

Staff Report

Administrative Appeal: Good Neighbor Village (a.k.a., Pierce County Village/Community First Village) Clear and Grade Permit

Application Number: 1045629

Related Application Numbers: 1033457, 1043844, 1044697

**Associated Application Numbers: 1013476, 1013477, 1013002, 1013482, 1013483, 1013560,
1026848, 1038347, 1038497, 1043024**

Tax Parcel Numbers: 0319293002, 0319293004, 0319294135 and 0319294046

Examiner's Hearing: January 22, 2025, at 9:00 a.m.

This hearing is being held remotely via Zoom and at the Pierce County Public Services Building, South Entrance, Public Meeting Room 2401 South 35th Street, Tacoma, Washington 98409. To participate in the virtual hearing, visit www.Zoom.com and click "Join a Meeting", or call 253-215-8782, then enter the Meeting ID: 969 5220 0319, and Passcode: 214008, or follow this link: <https://piercecountywa.zoom.us/j/96952200319?pwd=FuApkaDkyEvVPo8Qu0cVLPQJ47ITLt.1>. For additional questions regarding the virtual hearing process contact Sandy Huynh at (253) 553-7856, or at sandy.huynh@piercecountywa.gov.

Request: Appeal of the October 30, 2024, Administrative Decision, by a Pierce County Administrative Official, issuing the Clear and Grade Permit, No. 1033457, and Driveway Approach Permit, No. 1044697, for the Good Neighbor Village project. The Appellant requests withdrawal of permit approvals until such time as the condition no. 29 of the PDD/Environmental Appeal decision dated June 3, 2024, and condition no. 2 of the PDD Reconsideration decision dated September 12, 2024, regarding the tree conservation tract, all requirements of the Pierce County Code for permit issuance have been met, a U.S. Fish and Wildlife Service permit has been obtained, and the requirements in the violation notice, dated October 28, 2024, have been completed.

Project Location: The site is in the Residential Resource (RR) zone classification of the Parkland-Spanaway-Midland Communities Plan area, located at 1609 176th Street South and 17320 Spanaway Loop Road South, Spanaway, WA, within the South ½ of Section 29, T19N, R3E, W.M., in Council District #3.

Staff Recommendation: County staff has reviewed the Appeal and finds that the appeal should be denied. Staff finds that the appellants have not presented evidence to show that the items mentioned in the administrative decision were erroneous.

State Environmental Policy Act (SEPA): The Administrative Appeal is exempt from environmental review under SEPA.

County Contact: Steve Hupper, CE2, (253) 798-2473 steve.hupper@piercecountywa.gov

Pierce County Online Permit Information:

<https://pals.piercecountywa.gov/palsonline/#/permitSearch/permit/departmentsStatus?applPermitId=1045629>



Application Data

Appeal Application Date: November 13, 2024

Staff Report Distribution Date: January 8, 2025

Appellant: Spanaway Concerned Citizens
Attn: Angela Schick
P.O. Box 562
Spanaway, WA 98387
spanawayconcernedcitizens@gmail.com

Notice

Notice of this request was advertised in accordance with Chapter 1.22 of the Pierce County Code. Notice of the date and time of hearing is published on January 8, 2025, in the official County newspaper (the Tacoma News Tribune).

History

- A. A request for a Planned Development District (PDD) / Conditional Use Permit for development of a shared housing village was submitted on May 23, 2023. The shared housing village proposal consisted of a mix of sleeping and dwelling units along with support and administration buildings for the residents and Tacoma Rescue Mission (TRM) staff.

The shared housing village included the following elements:

- 189 - park model style recreational vehicles (399 sq. ft. max. size)
- 96 - micro sleeping units (300 sq. ft. max. size)
- 3 - single-family dwellings for volunteers (800 sq. ft. max. size)
- 1 - existing single-family dwelling for volunteers or staff
- 10 bath/laundry buildings
- 2 communal kitchens
- Community support buildings, i.e., living room, art, aquaponics, market, village commons, and agriculture buildings
- Administrative building
- 3 maintenance buildings
- Community farm
- Community garden
- Dog park
- Civic building

- Security building
- Associated access drives, 331 parking spaces, and pedestrian walkways

The density of the shared housing village will be 3 dwelling units per net developable acre, i.e., 217 dwelling units. There are 72.71 net developable acres. The project is to be developed in four phases.

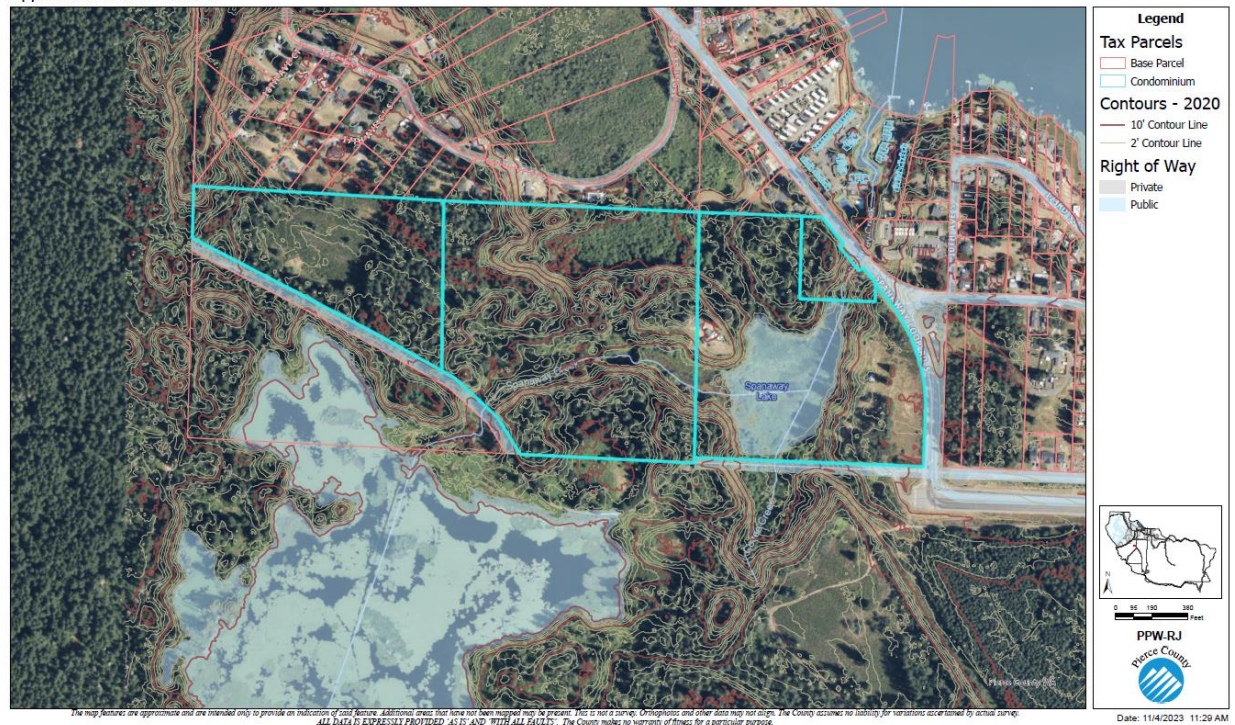
TRM will provide onsite wrap-around services for the Village residences. Since the Village residents will pay rent, TRM will provide employment opportunities for the residents such as onsite micro enterprises and community gardening/low-scale agriculture. The civic building and future agriculture building will also provide employment opportunities for the residences while also providing a means of income generation for the TRM and connection with the community.

The project is located on a four-parcel, 86.32-acre site. The site will be served by sanitary sewers and public water and will be accessed from Spanaway Loop Road South.

- B. A Mitigated Determination of Nonsignificance (MDNS) was issued on November 16, 2023, with a comment deadline of November 30, 2023, and an appeal deadline of December 14, 2023. The SEPA determination was appealed on December 14, 2023.
- C. A public hearing on the PDD/Conditional Use Permit and Environmental Appeal was held from April 29, 2024, to May 9, 2024.
- D. The Deputy Pierce County Hearing Examiner issued a decision on the PDD/Conditional Use Permit and Environmental Appeal on June 3, 2024. The appeals of the environmental determination were denied, and the PDD/Conditional Use Permit request was approved.
- E. There were two Requests for Reconsideration filed on June 12 and 14, 2024.
- F. A separate Deputy Pierce County Hearing Examiner issued a decision on both requests for reconsideration in a September 12, 2024, decision. The requests for reconsideration from Spanaway Concerned Citizens was denied. Some of the conditions were modified at the request of the Tacoma Rescue Mission.
- G. An appeal of the final PDD and Environmental Appeal decision was filed in Thurston County Superior Court. An initial court date will be in January 2025.
- H. Fill and grade and wetland/steam/flood complaints were initially filed on October 2, 2024, regarding removal and replacement of Coffee Creek and Spanaway Creek culverts in Wasmund Road South public road right-of-way, vegetation removal along Wasmund Road, replacement of paved Wasmund Road surface with gravel, and installation of a truck turnaround. A subsequent complaint for shoreline code issues was filed on October 3, 2024.
- I. A clear and grade permit and driveway approach permit were issued by Planning and Public Works on October 30, 2024.
- J. A Class IV Forest Practices Permit was approved on October 31, 2024.

2023 Aerial Photo

Pierce County Village, Planned Development District/Conditional Use Permit
Appl. No. 1013476/1013477



BURDEN OF PROOF:

PCC 1.22.090 G. Burden of Proof.

1. A decision of the Administrative Official shall be entitled to substantial weight. Parties appealing a decision of the Administrative Official shall have the burden of presenting the evidence necessary to prove to the Hearing Examiner that the Administrative Official's decision was clearly erroneous.

RIGHT TO APPEAL:

18D.10.080 Appeal Procedures.

The procedures governing an appeal of a threshold determination, DEIS, FEIS, or SEIS are set forth in Chapter 1.22, Pierce County Code.

PCC 1.22.090 Appeals of Administrative Decisions to the Examiner.

- A. **Right to Appeal.** Any person aggrieved, or any officer, department, board, agency, district or bureau of the County or State affected by any decision of an administrative official, as set forth in Section 1.22.080 B., may file a notice of appeal.
- B. **Time Limits.**
 1. Land Use Matters.
 - a. A notice of appeal, together with the appropriate appeal fee, shall be filed at the Planning and Land Services Department within 14 days of the date of an Administrative Official's decision. In the case of an appeal of a Determination of Nonsignificance requiring a comment period which is issued concurrently with a final decision, the appeal period shall be extended to 21 days.

- b. The Administrative Official shall prepare a written report with findings of fact and conclusions of law regarding the administrative decision.
 - c. Staff reports shall be filed with the Examiner, mailed to the applicant and appellant, and made available to the public at least 10 working days prior to the public hearing scheduled to review the administrative appeal. Copies shall be provided to the public upon request at the cost of reproduction.
 - d. The public hearing, if applicable, shall be scheduled no later than 70 days from the date a notice of appeal is filed. The Examiner shall render a final decision regarding the appeal no later than 90 days from the date a notice of appeal is filed.
 - e. If the Examiner has been requested to render a decision on an appeal in writing without conducting a public hearing, as set forth in Section 1.22.090 F.2., then the written briefs shall be submitted to the Examiner within 30 days of the Department's receipt of a filed notice of appeal.
2. Non Land Use Matters. Refer to the applicable code.
- C. **Content of Notice of Appeal.** A Notice of Appeal on an administrative decision shall, at a minimum, contain the following information:
- 1. Name and mailing address of the appellant and his/her agent or representative, if any;
 - 2. A copy of any decision, license, order, or environmental determination which is being appealed;
 - 3. A concise statement of the factual and legal basis for the appeal citing specifically the alleged errors in the administrative official's decision; and
 - 4. The specific relief sought.

ALLEGED ERRORS:

The Appellant has raised issues that will be addressed below.

Issue No. 1:

Appellant Allegation: Per the Report and Decision of the Pierce County Hearing Examiner, Alexander A. Sidles, dated June 3, 2024, condition #29, page 48, "The largest of the significant trees on the site shall be preserved within a conservation tract pursuant to PCC 1SE.40.040." This condition was upheld within the conclusions by Pierce County Deputy Hearing Examiner, Stephen R. Shelton on page 13, number 4, of the Decisions dated September 12, 2024."

PCC 18J.10.080 (A.2) states "Title Notification of approved Tree Conservation and Landscape Plans shall be recorded with the Pierce County auditor prior to issuance of any site development or building permit approval.

As of October 30, 2024, the date of approval for said permits, no Title Notification of Approved Tree Conservation and Landscape Plans had been recorded on parcel numbers 032919-3002, -3004, -4046, or 4135.

Thus, Permit numbers 1033457 and 1044697 for the Good Neighbor Village were granted prior to fulfilling Pierce County Code requirements, deeming these permits invalid.

Staff Response:

The Appellants are applying inapplicable requirements. Neither the Hearing Examiner decisions nor the Pierce County Code requires recording of a tree conservation tract prior to issuance of a clear and grade permit. The requirements for recording title notification that the appellants have lifted out of PCC 18J.10.080 only apply to applications for design review or Site Plan Review per 18J.10.055(A). The appellants have not demonstrated how the title notification requirements of 18J.10.080 apply to the issued clear and grade or driveway approach permits.

However, there are protections for tree conservation included in the Hearing Examiner's findings and conditions. Hearing Examiner Finding Nos. 56, 57 and 58 of the June 2024 PDD decision discuss significant trees and habitats regulated under PCC 18E.40.040. Staff reads Finding No. 64 of the June 2024 decision to mean that only Oregon white oak trees regulated under PCC 18E.40.040.C.1. were intended to be placed in a conservation tract per PCC 18E.40.040.C.1.b.(4). The tract required per Cond. No 2 of the September 2024 reconsideration decision will be in place prior to issuance of the commercial site development permit related to infrastructure development. Since the PDD request did not involve platting, during which tracts could be created, staff may consider "alternative protective mechanisms" instead. The tract or alternative mechanism will be in place prior to issuance of the commercial site development permit related to infrastructure development. Other trees required to remain per the PDD decision are not required to be placed in tracts.

PPW did not require the applicant to record title notification prior to issuance of the clear and grade permit because the title notification in PCC 18J.10.080.A.2. is typically addressed through a note placed on a recorded plat. In the case of commercial, industrial, and multi-family developments where there is no platting, PPW has not historically required a title notification to be recorded. But this does not mean that trees are without protection. PCC 18J.15.130.C.4.b.2. requires that with all non-plat developments compliance with the approved landscape plan and maintenance of the trees is required in perpetuity by all subsequent owners. To ensure adequate protection, a title notification will be required to be recorded prior to issuance of the commercial site development permit related to infrastructure development.

Issue No. 2:

Appellant Allegation: Pierce County Code (PCC) 18.140.030 (C) No Conflicting Licenses or Permits Shall Be Issued. Within the code it states that no license, permit, or approval for uses, buildings, or activity where the same would be in conflict with any provision of the Pierce County Development Regulations shall be issued. The code states conflicting approvals shall be null and void.

On October 30, 2024, Pierce County Planning and Public Works (PCPPW) granted the applicant permit numbers 1033457 and 1044697. Just two days prior PCPPW issued a Violation Notice, case number 84075 [and 84067], to the applicant for work done without a permit. This Violation Notice specifically cites four violations that are in conflict with a number of provisions within the Pierce County Development Regulations as identified by PCPPW.

Thus, permit numbers 1033457 and 1044697 on parcel numbers 0319293002, 0319293004, 0319294046, 0319294135 should not have been granted until such time that all Notice of Violation Confirmed Violations/Unpermitted Work were corrected as outlined in the Violation Notice dated

October 28, 2024.

Staff Response: Members of the Pierce County Public Works (PPW) Review team, PPW Management, and PPW Executive representatives met onsite with the Applicant, Contractor, Engineer, Environmental Consultant and a representative from Washington Department of Fish and Wildlife (WDFW) to inspect the work completed on October 16, 2024. Pierce County determined that the work done without a permit was related to maintenance of the existing culverts and replacement of the existing nonfunctioning overflow culverts while keeping the existing primary culvert operational.

A portion of the clearing and temporary turn-around is within the clearing and grading limits of the now issued Early Clear and Grade Permit 1033457. The cleared area and culvert maintenance that occurred outside of the approved clearing and grading limits will be required to be addressed under a separate site development permit. Therefore, there is no conflict between the violation notices and the issued clear and grade permit or driveway approach permits. A portion of the unpermitted clearing and grading work is now permitted under permit no. 1033457 and the remainder of the unpermitted work will be addressed under a separate site development permit.

Issue No. 3:

Appellant Allegation: On the approved set of plans for permit number 1033457, Clear and Grade for the Good Neighbor Village, pages C2.02, C2.01, C2.04, C2.05, Note Number 4 states: "Eagles nest is present on site but no evidence of use, contractor shall not perform any clearing or excavation within 300 feet of nest tree during the months, Jan., through Aug., or when eagle is present without authorization from project biologist."

Under the federal Bald and Golden Eagle Protection Act, it declares that it is the United States Fish and Wildlife Service (USFWS) who has the primary responsibility for managing eagles and their nests, and who is responsible for providing required permits per the USFWS guidelines.

Thus, it is the responsibility of the USFWS, to determine if and when work can be performed within 300 feet of the eagle nest tree. And, until such time the applicant can prove that they have applied and/or received an appropriate permit(s) from the USFWS, Spanaway Concerned Citizens is requesting the aforementioned permits be suspended.

Staff Response: It is the applicant's responsibility to contact the United States Fish & Wildlife Service (USFWS) for any required Eagle Permits. The Washington State Department of Fish and Wildlife (WDFW) no longer manages bald eagles or bald eagle nests or prepares bald eagle management plans, since bald eagles were completely delisted from the federal Endangered Species Act (ESA) in 2007 and in 2017 were also delisted from the Washington State's endangered list.

Bald eagles are not listed as endangered, threatened, sensitive, candidate, or priority species by Washington State, nor are they listed as endangered or threatened species by the ESA. Even though bald eagles were delisted from the Endangered Species Act in August 2007, because their populations recovered sufficiently, bald eagles are still protected under the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. Both laws prohibit killing, selling, or otherwise harming eagles, their nests or eggs.

Issue No. 4:

Appellant Allegation: On October 28, 2024, Pierce County Planning and Public Works notified the applicant of said permits a Violation Notice (Case number 84075) for work they had performed without permits. This Violation Notice addressed parcel numbers 0319293002, 0319293004, 0319294046, 0319294135. Within the Violation Notice it states: "County Code requires that activities such as those noted are not to take place within 315 feet of wetland indicators or 165 feet of fish and wildlife habitat indicators without the appropriate application and permits."

Within the "Description of Confirmed Violations/Unpermitted Work" section of the forementioned Violation Notice Pierce County Planning and Public Works identifies a list of confirmed activities that were initiated and performed on behalf of the applicant Tacoma Rescue Mission. Most of these activities listed appear to be within 315 feet of wetland indicators or 165 feet of fish and wildlife habitat, which make these violations in conflict with provisions of the Pierce County Developing Regulations.

Pierce County Code 18.140.030 states that "No license, permit, or approval for uses, buildings or activity where the same would be in conflict with any provision of the Pierce County Development Regulations shall be issued."

Given that this stop work order has been served listing the same four properties (0319293002, 0319293004, 0319294046, 0319294135) as the same 4 properties included in the permits numbered 1033457 and 1044697, and being that the listed violations listed on the Violation Notice is clearly in conflict with Pierce County Development Regulations permit numbers 1033457 and ~~1044597~~ [1044697], should not have been issued and should now be suspended.

Staff Response:

On October 16, 2024, a meeting with Washington Department of Fish and Wildlife (WDFW) staff was held to review the site. Violations were confirmed. The property owner was instructed to implement temporary erosion control measures immediately, even before receiving a formal mitigation notice.

On October 28, 2024, Pierce County Planning and Public Works notified the applicant of said permits in a Notice of Potential Code Violations (Service Request case number 84068) and in a Violation Notice (Service Request case number 84075) for work they had performed without permits. Steps needed to remedy the unpermitted work have been outlined by WDFW in a notice of correction, dated November 16, 2024, and must be completed by December 31, 2024.

Code Enforcement's primary objective is to achieve voluntary compliance when violations are identified. Tacoma Rescue Mission, the applicant, is actively participating in corrective actions and cooperating with our enforcement team. In this instance, it was determined that the unpermitted work within the County ROW and that portion on the Good Neighbor Village property is not in conflict with any approvals or conditions associated with PDD/CUP and site development permits which have been issued. As such, work was allowed to proceed while the violation is brought into compliance. There was no stop work order issued since no permits related to the culvert replacements have been applied for or issued by PPW. The property owner was informed in the October 28, 2024, violation notice to stop any additional unpermitted work.

Site development applications were accepted on December 19, 2024, for the haul road turnaround and the culvert replacement at Spanaway Creek, per Appl. Nos. 1046831 and 1046832. The required application for wetland approval for the two creek culverts has not yet been submitted, nor the site development application for the Coffee Creek culvert replacement.

Following the Hearing Examiner's decision, Pierce County is obligated to process permit applications in accordance with legal and procedural standards. On October 30, 2024, two site development permits were issued for clearing (#1033457) and driveway approach (#1044697). These permits meet the clearing limits and tree preservation requirements set by the Hearing Examiner's approval. Trees designated for preservation have been marked onsite and clearing limits have been flagged. County inspectors are conducting daily site visits to ensure compliance with tree retention and critical area protection.

Issue No. 5:

Appellant Allegation: The Tacoma Rescue Mission began grading work, as well as culvert changes on their site, a public access road and into federal lands owned by Joint Base Lewis-McChord, without seeking a permit to begin work. Pierce County Code requires permits for all work related to culvert changes and grading work that changes elevations, specifically around wetlands. Pierce County employees were notified of the illegal work done by Tacoma Rescue Mission and issued a Violation Notice 84076, outlining the observed violations.

The work disturbed identified wetlands as well as endangered species habitats. The Clean Water Act Section 401 requires that prior to working in a Federally regulated wetlands there must be a submittal request for a Section 401 Water Quality Certification. The Tacoma Rescue Mission disturbed wetlands on Federal property, without permission, and should be required to submit the 401 Water Quality Certification. Additionally, non-Federally regulated wetlands must submit a request for an administrative order to comply with the State Water Pollution Act per RCW 90.48.

It appears the Tacoma Rescue Mission may have altered fish passage water which are governed by WAC 222-24-041.

Per County Code 18.140.030 (c), Pierce County Planning and Public Works should suspend permit numbers 1033457 and 1044697 until such time the applicant is in compliance with the forementioned regulations.

Staff Response: Members of the Pierce County Public Works (PPW) Review team, PPW Management, and PPW Executive representatives met onsite with the Applicant, Contractor, Engineer, Environmental Consultant and a representative from Washington Department of Fish and Wildlife (WDFW) to inspect the work completed on October 16, 2024. Pierce County determined that the work completed was related to maintenance of the existing culverts and replacement of the existing nonfunctioning overflow culverts while keeping the existing primary culvert operational. A site development permit is required for the work completed in and outside of the Right-Of-Way (ROW). This work was determined to be separate from the recently approved Early Clear and Grade Permit No. 1033457 & Temporary Driveway Approach Permit No. 1044697. Therefore, suspension of the recently issued permits was not warranted.

PPW Management directed the applicant to immediately stabilize any disturbed soils with soil stabilization best management practices. Pierce County Engineering Inspector confirmed

stabilization was installed as of December 5, 2024, and no further non-permitted disturbance has occurred. In addition, PPW Management directed the applicant to apply for a separate site development permit to include Engineering and Environmental mitigation plans. These plans must clearly identify the unpermitted work and what is proposed to mitigate and/or restore those areas per PPW & WDFW Standards. PPW has not received the required submittal as of December 4, 2024.

STAFF CONCLUSIONS:

The appellant has not submitted any evidence to demonstrate that the decision to approve Early Clear and Grade Permit No. 1033457 and Temporary Driveway Approach Permit No. 1044697 was done erroneously. With regard to Issue No. 1, the oak trees regulated per Title 18E will be placed in tracts and significant trees regulated per Title will have a title notice recorded prior to issuance of the Commercial Site Development Permit No. 1043024. With regard to Issue Nos. 2, 4 and 5, those violations are either addressed within the scope of the issued Early Clear and Grade Permit or will be dealt with and resolved on a separate permit track. With regard to Issue No. 3, it is the applicant's responsibility, not PPW's, to ensure compliance with federal laws regarding bald eagles. Therefore, staff recommends the Hearing Examiner deny the appeal and uphold Pierce County Planning Department's issuance of Early Clear and Grade Permit No. 1033457 and Temporary Driveway Approach Permit No. 1044697.

List of Exhibits Provided to Pierce County Hearing Examiner

1. STAFF REPORT
2. APPLICATION:
 - A. Appeal of a Determination of a Responsible County Official, submitted by Spanaway Concerned Citizens, dated November 13, 2024
 - B. Appeal Application #1045629, dated November 14, 2024
3. PLANNING STAFF SUPPORTING DOCUMENTS:
 - A. PDD/Environmental Appeal Decision of Pierce County Hearing Examiner, dated June 3, 2024
 - B. PDD Reconsideration Decision of Pierce County Hearing Examiner, dated September 12, 2024
 - C. PALS+ Appl. No. 1033457, Approved Permit and Approval Comments
 - D. Approved Clear and Grade Plans, Appl. No. 1033457, dated October 29, 2024
 - E. Approved Construction Stormwater Pollution Prevention Plan, dated October 29, 2024
 - F. PALS+ Appl. No. 1044697, Approved Permit and Approval Comments
 - G. Clear and Grade and Driveway Approach approval letter, Appl. No. 1044697, dated October 30, 2024
 - H. Class IV Forest Practices Permit Approval, Appl. No. 1043844, dated October 31, 2024
 - I. Submitted Plans for Haul Turnaround Loop, Appl. No. 1046831
 - J. Submitted Plans for Spanaway Creek Culvert Replacement, Appl. No. 1046832
 - K. Service Request No. 84067 – Wetland/Stream/Flood
 - L. Service Request No. 84068 – Fill and Grade
 - M. Service Request No. 84075 – Wetland/Stream/Flood
 - N. Service Request No. 84076 – Shoreline
 - O. Notice of Potential Code Violations (Service Request case number 84068), dated October 28, 2024
 - P. Violation Notice (Service Request case number 84075/84067), dated October 28, 2024
 - Q. Aerial photo of areas related to the Code Enforcement Complaints
 - R. SR84076 - Spanaway Creek Crossing - 10.04.24 Site Visit Photos
 - S. SR84076 - Coffee Creek Crossing - 10.04.24 Site Visit Photos
 - T. SR84076 - Western Turn-Around Drive - 10.04.24 Site Visit Photos
 - U. WDFW Notice of Correction, dated November 16, 2024
4. NOTICE AND ROUTING DOCUMENTS
 - A. Scheduling letter dated November 26, 2024, for the Examiner's Hearing on January 22, 2025
 - B. Agenda, and legal notice for the January 22, 2025, Examiner's Hearing

Please note: A complete set of exhibits may be found at the following link:

<https://pals.piercecountywa.gov/palsonline/#/permitSearch/permit/documents?applPermitId=1045629>