

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

Regarding an application by Hurley Development)	CORRECTED
for preliminary plat approval to divide 64.97-acres)	<u>FINAL ORDER</u> ¹
for residential development including detached,)	
attached, live/work, and apartment units at 18717)	PR 26:2020
NE 122 nd Avenue in the City of Battle Ground)	(Woodin Creek Station)

A. SUMMARY

1. The applicant, Hurley Development, requests approval to divide the 64.97-acre parcel located at 18717 NE 122nd Avenue; also known as Tax Assessor Parcels 194048-000, 194049-000, and 194050-000 (the “site”), into 191 single-family detached residential lots, 128 single-family attached residential lots, one live/work unit, and a 180-unit apartment complex.²

a. The site and abutting properties to the north are zoned MU-R (Mixed Use Residential). Properties to the east are zoned R7 (Residential, 7 units per acre maximum density). Properties to the south and the majority of properties to the west, across SR-503, are located in unincorporated Clark County and zoned R1-5 (Residential, 5,000 square foot average minimum lot size). One property to the west, across SR-503, is located in the city and zoned R10 (Residential, 10 units per acre maximum density).

b. The site is currently vacant and contains multiple wetlands, three type Np streams, geologically hazardous areas, and two Oregon White Oak trees. Woodin Creek (also known as Weaver Creek), a Type F stream, extends across the southeast corner of the site. The applicant proposed to retain much of the highest quality wetlands in the eastern portion of the site, the creeks, steep slopes, one oak tree, and associated buffers in proposed open space tracts. The applicant proposed to remove one oak tree, extend SW 31st Street over one of the Type Np Streams, and fill the lower quality wetlands in the western portion of the site in order to accommodate the proposed development. The applicant will mitigate for all wetland impacts by enhancing the remaining on-site wetlands and by purchasing credits at an off-site wetland mitigation bank. The applicant will mitigate for the tree removal by planting additional oak trees on the site and the stream crossing by enhancing the stream riparian corridor.

c. The City of Battle Ground will provide domestic water and sanitary sewer service to the site. The applicant will collect storm water from impervious areas on the site and convey it to one of three proposed stormwater facilities in the eastern portion

¹ The original Final Order in this case concluded that the applicant is not required to provide mitigation at the intersection of SR 503 & SW Eaton Boulevard, however, the examiner neglected to delete the condition of approval requiring such improvements. This Corrected Final Order corrects that error, remedies numbering errors in the conditions of approval, and replaces the prior Final Order.

² The applicant originally proposed 200 single-family detached residential lots. (Exhibit 6). The applicant subsequently modified the plat to eliminate nine lots in order to reduce impacts to the critical areas on the site. (Exhibit 47).

of the site for treatment and detention. The applicant will release treated stormwater into the on-site creeks at less than predevelopment rates.

d. The applicant will extend a new east-west public street, proposed SW 34th Street, into the site from SR 503, which abuts the west boundary of the site. The SW 34th Street/SR 503 intersection is proposed as a right-in/right-out only access and it is subject to WSDOT approval. The applicant will extend additional east-west public streets through the site, including SW 31st Street near and along the north boundary and SW 35th Street on the south boundary. SW 31st Street will connect to existing SW 9th Avenue north of the site and SW 35th Street will connect to NE 121st Avenue to the south. The applicant will provide additional streets within the site to provide access to the proposed development as well as streets and rights-of-way stubbed to the north, south, and east boundaries of the site to provide opportunities for additional street connections when abutting properties redevelop.

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 and Recommendation to the Hearing Examiner dated April 29, 2021 (the "Staff Report"). The applicant accepted those findings and conditions, as amended, with certain exceptions. Five persons testified orally regarding the application. Other persons testified in writing. Disputed issues or concerns in the case include the following:

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

b. Whether the NE 179th Street/NE 122nd Avenue intersection will operate safely;

c. Whether the lack of turn lanes at the intersections of SW 10th Avenue (SR 503) at NE 189th/SW 30th Streets and 179th/40th Streets will create a hazard;

d. Whether the applicant can be required to improve NE 122nd Avenue, including adding a sidewalk or pedestrian lane;

e. Whether the parallel roadways of SW 35th Street and NE 184th Street will create a hazard;

f. Whether the applicant should be required to retain the existing trees on the south boundary of the site, between proposed SW 35th and existing NE 184th Streets;

- g. Whether the proposed development will accommodate stormwater runoff from the section of NE 184th Street abutting the site;
 - h. Whether on-street parking is allowed on NE 184th Street;
 - i. Whether on-street parking is allowed on half-width streets created by this development;
 - j. Whether the proposed NE 122nd Avenue/NE 184th Street/SW 35th Street intersection will create a hazard or limit access for larger vehicles, including trailers;
 - k. Whether the examiner can prohibit future use of NE 184th Street as a means of crossing Woodin Creek;
 - l. Whether the applicant can be required to contribute toward the cost of mitigation at the intersection of SR 503 and Eaton Boulevard;
 - m. Whether the applicant is not required to obtain an Administrative Order from ECY prior to impacting the wetlands and buffers on the site;
 - n. Whether it is feasible for the proposed development to comply with the City's critical area ordinances; and
 - o. Whether the proposed development will cause prohibited impacts to wildlife and wildlife habitat.
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 an online public hearing about this application on May 6, 2021. 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. Community development director Sam Crummett summarized the Staff Report.
 - a. He noted that the site is zoned MU-R, which allows up to 22 dwelling units per acre and up to twenty-percent commercial development. In this case the applicant proposed to develop the 65-acre site with 200 single-family detached residences, 128 single-family attached residences, one live/work unit, and a 180-unit apartment complex.

b. Primary access to the site will be provided from a new intersection with SR 503, which abuts the west boundary of the site. Additional access will be provided by extensions of SW 9th Avenue abutting the north boundary of the site and NE 122nd Avenue abutting the south boundary.

c. The applicant proposed to retain much of the forested habitat, streams, wetlands, and steep slopes in the eastern portion of the site as undeveloped open space.

d. The City will review turn movements and queuing capacity at the intersection of NE 179th Street and NE 122nd Avenue during final engineering.

e. The Washington Growth Management Act (“GMA”) allows wetland impacts subject to a hierarchy of avoidance, minimization, and mitigation. The requirement to avoid wetland impacts is an aspirational goal, not an absolute requirement. There is a balance between the need to protect wetlands and the need for development. The applicant has the burden of proving that these standards are met.

3. City engineer Ryan Jaynes noted that the WSDOT must approve the proposed SW 34th Street/SR 503 intersection. The City will perform additional traffic review during the final engineering process if WSDOT denies this new intersection.

a. He requested the examiner add a condition of approval requiring “No Parking” signs on the half-width section of NW 35th Street.

b. He requested the examiner modify condition 5 in the “Prior to Construction of the Site” section of the Staff Report to require that the applicant, “Erect and maintain erosion control measures...”

4. Attorney LeAnne Bremer, wetland biologist Francis Naglich, traffic engineer Hann Lee, engineer Jason Taylor, and engineer Travis Johnson appeared on behalf of the applicant, Hurley Development.

a. Ms. Bremer summarized the proposed development.

i. She accepted the findings and conditions in the Staff Report, with certain exceptions. Condition 2.m in the “Prior to Engineering Approval and Final Site Plan” section of the Staff Report requires that the applicant provide mitigation at the intersection of SR 503 and Eaton Boulevard. However, SR 503 is a state facility operating at LOS E, which meets the State’s intersection operating standard and no additional mitigation is required at this intersection. WSDOT has no authority to defer to the City’s LOS standards, citing RCW 36.70A.030 and 47.80. She proposed to recommend additional changes to the conditions during the open record period.

ii. She argued that the Washington Department of Ecology (“ECY”) has the right to comment on this application, but it does not have regulatory authority over this project, which is subject to the City’s critical areas ordinance. The

examiner must approve the application if it complies with the standards of the City's critical areas ordinance. ECY has no administrative authority to approve or deny a wetland permit for this development.

b. Mr. Naglich testified that the applicant will work with ECY and the U.S. Army Corps of Engineers (the "Corps") regarding impacts to the critical areas on the site. The applicant proposed to retain roughly 25-percent of the site area as undeveloped open space in order to protect the streams, wetlands, associated buffers, and steep slopes. The applicant eliminated 11 lots from the original proposal and modified others to reduce impacts to critical areas, based on discussions with the Corps, Ms. Adams and ECY. Eliminating Phases 4 and 5 as proposed by Ms. Adams would eliminate 36 lots that are unencumbered by any critical areas or buffers. The majority of critical area impacts result from road improvements required by the City.

c. Mr. Lee testified that the traffic analysis is based on a conservative assumption that the proposed right-in/right-out access onto SR 503 will not occur. The analysis routed all northbound traffic onto SR 503 at SW 30th Street and all southbound traffic onto SR 503 at NE 179th Street. As a result, the analysis overstates the traffic volumes at these intersections, but traffic queues still meet City and WSDOT standards. The applicant submitted an updated traffic analysis to the City on the day of the hearing (Exhibit 40).

i. Regarding the intersection of SR 503 and SW 40th/NE 179th Streets, WSDOT's only concern is with traffic queuing on SR 503. The City could modify the NE 179th Street/NE 21st Avenue intersection to give inbound traffic from SR 503 the right-of-way, requiring all other vehicles to stop at the intersection. This would avoid the potential for vehicle queues on the highway.

ii. The intersection of SR 503 and Eaton Boulevard will operate at LOS E, which is the minimum LOS allowed by the applicable state standard. If desired, WSDOT could coordinate the signal timing to improve this intersection to LOS D.

iii. Traffic from this development will disperse onto multiple roads within the site. Some northbound traffic will access SR 503 at SW 34th Street. Other northbound drivers will use SW 30th Street. Traffic volumes are unlikely to exceed the design volume of individual streets. In addition, the design volumes are merely guidelines, not an absolute volume limit.

d. Mr. Taylor argued that parking is allowed on the half-width section of SW 35th Street, based on the findings on page 14 of the Staff Report. The western portion of NE 184th Street is a public street, which the applicant can use to access the site. The applicant did subtract all critical areas on the site to determine the site area used in the critical area calculations.

e. Mr. Johnson testified that the applicant designed the stormwater facilities in compliance with the Stormwater Management Manual for Western

Washington (the “SMMWW”). Although infiltration of stormwater is preferred, the SG4 soils on the site are not suitable for infiltration. The proposed development will continue to discharge stormwater to the onsite wetlands as necessary to maintain the existing hydroperiod. The applicant will collect runoff from NE 184th Street that currently flows onto the site and direct it to the stormwater facilities.

i. The parallel roadways of proposed SW 35th Street and existing NE 184th Street will not create a hazard. There will be a curb and ditch between the two roadways, which will prevent vehicles from moving between these roads. The applicant will install street lights on SW 35th Street. In addition, the applicant will plant trees spaced 30 feet apart between the roads to provide a physical barrier and a visual screen between these roadways.

ii. The proposed intersection of NE 122nd Avenue/NE 184th Street/SW 35th Street will operate safely as proposed. However, there are three other options for modifying this intersection:

(A) The applicant could combine existing NE 184th Street and proposed SW 35th Street, with the resulting street turning south to connect to NE 122nd Avenue without an intersection. However, the residents served by NE 184th Street objected to that proposal;

(B) The applicant could create a new intersection connecting NE 184th Street and SW 35th Street aligned with proposed SW 6th or 8th Avenues; or

(C) The applicant could modify the proposed “S” curve on NE 184th to create a more direct intersection with SW 35th Street/NE 122nd Avenue. The applicant is willing to work with the City and the neighbors to find an acceptable design for this intersection.

5. Engineer Chris Robertson appeared on behalf of the Viewcrest Acres 2 Neighborhood Association (the “NHA”).

a. He argued that construction traffic should be prohibited on NE 184th Street. This private street provides the only access to the Viewcrest Acres 2 neighborhood south of the eastern portion of the site.

b. The proposed intersection of NE 122nd Avenue/NE 184th Street/SW 35th Street needs to be redesigned. As proposed, NE 184th Street intersects the other streets at a highly skewed angle on the inside of a horizontal curve. The proposed intersection does not appear to provide adequate sight distance in either direction. The public should be allowed to review and comment on the final design of this intersection.

c. As proposed, SW 35th Street will run parallel to NE 184th Street, separated by a four to six foot side landscape strip. Westbound traffic on NE 184th Street

will face two lines of oncoming (eastbound) traffic on either side, which could cause confusion, especially at night when westbound drivers will face two sets of oncoming headlights. The applicant should be required to provide a fence or other barrier between these roads to mitigate this hazard.

d. The NHA supports the proposed access to SR 503 at SW 34th Street. However, this access may exceed the design capacity of SW 34th Street, a Neighborhood Collector with a design capacity of 2,000 Average Daily Trips (“ADT”). The proposed development is projected to generate 3,804 daily trips and the applicant’s traffic study does not include a trip distribution analysis for the roads within the site.

e. The NHA opposes any future use of NE 184th as a means of crossing of Woodin Creek.

6. Miranda Adams, shorelands and wetlands specialist for the Department of Ecology (“ECY”), testified on behalf of ECY.

a. She argued that the proposed development does not comply with state law requirements that the applicant avoid wetland impacts to the extent possible. The proposed development impacts all of the wetlands on the site to some extent, including 0.76 acres of direct wetland impacts, 0.86 acres of indirect impacts, and 0.1-acres of riparian habitat impact. The applicant’s analysis does not address the effect of these cumulative impacts.

b. She questioned the applicant’s density calculations, arguing that the numbers in the Staff Report are not consistent with the ECY/Corps analysis. Based on the ECY/Corps analysis, the wetlands on the site are larger and there are more wetlands than shown on the applicant’s plans. The density calculations do not include those additional wetlands. The applicant could eliminate 19 lots, which would reduce impacts to the critical areas on the site and still meet the minimum density requirements.

c. All of the stormwater facilities are proposed in the eastern portion of the site, adjacent to the wetlands. The applicant could provide additional stormwater treatment and infiltration facilities on the eastern portion of the site, which would allow for groundwater recharge and reduce the size of the ponds on the west side. The applicant proposed to line the stormwater ponds, which will preclude infiltration. Detention ponds also discharge warmer waters directly into the streams.

d. The applicant could remove proposed Phases 4 and 5 and preserve the entire eastern portion of the site as permanent open space. That would reduce the amount of mitigation required and eliminate the proposed stream crossing.

7. Ron Reeves, president of the Viewcrest Acres 2 Neighborhood Association, agreed with Mr. Robertson’s testimony. The NHA wants the opportunity to review the design of the NE 122nd Avenue/NE 184th Street/ SW 35th Street intersection.

8. Tom Clark agreed with Mr. Robertson and Mr. Reeves' testimony.

9. Jim Schuller and Leah Goldstone-Schuller agreed with Mr. Robertson's testimony.

10. At the conclusion of the hearing the examiner held the record open for three weeks, subject to the following schedule:

a. For one week, until May 13, 2021, for anyone to submit additional written testimony and evidence in this matter; and

b. For a second week, until May 20, 2021, to allow anyone to respond to the new evidence submitted during the first week; and

c. For a third week, until May 27, 2021, to allow the applicant to submit a written final argument, without any new evidence.

11. The following exhibits were submitted during the open record period:

a. An email from Tom Clark dated May 10, 2021 (Exhibit 35);

b. A memorandum from Ms. Bremer dated May 13, 2021 (Exhibit 36);

c. A letter from Ecological Land Services dated May 13, 2021 (Exhibit 37);

d. An email from the applicant's geotechnical engineer dated May 7, 2021 (Exhibit 38);

e. A letter from Ms. Adams dated May 13, 2021 (Exhibit 39);

f. A revised traffic study from Mr. Lee dated May 4, 2021 (Exhibit 40);

g. A memorandum from Ms. Lutz dated May 20, 2021 (Exhibit 41);

h. A memorandum from Ms. Bremer dated May 27, 2021 (Exhibit 42);
and

i. A letter from Ecological Land Services dated May 26, 2021 (Exhibit 43).

12. By order dated June 9, 2021,³ the examiner re-opened the record for four weeks for the limited purpose of accepting new testimony and evidence regarding the

³ The examiner initially re-opened the record for three weeks by order dated June 8, 2021. Pursuant to the applicant's request the examiner issued a revised order dated June 9, 2021, extending the initial open record period by one week.

feasibility of avoiding or minimizing impacts to critical areas on the site, subject to the following schedule:

- a. For two weeks, until June 23, 2021, for anyone to submit additional written testimony and evidence in this matter; and
- b. For a second week, until June 30, 2021, to allow anyone to respond to the new evidence submitted during the first week; and
- c. For a third week, until July 7, 2021, to allow the applicant to submit a written final argument, without any new evidence.

13. The following exhibits were submitted during the open record period:

- a. A letter from Ecological Land Services dated June 23, 2021 (Exhibit 44);
- b. A memorandum from PLS Engineering dated June 23, 2021 (Exhibit 45);
- c. A “Preliminary Wetland Mitigation and Bank Use Plan” for the 503 Battle Ground subdivision (Exhibit 46);
- d. A revised preliminary plat (Exhibit 47);
- e. A memorandum from Ms. Bremer dated June 23, 2021 (Exhibit 48);
- f. A memorandum from Hurley Development dated June 23, 2021 (Exhibit 49);
- g. A letter from the Department of Ecology dated June 30, 2021 (Exhibit 50); and
- h. A memorandum from Ms. Bremer dated July 9, 2021 (Exhibit 51).

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 modified at the hearing and by Exhibit 41. The applicant accepted those findings and conditions, as modified, with certain 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 Battle Ground Municipal Code (the “BGMC”) and the Revised Code of Washington (the “RCW”), provided that the applicant complies with recommended conditions of approval

as modified. The examiner adopts the affirmative findings in the Staff Report as his own, except to the extent they are inconsistent with the following findings.

3. The proposed development will generate increased traffic on area streets. That increased traffic will be perceptible to area residents. However, that traffic will not create a hazard, based on the applicant's traffic study. All intersections impacted by this development will continue to operate at acceptable levels of service.

a. Based on the applicant's trip distribution assumptions, traffic generated by the proposed development is likely to exceed the design capacity of some streets.

i. Proposed SW 31st Street, SW 34th Street, and SW 6th Avenue are all proposed as "Neighborhood Collector" streets. Pursuant to BGMC Table 12.116.040.B.2, neighborhood collector streets are intended to carry under 2,000 ADT.

ii. The proposed development is projected to generate a total of 3,804 ADT (p. 2 of Exhibit 40). Those trips will be distributed throughout the site. However, they will be concentrated on SW 6th Avenue and SW 31st, 34th, and 35th Streets which provide access onto the surrounding street system. The applicant's traffic analysis assumed that all site generated trips will utilize the SR 503/NE 189th Street/30th Street and SR 503/179th Street/40th Street intersections.

iii. Based on the applicant's trip distribution map (Figure 6 of Exhibit 40), 67-percent of the site generated trips will utilize the SR 503/30th Street intersection and all of those trips must utilize SW 6th Avenue to access 30th Street. This equates to 2,548 ADT,⁴ which exceeds the intended capacity of a neighborhood collector road. However, the ADT limits of BGMC Tables 12.116.040 are expressly stated as "approximate." They are not intended as a regulatory limit that may not be exceeded. As noted above, all of the affected intersections are projected to operate at acceptable levels of service with the additional traffic generated by the proposed development.

iv. In addition, the traffic analysis did not consider the proposed right-in/right-out access onto SR 503 at SW 34th Street. If WSDOT approves this access, some site generated trips will utilize this intersection, reducing the number of trips through the SR 503/30th Street intersection, diverting some traffic away from intersections to the north and south, reducing the volume of traffic on other roadways that provide access to SR 503.

4. Concerns were expressed with the safety of the NE 179th Street/NE 122nd Avenue intersection.

a. This four-leg intersection is currently striped to allow free flowing traffic for the northbound to westbound and the eastbound to southbound turn movements, with stop controls on the southbound (NE 122nd Avenue) and eastbound (NE

⁴ 3,804 ADT x 67-percent.

179th Street) legs of the intersection. Therefore, vehicles exiting SR 503 and turning left from NE 179th Street onto northbound NE 122nd Avenue must wait for breaks in the northbound to westbound traffic flow. There is limited vehicle storage capacity on the section of NE 179th Street between SR 503 and NE 122nd Avenue. Therefore, vehicles waiting to turn left onto NE 122nd Avenue may cause traffic to back up onto SR 503.

b. As Mr. Lee noted, this intersection could be modified to give inbound traffic from SR 503 the right-of-way, requiring all other vehicles to stop at the intersection. This would avoid the potential for vehicle queues on the highway. The City can review the need for such modification through the final engineering process. Such a modification would require that northbound drivers turning left onto NE 179th Street and westbound drivers continuing onto NE 179th Street or turning left onto NE 122nd Avenue wait for gaps in the eastbound traffic flow. However, this is not an unusual intersection design and there is no evidence that it will create a hazard.

5. Professional engineer Ana Taylor and others expressed concerns that with the safety of the SW 10th Avenue (SR 503) intersections at NE 189th/SW 30th Streets and 179th/40th Streets, due to the lack of a northbound right turn lane at 179th/40th Streets and the capacity of the left-turn lanes at both intersections (Exhibits 26 and 32). The examiner understands these concerns. However, based on the applicant's traffic analysis, these intersections are projected to operate at acceptable Levels of Service (LOS) with the additional traffic from the proposed development. The intersection of SW 10th Avenue (SR 503) and NE 189th/SW 30th Streets is projected to operate at LOS C and the intersection of SW 10th Avenue (SR 503) and NE 179th/40th Streets is projected to operate at LOS A (Table 5 of Exhibit 40). Ms. Taylor's opinion as a professional engineer is substantial evidence. But the examiner finds that the expert opinion of the applicant's traffic engineer is more persuasive, as it is based on detailed review and modeling of these intersections as set out in the traffic study and reviewed by the City engineer.

6. There is no dispute that NE 122nd Avenue is not improved to current City standards. There are no curbs, sidewalks, or street lights and the pavement is beginning to deteriorate. However the applicant is not required to remedy this existing deficiency, because it would be disproportionate to the impact of the proposed development on the need for such facilities. Applicants are not required to remedy all perceived and existing deficiencies in the vicinity of a development. The Code requires an applicant to mitigate impacts a development causes or to which it contributes significantly. Although the proposed development contributes to problems with substandard streets in the area, those problems exist largely because of existing development. It would be inequitable to require an applicant to bear the full burden of improvements where the proposed development is only responsible for a small portion of the problem. The need for street improvements is one that exists generally along streets in the area, and is a need to which all adjoining properties contribute, not just the lots being created in this case. There is no substantial evidence that the existing conditions create a hazard.

7. Mr. Robertson noted that NE 122nd Avenue provides connection between the existing pedestrian pathways adjacent to SR 503 to the north of 184th Street and to the

south of NE 179th Street. Pedestrians traveling between these two sections of pathway must walk on the paved portion of NE 122nd Avenue. He expressed concerns that residents of the proposed development will park on NE 122nd Avenue and force pedestrians to walk in the travel lane of this roadway (Exhibit 22a). As discussed above, this is an existing condition that the applicant is not required to remedy. In addition, there is no evidence that this development is likely to generate significant demand for on-street parking on NE 122nd Avenue. The applicant will provide opportunities for on-street parking throughout the site as well as within proposed off-street parking areas and on the individual lots. In addition, this development is unlikely to generate significant demand for on-street parking on NW 122nd Avenue due to the distance between this street and most of the residences on the site. If necessary the City can install striping and/or signage to limit or prohibit parking and/or designate a separate pedestrian lane on NE 122nd Avenue.

8. The examiner finds that the parallel roadways of proposed SW 35th Street and existing NE 184th Street will not create a hazard. The applicant will install street lights on SW 35th Street and construct the road with a curb on the south side and a roughly six-foot wide landscape strip planted with trees every 30 feet, which will clearly demarcate the separate roadways as well as providing a visual screen and physical barrier between these streets.

9. The applicant likely cannot retain the existing trees on the south boundary of the site, between proposed SW 35th and existing NE 184th Streets because grading for construction of the new street improvements and excavations for utilities will likely damage the roots of these trees, which could affect the survival of the trees. The Code does not require the preservation of trees outside of critical areas.

10. Portions of NE 184th Street slope to the north, directing stormwater flows into the landscape strip between SW 35th and existing NE 184th Streets. The applicant agreed to collect runoff from this area and direct it to the on-site stormwater facilities (Attachment D of Exhibit 36). A condition of approval is warranted to that effect.

11. The majority of NE 184th Street is a private street; according to the City, only a short section of NE 184th Street near the intersection with NE 122nd Avenue is a public street. The owners of the private section of this street have the right to prohibit on-street parking and construction traffic from using their street.

12. As discussed on page 14 of the Staff Report, on-street parking is prohibited on both sides of half-width streets less than 26 feet wide and on one side of half-width streets less than 32 feet wide. The applicant proposed to construct SW 35th Street as a half-width street with a 25-foot paved section (See page 8 of Exhibit 6). Therefore, parking should be prohibited on this street. However, if desired, the applicant could widen this street to 26 feet to allow on-street parking. Condition 2.x should be modified to that effect.

13. Residents of the Viewcrest Acres 2 development objected to the proposed design of the new NE 122nd Avenue/NE 184th Street/SW 35th Street intersection (Exhibits

22a, 26, 32, and 33). However, based on the expert testimony of the applicant's engineer, this intersection will meet Code requirements including sight distance and intersection spacing (Attachment D of Exhibit 36). There is no substantial evidence to the contrary. Mr. Robertson, a professional engineer, testified that the proposed intersection design "[d]oes not appear to provide adequate sight distance in either direction..." (page 2 of Exhibit 22a). However, the examiner is persuaded by the expert testimony of the applicant's engineer, which is based on actual on-site observations and measurements. In addition, the City engineer will review the design of this or other alternative intersection designs in more detail during final design and ensure that it complies with all applicable requirements. The examiner encourages the applicant to continue to work with the neighbors to address their concerns with this intersection.

a. Mr. Clark expressed concerns that an alternative intersection of these roadways with an "S" type connection between NE 184th/SW 35th Streets could be difficult for larger/longer vehicles (RVs, trailers, delivery, and similar types of vehicles) to maneuver through. As discussed above, any intersection design must meet City standards that are intended to ensure adequate access for all vehicles that are likely to utilize a particular roadway, including fire and other emergency vehicles. Compliance with those standards will ensure adequate access for other large vehicles.

b. On-street parking is allowed on both sides of all full-width neighborhood collector and Local "A" streets proposed on the site (See BGMC Figures 12.116.040B and C). On-street parking on Local "A" streets may reduce such roadways to a single 14-foot wide travel lane, forcing oncoming drivers to slow down and wait for oncoming traffic to pass before proceeding. However, such roadway widths comply with the adopted City standards and do not significantly interfere with emergency vehicle access or other large vehicles.

14. The NHA objected to any future use of NE 184th Street as a means of crossing Woodin Creek. Such a crossing is not proposed with this application. The City approved a road modification allowing the applicant to terminate the public street improvements for SW 35th Street prior to the east boundary of the site in order to avoid impacts to the critical areas (steep slopes and streams) and because the cost of such a road extension would exceed the roughly proportional impacts of the proposed development.

a. The applicant will dedicate right-of-way to the eastern boundary of the site, which will allow the City to extend SW 35th Street further east, across Woodin Creek, in the future to provide access to adjacent properties and enhance emergency access and cross-circulation in the area. In the alternative, based on additional analysis, the City may choose to locate such a stream crossing in an different location with less impact to the creek, including, potentially, the existing NE 179th Street crossing. NE 179th Street is currently a private street. Therefore, the City would be required to compensate the owner(s) of this street or require dedication of the roadway as a condition of approval for development on the property underlying this roadway. The choice of whether and how to extend a new public roadway across Woodin Creek is not an issue before the examiner

in this proceeding. Any future alignment decisions will be subject to additional public review.

15. The examiner finds that the applicant cannot be required to contribute toward the cost of mitigation of the southbound leg of the SR 503/SW Eaton Boulevard intersection. SR 503 is not a Highway of Statewide Significance (“HSS”). It is a regional state highway facility. (See <https://www.rtc.wa.gov/packets/board/2016/03/201603-08-B-GMAguide.pdf>, page 41, and Attachment A of Ex 36). Therefore, it is subject to the minimum LOS E concurrency standard for state highways established by the Southwest Washington Regional Transportation Council (“RTC”), the regional transportation planning organization for Clark County. The City recognized the minimum LOS E standard for this intersection in the 2015 Transportation System Plan Update, which states, “The mobility standard for Intersections along urban sections of SR 503 is LOS E.” (See <https://www.cityofbg.org/DocumentCenter/View/2837/TSP-Update---Final-020816>, page 15 and Tables 1-5 of that document). The state has no authority to “defer” to the City’s LOS D concurrency standard. Condition 2.m should be modified to that effect.

a. The fact that SW Eaton Boulevard is subject to City jurisdiction does not change this analysis. LOS requirements are based on the intersection operation, not the individual movements. (BGMC 12.120.060.B). However, even if LOS standards applied to individual movements, the City is seeking mitigation for the southbound leg of this intersection, SR 503, which is subject to the state’s minimum LOS E concurrency requirement.

b. “The applicant is not objecting to the fee associated with the east and westbound improvements on Eaton Boulevard because they were a previously established mitigation measure to improve a failing condition.” (page 3 of Exhibit 42).

16. The examiner finds that the applicant is not required to obtain an Administrative Order from ECY prior to impacting the wetlands and buffers on the site. The examiner agrees with and adopts the legal arguments regarding this issue in the applicant’s submittals (Exhibits 23a, 36, and 42). The Washington Pollution Control Act (RCW 90.48) authorizes ECY to address unauthorized impacts to wetland and other waters of the state. However, as the applicant notes, state law gives the City exclusive authority to adopt and implement critical areas ordinances (RCW 36.70B.030) and approve preliminary plats (RCW 58.17). The applicant is required to obtain a Section 401 Water Quality Certification from ECY, as well as a Nationwide Permit #39 from the Corps, prior to engineering approval and final site plan (See Condition A.11).

17. The examiner finds that there is sufficient evidence in the record to find that it is feasible for the proposed development to comply with the City’s critical area ordinances. There is no need to delay approval of this application based on potential changes in the boundaries of the critical areas on the site. The applicant modified the critical area boundaries based on input from ECY and the Corps. Those modifications reduced the minimum density for the site from 485 to 482 units (Attachment D of Exhibit

36 and Exhibit 37). There is no substantial evidence that those boundaries are inaccurate. In addition, these agencies will have additional opportunities to confirm the critical area boundaries prior to final plat approval through the Section 401 and Nationwide Permit reviews noted above. If necessary, the applicant can further modify the final plat to accommodate any changes noted in those reviews.

18. The site contains eight wetlands and three Type Np streams and associated buffers. Woodin Creek, a Type F stream, is located east of the site and extends across the southeast corner of the site, with the buffer extending over much of the east boundary. Wetlands A, B, C, D, G, H, and K are located in the western half of the site in areas of mowed agricultural field with two small forested patches. The eastern portions of wetlands D, G, and K extend into the forested patches. All of the streams and wetlands E, F, I, and J are located in the eastern half of the site, which is largely covered in mature forest. (Exhibit 16a). The wetlands in the western portion of the site are generally lower quality due to their smaller size, isolation, and location in areas of mowed field. (Exhibits 18 and 44). Wetlands in the eastern portion are higher quality due to their location in a mature forest and connections to other forested riparian areas on and adjacent to the site, including Woodin Creek.

19. The applicant is required to avoid all impacts that degrade the functions and values of the critical areas, minimize impacts where avoidance is not feasible, and compensate for the unavoidable impacts by replacing each of the affected functions to the extent feasible, in order to ensure the development results in no net loss of critical area functions and values. BGMC 18.260.115. However, the Code also requires that the City “Balance the need for the protection of natural resources with private property rights and economic development,” BGMC 18.270.010.E, and “[p]rotect these areas and their functions and values while also allowing for reasonable use of private property,” 18.260.010. Precluding incompatible uses and development does not mean a prohibition of all uses or development. WAC 365-190-020(6). Therefore, the examiner finds that what is “feasible” must include consideration of the zoning and intended use of the site where critical areas are located as well as the financial feasibility of the development proposed on the site.

20. The examiner finds that the applicant has designed the proposed development to avoid critical area impacts to the extent feasible.

a. As illustrated in the “Existing Conditions Map” included with the applicant’s Critical Areas Report (p. 21 of Exhibit 16a), there are critical areas throughout the site, making it impossible to develop the site in compliance with the minimum density requirements of the MU-R zone without impacting some critical areas.

b. The applicant is required to extend SW 6th Avenue and SW 35th Street through the site in order to comply with the City’s Transportation Plan. (See page 7 of Exhibit 37 and Figure 4-3 of the Transportation Plan). The City also required that the applicant extend SW 31st Street to the east boundary of site in order to provide opportunities for future cross-circulation and connection with the future extension of

Parkway Avenue. These roadways are necessary to achieve the City's goal of providing alternative routes and cross-circulation connections in order to reduce dependence on the State Highways. These required street extensions will result in unavoidable impacts to Wetlands E, G, F, I, and J and their associated buffers. Such impacts are expressly allowed by BGMC 18.270.070.B. The required extension of SW 31st Street will also impact Tributary C and the associated riparian buffer.

c. The applicant designed the plat to minimize impacts to the extent feasible.

i. As discussed in Exhibit 57, the applicant modified the plat several times, removing 11 lots, relocating six lots, and reducing the size of 38 lots. (Compare Exhibits 6 and 47). The applicant proposed to concentrate development in the western portion of site where lower quality wetlands are located in order to preserve higher quality critical areas, forested wetlands and streams, in the east portion of the site where the oldest and largest trees occur. The applicant proposed to preserve 25-percent of the site area as undeveloped protected open space. (pages 7 and 12 of Exhibit 37).

ii. In addition, the applicant proposed to construct SW 31st and SW 35th Streets as half-width improvements on the boundaries of the site in order to minimize impacts to the on-site wetlands. The applicant located the SW 31st Street crossing over Tributary C downstream from an existing culvert in an area that is currently impacted and in an eroded and degraded condition. The applicant will remove the existing undersized culvert and install a larger culvert large enough to convey the stream flow without causing downstream existing erosion and scour issues. (See Exhibits 16b and 44).

iii. The proposed plat preserves 15.91 acres (25—percent) of the site as permanently protected open space, primarily within a contiguous area consisting of proposed Tracts E, H, and K. With the exception of the SW 31st Street stream crossing, these tracts will preserve and protect all of the streams and buffers on the site, the remaining wetlands and buffers, and additional upland forested areas in the central and eastern portions of the site as well as providing a wildlife corridor connection to similar forested upland and riparian habitat in areas east of the site.

iv. Development in the southern portion of the site, proposed Phase 4, will eliminate existing forested areas on the site. However, that portion of the development is entirely within unprotected uplands; with the exception of the required extension of S 35th Street, this portion of the development will have no impacts on wetland or riparian areas or buffers.

v. The applicant argues that “Wetlands E, F, and G are already completely indirectly impacted from the proposed roadways, meaning that removal of lots from their buffers does not result in a reduced amount of impacts.” (page 1 of Exhibit 44). However, they failed to explain this statement. Proposed Lots 104-108, 109-112, and 116-118 are located on the north or east sides of the roads that will impact the wetlands. Eliminating these lots would reduce direct impacts the buffers associated with these

wetlands. However, based on the applicant's un rebutted testimony, it is not financially feasible to eliminate these lots.

d. The examiner finds that it is not feasible to further avoid or minimize critical area impacts without making development of the site financially infeasible. As the applicant notes, the proposed development proposes a balance of housing types to meet market demand in the area and the City's planning goals. It is not financially feasible to develop additional multi-family units on the western portion of the site in order to reduce development in the eastern portion, because there is insufficient demand for multi-family development in the City of Battle Ground. (Exhibits 45 and 49). There is no evidence to the contrary.

i. The examiner finds that it is not feasible to simply "[o]mit plans to develop the northeast corner of the property..." in order to avoid impacts to the high quality wetlands, wetland buffers and riparian habitat in this portion of the site as suggested by ECY. (Exhibit 50).

(A) As noted above, the applicant is required to extend SW 31st Street to the east boundary of site in order to provide opportunities for future cross-circulation and connection with the future extension of Parkway Avenue. Extension of this street will result in unavoidable impacts to Wetlands I and J, Tributary C and their associated buffers and habitat in this portion of the site.

(B) The applicant proposed to develop 15 lots in this area of the site, east of Tributary C. The proposed lots will not directly impact the stream or wetlands, but they will cause additional impacts to the wetland buffers. However, prohibiting lots in this portion of the site would likely preclude the City from requiring the extension of SW 31st Street. Without these lots, there would be no essential nexus between the need for this street extension and the impacts of this development. This street is unnecessary to serve the proposed development unless and until it is extended to the east and/or north and provides additional opportunities for access and circulation. In the meantime, all traffic from this site will travel west towards SRE 503. See *Benchmark v. City of Battle Ground*, 94 Wash.App. 537, 972 P.2d 944 (1999); 103 Wash.App. 721, 14 P.3d 172 (2000), aff'd on other grounds, 146 Wash.2d 685, 49 P.3d 860 (2002) and *Burton v. Clark County*, 91 Wn.App. 505, 958 P.2d 343 (1998).

e. The applicant will compensate for the unavoidable impacts to critical areas on the site and ensure that the development results in no net loss of critical area functions and values, BGMC 18.260.115 C and D, and "Ensur[ing] the goal of no net loss of wetland acreage and functions," 18.270.010.A.

i. The applicant proposed to preserve 15.91-acres of wetlands, wetland buffer, and riparian areas on the site as well as additional forested upland in the area south of proposed Lots 50-56 and grassy open space within the utility corridors in the northeast corner of the site. In addition, the applicant will enhance 0.72-acres of wetlands, and 0.40-acres of riparian area on the site. (See page 12 of Exhibit 37). The enhancement

areas are intended to improve the quality and function of Wetlands E, F and G, which are located in the central portion of the site and are hydraulically connected to the streams on the site. As these mitigation plantings mature, they will expand the forest fringe areas around these wetlands and the streams, improving the quality of the buffers. The proposed enhancements are intended to develop “[a] diverse, multi-strata forested habitat...” on the site. (Page 36 of Exhibit 16b, page 12 of Exhibit 37, and Exhibit 51). The applicant is required to regulate and direct treated runoff from the site as necessary to maintain the hydrology of all retained wetlands on the site as required by the SMMWW. The applicant will address this requirement through the final engineering review process.

ii. In addition, the applicant will remove 1.42-acres of invasive species on the site and provide long-term maintenance to ensure continued control and prevent the recurrence of these invasive plants. (Exhibit 51 and pages 439 and 440 of Exhibit 18). ECY notes that “This site is not overgrown with invasive species. The forested half of the property contains a diverse array of plant species that have been left undisturbed for decades and currently provide high quality habitat, as well as supporting and protecting the wetlands.” (Page 2 of Exhibit 50). However, as the applicant notes, unless these existing invasive plant species are removed and suppressed they will naturally expand and degrade the quality of habitat over time. (Exhibit 51).

iii. Finally, the applicant will purchase mitigation credits at the offsite Remy Consolidated Mitigation Site. The applicant proposed different mitigation ratios depending on the type of wetland or buffer impacted in order to ensure proper mitigation and no net loss of wetland functions and values. ECY argued that the proposed mitigation “may” be inadequate. (page 2 of Exhibit 50). However, ECY’s unsupported and equivocal concerns are not sufficient to overcome the affirmative testimony of the applicant’s critical areas consultant that the proposed mitigation is adequate and will result in no net loss.

f. ECY argued that the applicant should be required to utilize unlined stormwater detention facilities in the western portion of the site in order to allow some stormwater to infiltrate through the bottom of the ponds and maintain wetland hydrology on the site (Exhibit 39). However, as shown in the applicant’s geotechnical analysis (Exhibit 11), the soils on the site allow little or no infiltration. The applicant will be required to utilize other methods to maintain wetland hydrology as required by ECY’s SMMWW.

g. The applicant will be required to identify specific locations for stormwater outfalls, and mitigate for the impacts thereof, through the final engineering review process. The preliminary engineering plans are conceptual, and analysis of all technical details is not required. The applicant is only required to demonstrate that it is feasible to comply with the applicable approval criteria at this preliminary stage of review. To require complete, detailed plans prior to preliminary approval would require re-working the entire design any time amendments or modifications of the project are required. This would be highly inefficient and is not necessary to protect the public interest.

21. Clearing and development on this site will eliminate habitat for wildlife. But the Code does not prohibit such an effect. To the contrary, it is an inevitable consequence of concentrating new development in the urban area. None of the animals observed on this site, including the animals and birds cited in Section 12 of Exhibit 22a, is listed as endangered or threatened. They are commonly observed in the urban area. Their presence is less likely after the site is developed, but that is to be expected. There is no substantial evidence that any endangered or threatened species exist on the site.

22. Condition 2.xx of the Staff Report requires a 30 foot setback for all lots “along the ravine,” based on the applicant’s October 2020 Geotechnical Report. Based on the May 7, 2021 email from the applicant’s geotechnical engineer (Exhibit 38), a setback of 25 feet from all structures to the crest of continuous slopes that exceed 50 percent, as shown in the “critical slope exhibit” attached to Exhibit 38, is sufficient to ensure the stability of such slopes. However, BGMC 18.300.070.B(12)(a) requires:

Activities at the tops of descending slopes (building at the top of a steep slope):

- a. For slopes greater than or equal to forty percent and less than one hundred percent, buffers shall extend a distance back from the top of the slope equal to the vertical height of the slope divided by three, but not to exceed forty feet. The top of the slope is defined as a distinct break in slope at the top of a steep slope.

...

Conditions 2.xx and 14 should be modified to that effect.

23. Members of the public argued that “The city of Battle Ground must consider the concerns of [its] constituents when pushing through projects of this magnitude.” (Exhibit 28). Such testimony misunderstands the law. While neighbors’ concerns are relevant, those concerns are addressed through compliance with the applicable approval criteria. The best way to protect all of the public is to enforce the laws consistently. To give special consideration to a limited class of people violates the due process rights of all. The applicants are entitled to equal protection of the law. The examiner is obligated to apply the plain meaning of the law when it is not ambiguous. Citizen input is relevant and important in determining whether and how the application complies with the applicable approval criteria. Existing residents often have unique knowledge due to their experience living in the area. However the Code does not require community approval of the application. This is not a popularity contest. The examiner must approve the application if it does or can comply with the law.

- a. Even if the subdivision will have an adverse impact on property values -- and there is no substantial evidence to that effect in the record --- protection of property values is not relevant to the applicable approval criteria.

D. CONCLUSION

Based on the above findings and discussion, the examiner concludes that PR 26:2020 (Woodin Creek Station) should be approved, because it does or can comply with the applicable standards of the BGMC and the RCW, 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 PR 26:2020 (Woodin Creek Station), subject to the following conditions of approval:

Conditions of Approval

A. Prior to Engineering Approval and Final Site Plan:

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 site and engineering plans:
 - a. Showing SW 31st Street, SW 34th Street, and SW 6th Avenue shall be constructed to “Neighborhood Collector” standards including sidewalk, planter strip, curb and gutter, and asphalt.
 - b. Showing SW 32nd Street, SW 33rd Street, SW 33rd Way, SW 34th Way, SW 1st Place, SW 2nd Place, SW 5th Avenue, SW 6th Avenue (between SW 34th Street and SW 35th Street), SW 7th Place and SW 8th Avenue as “Local ‘A’” standards including sidewalk, planter strip, curb and gutter, and asphalt.
 - c. SW 35th Street shall be constructed to “Neighborhood Collector” half-width standards along the southern property line, that includes a 34-foot right-of-way, 25-feet of roadway, 4-foot landscape strip and 5-foot sidewalk.
 - d. Showing Tracts “G”, “I”, “Q” and “R” as privately owned, maintained, and constructed to Local “A” Standards per BGMC 12.116.140 for private roads longer than 120 feet and serving 3-4 Lots.
 - e. Showing tracts “D” and “L” as privately owned and maintained and constructed to Private Street Standards per BGMC 12.116.140 for streets serving 3-4 lots, 32-foot easement, 30-foot roadway.
 - f. Showing a new intersection at SR 503 and SW 34th Street (NE 184th Street) the City’s Transportation System Plan (TSP). However, if Washington State Department of Transportation does not approve an access break at this location, then this requirement will be removed.

- g. Containing a combined landscaping and driveway plan.
- h. Showing sight distance and vision clearance triangles.
- i. Containing a signing and striping plan.
- j. Containing a street lighting plan having LED acorn units for all streets.
- k. Showing traffic calming devices on all public streets.
- l. Showing driveways that meet the requirements of BGMC 12.116.243 and 12.116.246.
- m. Showing traffic mitigation at SR 503 & NW Onsdorff Boulevard, Grace Avenue & East Main Street, SW 20th Avenue & SW Eaton Boulevard, and east and westbound improvements on Eaton Boulevard at SR 503 or indicating that mitigation fees will be paid in lieu of the improvements.
- n. Showing water lines extending to extreme property lines.
- o. Showing each residential lot having its own individual water service.
- p. Showing FE-7 (10-inch), FE-6 (15-inch), a portion of FE-5 (18-inch).
- q. Showing sewer line extending to extreme property lines.
- r. Showing each lot having its own individual sanitary lateral.
- s. Showing sampling manholes for commercial uses including applicable easement.
- t. Showing fire hydrants meeting spacing requirements throughout the subdivision.
- u. Showing a stormwater facility that meets the requirements of BGMC 18.250.
- v. Showing grading and erosion control in conformance with applicable city standards and standard construction details.
- w. Showing how changes in elevation will meet the accessible route requirements (spot elevations, ramp details, parking signage, etc.).
- x. Identifying the location of “No Parking – Fire Lane” signage/striping at all access roads. This includes signage at landscape islands/peninsulas, alleys, shared driveway tracts, turnarounds (cul-de-sacs and hammerheads), and , half-width streets less than 26 feet wide. Include corresponding sign details for each.
- y. Showing the location of the required 26-foot-wide aerial fire apparatus access roads required for all of the 3-story apartment buildings.

- z. Revise dimensions and details for hammerhead serving tract G and the cul-de-sac at the east end of SW 31st Street to meet dimensional requirements listed in this report.
- aa. Revise spacing and location of fire hydrants to meet requirements listed in this report.
- bb. Indicating the location of all striped exterior accessible routes of travel crossing parking lot connecting all multi-family buildings and sidewalks.
- cc. Identifying the location of all type-A accessible units on the site plan.
- dd. Showing the location of additional accessible parking required for type-A units, leasing office, and building C.
- ee. Showing the live-work unit abutting two streets (corner lot) that meets the frontage and dimensional requirements of the MU-R zone.
- ff. Showing all residential lots meet the minimum 2,000 square-foot requirement. This applies to lots 66, 69, 70, 73, 74, 77, 78, 81, 82, 278, 279, 282, 283, 286, 287, 290, 291, 294, 297, 300, 301, 304, 305, 308, 309, 312, and 313.
- gg. Modifying the narrow lot development plans to show on-street parking counts are not proposed along fire lanes.
- hh. Showing the parking lot proposed meets applicable design standards listed in BGMC 17.133.070, table 17.133-3, and meets the curb requirement of 4 inches.
- ii. Change the layout for apartment buildings B-D to meet the 10-foot setback along SR 503.
- jj. Showing that the apartment parking lots are behind or to the side of buildings B-D.
- kk. Showing a different paving material (such as scored, brushed, stamped and colored concrete and brick pavers) where pedestrian routes cross driveways or vehicular access aisles.
- ll. Stating the percentage of recreational area for the apartment site. The site plan should also include the amenities this area is going to provide; such as play structures or outdoor sport amenities/features.
- mm. Showing all trash and recycling areas are adequately screened and provide a wall detail meeting the 6-foot height requirement.
- nn. Showing the total landscape coverage on the landscape plan.
- oo. Showing the approximate location of mechanical equipment and their screening meeting 17.131.040.

- pp. Showing parking stalls to shall be designed at 20 feet x 9 feet for standard, and 8 feet x 15 feet for compact, or identify how the vehicle over hang can be accommodated without compromising landscaping or sidewalks standards.
 - qq. The applicant should be aware that the City has standards for noise, glare, vibration, and odor, as referenced in BGMC 17.131.090 to 17.131.120.
 - rr. Each commercial/apartment site shall submit lighting plan at a scale that is legible.
 - ss. Showing a B2 landscape buffer is required at the perimeter of parking lots.
 - tt. Showing apartment site meets parking standards BGMC 17.133.
 - uu. Providing bicycle parking that meets the requirements listed in 17.133.110 C-F.
 - vv. Showing a signage plan and detail meeting the criteria listed in 18.270.050 and 18.280.070. Critical area demarcation along roads should show split fencing listed in these sections.
 - ww. Showing the stormwater facility in phase 5 is in compliance with 18.270.070A. If trees are proposed to be taken down, we will need a tree removal plan that shows you are in compliance with 18.270.070 A1 and A2.
 - xx. Provide a plan showing the top of slope and the setback of 25 feet from all structures to the crest of continuous slopes that exceed 50 percent, as shown in the “critical slope exhibit” attached to Exhibit 38.
3. Provide a Traffic Study Addendum addressing LOS and safety at the intersection of NE 122nd Avenue and SW 40th Street (NE 179th Street) and using correct values for *HCM Platoon* Ratio for intersections along SR 503.
 4. Provide a photometric plan shall be done for all access points, intersections, frontage roads out to centerline, and any existing lights to ensure that proposed lights meet IES RP-8-00 standards.
 5. Submit a hydrology report that addresses all requirements found in BGMC 18.250.
 6. Submit a SWPPP that meets Department of Ecology requirements.
 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 that is two (2) percent of the estimated costs of construction.
 9. Submit proof of engineering plan approval by Clark Public Utilities for water improvements.

10. Demonstrate compliance with the mixed-use design standards of 17.122.060 during each phase of the project.
11. Coordinate with the Army Corps of Engineers in acquiring a Nationwide Permit #29, and with the State Department of Ecology in acquiring a Section 401 Water Quality Certification.
12. Provide an updated mitigation plan that demonstrates compliance with Chapters 18.260, 18.270, and 18.280
13. Provide updated plans with a buffer based on the calculations in BGMC 18.300.070.B.2a.
14. Submit evidence of purchased mitigation credits prior to engineering approval or site disturbance, whichever happens first.
15. Landslide protection area boundaries shall be permanently marked on the site prior to final inspection by the city using methods and materials acceptable to the city.
16. Clearing or vegetation removal in landslide protection areas, steep slope hazard areas or landslide hazard areas or their buffers is prohibited, except for BGMC 18.300.050.F1-8.

B. Prior to Construction of the Site:

1. Receive signed and approved engineering plans from the City of Battle Ground.
2. Receive an approved ROW permit from the City of Battle Ground.
3. Submit a surety bond meeting the requirements of BGMC 12.118.110.
4. Submit a Certificate of Liability Insurance meeting the requirements of BGMC 12.118.120.
5. Erect and maintain erosion control measures consistent with the approved Erosion Control Plan and City of Battle Ground erosion control standards.
6. 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.
7. Conduct a pre-construction conference with City engineering and planning staff. Contact the Engineering Department at (360) 342-5069 to schedule an appointment.
8. Erect temporary markers in the field the boundary of all landslide protection areas required by this section, or the limits of the proposed site disturbance outside of the landslide protection areas, using methods and materials acceptable to the city.

C. Prior to Creation of Impervious Surface:

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.

D. Prior to Engineering Acceptance:

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 a letter, 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 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) 11x17 paper sets of As-Built record drawings and one (1) compact disc version of the as-built drawings in AutoCAD, PDF, and TIF formats.
6. Submit recorded sewer easement, if applicable, after being reviewed by City Engineering Staff.
7. If LID improvements are incorporated into the project, provide appropriate stormwater covenants.
8. Provide certification that private streets were built per BGMC 12.116.140.
9. Submit a private maintenance agreement for private streets.
10. Submit a signed Bill of Sale for sewer and stormwater.

E. Prior to Final Plat Approval:

1. Construct all required public improvements and gain engineering acceptance or provide appropriate bonding.
2. Construct the mitigation measures for the failing intersection of SR 503 & NW Onsdorff Boulevard or pay the mitigation fees of \$50,338.53

3. Construct the mitigation measures for the failing intersection of Grace Avenue & East Main Street or pay the mitigation fees of \$18,939.47.
4. Construct the mitigation measures, 100-foot eastbound right turn lane and a second westbound left turn lane, for the failing intersection of SR 503 & SW Eaton Boulevard or pay the mitigation fee of \$203,932.89
5. Construct the mitigation measures for the failing intersection of SW 20th Avenue & SW Eaton Boulevard or pay the mitigation fee of \$103,113.00.
6. Record a conservation covenant for the critical areas on the eastern side of the property.
7. Submit a final plat:
 - a. That shows easements for public utilities not located in the right-of-way.
 - b. Showing critical areas in a separate tract and label the tract as a wetland and habitat tract. Add a note on the final plat that refers to the recorded conservation covenant.
 - c. With the following note: "Fences higher than 42-inches will not be allowed in the front yards."
 - d. With the following note: "All utilities are to be located outside of the sidewalk section and to be underground where possible."
 - e. With the following note: "The City of Battle Ground has no responsibility to improve or maintain the private streets, including streetlights and signs, contained within, or private streets providing access to, the property designed in this development."
 - f. With a note describing the maintenance responsibilities of each lot owner for the private streets.
 - g. With a note specifying the party/s responsible for long-term maintenance of stormwater facilities.
 - h. That shows where any control monuments have been placed.
 - i. That shows the dedication of any public roads or alleys.
 - j. Demonstrating a minimum of 16 feet of frontage for all residential lots and 50 feet for commercial lots.
 - k. With the following note: "All new structures shall conform to the setback and building heights of the underlying zoning district."
 - l. With the following note: "All households shall conform to the neighborhood design standards as listed in BGMC 17.106.040."

- m. With the following note: “Building permits and impact fees will be calculated and shall be paid at the time of permit issuance.”
- n. Add a note specifying maintenance responsibilities for the onsite critical area and open space tracts.
- o. With the following note: “Houses served by alleys shall have the façade of the house facing the public street as the front of the house including, and shall meet the design standards of 17.106.040B and 17.106.040C.”
- p. With a note stating that the lot set aside for the live/work will is for commercial use.
- q. That shows the steep slope hazard buffer (landslide protection area).
- r. Add a note that states the steep slope hazard buffer is designated as a landslide protection area.

F. Prior to Building Construction:

- 1. Acquire the required permits as outlined in Title 15 above.
- 2. Provide documentation that the required fire hydrants have been installed, tested, and approved in accordance with City of Battle Ground engineering standards.
- 3. All new structures shall conform to setbacks, design, parking, and building height requirements of the underlying zoning district.
- 4. For the apartment project, provide elevation drawings:
 - a. Showing compliance with 17.106.070, multifamily development standards, height requirements, architectural design elements, pedestrian scale elements, and building modulation.
 - b. Showing the apartment office’s main entrance is off of SW 31st St and meets the required design standards.
 - c. Showing compatible building designs with all buildings in the complex.
 - d. Showing buildings B-D’s west elevation plans have additional architectural variety.

G. Prior to Certificate of Occupancy:

Complete all building and fire permit requirements of the City of Battle Ground Building Division.

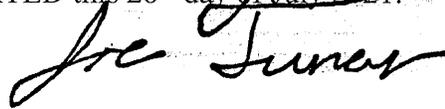
H. Other:

- 1. If any cultural resources are discovered in the course of undertaking the development activity, Washington State Department of Archaeology &

Historic Preservation (DAHP) and the City of Battle Ground Planning Department must be notified.

2. Coordinate any water quality recommendations from Ecology for any necessary reviews or approvals.
3. The live/work unit will need to come in for a separate site plan approval and will be subject to the commercial standards outlines in 17.122.060, 17.118.040, 17.131, 17.133, 17.135, and any other applicable sections of the municipal code.
4. The applicant is required to obtain any necessary reviews, approvals, and permits from Williams NW Pipeline Company or any other applicable state agencies.
5. Follow all recommendations of the final geotechnical report during each stage of design and construction.
6. All signs must go through a formal permit review and approval.

DATED this 28th day of July 2021.

A handwritten signature in black ink that reads "Joe Turner". The signature is written in a cursive style with a large, stylized "J" and "T".

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