BEFORE THE LAND USE HEARING EXAMINER
FOR THE CITY OF BATTLE GROUND, WASHINGTON

Regarding an application by Votum Holdings CGC, LLC for approval of a preliminary plat to divide 39-acres into 117 lots in the R3 zone west of NE 152nd Avenue and south of NE 181st Street in the City of Battle Ground	))))	**FINAL ORDER** **SUB: 02-15** **(Cedars Village)**

A. SUMMARY

1. The applicant, Votum Holdings CGC, LLC, requests approval to divide the 39-acre parcel into 117 residential lots and tracts for parks/open space, utilities, and private roads. The development site is located south of the Cedars on Salmon Creek Golf Course clubhouse, west of NE 152nd Avenue and south of NE 181st Street. The site includes a small part of the southern portion of the Cedars on Salmon Creek Golf Course and some adjacent properties. The legal description of the property is Tax Assessor Parcels: 195019-000, 195101-000 & portion of 194329-000 (the "site"). The applicant proposed to develop the site in three phases.

a. The site and abutting properties to the north and northwest are zoned R3 (Residential, 3 units per acre maximum density). Properties to the east, south, and southwest are located in unincorporated Clark County and zoned R-5 (Rural, 5-acre minimum lot size). An existing residence and associated accessory structures are located on the southern portion of the site. The northern portion of the site is developed as part of the existing Cedars on Salmon Creek Golf Course (driving range and holes 1 and 2).

b. All proposed lots comply with the dimensional requirements of the R3 zone, as modified by the density transfer ordinance.

c. A new single-family detached dwelling will be built on each of the proposed lots. Clark Public Utilities will supply domestic water service. The City of Battle Ground will provide sanitary sewer service. The applicant will collect storm water from impervious areas on the site and convey it to storm water facilities throughout the site for treatment, detention and discharge to the wetlands on the site at less then predevelopment rates.

d. The applicant will extend a new public street, proposed SE 19th Avenue, into the site from NE 181st Street, which will provide the sole access to the site. SE 19th Avenue will bisect the existing golf course clubhouse parking lot before entering the site. The applicant will extend additional streets from SE 19th Avenue, creating loop and cul-de-sac streets within the site.

2. The City issued a Mitigated Determination of Nonsignificance ("MDNS") for the subdivision pursuant to the State Environmental Policy Act ("SEPA"). The SEPA determination was not appealed and is now final.

3. City of Battle Ground Hearing Examiner Joe Turner (the "examiner") conducted a public hearing to receive testimony and evidence about the application. City staff recommended the examiner approve the preliminary plat subject to conditions. See the Staff Report to the Hearing Examiner dated June 1, 2016 (the "Staff Report") as modified by Exhibit 47. The applicant accepted those findings and conditions, as modified, without exceptions. Twelve persons testified orally in opposition or with questions and concerns about the application. Other persons testified in writing. Disputed issues or concerns in the case include the following:

a. Whether traffic generated by the proposed development will exceed the capacity of area streets or otherwise create a hazard;

b. Whether the lack of secondary access to this area is grounds for denial of the application;

c. Whether the applicant can be required to provide off-site road improvements;

d. Whether construction of proposed SE 19th Avenue will violate the conditions of approval for the existing golf course and clubhouse;

e. Whether the proposed road modifications comply with applicable approval criteria;

f. Whether the proposed on-site section of the Chelatchie Rails With Trails trail conflicts with prior approvals;

g. Whether the applicant can be required to install fencing between the proposed lots and the abutting railroad right of way;

h. Whether the development makes adequate provisions for protection of wetland and riparian areas;

i. Whether the development will impact historic or archaeological resources; and

j. Whether adequate sanitary sewer capacity is available, or can be provided, to serve the proposed development.

4. Based on the findings provided or incorporated herein, the examiner approves the preliminary plat subject to the conditions at the end of this final order.

B. HEARING AND RECORD HIGHLIGHTS

1. The examiner received testimony at a public hearing about this application on June 8, 2016. All exhibits and records of testimony are filed at the City of Battle Ground.

At the beginning of the hearing, the examiner described how the hearing would be conducted and how interested persons could participate. The examiner disclaimed any *ex parte* contacts, bias or conflicts of interest. The following is a summary by the examiner of selected testimony and evidence offered at the public hearing.

2. City planner Sam Crummett summarized the Staff Report and his June 8, 2016 memorandum amending the conditions of approval (Exhibit 47).

a. The applicant proposed to develop the site with 117 lots or roughly three dwellings per acre, with an average lot size of 8,000 square feet. The proposed development will eliminate the driving range and existing holes 1 and 2 of the Cedars on Salmon Creek Golf Course.

b. The applicant no longer proposes to provide an emergency access to SE 152nd Avenue at the south end of the site. The applicant will be required to dedicate right-of-way between the SE 17th Court cul-de-sac and the site boundary to allow the opportunity for future pedestrian and/or vehicle access in this area.

c. The applicant proposed to develop the site in three phases. Phase 1 can be served by the City's existing sanitary sewer system. Phases 2 and 3will require construction of a new sanitary sewer pump station and force main.

d. The applicant will construct a portion of the planned Chelatchie Rails With Trails ("CRWT") trail through the site as a 12-foot sidewalk abutting proposed SE 43rd Way and SE 19th Avenue. The applicant will provide connections between the on-site and offsite sections of the CRWT via Tracts 'G' and 'A.'

e. Clark County Fire and Rescue reviewed the proposed development and did not raise any concerns or objections regarding the lack of secondary access to the area. The Fire District prefers a secondary access, but did not require one in this case. This area was served by Clark County Fire and Rescue until January 1, 2016, when Clark County Fire District #3 took over the contract for the City. Mr. Crummett spoke with Fire District #3 the day before the hearing and they declined to review the application, stating there is no reason to duplicate CCF&R's review.

f. The original development proposal retained the existing residence on the site. After the application was placed "on hold," the applicant modified the design to eliminate the existing home. The number of lots proposed did not change. The applicant's archaeologist reviewed the existing home and determined it is not historically significant.

g. Nothing in the Code requires a fence between the proposed lots and the railroad.

h. The applicant will be required to install permanent markings and signs along the outer edge of the wetland and riparian buffers on the site, including the stream abutting the southwest boundary of the site.

3. City associate civil engineer Ryan Jeynes testified that the golf course clubhouse will take access from proposed SE 19th Avenue. The conditions of approval require the applicant dedicate fifty feet of right-of-way at proposed Tract G to allow the opportunity for some type of secondary access to the site in the future

4. Attorney Randy Printz appeared on behalf of the applicant and summarized the proposed development.

a. He noted that the site is bounded by a stream and steep sloped areas on the southwest and the Chelatchie Prairie Railroad and a wetland on the east.

b. The City has sufficient sanitary sewer capacity to serve approximately 41 lots on this site. The remaining lots cannot be platted until additional sanitary sewer improvements have been funded. The planned sewer improvements will be extended through the existing golf course northwest of the site. Sewer lines will primarily follow the existing golf cart paths and some fairways. Sewer capacity is available on a "first come-first served" basis. The City will not approve any phase of this development without adequate sewer capacity.

c. The applicant will connect to the existing water main in NE 152nd Avenue east of the site. The applicant will bore under the railroad to extend pipes to connect to the existing main.

d. Based on a letter from the School District, students living on this site will be bussed to school.

e. The applicant designed the proposed development to avoid the majority of wetlands on the site. The development will fill 0.294 acres of wetland for a road crossing in a highly degraded wetland area that has been previously impacted by the existing golf course. The applicant will mitigate the wetland impacts by purchasing wetland credits within the Remy wetland bank. The applicant prepared a supplemental wetland report to address changes in the Department of Ecology ("DOE") wetland typing regulations. The applicant increased the size of the proposed wetland buffers to resolve conflicts between the new DOE regulations and City buffer requirements.

f. The applicant will provide a 50-foot buffer between the development and the tributary stream on the west side of the site. The 250-foot riparian buffer associated with Salmon Creek does not extend onto the site and there are no mapped locally important habitat areas on the site. The applicant will install markers to identify the wetland and riparian buffers and signs encouraging people to leave the areas in their natural state.

g. The applicant's archaeological analysis discovered an approximately 30-by 30- square foot area of debitage on the site. No development is proposed in or near this identified archaeological area, which is located within the large wetland on the site.

h. The applicant's transportation analysis noted that the intersections of Eaton Boulevard & SR 503 and Eaton Boulevard & SE 20th Avenue will operate at Level Of Service ("LOS") E with traffic from the proposed development. The applicant will contribute a proportionate share towards the cost of improvements at these intersections. The intersections of NE 181st Street & NE 152nd Avenue and NE 152nd Avenue & NE 159th Street will operate at LOS A. Traffic volumes on NE 152nd Avenue will be well below the capacity of this street. The applicant conducted the traffic counts used in the study during the a.m. and p.m. peak hours on three weekdays. The analysis included vehicle trips generated by the golf course. City staff reviewed the traffic study and determined that it meets City standards.

i. There are no stop signs at the intersection of NE 152nd Avenue and NE 181st Street under existing conditions. The applicant is required to install a stop sign and stop bar on northbound NE 152nd Avenue at NE 181st Street, which should improve safety at this intersection. The City can require additional stop controls if it deems them warranted based on actual traffic conditions. Buses stopped at the railroad crossing on 181st Street will be obvious to approaching vehicles. Drivers traveling northbound on 152nd Avenue will be required to stop at 181st Street and can wait for buses to continue across the railroad before proceeding.

j. The Code requires applicants to construct frontage improvements on streets abutting the site. This site does not abut NE 152nd Avenue; it is separated by the railroad right-of-way. Therefore the applicant cannot be required to construct frontage improvements on this section of road.

k. The conditions on NE 152nd Avenue are similar to many other rural roads in the area. The 20-foot paved width is adequate to accommodate two-way traffic and meets the County's minimum standard for road width. In addition, it is not uncommon to have older driveways on rural roads that do not meet sight distance requirements. The City and/or County can reduce the posted speed limit on NE 152nd Avenue, install signage, pavement markings, "road buttons," and other improvements to enhance safety at existing driveways. The roadway will continue to operate at LOS A. Therefore the City cannot require additional improvements as a condition of this application.

l. Clark County Fire and Rescue reviewed the proposed development and determined that the International Fire Code (the "IFC") does not require a secondary access to the site. Exhibit 49. The IFC applies to all Fire Districts in Clark County. Fire District #3 had an opportunity to comment on this application and chose not to. Some jurisdictions have a standard limiting the number of lots that can be served by a single access. Clark County requires a secondary access for more than 100 lots. However the City of Battle Ground does not have such a standard and does not require a secondary access. The City has a secondary access planned for this area, extending streets within the Cedars East development to connect with NE 167th Avenue.

m. The applicant requested approval of two road modifications: to allow cul-de-sac streets and to reduce the intersection spacing on NE 181st Street.

(A) Cul-de-sac streets are necessary due to natural features and existing development. The site is bounded by wetlands and the Chelatchie Prairie railroad on the east and the golf course and stream to the west. The applicant reviewed the possibility of providing additional access to NE 152nd Avenue via Tract G. However this access would utilize a private road, which the applicant has no right to use. In addition, the applicant cannot obtain approval for a second railroad crossing. The County and federal agencies would only approve a railroad crossing in this area if the applicant closed the existing crossing at NE 181st Street. Although Clark County owns the railroad, the federal Utilities and Trade Commission regulates railroad crossings and severely limits new crossings.

(B) A modification to the intersection spacing requirements on NE 181st Street is necessary due to the location of the existing golf course clubhouse. The applicant will shift the 19th Avenue intersection to the west, closer to the clubhouse, which will increase the intersection spacing to approximately 214 feet. The Code requires a minimum 250 feet of intersection spacing on this street. Adequate sight distance is available at the proposed intersection and vehicle queues will not obstruct the intersection, given the low volumes of traffic on this street.

n. The City originally planned to locate the CRWT along the east boundary of the site. However that alignment would result in significant wetland impacts and potential conflicts between pedestrian and train traffic. Therefore the applicant agreed to construct a portion of the trail within the site, replacing the standard six-foot wide sidewalk with a 12-foot wide sidewalk on the east side of certain roads within the site.

o. Modifications to the golf course parking lot will require additional City review. Construction of proposed SE 19th Avenue will reduce the existing parking area by the width of the street. He agreed to a condition of approval requiring the applicant demonstrate that construction of SE 19th Avenue will not cause the golf course to fall out of compliance with prior land use approvals regarding the minimum number of parking spaces.

5. Bill Labath opined that the proposed development will double the volume of traffic on NE 152nd Avenue. He objected to the proposed road modification allowing cul-de-sac streets on the site.

6. Kevin Murray questioned why the applicant is not required to construct sidewalks and other frontage improvements on the section of NE 152nd Avenue adjacent to the site. NE 152nd Avenue is very narrow with no shoulders and unsafe for pedestrian travel. The golf course generates significant higher speed traffic and on this road on weekends and when tournaments, weddings, and other events are being held, especially in the summer. Many of these events include alcohol, which increases the hazard posed by this traffic.

a. NE 152nd Avenue provides the only access to this area, serving 250 to 300 homes. This many homes served by a single access is hazardous. An accident anywhere north of the 152nd Avenue/159th Street intersection will block all access to this area. A secondary access to NE 152nd Avenue from the site would not resolve this hazard. Clark County and the Fire District both state that they were unaware of any similar situations, with this many homes served by a single access. The US Forest Service requires a minimum two access points to adequate emergency access and egress. The secondary access noted by Mr. Printz is not expected to occur for 20 years. Trees frequently fall over the road, blocking all access to the area. A single car accident can also block the road. There is a large natural gas main to the north, which could cause significant damage if it ruptured. A railroad derailment could also block the road. A wildland fire in this area could also create a hazard.

b. Clark County Fire and Rescue is no longer the fire protection service provider for this area. Clark County Fire District #3 is the current fire fighting contractor for the City of Battle Ground.

c. He questioned whether additional traffic controls will be required at the 181st Street railroad crossing, given the additional traffic generated by the proposed development.

d. He questioned whether the applicant will be required to construct a fence or other barrier between the site and the railroad.

e. He testified that the tributary stream within proposed Tract E is in pristine condition. He questioned how the applicant and/or the City will prevent residents of this development from impacting the stream.

7. Don Harring argued that the horizontal and vertical curves on NE 152nd Avenue limit sight distance, creating a hazard for pedestrians and bicyclists. School buses stopping at the railroad crossing on NE 181st Street will cause additional traffic delays. Pedestrians crossing proposed SE 19th Avenue between the clubhouse and parking lot will also cause traffic delays. Construction of SE 19th Avenue will reduce the amount of parking available for the golf course clubhouse, which will increase demand for on-street parking on NE 181st Street. He argued that Clark County has approved plans for construction of the CRWT along the railroad right-of-way. He questioned whether County approval will be required for the proposed trail section within the site. He questioned why vehicle access to NE 152nd Avenue is not allowed through Tract G, since Clark County owns the railroad right-of-way. The proposed development will reduce the size of the golf course. The City should consider the economic impact of a smaller golf course.

8. Larry Knight, president of the Greater Brush Prairie Neighborhood Association, expressed concern with the single access to this area. A recent traffic accident closed the

road and caused a 30 minute traffic delay. The narrow roads in the area cannot accommodate the additional traffic generated by this development.

9. Ray Steiger testified that NE 152nd Avenue currently serves 172 residences, six school bus trips per day, and golf course traffic including delivery vehicles. Construction vehicle traffic will also use this road. School buses and other large vehicles cannot maneuver through the 152nd Avenue/159th Street intersection without entering the opposing vehicle lane. NE 152nd Avenue provides the only access to a 90-acre forested natural area, which poses a significant fire hazard.

10. Cathy Steiger testified that the pavement on 152nd Avenue is caving into the ditch in some areas, further reducing the width of this narrow roadway. She requested the applicant construct the CRWT with permeable pavement.

11. Hal Linton argued that there needs to be a second access to this area before this development is approved. A prior wind storm caused trees to fall and block NE 152nd Avenue for 12 hours. He was unable to get home and was forced to stay in a motel while his kids were left at home. Other trees fell on houses in the area. Emergency crews were unable to respond because the road was blocked. In addition, there is a driveway on a curve at the bottom of a hill on NE 152nd Avenue. Speeding traffic makes it hazardous to enter and exit this driveway.

12. Donna Power testified that the school bus stops at the driveway noted by Mr. Linton, on a curve at the bottom of the hill, causing traffic to back up behind the bus. Additional traffic from this development will create a hazard.

13. David Abrahamson testified that the crash rate on NE 152nd Avenue is nearly double that of other roads in the County. The existing road width does not meet the federal standard for 12-foot wide travel lanes. There are at least three locations with ten-foot wide lanes. Additional traffic on this road will increase the wear and tear on the road surface. The narrow lanes, horizontal and vertical curves, and 40 mph speed limit create a significant hazard. He requested the examiner hold the record open to allow him an opportunity to submit additional crash data for the section of NE 152nd Avenue south of 181st Street.

14. Gary Kaster testified that many drivers do not realize that the intersection of NE 152nd Avenue and NE 181st Street is a "T" intersection and that the road dead-ends. They believe argued that NE 181st Street provides a route to Battle Ground. Many accidents at this intersection go unreported. The actual accident rate at NE 152nd Avenue and 181st Street is higher than reported. He noted that the golf course was approved as part of a planned development ("PD") and questioned how the PD can be changed.

15. Gail Power testified that traffic speeds on NE 152nd Avenue are excessive.

16. Sandy Burgstahler testified that she owns the driveway noted by Mr. Linton and Ms. Powell. Her family was involved in an accident as they were leaving the

driveway, caused by speeding traffic. The topography of the road makes it difficult to turn left into the driveway due to limited sight distance.

17. City engineer Mark Herceg testified that Clark County owns the Chelatchie Prairie Railroad right-of-way, even though a portion of the railroad is located within the City of Battle Ground. The railroad is subject to federal regulations. The Battle Ground City Council can "move up" the 167th Avenue extension project to provide a secondary access to this area sooner than is currently planned if the Council determines it is warranted.

18. Professional engineer Kurt Stonex testified that the existing golf course clubhouse is not striped for parking, resulting in an inefficient use of the available parking area. Striping of the modified parking lot after proposed SE 19th Avenue is constructed will create roughly the same number of parking spaces as are currently utilized on the clubhouse property.

19. The examiner denied Mr. Abrahamson's request to hold the record open. The examiner closed the record at the end of the public hearing and took the matter under advisement.

C. DISCUSSION

1. City staff recommended approval of the application, based on the affirmative findings and subject to conditions of approval in the Staff Report, as further modified at the hearing. The applicant accepted those findings and conditions, as modified, without exceptions.

2. The examiner concludes that the affirmative findings in the Staff Report show that the proposed preliminary plat does or can comply with the applicable standards of the BGMC and the Revised Code of Washington, provided that the applicant complies with recommended conditions of approval as modified herein. The examiner adopts the affirmative findings in the Staff Report, as modified, as his own, except to the extent they are inconsistent with the following findings.

3. The proposed development will generate additional traffic on area streets, with associated increases in congestion and other impacts. Those impacts will be perceptible to area residents. However, as mitigated, the additional traffic will not exceed the capacity of streets nor create a hazard, based on the applicant's traffic impact study. With the proposed mitigation, all affected intersections will operate at LOS D or better, consistent with BGMC 12.120.060.A(1). Based on Exhibit 46, NE 152nd Avenue has capacity to carry between 400 and 600 vehicles per hour.[1] This street is expected to carry a maximum

[1] The section of NE 152nd Avenue within the City of Battle Ground is designated a major collector, intended to carry more than 5,000 ADT, or 400 to 500 peak hour trips. BGMC Table 12.116.040.B(1). For the roadway section in Clark County, Section 40.350.020.G(1)(a) of the Clark County Code provides that for roadways with lane widths less than eleven (11) feet, the lane capacity shall be six hundred (600) vehicles per hour.

238 vehicles during the p.m. peak hour, well below the capacity of this street. There is no substantial evidence to the contrary.

a. Neighbors testified that the traffic from the development will exacerbate existing congestion problems and hazards. Neighbors' observations of existing traffic is substantial evidence. But their opinions that traffic from the proposed development will exceed the capacity of area streets or make the streets unsafe are not supported by substantial evidence, because they are not experts in such matters. The examiner finds that the expert testimony by the applicant's traffic engineer is more persuasive than neighbors' testimony about the impact of traffic from the proposed development on area streets. A licensed professional engineer prepared the traffic study based on actual traffic volumes. Traffic counts were performed at all affected intersections during peak hours on multiple days. Future traffic volumes and trip distribution were estimated using accepted methods of calculation based on the type and amount of development proposed. Although neighbors disputed the accuracy and findings of the traffic study and argued that the traffic from the development will exacerbate existing hazards, they failed to provide any substantial evidence to contradict the traffic study. Their unsupported opinions do not have enough probative value to rebut the expert testimony of the applicant's traffic engineer.

b. The applicant's traffic study analyzed the crash history as obtained from WSDOT. With one exception, the crash rates for all identified intersections are well below 1 accident per million entering vehicles, the City's action rate. The action rate is based on reported accidents. As noted in the testimony, some accidents are not reported. Therefore the accident history may not reflect all of the accidents in the area. However the action rate of 1 accident per million entering vehicles is based on reported accidents. There is no substantial evidence that this location experiences an unusually high number of unreported accidents. The examiner finds that the WSDOT accident history is the best evidence available regarding the accident history for this area.

i. The accident rate at the intersection of NE 152nd Avenue and NE 181st Street is higher than 1 accident per million entering vehicles. The applicant will modify this intersection, replacing the existing yield signs with stop signs on northbound NE 152nd Avenue, which is expected to reduce the accident rate at this intersection.

c. There is no dispute that NE 152nd Avenue is not improved to current standards. Based on the testimony at the hearing, the pavement on some sections of this road are 20 feet wide, there are no sidewalks or shoulders and there are several vertical and horizontal curves. However these conditions are obvious and reasonable drivers will reduce their speeds as needed to accommodate these conditions. The existing pavement width is adequate to accommodate two-way traffic and emergency vehicles and meets the County standard for off-site roadways.[2]

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[2] CCC 40.350.030(B)(6)(b)(1) requires that offsite roadways have an unobstructed and paved roadway width of twenty (20) feet, or eighteen (18) feet of pavement with one (1) foot wide shoulders. Battle Ground does not have a minimum paved width requirement for offsite roads within the City.

d. The examiner finds that the proposed development will not significantly exacerbate existing speeding and reckless driving problems in the area. Reasonably prudent drivers will observe the posted speed limit and if necessary, further reduce their speed to accommodate changing road conditions. Unfortunately not all drivers are prudent. However there is no evidence that the development proposed in this application will contribute a disproportionate share of imprudent drivers. The examiner encourages area residents to contact the City to request additional enforcement if speeding and other traffic problems continue.

e. Neighbors testified about congestion issues and delays at the intersections of NE 152nd Avenue and NE 181st Street and NE 181st Street and proposed SE 19th Avenue. However these intersections are projected to operate at LOS A with the additional traffic generated by this development. School busses stopped at the railroad crossing and pedestrians traveling between the parking lot and the clubhouse may cause additional congestion, but these minor temporary impacts will not cause these intersections to fall below acceptable levels of service.

4. NE 152nd Avenue provides the sole access for this area north of NE 159th Street. As noted at the hearing, traffic accidents, falling trees and other incidents can block the road and limit access to this area. However this is an existing condition that is not created by this development. The Code does not require additional access in this case. The International Fire Code, which applies to all fire service providers in Washington, does not require a secondary access. The Fire District reviewed the proposed development and did not express any concern with the single access.[3] The proposed development will not increase the potential for a blocked roadway, except to the extent that increased traffic will result in a proportional increase in potential auto accidents. The proposed development will increase the number of persons affected by future road obstructions. However the increased population may also encourage the City to fund construction of the planned secondary access to this area. The applicant cannot be required to construct a secondary access because it does not own the property necessary for the access and the cost of constructing this offsite improvement would exceed the proportionate impact of this development. The need for a secondary access is created by all of the existing and proposed development in the area. The applicant is not required to remedy all existing deficiencies in the area.

5. The applicant cannot be required to construct frontage improvements on NE 152nd Avenue. BGMC 12.16.180.A requires applicants construct half-width road improvements on roads abutting the parcel being developed. In this case the site does not abut NE 152nd Avenue. The Chelatchie Prairie Railroad separates the site from NE 152nd Avenue. Therefore the applicant is not required to construct frontage improvements on this street. The fact that Clark County owns the railroad is irrelevant. The railroad is an intervening ownership that separates the site from NE 152nd Avenue.

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[3] Clark County Fire and Rescue reviewed and commented on the development. Exhibit 49. Mr. Crummett contacted Fire District #3 and they refused the opportunity to comment, citing the comments from Clark County Fire and Rescue.

6. There is no dispute that there is a need for additional sidewalks and bicycle lanes on streets in the area. The applicant will construct sidewalks and bicycle lanes along streets within the subdivision. However the applicant cannot be required to construct offsite sidewalks elsewhere in the area. The need for sidewalks and other improvements is one that exists generally along streets in the area, and is a need to which all adjoining properties contribute, not just the development proposed in this case. The City cannot require this applicant to bear the cost of additional improvements, because the costs would exceed the roughly proportional impact of the proposed development. There is no substantial evidence in the record that additional improvements are necessary to remedy a hazard caused or exacerbated by the proposed development. Sidewalks and bicycle lanes in the area will connect over time as additional development occurs.

7. Neighbors testified that school buses and other large vehicles cannot maneuver through the NE 152nd Avenue/NE 159th Street intersection without entering the opposing vehicle lane. However the applicant is not required to remedy this existing condition.

8. The applicant requested approval of two road modifications for this development.

a. The applicant requested a road modification to allow cul-de-sac streets on this site. BGMC Table 12.116.040.E prohibits cul-de-sac streets, "[e]xcept when necessary for access management or protection of parks and natural recourses." The examiner finds that cul-de-sac streets are necessary for protection of natural recourses in this case. The location of wetlands, riparian areas and associated buffers limit the applicant's ability to extend roads into the southern portion of the site. There is a stream and associated steep sloped areas on the west boundary and a large wetland on the east, which preclude the extension of additional loop streets within the site. The stream on the west and the railroad right-of-way on the east preclude the extension of roads across abutting properties to the east, west or south or east. The applicant cannot provide access to NE 152nd Avenue at the south end of the site, because the applicant is unable to obtain approval of an additional railroad crossing in this location. The examiner finds that the proposed road modification complies with the approval criteria in BGMC 12.116.290.A:

i. There are topographical and physical conditions that justify cul-de-sac streets on this site. BGMC 12.116.290.A(1). As noted above, the existing golf course, railroad, wetlands, streams, and steep slopes preclude the extension of streets on this site to connect with other streets in the area. The large wetland in the southeast portion of the site precludes construction of additional loop streets within the site. The only way to provide vehicular access to the southern portion of the site is via cul-de-sac streets.

ii. Allowing cul-de-sac streets within the development is consistent with sound engineering principles and it will be safe, practical, and efficient. BGMC 12.116.290.A(2). Cul-de-sac streets are expressly allowed "[w]hen necessary..." BGMC Table 12.116.040.E. Given the constraints discussed above, cul-de-sac streets are necessary in this case.

iii. The proposed modification is consistent with the intent and purpose of the standard being modified. BGMC 12.116.290.A(3). BGMC Table 12.116.040.E expressly allows cul-de-sac streets "[w]hen necessary for access management or protection of parks and natural recourses." As discussed above, cul-de-sac streets are necessary in this case for access management or protection of parks and natural recourses.

iv. The proposed modification is consistent with the goals and policies of the comprehensive plan. BGMC 12.116.290.A(4). Approval of the road modification will help fulfill Policy HO-4 of the comprehensive plan by allowing this development to achieve a substantial portion of the maximum density allowed by the R3 zoning. Cul-de-sac streets are necessary on this site to allow development of the southern portion of the site.

v. Therefore the examiner approves a road modification to allow cul-de-sac streets on this site.

b. The applicant also requested a modification to the intersection spacing requirement for the intersection of SE 19th Avenue and NE 181st Street. BGMC Table 12.116.040(C) requires a minimum of 240-feet of separation between intersections. The applicant requested a modification to reduce the intersection separation distance to 184-feet, because the existing golf course clubhouse limits how far west SE 19th Avenue can be located. The examiner finds that the proposed road modification, as conditioned, complies with the approval criteria in BGMC 12.116.290.A, based on the findings in the Staff Report. The examiner adopts those findings as his own.

9. Construction of SE 19th Avenue will require modification of the existing clubhouse parking lot, which will require additional City review. This road will also reduce the amount of area available for parking. The applicant testified that the lack of striping in the existing parking lot reduces parking efficiency. The revised parking lot will be striped to designate parking spaces, which will improve the use of the available space and maintain the current parking capacity. The applicant should be required to demonstrate that the revised parking lot complies with the any conditions of prior approval for the existing golf course and clubhouse. A condition of approval is warranted to that effect.

10. The planned CRWT trail alignment abuts the east boundary of the site, within the Chelatchie Prairie Railroad right-of-way. However there is no evidence that the County has approved a particular alignment in this area. Selection of the final trail alignment will depend on actual conditions, including the location of wetlands and other natural features that may require modifications to the route. In this case there are significant wetlands on the east boundary of the site that would be impacted by the proposed trail alignment. Therefore the applicant proposed to construct a portion of the trail through the site, providing a wider sidewalk on the south and east side of certain roads within the site, that avoids impacts to the wetlands. This route does not prevent the

City or the County from constructing an additional trail abutting the railroad and presumably the City or the County could choose to spend additional funds and build the trail abutting the railroad, with mitigation for wetland impacts. But the City and the County are unlikely to do so given the additional costs of wetland mitigation and construction that would be required for that alignment.

11. The Code does not require a fence along the east boundary of the site, separating proposed lots from the abutting railroad right-of-way. The applicant or future lot owners are likely to install fences on these lots for privacy, safety and noise reduction.

12. The applicant will install a permanent physical demarcation along the upland boundary of the wetland and riparian buffers on the site. The demarcation will consist of logs, a tree or hedge row, fencing made only of wood, or other prominent physical marking approved by the director. In addition, the applicant will install signs at an interval of one per lot or every one hundred feet, whichever is less, identifying the buffers and requiring that they be retained in a natural state. BGMC 18.270.050.A and 18.280.050.A. Reasonable people will respect and maintain the identified buffers. The City can address violations of the buffer restrictions through its enforcement process.

13. The proposed development will not impact historic or archaeological resources. There is a small archaeological area on the site. Exhibit 11. No development is proposed on or near the archaeological area, which is located within the wetland tract. The applicant's archaeologist is required to monitor any grading or construction activities occurring within a ten meter radius of the archaeological area. Additional review will be required if any additional archeological are discovered on the site.

14. As discussed at the hearing, the existing sanitary sewer system for this area has limited capacity. That capacity is available to developments on a first come-first served basis. The City will review the available sanitary sewer capacity prior to final plat approval of any phase of this development. The applicant will be required to construct additional sanitary sewer improvements prior to approval of development phases that exceed the existing sewer capacity.

15. The Code does not require additional crossing controls at the railroad crossing over NE 181st Street based on the increased traffic generated by this development.

16. Potential adverse economic impacts of the development on the adjacent golf course are not relevant to the approval criteria for this development.

D. CONCLUSION

Based on the above findings and discussion, the examiner concludes that SUB: 02-15 (Cedars Village Subdivision) should be approved, because it does or can comply with the applicable standards of the Battle Ground Municipal Code and the Revised Code of the State of Washington, subject to conditions of approval necessary to ensure the final plat and resulting development will comply with the Code.

E. DECISION

Based on the findings, discussion, and conclusions provided or incorporated herein and the public record in this case, the examiner hereby approves SUB: 02-15 (Cedars Village Subdivision), subject to the following conditions of approval:

Conditions of Approval

A. Prior to Engineering Plan Approval:

1. Submit final engineering plans, for review and approval by staff, pertaining to transportation, sewer, water, grading, erosion control, stormwater, driveways, street lighting, and landscaping prepared and stamped by a registered engineer in the state of Washington.

2. Submit final engineering plans:

   a. Showing full width improvements to SE 17th Avenue, SE 19th Avenue, SE 40th Street, SE 43rd Way, and SE 17th Court to Neighborhood Collector standards, including sidewalk, planter strip, curb & gutter, and asphalt.

   b. Showing full width improvements to SE 18th Avenue and SE 42nd Street to Local "A" standards, including sidewalk, planter strip, curb & gutter, and asphalt.

   c. Showing dedication for future road at terminus of SE 17th Court to eastern property line.

   d. Showing a shared path within the subdivision from southern end of SE 17th Court to Lot 54 along SE 17th Court, SE 43rd Way, and SE 19th Avenue.

   e. Containing a combined landscaping and driveway plan.

   f. Showing sight distance triangles.

   g. Containing a signing and striping plan.

   h. Containing a street lighting plan.

   i. Showing private street signs at intersections of public and private streets. Signs shall meet the requirements of the current MUTCD.

   j. Showing traffic calming devices on all public streets.

   k. Showing SE 43rd Circle (Tract "C") and SE 44th Circle (Tract "D") meeting

the applicable private street requirements in BGMC 12.116.140 based on 5-8 lots/units.

l. Showing SE 47th Circle (Tract "F") meeting applicable private street requirements in BGMC 12.116.140 based on 3-4 lots/units.

m. Showing SE 45th Circle meeting the applicable private street requirements in BGMC 12.116.140 based on 5-8 lots/units.

n. Showing driveways that meet the requirements of BGMC 12.116.243

o. Showing the Yield Sign at NE 152nd Avenue and NE 181st Street changed to a Stop Sign and the installation of a Stop Bar at same location.

p. Showing water lines extending to extreme property lines.

q. Showing each residential lot having its own individual water service

r. Showing PR-14 gravity sewer line to the new Cedar's pump station (PS#4) as shown in the General Sewer Plan.

s. Showing 8-inch minimum diameter sewer lines throughout the rest of the development and extending to extreme property lines.

t. Showing the relocated PS-4 pump station.

u. Showing FM #4 sewer force main from the new pump station to intersection of SE Grace Avenue and SE Eaton Boulevard and from intersection of SE Grace Avenue and SE Scotton Way to the City's headworks.

v. Showing minimum size sewer easement over sewer mainlines not located in public right-of-way.

w. Showing each residential lot having its own sanitary lateral.

x. Showing fire hydrants meeting spacing requirements throughout the subdivision.

y. Showing a stormwater facility which meets the requirements of BGMC 18.250.

z. Showing grading and erosion control in conformance with applicable city standards and standard construction details.

3. Prior to Final Plat approval, meet one of the mitigation options listed in the body of the Staff Report for traffic impacts at SR 503 & SW Eaton Boulevard and SW

20th Avenue & SW Eaton Boulevard.

4. At the applicant's discretion, submit a revised pump station capacity analysis to determine how many lots can be built using the existing pump station and if used at the time of the recording of the plat of the first phase of the project, the City shall determine the amount of the bond or surity, if any, that is needed to secure the construction of PS 4, PR 14 and FM 4. In the event that the City and the Applicant cannot agree on whether a bond or surity is appropriate or the amount of the bond, either the City or the Applicant can request the matter be heard before the Hearings Examiner.

5. Submit a hydrology report that addresses all requirements found in BGMC 18.250 meets the approved Department of Ecology soil criteria.

6. Submit proof of engineering plan approval by Clark Public Utilities for the water improvements.

7. Submit a construction cost estimate for required public and applicable private improvements for review and approval by the City Engineering Department.

8. Following the City Engineer's acceptance and approval of the construction cost estimate, pay the required engineering plan review and construction inspection fee which is two (2) percent of the estimated costs of construction minus the $500.00 due at engineering plan submittal.

9. Demonstrate that the proposed development will not cause the will not cause the golf course to fall out of compliance with prior land use approvals regarding the minimum number of parking spaces required.

B. <u>Prior to Final Plat Approval: (Note: this is a phased subdivision, spilt into three phases, that will require three final plat recordings).</u>

1. Construct all required public improvements and gain engineering acceptance or provide appropriate bonding.

2. Construct or pay proportionate share of traffic mitigations as required per revised traffic study.

3. Submit a final plat:

   a. That shows easements for public utilities not located in the right-of-way.

   b. With the following note: "No fences are allowed in the sight distance triangle."

   c. With the following note: "All utilities are to be located outside of the sidewalk

section and to be underground where possible."

d. With the following note: "The City of Battle Ground has no responsibility to improve or maintain the private streets contained within, or private streets providing access to, the property designed in this development."

e. With a note describing the maintenance responsibilities of each lot owner for the private streets.

f. With a note specifying the party(s) responsible for long-term maintenance of stormwater facilities.

g. That shows where any control monuments have been placed.

h. That shows the dedication of any public roads or alleys.

i. That shows the dedication of land for the shared path along the eastern property.

j. Showing separate tracts for wetland areas and associated buffers.

k. With a note: "All new structures shall conform to the setbacks and building heights of the R3 zoning district."

l. With a note: "All houses shall conform to the neighborhood design standards as listed in BGMC 17.106.040."

m. With a note: "Building permits and impact fees will be calculated and shall be paid at the time of permit issuance."

n. Show a 20 foot setback for all lots abutting steep slopes along the western portion of the project (Lots 24 to 36) as described in Section 5.1.1 and illustrated in Figure 2 of Geotechnical Site Investigation, prepared by Columbia West Engineering, Inc.

4. Provide certification that private streets were built per BGMC 12.116.140.

5. Submit a private maintenance agreement for private streets.

6. Submit recorded sewer easement after being reviewed by City Engineering Staff

7. Submit a two-year stormwater maintenance contract for review and/or approval.

C. <u>Prior to Engineering Acceptance:</u>

1. Construct all public improvements, if applicable, and go on a walkthrough with

City of Battle Ground Engineering Staff and correct any deficiencies as determined by City staff.

2. Submit letter shall be provided by the applicant showing that fire flow requirements per BGMC 15.105.180 and 15.105.190 can be met.

3. Submit to the City of Battle Ground a two-year/20-percent maintenance bond for all completed and accepted public improvements.

4. Submit to the City of Battle Ground a recorded Stormwater Facility Maintenance Covenant meeting requirements of BGMC 18.250.310(B)(2) for review and/or approval.

5. Submit to the City of Battle Ground a Stormwater Access and Inspection Covenant for review and/or approval

6. Submit complete sets of as-built drawings for all required public improvements for streets and roads, stormwater drainage and control, sanitary sewer and water services, as applicable prior to the issuance of the occupancy permit for review and approval by the Engineering Department. Upon acceptance by the Engineering Department, submit prior to the issuance of the occupancy permit, one (1) Mylar set, one (1) full size paper set, two (2) 11x17 paper sets of As-Built record drawings and one (1) 3.5-inch disk (s) or compact disc version of the as-built drawings in AutoCAD and PDF formats.

D. <u>Prior to any Ground Disturbance:</u>

1. Coordinate with the State Department of Ecology and Army Corps of Engineers on wetland permitting and review, and a final wetland mitigation plan.

2. Comply with the Wetland Delineation and Assessment and Wetland Mitigation prepared by The Resource Company Plan.

3. Comply with the recommendations of the Geological Hazardous report prepared by Columbia West Engineering.

4. All buffer reductions/averaging shall comply with the applicable sections of BGMC 18.270.070 and 18.270.080.

5. Comply with the recommendations cited in the State Department of Archaeology's July 28, 2014 letter. This includes compliance with applicable state laws and any identified archaeology sites. Complete a Historic Inventory Form for the 1915 house and barn prior to demolition or relocation.

6. Follow all recommendations in the *Archaeological Survey of the Cedars Village Project Area,* dated July 22, 2014.

7. If any cultural resources are discovered in the course of undertaking the development activity, the State of Office of Historic Preservation and Archaeology and the City of Battle Ground Planning Department must be notified.

8. Comply with all recommendations of the Geotechnical Site Investigation, prepared by Columbia West Engineering, Inc. during all stages of design and construction.

E. <u>Prior to Construction:</u>

1. Receive signed and approved engineering plans from the City of Battle Ground.

2. Submit a surety bond meeting the requirements of BGMC 12.118.110.

3. Submit a Certificate of Liability Insurance meeting the requirements of BGMC 12.118.120.

4. Erect and conduct erosion control measures consistent with the approved Erosion Control Plan and City of Battle Ground erosion control standards.

5. Submit evidence that an individual on-site has successfully completed formal training in erosion and sediment control by a recognized organization acceptable to the City.

6. Conduct a pre-construction conference with City engineering and planning staff. Contact the Planning Customer Service Clerk at (360) 342-5047 to schedule an appointment.

F. <u>Prior to Creation of Impervious Surface:</u>

1. Except roofs, the stormwater treatment and control facilities shall be installed in accordance with the approved final engineered plans and in accordance with the City of Battle Ground stormwater regulations.

G. <u>Prior to Building Permit Occupancy:</u>

1. Install permanent physical demarcation between any abutting houses and wetland and habitat buffers per 18.270.050.

2. The private road listed as "Tract C" shall be posted "No Parking- Fire Lane" on one side. The private road listed as "Tract D" and "Tract F," shall be posted "No Parking- Fire Lane" on both sides.

3. All required fees, including Transportation, Park and School Impact fees shall be paid.

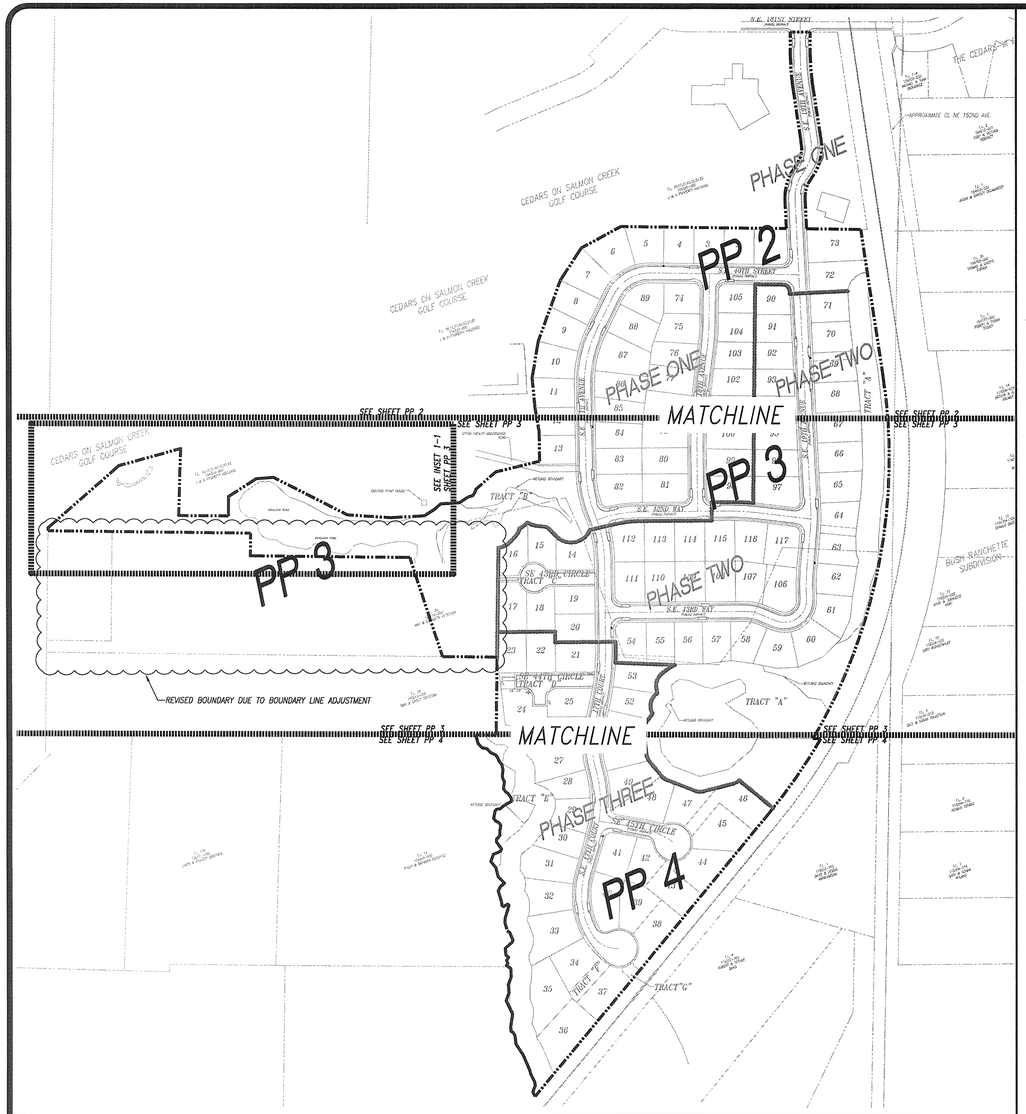
APPEAL

This Final order may be appealed to the Washington Superior Court per RCW 36.70C within 21 calendar days after the issuance of the decision.

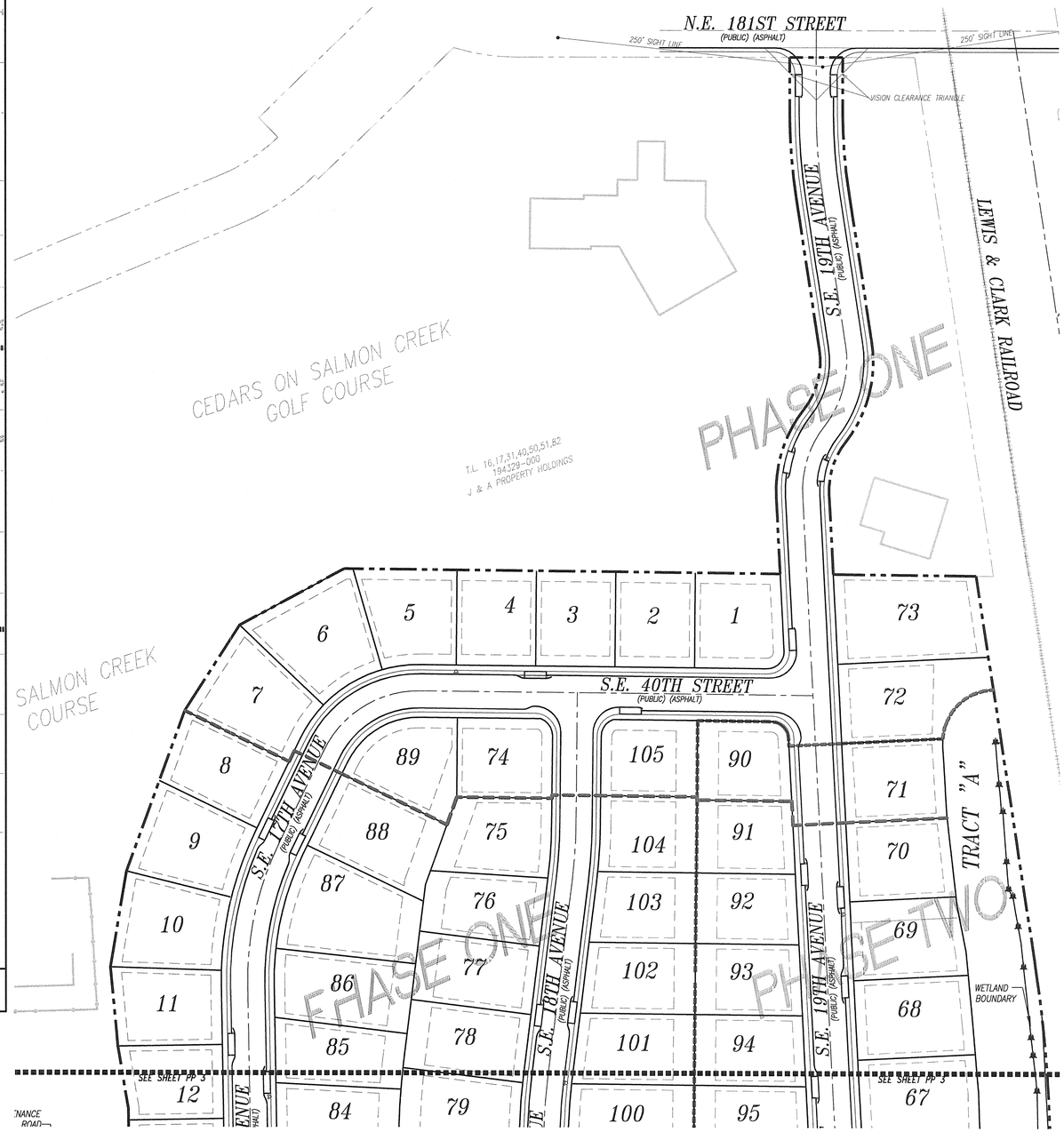
DATED this 7th day of July, 2016.

Joe Turner

Joe Turner, AICP
City of Battle Ground Land Use Hearing Examiner



OVERALL PROJECT AREA/SHEET LAYOUT – NOT TO SCALE



LEGEND

- BUILDING ENVELOPE
- OFFSITE BUILDING
- PROPOSED EASEMENT
- PHASELINE
- MATCHLINE
- PROPOSED LOT – PLAT
- PROPERTY LINE
- ASPHALT ROAD/STREET/DRIVEWAY
- ROAD CENTERLINE
- SIDEWALK/CONC. PAD/TRAIL
- ADJACENT TAXLOT
- EXISTING ON-SITE TAXLOT
- WETLAND BOUNDARY
- TOP OF SLOPE FOR GEO SETBACK

PARCELS #194329-000
#195101-000

OWNER:
J & A PROPERTY HOLDINGS, LLC
15001 NE 181ST STREET
BRUSH PRAIRIE, WA 98606

PARCEL #195019-000

OWNER:
VOTUM CGC, LLC
15545 VILLAGE PARK COURT
LAKE OSWEGO, OR 97034

APPLICANT:
VOTUM HOLDINGS CGC, LLC
14810 SE LEA STREET
HAPPY VALLEY, OR 97086
PH (503) 970-3853

CONTACT:
OLSON ENGINEERING, INC.
ATTN: STACY HICKMAN
222 E. EVERGREEN BLVD.
VANCOUVER, WA 98660
(360) 695-1385
FAX (360) 695-8117
stacyh@olsonengr.com

GRAPHIC SCALE
0 30 60 120
(IN FEET)
1 inch = 60 ft.

PLOT: consultant3.ctb
FILE: j:\data\8000\8900\8950\8959\Planning\8959.p.prelim.plat.village.dwg

PRELIMINARY SUBDIVISION PLAN:

CEDARS VILLAGE

OLSON ENGINEERING, INC.
LAND SURVEYORS
ENGINEERS
360-695-1385
360-695-8117
222 E. EVERGREEN BLVD., VANCOUVER, WA 98660

KURT F. STONEX
STATE OF WASHINGTON
28052
REGISTERED
PROFESSIONAL ENGINEER
1/21/16

CHANGES / REVISIONS

DESCRIPTION	DATE
BLA – REVISED BOUNDARY	1-14-2016

DESIGNED: SAH
DRAWN: SAH
CHECKED: KFS\JC
DATE: FEBRUARY 2015
SCALE: H: 1" = 60'
V:

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CEDARS VILLAGE
JOB NO. 8959.01.01