

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF RICHLAND**

Regarding the Application to *Rezone* a 98+)
acre site from AG to zoning districts that are)
consistent with Comprehensive Plan land)
use designations assigned to the area,)
submitted by the property owner,)
**SIENNA HILLS DEVELOPMENT, LLC ON)
BEHALF OF RICHLAND PROPERTIES, LLC)
(GREG JOHNSON),)
Applicant)**

File No. Z2019-106

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

I. SUMMARY OF RECOMMENDATION.

The applicant, Sienna Hills Development, LLC, acting on behalf of the property owner Richland Properties, LLC (Greg Johnson), can meet its burden of proof to demonstrate that its requested rezone merits approval, subject to certain conditions that will ensure the zoning reclassification conforms to the relevant elements of the city’s development regulations and comprehensive plan, and that any significant adverse environmental impacts have been adequately addressed. *See RMC 19.60.060.*

The proposed rezone would assign mostly Residential and a small segment of Commercial zoning districts to portions of the 98+ acre site in a manner that is consistent with provisions of the City’s Comprehensive Plan.

The relevant Comprehensive Plan Land Use Map for the rezone-area was first adopted in 2010, through approval of the Badger Mountain Subarea Plan, an appendix to the City of Richland Comprehensive Plan. To correct a scrivener’s error made during the 2017 review process, the Badger Mountain Subarea Plan, with its Land Use Plan map for the area on page 19 of such document, was fully re-adopted and effectively ratified and confirmed as part of the City’s Comprehensive Plan

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1 through passage of Ordinance No. 38-19 in October of 2019. The City’s 2019 Comprehensive Plan
2 ordinance took effect without any timely challenge to any state board, agency or court with
3 jurisdiction over the matter.

4 This requested rezone does not approve any development activity on the site, it merely brings
5 the zoning districts assigned to portions of the area into full compliance with land use designations
6 now specified for the property in the City’s Comprehensive Plan. City Development Regulations will
7 apply to any specific projects that may eventually be proposed on the site. Comments, concerns and
8 opposition expressed at the public hearing for this matter are more appropriately directed at future
9 project-specific development proposals that may come forward, and do not provide a basis in fact or
10 law to deny the pending rezone request.

11 II. BACKGROUND and APPLICABLE LAW.

12 In this matter, the Hearing Examiner has jurisdiction to conduct an open record public hearing
13 on the site-specific rezone application at issue and is directed to issue a written recommendation for
14 consideration and final action by the Richland City Council. *See* Richland Municipal Code (RMC)
15 19.20.010(D)(identifies “site-specific rezones” as Type IIIA permit applications); RMC
16 23.70.210(A)(“The hearing examiner shall conduct an open record public hearing as required by
17 RMC Title 19 for a Type IIIA permit application.”); and RMC 19.20.030(granting jurisdiction to
18 Hearing Examiner to conduct public hearing and issue recommendation to City Council); RMC
19 19.25.110(authority for Examiner actions, including conditions of approval on applications or
20 appeals); and RCW 35A.63.170(state statute regarding hearing examiner system).

21 The applicant bears the burden of proof to show that its application conforms to the relevant
22 elements of the city’s development regulations and comprehensive plan, and that any significant
23 adverse environmental impacts have been adequately addressed. RMC 19.60.060.

24 Finally, Washington Courts apply three basic rules when reviewing appeals of rezone
25 applications: (1) there is no presumption favoring the rezone request; (2) the proponent of a rezone
26 must demonstrate that there has been a change of circumstances since the original zoning,
PROVIDED if a proposed rezone implements the policies of a comprehensive plan, a showing of
changed circumstances is usually not required¹; and (3) the rezone must have a substantial relationship
to the public health, safety, morals, or general welfare. *Woods v. Kittitas County*, 162 Wn.2d 597
(2007), citing *Citizens for Mount Vernon*, 133 Wn.2d 861, at 875 (1997); *Parkridge v. City of Seattle*,
89 Wn.2d 454, 462 (1978).

27 III. QUESTIONS PRESENTED.

¹ *Save Our Rural Env't v. Snohomish County*, 99 Wn.2d 363, 370-71 (1983); *Henderson v. Kittitas County*, 124 Wn. App. 747, 754 (Div. III, 2004); *Bjarnson v. Kitsap County*, 78 Wn. App. 840, 846 (Div. III, 1995).

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For purposes of the pending rezone application, the central questions presented are:

A. Whether the requested rezone implements policies of the City’s Comprehensive Plan, and/or whether there has been a change of circumstances since the original AG (Agriculture) zoning was adopted for the site?

Short Answer: Yes to both. The requested rezone would implement land use designations assigned to the area in the Badger Mountain Subarea Land Use Plan, the portion of the City’s Comprehensive Plan addressing the Sienna Hills site, using zoning districts, boundaries, and conditions of approval to ensure the rezone is consistent with provisions of such plan. Further, the entire rezone-area has already been annexed into the City, and is within its Urban Growth Area, making the existing AG zone inconsistent with recent urban development of residential and commercial uses in portions of the City abutting the area.

B. Whether the rezone bears a substantial relationship to the public health, safety, morals, or general welfare?

Short Answer: Yes, because the rezone would implement policies and direction provided in the Badger Mountain Subarea Plan, which is included as part of the City’s Comprehensive Plan, and any future, project-specific proposals will have to meet city development regulations, including SEPA, subdivision codes, traffic impact reviews, public infrastructure concurrency reviews, and payment of any impact fees in effect at the time of an application.

IV. RECORD.

Exhibits entered into evidence as part of the record, and an audio recording of the public hearing, are maintained by the City of Richland, and may be examined or reviewed by contacting the City Clerk’s Office. The Notices issued for the pending Sienna Hills Rezone application (File No. Z2019-106) and Sienna Hills Preliminary Plat application (File No. S2019-101) were combined. (*See Ex. 2, notice materials included in Rezone application file; and Ex. 4, notice materials included in Preliminary Plat application file*). The criteria for approval of each application are different. Accordingly, the public hearing first sought to focus on the Rezone matter, followed by a separate hearing segment devoted to consideration of the Preliminary Plat application.

However, given the number of public comments made during the public hearing and the spill-over that many comments presented – talking about one matter while standing at the microphone during time devoted to the other matter – the Examiner finds and concludes that it is prudent to consider all public comments made during each portion of the public hearing together, rather than exclude someone’s remarks because they chose to make them in the wrong part of the hearing held on the same night. This Recommendation on the requested Rezone, and Preliminary Plat application is based on all comments and materials included in the record for both matters. Key aspects of the

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1 full hearing record are summarized below, noting that several comments overlapped and covered the
2 same ground, and that none of the comments presented a legal or factual basis to deny either
3 application, subject to appropriate conditions.

4 **Hearing Testimony:** The following individuals presented testimony under oath at the duly
5 noticed public hearing for the underlying application, held on December 9, 2019:

- 6 1. Mike Stevens, Planning Manager for the City of Richland;
- 7 2. Shane O'Neill, Senior Planner for the City of Richland;
- 8 3. Jason Mattox, applicant's project engineer and primary hearing representative;
- 9 4. Rebecca Clapperton, lives in home south of the Sienna Hills site, outside the Richland
10 City limits;
- 11 5. John Becker, lives in home to the south of the Sienna Hills site, outside the Richland
12 City limits;
- 13 6. Sean Flinders, lives in home on Clover, to the south of the Sienna Hills site, outside
14 the Richland City limits;
- 15 7. Stacy Fveum, lives in home to the south of the Sienna Hills site, outside the Richland
16 City limits;
- 17 8. Tony Waldo, lives in home on Clover, to the south of the Sienna Hills site, outside
18 the Richland City limits;
- 19 9. Joe Angingh, local resident
- 20 10. David Shelbourne, lives in home on Bermuda, south of the Sienna Hills site;
- 21 11. Brooks Bayne, local resident;

22 **Exhibits:** The Development Services Division Staff Report for the requested Rezone,
23 including a recommendation of approval, was provided to the Examiner in the week before the
24 hearing. The Staff Report, and the following Exhibits, were all accepted into the Record in their
25 entirety without modification:

- 26 1. Application materials for Rezone, dated September 6, 2019.
**NOTE: The proposed rezone map is found on the 4th full page of Ex. 1 provided to the
Examiner, and is also depicted as Figure 2.1 on page 4 of the Staff Report;*
2. Public Notices and affidavits confirming same;
3. Public comments;
4. SEPA DNS and SEPA Checklist for both Sienna Hills Rezone and proposed preliminary
plat;
5. Copy of Badger Mountain Subarea Plan, part of the City's Comprehensive Plan
addressing area that includes the Sienna Hills site. **NOTE: Page 19 of the Plan features
Figure 1, the Badger Mountain Subarea – Land Use Plan map, which is the official city
Comp. Plan land use map for the area;*
6. Ordinance No. 38-19, adopted by the Richland City Council on October 1, 2019,

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1 regarding the City's Comprehensive Plan, includes correction of a scrivener's error in
2 prior action that mistakenly omitted the northeast segment of the Badger Mountain South
3 site (where the Sienna Hills site is located) from the Badger Mountain South Sub-Area
4 map, and formally confirming;

- 5 7. Copy of GIS map that at some point showed the Sienna Hills area with zoning
6 assignments similar to those requested in the rezone application, but not identical to
7 (though not necessarily inconsistent with) the Badger Mountain Subarea Land Use Plan
8 Map found on page 19 of the Badger Mountain Subarea Plan (Ex. 5, above);
- 9 8. Current zoning map for the Sienna Hills area, correctly depicting the entire area with its
10 place-holder zoning assignment, i.e. "AG – Agricultural," officially assigned to the area
11 by the City Council after the land was annexed into the city of Richland; and
- 12 9. Written comments offered as part of Ms. Clapperton's testimony at the public hearing.

13 The Examiner has visited the road network and vicinity of the proposed rezone on multiple
14 occasions over the past few years in connection with other applications, and is fully advised on matters
15 at issue herein, including without limitation adjacent developments and land uses, applicable law,
16 application materials, and relevant comprehensive plan provisions.

17 V. FINDINGS OF FACT.

18 Based upon the record, the undersigned Examiner issues the following Findings of Fact.

19 *Application.*

20 1. The site of the proposed Sienna Hills Rezone and Preliminary Plat applications is a 98+ acre
21 portion of the much larger Badger Mountain Subarea, an almost 2,000-acre area located south and
22 east of the Badger Mountain Centennial Preserve and north of Interstate 82. (*Ex. 5, Badger Mountain
23 Subarea Plan, Introduction on page 1*).

24 2. The smaller Sienna Hills site was part of an almost 1,900-acre annexation into the City of
25 Richland that took effect in 2010, through passage of Ordinance No. 41-10, which assigned the AG-
26 Agriculture zoning designation to the entire northeast portion of the annexation area where the Sienna
Hills site is located. (*See Ord. No. 41-10, Sec. 6, and Ex. B thereto, labeled "Zoning Designations
for Annexation Area", included as part of the application materials, Ex. 1*).

Mapping errors that generated confusion and misunderstandings.

3. For some reason unknown and unclear to the Examiner, unofficial city mapping resources
have presented public illustrations with zoning assignments for the Sienna Hills area that were in
error. At one point, the Staff Report explains that the "2017 Comprehensive Plan Periodic Update
contained a scrivener's error, which resulted in the entire site being designated as Low-Density
Residential. This scrivener's error was discovered during the 2018-2019 annual Comprehensive

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1 *Plan update and was rectified via Ordinance No. 38-19 (Exhibit 6)."*

2 4. In any event, the City Council's passage of Ord. No. 38-19 in October of 2019 formally
3 corrected the scrivener's error from 2017 by expressly including the northeast portion of the Badger
4 Mountain Subarea on the city's official maps for such subarea and adopting (more accurately,
5 ratifying and confirming) the Comprehensive Plan of the City of Richland, which includes the Badger
6 Mountain Subarea Plan and its Land Use Plan map for the area on page 19. Unfortunately, it appears
7 that some city maps available online to members of the public and the applicant team before the public
8 hearing, perhaps GIS maps, inaccurately depict a land use map of unknown origin for the Sienna Hills
9 area (*See Ex. 9, comment regarding GIS database mapping; Testimony of Mr. Stevens*).

6 5. To eliminate confusion and misunderstandings, the Examiner expressly finds and concludes
7 that the Comprehensive Plan policies and land use maps that should be used for consideration of this
8 pending rezone are those adopted, and effectively ratified and confirmed, in Ord. No. 38-19. The
9 Comprehensive Plan Land Use Map for the area is as depicted on page 19 of the Badger Mountain
10 Subarea Plan, which is republished following this paragraph:

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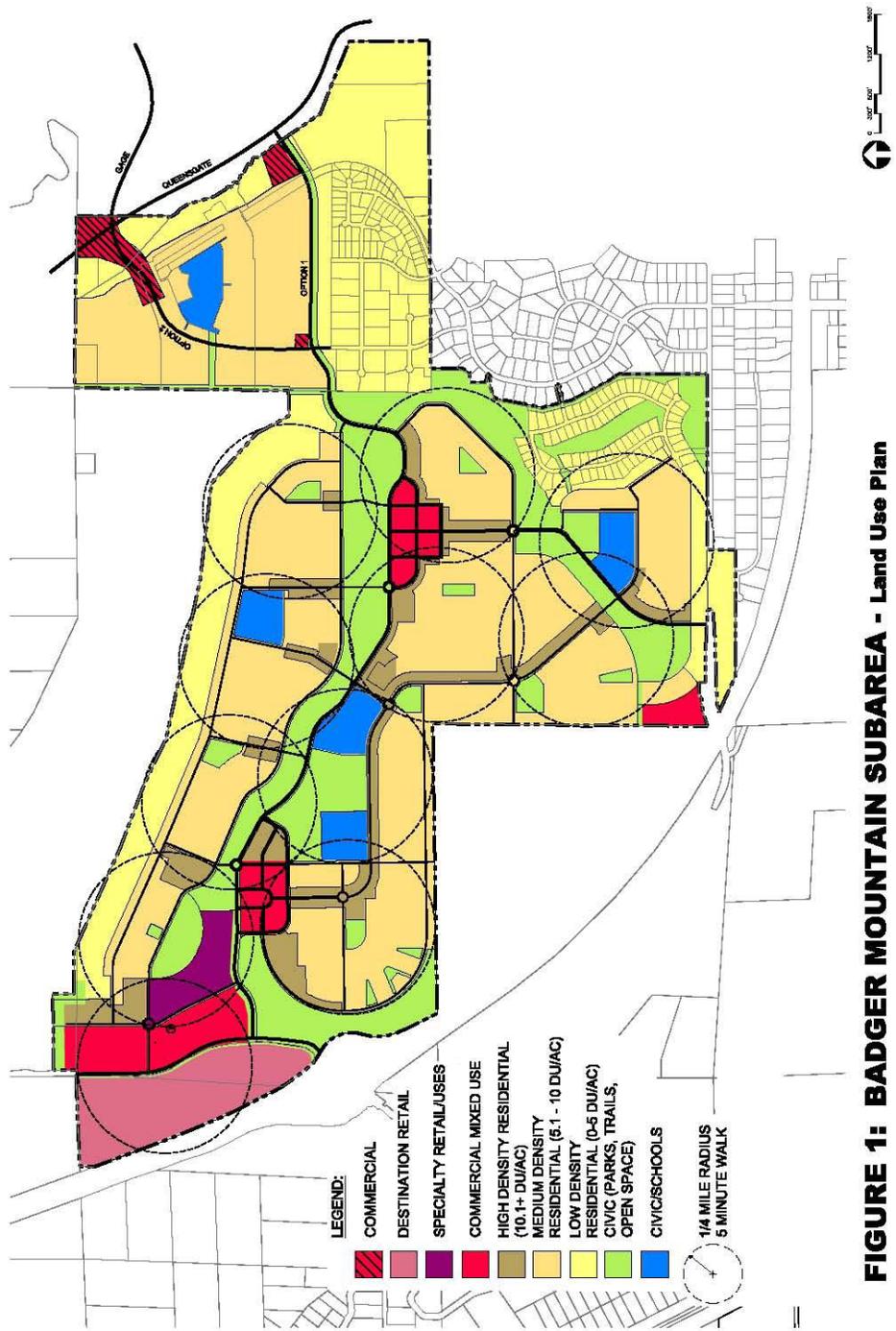


FIGURE 1: BADGER MOUNTAIN SUBAREA - Land Use Plan

REZONE APPLICATION TO CHANGE A 98+ ACRE SITE FROM AG (AGRICULTURE) TO ZONING DISTRICTS IN ACCORD WITH LAND USE DESIGNATIONS PROVIDED FOR THE AREA IN THE CITY'S COMPREHENSIVE PLAN - FILE NO. Z2019-106

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2 6. For purposes of this Recommendation, the Examiner disregards the illustration included as
3 Figure 3 on page 8 of the Staff Report, derived from Ex. 7, which has never been reviewed or approved
4 by the City Council, so it should have no legal effect for purposes of considering this rezone
5 application.

6 ***Existing AG zoning for the site is entirely inconsistent with the Comprehensive Plan, and the***
7 ***requested rezone has been thoroughly reviewed under SEPA.***

8 7. At no time has the Sienna Hills site been rezoned (or reclassified, as referenced in some parts
9 of the City’s Municipal Code, though the terms rezone and reclassification/reclassify mean the same
10 thing), from anything other than the “placeholder” AG-zone assigned to the area when it was first
11 annexed. There is no credible dispute that the AG-zone for the Sienna Hills area is entirely
12 inconsistent with its location in the City’s urban growth area, where transition from previous orchard
13 uses to residential and commercial development is readily apparent in this part of the Tri-Cities area,
14 including many new neighborhoods and commercial projects built in the City of Richland in the past
15 few years.

16 8. The Examiner takes official notice of previous City Council actions related to its
17 Comprehensive Plan, including its most recent 10-year update, in 2017, on issues and topics that have
18 not been challenged or mistakenly depicted in publicly available materials. Relevant portions of the
19 2017 process provide summaries of previous public review processes in the City that explain how AG
20 (Agricultural) zoned properties are generally inconsistent with growth and development targets
21 assigned to properties within an urban growth area. These findings support the requested rezone.

22 9. Before undertaking its last major “10-Year” review and revisions to the Richland
23 Comprehensive Plan, the City hired the consulting firm of Oneza and Associates, to assist City staff
24 in updating the plan. After meeting, discussing and considering the physical and social development
25 needs and potential of the Richland Urban Growth Area, and receiving information from federal, state
26 and city agencies, including municipal and non-municipal departments and agencies, and holding
public meetings and workshops, the City’s consultant and staff developed and prepared a new
Comprehensive Plan and submitted said Plan to the Richland City Council for its review and adoption,
which occurred on October 3, 2017. *(See explanation provided in preamble of Ord. No. 42-17).*

10. The City Council prepared a public participation plan for its 10-year comprehensive plan
update process and published said plan on its website. Public participation included a variety of
methods including visioning workshops, focus group discussions, an on-line survey, open houses,
two public hearings, providing a webpage devoted to the plan update, planning commission and city
council workshops, review by other City boards including the parks and recreation commission and
the economic development committee, and soliciting comments from other local agencies and
organizations. Public notification was also provided in a variety of methods including notices through
City utility bills, notices on the City webpage and in the newspaper and notices via email. *(Id.)*

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1 11. The City considered the Benton County Countywide Planning Policies in the development of
2 its comprehensive plan and used the population projections provided by Benton County in its planning
3 efforts as mandated under the Growth Management Act. (*Id.*)

4 12. The City provided formal 60-day comment periods for the draft plan to the public and to a
5 wide variety of local, state and federal agencies and private organizations in accordance with Growth
6 Management Act requirements. (*Id.*)

7 13. The Planning Commission conducted public hearings on the proposed Comprehensive Plan
8 on May 10, 2017 and August 30, 2017, and adopted findings of fact and a made a formal
9 recommendation to the City Council for approval of the proposed Comprehensive Plan and associated
10 amendments to Title 23 of the Richland Municipal Code. (*Id.*)

11 14. Consistent with the State Environmental Policy Act, the City prepared Draft and Final
12 Environmental Impact Statements for the proposed Comprehensive Plan amendments considered in
13 2017. The City Council did not take action until after the EIS was final, at which time the City
14 Council considered all recommendations and reports submitted to it and all comments made to it at
15 public hearings, and concurred with the findings and recommendations of the Planning Commission
16 and City staff, as proposed at that time. (*Id.*)

17 15. Some of the key findings made by the City's Planning Commission back in 2017 – with which
18 the City Council formally concurred – included the following:

19 The City's plan demonstrates that it has adequate land area to accommodate the future
20 growth forecast for the next twenty-year period as required under RCW 36.70A.115;
21 includes chapters addressing economic development, land use, housing, transportation,
22 utilities, capital facilities and parks and recreation as required under RCW 36.70A.070;
23 considers and incorporates the 14 goals stated in the growth management act under RCW
24 36.70A.020; and, most significantly, considered, but did not identify, any agricultural, forest
25 or mineral resource lands of long term significance within the City's urban growth area in
26 conformance with RCW 36.70A.050. (See Findings of the Planning Commission, included
in Staff Report issued prior to adoption of Ord. 42-17, in Agenda File No. Z2017-103, for
the Council's Oct. 3, 2017 meeting).

16. The Sienna Hills rezone-site was included in such review, meaning that the Council has
already determined that it is not an agricultural land of long-term significance within the City's urban
growth area. Maintaining it as such runs contrary to a basic Growth Management principal that urban
development should not sprawl, but should be concentrated on lands located within urban growth
areas.

17. Finally, this rezone request, and the connected Sienna Hills preliminary plat application, were

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1 the subject of a combined SEPA review process, resulting in issuance of a Determination of Non-
2 Significance, issued on December 2, 2019. (Ex. 4, SEPA Checklist and DNS for both the requested
3 rezone and proposed preliminary plat). All of the modifications included in this Recommendation
4 are well-within the scope of topics covered in the SEPA review and are intended to reduce the
5 potential for impacts associated with each application. For instance, by conditioning the rezone to
6 expressly include future development of a trail/pedestrian pathway running through the property,
7 walkability and connectivity goals in the Badger Mountain Subarea Plan (BMSP) can be implemented
8 in a manner substantially consistent with the general alignment depicted on the Land Use Plan map
9 for the area. (Land Use Map, found on page 19 of the BMSP, republished above on page 6 of this
10 Recommendation).

11 ***The requested zoning reclassifications are consistent with the Comprehensive Plan.***

12 18. As shown above, the Badger Mountain Subarea Land Use Plan map envisions Low Density
13 Residential uses running along the southern boundary of the Sienna Hills project site; Medium
14 Density Residential uses in the upper/northern portion of the site; a small Commercial area situated
15 in the west/southwest portion of the site where proposed streets/trails would intersect; another larger
16 Commercial area in the western portion of the site; and a Civic use, shown as a green line on the Land
17 Use Plan map (which could be a “Trail” according to the Legend provided on the face of the Land
18 Use Plan map), running in an east west alignment through the lower portion of the Sienna Hills site,
19 connecting with trail/transportation corridors to the west and east of the site.

20 19. The proposed rezone would assign R-1-10 (Single Family Residential) zoning to Low Density
21 Residential areas running along the southern portion of the site; R-2 (Medium Density Residential)
22 zoning to the upper portion of the rezone site; and C-LB (Limited Business) zoning to the two
23 relatively small commercial areas in the Sienna Hills rezone site.

24 20. There is no credible dispute that the requested residential zoning classifications are consistent
25 with the Land Use Plan for the area. Opposition comments involving this topic appeared to be
26 motivated by personal interests, with neighboring property owner preferences for as little density as
possible in the Sienna Hills site, for instance, a few comments suggested that the lower/southern
portion of the site should be zoned R-1-12 (requiring larger lots) instead of R-1-10. The City’s code
expressly provides that both zones are appropriate for areas designated Low Density Residential in
the City’s Comprehensive Plan. See RMC 23.18.010(A) and (B). Such comments did not provide
any legal or factual basis to reject the requested residential zoning reclassifications.

27 21. With respect to the requested C-LB Commercial zoning classification for the two commercial
28 nodes in the rezone area (NOTE: the rezone area is NOT part of the much larger Badger Mountain
29 South area addressed in a separate Development Agreement for such properties), the Examiner finds
30 and concludes that the requested C-LB zoning classification is appropriate and fully supported by the
31 discussion of Commercial uses envisioned for such properties. (See pages 27 and 28 of the Subarea
32 Plan, re: Commercial Categories).

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1 *The requested Rezone must be conditioned to mandate development of a trail/pathway/non-*
2 *motorized linear connection running through the site, in an alignment generally consistent with*
3 *that depicted on the Badger Mountain Subarea Land Use Plan map for the rezone area.*

4 22. Some public comments challenged the requested rezone because it fails to establish a “Civic”
5 zoning classification for the area, running along or near the green line shown on the Badger Mountain
6 Subarea Land Use Plan map, or something to this effect. These comments appropriately seek to
7 ensure that a genuine trail route should be included in any final land use plan for the Sienna Hills site.
8 However, such comments are in error if their basis for challenging the rezone relies on the mistaken
9 assumption that “Civic” uses must be defined in the zoning code and included as a specific zoning
10 classification.

11 23. The Badger Mountain Subarea Plan expressly provides that “civic uses and spaces” include
12 “trails.” (Ex. 5, *Badger Mountain Subarea Plan at page 30, Sec. 5.7 re: Badger Mountain Civic*
13 *Uses*). The Plan also recognizes that “[n]ot all civic spaces are places that are owned and maintained
14 by the city but they are places that people know, gather and relate to because some activity with the
15 space appeals to and functions with some or all within the community.” *Id.*

16 24. Figure 5 on page 44 of the Subarea Plan depicts the potential east/west green line running
17 through the Sienna Hills area as a “Schematic Secondary Trail,” which is NOT an equestrian trail, as
18 some people requested. Instead, equestrian trails are depicted in other portions of the much larger
19 subarea, generally running north and south to the west of the site. *Id.* There is no legal or factual basis
20 to condition this requested rezone or the connected preliminary plat to require development of any
21 equestrian trail.

22 25. The term “Secondary Trails” is defined on page 11 of the City of Richland’s Parks, Trails,
23 Open Space and Facilities Master Plan version that was in effect until July of last year, and reads as
24 follows: “Secondary Trails shall serve a neighborhood park or provide access to the Class 1 Trail
25 system. Secondary Trails may also be constructed to provide ADA access in Natural Open Space
26 areas. Secondary Trails shall be concrete, or asphalt surface and 6-10 feet wide”. An online word-
search of the City’s new Parks Master Plan failed to turn up the term “Secondary Trails,” but the new
Parks plan addresses wide-sidewalks/trail facilities by directing attention to the City-wide
Transportation Plan, which “provides additional information about bikeways, bike lanes and other
non-motorized transportation facilities that are generally associated with streets and street right-of-
way”. (See current Parks Master Plan, at page 27, adopted in July of 2019).

27 26. The current Parks Master Plan for the City defines the term “Trail/Pathway/Linear
28 Connections” as follows: “*Trails, pathways and linear connections are designed to provide walking,*
29 *bicycling and other non- motorized means of linking various parts of the community, development or*
30 *open space system. Both paved and unpaved trails are appropriate. The primary purpose is to provide*
31 *a recreation experience. The secondary purpose is transportation to other parts of the community,*
32 *development or open space system.” (See current Parks Master Plan, Appdx. B, Definitions, at page*
33 *B-3).*

34 **FINDINGS OF FACT, CONCLUSIONS AND**
35 **RECOMMENDATION RE: SIENNA HILLS**
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1 27. The Sienna Hills Preliminary Plat proposal now includes a recommended condition of
2 approval that would require development of an 8-foot wide pedestrian sidewalk/trail located just south
3 of the main street, labeled “C” Street on the proposed plat map, which runs in an east-west direction
4 through the Sienna Hills property, in an alignment that is substantially similar to and consistent with
5 that depicted by the green line shown through the Sienna Hills site on the Badger Mountain Subarea
6 Land Use Plan map. Development of such a wide sidewalk/trail through the Sienna Hills site would
7 be fully consistent with the City’s Comprehensive Plan policies and vision for the area. (See Ex. 5,
8 at page 19, BMS Land Use Plan map, which includes “trails” in the Legend for Civic uses shown in
9 green; and on page 30, Sec. 5.7 re: Badger Mountain Civic Uses).

6 28. Because proposed plats are development permits that sometimes change, and sometimes fail
7 to go forward as originally planned, the Examiner finds and concludes that the requested rezone
8 should be specifically conditioned in a manner that will require any future development on the Sienna
9 Hills site (whether under the current proposed subdivision plan, or some other plat proposal from any
10 other applicant or owner) to include dedication and development of a pedestrian pathway/trail/wide-
11 sidewalk generally running to the south of an east/west street alignment in the rezone area. A
12 condition of approval to accomplish this purpose is included as part of this Recommendation
13 regarding the requested rezone.

11 29. Relying on a development project like a proposed subdivision to go forward on faith is not
12 sufficient. If this rezone were to be approved without any mandate for a trail through the rezoned
13 area, any future development application on the site could have a valid basis to challenge any future
14 request for a trail/pedestrian pathway through the site. To avoid this problem at any point in the
15 future, the rezone itself must be conditioned to ensure that the trail vision – a “Civic” use – is
16 accomplished as part of any future development project on the site.

15 ***The boundaries of the requested rezone should be adjusted to be more consistent with the Badger
16 Mountain Subarea Land Use Plan map, and in a manner more consistent with City development
17 regulations providing guidance on zoning district boundaries.***

17 30. Multiple public comments noted how the requested rezone boundaries deviate somewhat
18 from those generally depicted on the Land Use Plan map for the Badger Mountain Subarea. Staff
19 credibly explained that this may have been the result of mistaken GIS generated maps that were
20 publicly available at the time pre-application meetings for the Sienna Hills project took place, which
21 showed zoning boundaries in more of a straight line configuration, which was used to generate the
22 map included in the rezone application itself. For reasons explained below, the Examiner believes
23 the rezone should be approved, but with zoning boundaries adjusted to be more consistent with the
24 Badger Mountain Subarea plan policies and its Land Use Plan map, and in a manner more consistent
25 with City development regulations that provide guidance on where zoning district boundaries should
26 be located.

23 31. RMC 23.08.050 provides guidelines that city officials should seek to follow when

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1 determining where zoning district boundaries should be located. For instance, where streets, alleys,
2 or highways might be present, the actual centerline shall be construed to be the boundary; where
3 district boundaries are indicated on maps as approximately following the lot or tract lines, the actual
4 lot or tract lines shall be construed to be the boundary of such use district; and where a district
5 boundary divides a tract in unsubdivided property, the location of zoning boundaries should seek to
6 approximate the dimensions and scale appearing on any available sectional district map. In this
7 application, there appears to be no formally adopted sectional district map, but only the general Land
8 Use Plan map from page 19 of the Badger Mountain Subarea Plan.

9 32. Because this rezone application has been reviewed in conjunction with the connected
10 preliminary plat application, which includes proposed street alignments that appear to be based on
11 logical topographical and other site-specific conditions, particularly including an east-west roadway
12 identified as “C-Street”, the Examiner finds and concludes that the C-Street alignment should be used
13 as the proper zoning district boundary to the fullest extent possible, in keeping with guidelines that
14 list the centerline of available streets as the first rule for placement of zoning district boundaries. (*See*
15 *RMC 23.08.050(A), discussed above*). This adjustment to the requested rezone boundaries would also
16 be more consistent with the green line, or Civic, i.e. “Trail”, alignment running east/west through the
17 rezone area immediately south of a future east/west roadway generally depicted on the BMSP Land
18 Use Plan map. Where the roadway (C-Street) moves north, and becomes B-Street, on the western
19 portion of the rezone site, the zoning boundary should follow a logical lot line for the stormwater tract
20 from east to west, ending at the rezone area’s western boundary, shown as Gage Blvd. on the proposed
21 preliminary plat map.

22 33. The proposed rezone boundaries and zoning districts for properties located east of Burmuda
23 road should be approved as submitted by the applicant and described in the Staff Report.

24 34. As shown in the application materials, the small node of Commercial / C-LB zoning in the
25 western part of the rezone-area appears to float without purpose or reason away from any intersection,
26 where commercial uses are more commonly located, especially when they are part of a subdivision
proposal with mixed zoning assignments. The Examiner finds and concludes that the Badger
Mountain Subarea Plan Land Use map for the affected area envisions a small commercial space in
the rezone-area that should be located where future east-west and north-south roadways serving the
property intersect, in the lower southwest portion of the site, appearing to be served/accessible using
the green “trail” area on the Land Use Plan map. The range of uses permitted outright in the C-LB
zone would be better served if located at an intersection and with easy access to the Badger Mountain
Subarea trail network. As proposed, the small Commercial zone location is illogical, and poorly
placed. It should be moved, to the northeast corner of the future intersection of C-Street (the east-
west roadway) and Bent Road (the extension of a north-south roadway running through the rezone
site). This move is further supported by the placement of the wide-trail/walkway that will be required
to run along the southern alignment of C-Street, meaning pedestrians or non-motorized forms of
transportation could easily access the small C-LB site.

35. With modifications and conditions described above, the requested rezone will be more

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1 consistent with the Badger Mountain Subarea Plan and zoning boundary placement guidelines in
2 existing city codes, and it will be in the public interest.

3 36. In any event, the final action of the City Council will control in this rezoning matter, over
4 potential challenges that the requested rezone somehow is a modest deviation from map lines
5 allegedly carved in stone (which they are NOT) in the City’s Comprehensive Plan provisions for the
6 rezone-property, i.e. the map found on page 19 of the BMSP. The Washington Supreme Court has
7 long maintained that: “We resolve any conflict between a city's comprehensive plan and specific
8 zoning regulation in favor of the zoning regulation.” (*Citizens for Mount Vernon v. City of Mount
9 Vernon*, 133 Wn.2d 861, 873, 947 P.2d 1208 (1997); also see *Chinn v City of Spokane*, 173 Wn. App.
10 89, 293 P.3d 401 (Div. II, 2013)(“Even if Comprehensive Plan provisions were mandatory, such that
11 they conflicted with City zoning regulations, we resolve conflicts between a city’s comprehensive
12 plan and its specific zoning regulations in favor of the zoning regulations.”).

13 37. Given the extensive public review, issue-specific SEPA analysis, and balancing of land-use
14 needs throughout the City, which all occurred as part of the City’s 10-year Comprehensive Plan
15 Update process completed in 2017, and which modified the designated land uses for the rezone-area,
16 the Examiner finds that any decision to deny the pending request would be difficult to defend in any
17 appeal. Instead, substantial evidence supports the rezone request, as modified by this
18 recommendation, and the request is seeking to implement and effectuate polices and land-use
19 designations assigned to the area in the Badger Mountain Subarea Plan portion of the City’s
20 Comprehensive Plan.

21 38. For all these reasons, and others included in the Staff Report and this Recommendation, the
22 Sienna Hills Rezone application merits approval, as modified and conditioned herein.

23 39. City staff complied with all applicable public notice requirements for the rezone application
24 and the public hearing held for the matter. (*Staff Report, Exhibits 2 and 4, copies of various public
25 notices published and mailed, and SEPA DNS*).

26 40. Because all future, project-specific development proposals are required to follow City
development regulations, including those addressing traffic impacts, impact fees, and the like, the
rezone is not likely to have any material impact on capacity for the existing local street system
surrounding the property.

Public services and utilities are adequate and readily available to serve the site.

41. As part of the review process, City staff confirmed that adequate utilities, including without
limitation water, power, and sewer, are readily available to serve the property, though most will
require extensions or modifications to serve portions of the property, the cost of which is typically
borne by the developer of a specific project, or financed using an LID, latecomer’s agreement, or
other available options. *Staff Report, pages 5-6.*

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3 ***Consistency with City Codes and Comprehensive Plan.***

4 42. As explained elsewhere in this Recommendation, the rezone site is already assigned land use
5 designations in the City’s Comprehensive Plan that are consistent with those requested through this
6 rezone. The modifications included as part of this Recommendation will make the requested rezone
7 boundaries more consistent with the Badger Mountain Subarea Plan.

8 43. Based on the record, the Examiner finds and concludes that the requested rezone is not
9 inconsistent with existing land uses located on or zoning designations assigned to surrounding
10 properties in the area.

11 44. Standing alone, the requested rezone, as modified herein, conforms to the Comprehensive
12 Plan, because the plan already identifies the property as suitable for the uses and zoning districts
13 proposed in the application materials.

14 ***General findings.***

15 45. As modified and conditioned herein, the requested rezone bears a substantial relationship to
16 the public health, safety, and general welfare. The requested rezone is appropriate in the context of
17 adjacent properties.

18 46. Any factual matters set forth in the foregoing or following sections of this Recommendation
19 are hereby adopted by the Hearing Examiner as findings of fact, and incorporated into this section as
20 such.

21 **VI. CONCLUSIONS.**

22 Based upon the record, and the Findings set forth above, the Examiner issues the following
23 Conclusions:

- 24 1. As modified and conditioned in this Recommendation, the applicant has met its burden to
25 demonstrate that the requested rezone conforms to, and in fact implements objectives of, the City’s
26 Comprehensive Plan. *Findings; Staff Report.*
- 27 2. The applicant has met its burden to demonstrate that the requested rezone bears a substantial
28 relationship to the public health, safety, or welfare.
- 29 3. The rezoned site will not be materially detrimental to uses or property in the immediate vicinity of

30 **FINDINGS OF FACT, CONCLUSIONS AND
31 RECOMMENDATION RE: SIENNA HILLS
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1 the subject property

2 4. Development regulations, including without limitation those requiring traffic analysis for specific
3 proposals, will apply to any future project built on the site.

4 5. Based on the record, the applicant demonstrated that its rezone application merits approval, if
5 modified and conditioned as provided in this Recommendation, meeting its burden of proof imposed
6 by RMC 19.60.060.

7 6. Approval of this rezone will not and does not constitute, nor does it imply any expectation of,
8 approval of any permit or subsequent reviews that may be required for development or other regulated
9 activities on the site of the subject rezone.

10 7. Any finding or other statement contained in this Recommendation that is deemed to be a
11 Conclusion is hereby adopted as such and incorporated by reference.

12 **VII. RECOMMENDATION and CONDITIONS of APPROVAL.**

13 Based upon the preceding Findings and Conclusions, the Hearing Examiner recommends that
14 the Sienna Hills rezone application (File No. Z2019-106) to rezone a 98+acre site, assigning zoning
15 districts to portions of the property using boundaries as described, modified and conditioned below,
16 should be **APPROVED**.

17 To eliminate potential confusion and misunderstandings about specific zoning districts that
18 will be assigned to the Sienna Hills area, Staff should work with the applicant to generate a revised
19 Rezone Map that illustrates the modified zoning district boundaries described herein, for review and
20 initials of the Hearing Examiner, to be submitted with this Recommendation for final consideration
21 and approval by the City Council.

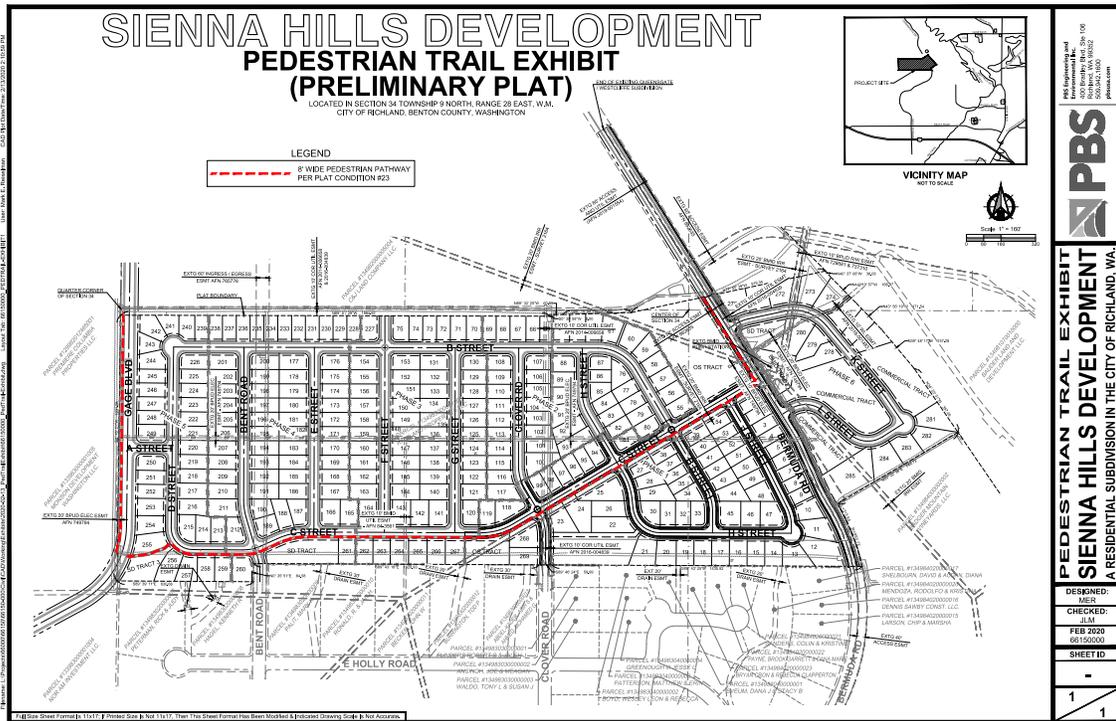
22 **CONDITIONS OF APPROVAL FOR REZONE**

23 **1. TRAIL/PEDESTRIAN PATHWAY REQUIREMENT** – Consistent with, and to effectuate
24 development of a “civic use,” i.e. a pedestrian trail alignment running through the rezone area, as
25 addressed in the Badger Mountain Subarea Plan, any future development on the Sienna Hills rezone
26 site (whether under the current proposed subdivision plan, assigned File No. S2019-101, or any
subsequent subdivision or development permit proposal regarding relevant portions of the rezone-
property addressed in this Recommendation) shall include dedication and development of a pedestrian
pathway/trail/sidewalk at least 8-feet wide, generally running along the south-side of an east/west
street alignment in the rezone area, between the property’s western boundary and Bermuda Road on
the east. Construction of a trail substantially similar to that described in Condition No. 23 of the
Examiner’s Recommendation of Approval for the Sienna Hills Preliminary Plat, assigned File No.
S2019-101, as depicted on Exhibit 25 from such file, republished below, subject to review and

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approval by the Director as part of final engineering design review, shall satisfy this Condition of Approval for the requested rezone.



Ex. 25, from Sienna Hills Preliminary Plat, File No. S2019-101

2. ZONING DISTRICT BOUNDARIES –

The official zoning map for the City of Richland and corresponding zoning classifications for the Sienna Hills Rezone site, located within Benton County Assessor Parcel No. 134983000001005, should be amended and approved as follows:

- A. LOWER PORTION OF REZONE SITE SHOULD BE RECLASSIFIED FROM AG TO R-1-10, LOW-DENSITY SINGLE FAMILY RESIDENTIAL – Using the final centerline of the proposed C-Street alignment in the Sienna Hills Preliminary Plat, shown in the image of Ex. 25 above, as reviewed and approved by the Director following final engineering design review, property to the south of such line from Bermuda Road on the east to D Street on the west, then continuing to the rezone-area’s western boundary along the northern lot-line for stormwater Tract 3, shall be reclassified from AG (Agriculture) to R-1-10 (Single Family Residential);

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B. EXCEPT FOR THE SMALL COMMERCIAL NODE, THE UPPER PORTION OF REZONE SITE SHOULD BE RECLASSIFIED FROM AG TO R-2, MEDIUM DENSITY RESIDENTIAL – Using the C-Street/northern lot line for stormwater Tract 3 boundary described above, except for the small Commercial area addressed below, property to the north of such line from Bermuda Road on the east to the rezone-area’s western boundary shall be reclassified from AG (Agriculture) to R-2 (Medium Density Residential);

C. COMMERCIAL NODE – Using final centerlines of public streets constructed on the site as the east, west, and southern boundary, and lot lines approved for any final plat addressing relevant portions of the rezone-area as the northern boundary, property located between Bent Road on the west, E Street on the east, C Street on the south, and final lot lines on the north, for an area at least 7.5 acres (noting original proposal was for 7.83 acres of Commercial land area), shall be reclassified from AG (Agriculture) to C-LB (Commercial, Limited Business);

D. AREA EAST OF BERMUDA ROAD ALIGNMENT – Using the final centerline of Bermuda Road as depicted on the Sienna Hills Preliminary Plat map shown on Ex. 25 above, the area east of Bermuda Road to the rezone area’s eastern boundary shall be reclassified from AG (Agriculture) to R-1-10 (Single Family Residential) on the northern and southern portions of such area, with C-LB (Commercial, Limited Business) in the central portion of such area, as depicted on page 4, Figure 2.1, of the Staff Report, the original rezone application map.

ISSUED this 3rd Day of March, 2020



Gary N. McLean
Hearing Examiner

Attachment: Proposed Rezone Map, to be generated by Staff and Applicant, depicting boundaries and zoning classifications addressed in this Recommendation (to be included as part of City Council packet).

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