & 40th JV Member
John and Joel Haack, 87th & 40th JV Members
Ben Madeo and Lafe Hermansen. Core Design
Brad Lincoln, Kimley-Horn
Jon Pickett, Soundview Consultants LLC
Dean Williams and Duana Kolouskova, Johns Monroe Mitsunaga & Kolouskova PLLC

Attachments:

- Core Design Correspondence dated September 22, 2023.
- Revised Preliminary Site Plan and Engineering Plans.
- Kimley-Horn Updated TIA dated February 9, 2023.
- DOE JARPA Application October 2022.
- ERCI Cultural Assessment dated March 21, 2023.