

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

Regarding an application by Robertson Engineering for approval of a preliminary plat to divide 18.04-acres into 37 lots in the R3 zone east of NE 159th Avenue, between NE 178th and NE 183rd Streets, in the city of Battle Ground) **FINAL ORDER**
) **LUDIII21-0001**
) **(Cedars East Subdivision)**

A. SUMMARY

1. The applicant, Robertson Engineering, requests approval to divide the 18.04-acre site into 37 residential lots and open space tracts for critical areas and stormwater facilities, pursuant to the density transfer provisions. The site is located east of NE 159th Avenue, between NE 178th and NE 183rd Streets; known as Tax Assessor Parcels 986051252 and 986051253 (the “site”).

a. The site, abutting properties to the northeast, and immediately abutting properties to the north are located in the city of Battle Ground and zoned R3 (Residential, three units per acre maximum density). Properties to the west and northwest, beyond the immediately abutting parcels, are located in unincorporated Clark County and zoned county R1-20 (Residential, 20,000 square foot minimum lot size). Properties to the south and east are also located in unincorporated Clark County and zoned county R-5 (Rural, five-acre minimum lot size).

b. There are nine wetlands scattered throughout the site.¹ The applicant proposed to fill three wetlands (Wetlands G, J and K) on the southwest portion of the site. In addition, the applicant will fill portions of Wetland H in the south-central portion of the site and those portions of Wetland D/E/F identified as Wetlands F1 and F2 in the northeast portion of the site to accommodate required road connections. The applicant will retain the remaining wetlands and portions of the associated buffers within open space Tracts C and D. The applicant will mitigate for the wetland and buffer impacts by purchasing credits at an off-site wetland mitigation bank and by planting vegetation within the remaining wetland buffers.

c. The site is currently vacant. The applicant proposed to develop a new single-family attached dwelling on each of the proposed lots. All proposed lots comply with the dimensional requirements of the R3 zone.

d. Existing NE 183rd Street abuts the northwest boundary of the site and existing NE 180th Street is stubbed to the southern portion of the west boundary of the site. The applicant proposed to dedicate right-of-way and construct a loop road within the site by extending NE 180th Street to NE 183rd Street. The applicant will also dedicate right-of-way and construct half-width improvements on the section of NE 183rd Street abutting the north boundary of the site. The applicant will extend a private road, proposed Tract A, and two shared driveways from the on-site section of NE 180th Street to provide access to the proposed lots.

¹ Wetlands D, E, and F constitute a single wetland. (Exhibit ZI).

e. The city of Battle Ground will provide domestic water and sanitary sewer service to the site. The applicant will collect storm water from all impervious areas on the site and the rear yards of lots abutting wetlands, treat it via bioretention cells located in the planter strip within the proposed on-site road right-of-way, and convey it to a detention pond in the northeast corner of the site, proposed Tract B. The applicant will release treated stormwater from the detention facility into the roadside ditch at NE 183rd Street at less than predevelopment rates. The applicant will also release some stormwater into the on-site wetlands as necessary to maintain the existing hydrology.

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 30, 2021 (the “Staff Report”). The applicant accepted those findings and conditions with certain exceptions. Nine persons testified orally with questions and concerns about the proposed development. Other person testified in writing. Disputed issues or concerns in the case include the following:

a. Whether the city provided adequate public notice of the application and hearing;

b. Whether the proposed development will have a probable significant adverse environmental impact and whether alleged errors and omissions in the SEPA checklist warrant the preparation of an Environmental Impact Statement (“EIS”) for this development;

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

d. Whether the applicant is required to extend NE 183rd and NE 180th Streets into the site;

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

f. Whether the applicant can be required to construct off-site sidewalks and road improvements;

g. Whether construction traffic on area roads and construction activities on the site will cause prohibited impacts on adjacent properties;

h. Whether the proposed flag lots comply with the street frontage requirements of the Code;

- i. Whether the proposed development complies with the wetland and critical area protection requirements of the Code;
- j. Whether the proposed development will cause or exacerbate flooding on adjacent properties;
- k. Whether the proposed development poses a significant risk of groundwater contamination;
- l. Whether the proposed development will cause prohibited impacts to wildlife and wildlife habitat; and
- m. Whether objections to the proposed lot sizes and density are relevant to the applicable approval criteria.

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 28, 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. City planner James Cramer summarized the Staff Report.

a. He noted that the applicant proposed to subdivide the 18-acre site into 37 lots pursuant to the city's density transfer ordinance. The 18 acre site could be developed with a maximum 54 lots. However, the applicant proposed to retain 8.83-acres of undevelopable area (wetlands and buffers) on the site. The 9.21-acre developable portion of the site can be developed with a maximum 28 lots. The density transfer ordinance allows applicants to transfer density from undevelopable areas to the developable portion of the site, up to 120-percent of the maximum density allowed in the developable portion. 120-percent of the 28 lots allowed on the developable portion of the site is 34 lots. Therefore, the applicant must eliminate three of the proposed lots in order to comply with the density transfer ordinance.

b. The site contains nine wetlands covering 3.64-acres of the site. The applicant will avoid direct impacts to six of the nine wetlands. The applicant proposed to reduce the required buffer widths by no more than 75-percent of the required buffer width through implementation of Land Use Impact Reduction measures in accordance with BGMC 18.270.090.C. The applicant will mitigate all wetland impacts by purchasing credits at an off-site wetland bank. The applicant is required to obtain final approval of

the wetland and buffer impacts from the U.S. Army Corps of Engineers (the “Corps”) and the Washington Department of Ecology (“ECY”).

c. Several persons expressed concerns that a single roadway, NE 152nd Avenue, provides the only access to the site and numerous surrounding homes. However, nothing in the Code requires a secondary access to the site.

d. He argued that paired flag lots are exempt from the 30-foot frontage requirement of BGMC Table 17.106-2. BGMC 16.125.110 allows paired flag lots to reduce their frontage by 50-percent, so a 15-foot shared flag pole access is allowed.

e. He noted that the city mailed notice of the proposed development to the owners of land within a 500-foot radius of the site. The city also published notice in the newspaper and posted it on the site as required by BGMC 17.200.070.F.

f. Many of the properties surrounding the site are located in unincorporated Clark County and zoned for lower density; urban R1-20 to the north and west and rural R-5 to the south and east. The site is located in the city of Battle Ground and zoned R-3, which is the city’s lowest density zone. The city requires different development standards than the county.

g. The site is not mapped as Fish and Wildlife Habitat. Therefore, BGMC 18.280 is inapplicable.

3. Engineer Jeremy Fick, wetland biologist Kevin Grosz, and developer Roland Haertl appeared on behalf of the applicant, Robertson Engineering

a. Mr. Fick accepted the findings and conditions in the Staff Report with certain exceptions.

i. He agreed with Mr. Cramer that the Code allows shared flag lots to be 15 feet wide. In the alternative, the city could approve an administrative variance allowing the proposed 24-foot shared flag pole accesses.

ii. The site is located in a Category 2 critical aquifer recharge area. The majority of the county is within this designation and no special limitations are warranted.

iii. The applicant avoided the wetlands on the site to the extent feasible. The applicant is required to extend NE 180th Street through the site to connect to NE 183rd Street in order to comply with the city’s cross-circulation requirements. The applicant curved the road to the north to avoid impacts to Wetland H. It is not feasible to provide a street connection to NE 183rd Street without impacts Wetlands F1 and F2. The Code allows roads through wetlands and buffers.

(A) The applicant proposed to fill Wetland G, which is an isolated, low quality wetland.

(B) The applicant will not impact the wetlands and mature forest area in the western portion of the site. The applicant will preserve nearly 50-percent of the land area on the site as protected open space.

(C) The applicant will also design the stormwater facility to discharge treated runoff to the remaining wetlands as necessary to preserve the existing wetland hydrology. The applicant will fence the rear yards of the proposed lots and install dense landscape plantings to limit access to the open space tracts. The applicant will install split rail fencing where the proposed roads abut open space tracts in order to clearly demarcate and limit access to the open space areas.

iv. The site is not mapped as Wildlife Habitat. Therefore, BGMC 18.280 is inapplicable.

v. The applicant is prohibited from blocking existing surface water that currently flows onto the site or increasing or concentrating runoff onto adjacent properties. The applicant will address these requirements through the final engineering process.

vi. The existing neighborhood east of the site was built to earlier county standards that allowed much larger lots and did not require sidewalks. The applicant is required to develop this site in compliance with current city standards.

vii. The delineated wetlands on the site are consistent with neighbors' observations of wet soils and standing water in the winter months.

viii. The applicant's traffic study considered the additional traffic generated by the recent development near the Cedars Golf Course. Traffic from that development was included in the analysis as "in process development." The background growth rate in the traffic study is intended to address traffic from developments occurring further away that may travel through the area. As many residents noted, the site is at the end of a dead-end street. Therefore, there is little or no through traffic on areas streets.

b. Mr. Grosz testified that ECY and the Corps determined that Wetlands D, E, and F constitute a single wetland. The Corps has jurisdiction over three of the wetlands on the site, which total 0.47-acres. A nationwide wetland permit is not required for this development. Two other wetlands are subject to ECY jurisdiction. The applicant proposed to fill 0.8-acres of the lowest quality wetlands on the site.

4. Peter Barber testified that he received notice of the application and the city's SEPA determination. He forwarded the notice to other residents in the area.

a. He argued that the wetlands and associated buffers on the site constitute fish and wildlife habitat, citing BGMC 18.280.010, and the proposed development is not consistent with that ordinance.

b. The Category II and III wetlands on the site are interconnected and feed to Morgan Creek east of the site. Morgan Creek is a tributary of Salmon Creek, which

provides habitat for fish species that are listed as threatened or endangered. Filling of the wetlands on this site will impact water quality and quantity within these streams, cutting off water that currently flows to Morgan Creek. Habitat degradation poses the biggest threat to protected fish species in this basin.

c. The proposed off-site wetland mitigation is located in a different watershed, Burnt Bridge Creek, and will do nothing to mitigate impacts within the Salmon Creek watershed.

5. Anne Brock expressed concerns with the traffic impact of the proposed development. All of the traffic from this site will travel past her home. There are 71 homes and some duplexes within the Cedars III development west of the site. Many residents walk and bike on the streets in the neighborhood. There are no sidewalks within the Cedars III development; residents must walk in the streets, which is hazardous under existing conditions. The additional traffic from this development will exacerbate that hazard. The wetland and buffer impacts of the proposed development will impact Salmon and Morgan Creeks. The applicant is proposing too many homes for this site.

6. Andy Hopkins testified that he experiences standing water in his yard abutting the southeast corner of the site six months a year. This water flows north/northeast into the site. Development on proposed Lots 1 and 3 will block this existing flow and increase flooding on his property. This area is flat. There is no significant grade change as the applicant asserts.

a. The applicant is not entirely avoiding the forested area in the western portion of the site. Proposed Lot 37 will impact this portion of the site.

b. The purpose of the R3 zone is to “maintain established neighborhoods.” The proposed flag lots are not consistent with the existing neighborhood west of the site.

7. Christian Clay expressed concern that the proposed flag lots in the southwest corner of the site will block water flowing onto the site from the wetlands south of the site. There is an existing pathway across the southeast corner of the site that is frequently flooded in the winter and the ditches are often full of water. The applicant’s SEPA checklist failed to list all of the wildlife that exists on the site and the proposed development will impact fish bearing streams.

8. Linda Mayers noted that NE 152nd Avenue provides the only access to approximately 300 homes. The proposed development will add even more homes. All of these residents must use NE 152nd Avenue to evacuate in the event of a fire, earthquake, or other disaster. The applicant should be required to provide a secondary access to the area to alleviate this hazard.

9. Janelle Cotlkes testified that recent brush clearing activities on the site caused flooding on her property. The equipment used created a berm that blocked surface water from flowing onto the site, causing it to back up and flood her property. The site contains a large amount of wildlife.

10. Jeffrey Cox noted that NE 152nd Avenue provides the only access to this area. He disputed the background growth rate used in the applicant's traffic study. The Cedars Village development has created 114 to 120 new homes in the area since 2015, resulting in a much higher growth rate. All of these lots rely on NE 152nd Avenue for access. Although NE 152nd Avenue is designated a rural major collector, it is not developed to that standard.

a. Drivers in the area frequently run stop signs under existing conditions. Traffic from the proposed development will exacerbate this problem.

b. The proposed development density and lot sizes are inconsistent with the existing R1-20 zoned neighborhood to the east of the site. The applicant should be required to provide a buffer between the site and adjacent lower density developments and the applicant should be required to provide a separate access to the site.

c. He noted that Gayle Evans requested a continuance of the hearing as she had to leave for work before she had the opportunity to testify, noting that the start of the hearing was delayed due to technical problems.

d. The signs posted on the site only lasted for a few days. He reported it to the city, but they were not replaced.

11. John Savona also disputed the growth rate used in the applicant's traffic study based on the amount of development occurring in the Cedars Village development. The Cedars Village development generated a significant increase in traffic and noise on area streets. Many drivers exceed the posted speed limit and "float" the stop signs at NE 19th Avenue and NE 181st Street. The additional traffic from this development will exacerbate those problems. The single access provided by NE 152nd Avenue creates a hazard in the event of a disaster, similar to what occurred during the wildfires in Paradise California.

12. Kristin Peters noted that the Salmon-Morgan Creeks Natural Area park north of the site generates additional traffic in the area and increases the number of people using NE 152nd Avenue. Public use of the forested park creates an increased risk of fire. She questioned who would be responsible for fighting a fire in that area. A retired fire fighter told her that the Fire District would not, given the lack of access to the area.

13. City engineer Ryan Jeynes noted that the majority of NE 152nd Avenue is located in unincorporated Clark County and subject to county jurisdiction and standards.

14. City community development director Sam Crummett noted that neither the code nor state law define the term "avoidance" of impacts to critical areas. Under the state Growth Management Act the city is required to meet a minimum density goal of six units per buildable acre, based on the city's buildable lands model. The model assumes a certain amount of wetland avoidance. But complete avoidance is not possible. Therefore, the code requires mitigation for such unavoidable impacts.

15. At the conclusion of the hearing the examiner held the record open subject to the following schedule:

a. For two weeks, until July 21, 2021, for anyone to submit additional written testimony and evidence in this matter;

b. For a third week, until July 28, 2021, for anyone to respond to the new evidence submitted during the first two weeks; and

c. For a fourth week, until August 4, 2021, to allow the applicant to submit a final written argument.

16. By order dated August 25, 2021, the examiner reopened the record in this case to allow the parties to submit additional evidence and testimony regarding the city's wetland and critical area ordinances. The record was reopened subject to the following schedule:

a. For two weeks, until Wednesday September 8, 2021, for all parties to submit new argument regarding this issue; and

b. For a third week, until Wednesday September 15, 2021, for all parties to respond to whatever was submitted during the prior week.

17. Exhibits ZG-ZY were submitted during the open record period. The record in this case closed at 5:00 p.m. on September 8, 2021.

C. DISCUSSION

1. City staff recommended approval of the preliminary plat, based on the affirmative findings and subject to conditions of approval in the Staff Report. The applicant accepted those findings and conditions, as amended, with certain exceptions.

2. 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 examiner finds that the city provided adequate public notice of the application and hearing and the public was provided with an adequate opportunity to review and comment on the application either orally at the hearing or in writing before and after the hearing.

a. The city mailed notice of the public hearing to the owners of properties within 500 feet of the site and published notice of the hearing in the newspaper as required by BGMC 17.200.070.F. Notice was posted on the site as required by BGMC 17.200.070.F.

b. Mr. Cox testified that the signs posted on the site only lasted a few days. Mr. Cox notified the city that the signs were down but they were not replaced. The examiner finds that any procedural error resulting from the lack of a sign on the site did not affect the parties' substantive rights to review and testify about this application. The

neighborhood was well represented at the hearing and in the written record. Residents of the neighborhood testified clearly and succinctly, both orally and in writing, regarding issues of concern to them. At the end of the hearing the examiner held the record open for two weeks to give all parties an opportunity to submit additional written testimony and evidence regarding the application and for a third week to allow all parties an opportunity to review and respond to information submitted during the first open record period. The examiner then reopened the record to allow all parties an additional three weeks to address the wetland and critical area ordinances.

4. The city was not required to send notice of the initial post-hearing open record period. The examiner announced the open record process and schedule at the conclusion of the hearing as required by BGMC 17.200.120B(5). The City did send all parties notice of the examiner's August 25, 2021 order reopening the record.

5. The city determined, based on the application materials and public and agency comments, that there are no probable significant adverse environmental impacts associated with this proposal that cannot be avoided or mitigated through the conditions of approval included in the MDNS. Therefore, the city, as the lead agency, determined that an environmental impact statement was not needed and issued an MDNS for this project. Opponents objected to the city's issuance of an MDNS for this development. However, the city's SEPA determination was not appealed within the 15 day deadline set out in BGMC 18.145.030. Therefore the city's SEPA determination is final.

a. Even if the city's SEPA determination were subject to review, the examiner is required to give "substantial weight" to the city's determination. (WAC 197-11-680(3)(a)(viii) implementing RCW 43.21C.090). The examiner must uphold the SEPA determination unless he is "left with the definite and firm conviction that the county made a mistake." *Preserve Our Islands v. Shorelines Hearings Board*, 133 Wn. App. 503, 539 (2006). (Internal citations omitted).

b. The purpose of the SEPA process is to ensure consideration of environmental issues that are not addressed by the Code.

SEPA is a procedural statute designed to ensure that local governments consider the environmental and ecological effects of major actions to the fullest extent. SEPA's purpose is to provide decision makers with all relevant information about the potential environmental consequences of their actions and to provide a basis for a reasoned judgment that balances the benefits of a proposed project against its potential adverse effects.

City of Des Moines v. Puget Sound Reg'l Council, 108 Wn.App. 836, 849, 988 P.2d 27 (1999). An EIS is only required where the city determines that the proposed development will have a "[p]robable significant, adverse environmental impact." RCW 43.21C.031(1).

c. In this case, the majority of the concerns raised by opponents of this application are addressed by the Code. The issues raised in the comments were fully considered in the findings related to the applicable code provisions. The proposed

development complies with the Code, based on the findings in the Staff Report and this Final Order. Other potential environmental and ecological effects were considered through the SEPA process and the MDNS. The examiner finds that the city satisfied its burden of demonstrating *prima facie* compliance with SEPA's procedural requirements.

i. Opponents argue that the SEPA checklist is incomplete. However, the checklist expressly requires brief responses. The examiner finds that any errors in the checklist were procedural and did not preclude the city's review. City staff are well aware of many of the issues raised by opponents, such as the single access road to this area, the site's location within a critical aquifer recharge area, the existence of wetlands and wildlife on the site, the presence of protected fish species in downstream waters, etc. and the city considered those issues in its review.

6. A single road, NE 152nd Avenue, provides access to the site and surrounding properties. This could create a hazard if the road were blocked by a vehicle accident, falling trees, or similar event, as it could delay emergency responders and temporarily limit access in and out of the area. This single roadway would also provide the only outlet in the event of a wildfire or similar disaster.

a. This is a hazard existing hazard that will remain regardless of approval or denial of this development. Although the proposed development contributes to the need for a secondary access, that need exists 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 34 lots created by this development will result in a roughly ten-percent increase in the number of homes served by this single access road. The need for street improvements is one that currently exists in the area, and is a need to which all adjoining properties contribute, not just the lots being created in this case.

b. Some jurisdictions have a standard limiting the number of lots that can be served by a single access, but the city of Battle Ground does not have such a standard and does not require a secondary access. Fire District #3 commented that this single access is a concern in the event of "a large-scale event" and provision of a secondary access would alleviate that concern however they did not require such access or state that the number of lots served this single access would violate the requirements of the International Fire Code or any applicable criteria, or create a significant hazard.

c. In addition, the applicant has no ability to provide a secondary access. The applicant does not own or control any surrounding properties where such access could be constructed and the applicant has no right to condemn property for that purpose. In addition, the cost of constructing such an offsite improvement would likely exceed the roughly proportionate impact of this development.

d. This development will facilitate the provision of a secondary access in the future by extending NE 183rd Street to the east boundary of the site. This street can be further extended in the future and provide a secondary connection to NE 167th Avenue when the abutting property to the east redevelops. The intervening property between the

site and NE 167th Avenue is within the city of Battle Ground and zoned for urban development.

7. The applicant is required to extend NE 183rd and NE 180th Streets into the site to provide opportunities for cross-circulation and future emergency access. The extension of these streets was foreseeable. The very nature of the existing design of these streets --- as a public right of way stubbed to the boundary of the site without a turnaround (NE 180th Street) or as dedicated but unimproved right-of-way along the boundary of undeveloped properties (NE 183rd Street) --- evidenced an intention that these streets would be extended. For people who have lived along what have heretofore been dead-end streets, the change created by the extension of these streets will be more significant. They have enjoyed a relatively low level of traffic given their location in an otherwise urbanized area. But it is time to extend the streets to accommodate development on this site and fulfill the city's connectivity and cross circulation goals.

8. The proposed development will generate additional traffic on area streets, with associated increases in congestion, noise, and other impacts. Those impacts will be perceptible to area residents. However, the additional traffic will not exceed the capacity of the streets nor create a hazard, based on the analysis in the applicant's traffic analysis, as confirmed by city engineering staff. There is no substantial evidence to the contrary. Neighbors' unsupported concerns about the impacts of increased traffic are not substantial evidence sufficient to overcome the expert testimony of the traffic engineers for the county and the applicant.

a. Opponents disputed the background growth rate used in the applicant's traffic analysis, arguing that the actual growth rate in this area is much higher, given the ongoing development near the golf course west of the site. However, the background growth rate is based on the overall growth rate in the city. It is not intended to reflect recent development in the immediate area. Traffic generated by local development is considered and included in the traffic analysis as "in-process" traffic. The volume of in-process traffic is determined based on the number lots proposed by all vested or approved but unoccupied developments within the analysis area. The background growth rate is intended to account for traffic from developments occurring outside of the analysis area that may travel on roads in the area. Future traffic volumes are estimated by combining counts of existing, in-process, and site generated traffic, and the background growth rate. The applicant's traffic study demonstrates that this overall traffic volume will not exceed the capacity of area streets, cause any intersections to fall below the adopted minimum levels of service, or create a hazard. There is no substantial evidence in the record to the contrary.

9. There is no dispute that the existing streets west of the site are not improved to current standards for urban development; there are no sidewalks and there are ditches on either side of the roadway. The applicant will construct sidewalks and road improvements along streets within and abutting the subdivision. However, the applicant cannot be required to construct offsite improvements 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. However, these streets are not unsafe. There is no evidence of a

significant increase in crash rates or other evidence of hazardous conditions. Many streets in the region are in this same condition.

a. The additional traffic generated by this subdivision may pose an increased risk for drivers, cyclists and pedestrians in the area. Higher vehicular traffic volume creates a marginally higher risk for pedestrians and bicyclists. It may well warrant a heightened degree of attentiveness to traffic when driving, cycling or walking in the neighborhood. However, those risks are consistent with the location of the site in the urban area where plans call for the sort of development being proposed. Reasonably prudent drivers will observe the posted speed limit, stop signs, and other applicable traffic regulations and if necessary, further reduce their speed to accommodate other 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. If necessary, the city and/or county can address traffic violations by providing increased enforcement of traffic laws on all streets in the area.

10. Construction on this site will temporarily cause increased noise, dust, traffic, and other impacts on adjacent roads and properties. The Code and state law regulate construction activities, including requirements for dust and erosion control, construction vehicle access, road closures etc., which will limit impacts on surrounding residents. The city will inspect the site during construction to ensure ongoing compliance with applicable requirements. Compliance with these regulations will not eliminate all potential impacts. However, the examiner finds that, while such impacts may occur, they are not significant enough to require specific limitations on construction other than those imposed by State law and the Code. The examiner encourages residents to contact the city if excessive impacts occur.

11. The examiner finds that the proposed flag lots do not comply with the street frontage requirements of the Code.

a. BGMC Table 17.106-2 requires that all lots in the R-3 zone have a minimum 30 feet of “lot frontage.” BGMC 17.103.432 provides, “‘Minimum lot frontage’ means the smallest permitted width in linear feet of a lot where it abuts a public or private street.” BGMC 16.110.010 provides, “‘Lot frontage’ means the width in linear feet of a lot where it abuts the right-of-way of any street.

b. Flag lots are not exempt from the lot frontage requirement. BGMC 16.125.110 provides, “Where such flag lots are allowed, the street frontage of each lot shall be as required by BGMC 17.106.030, Table 17.106-2...”

c. BGMC 16.125.110 further provides, “Two abutting flags may reduce their street frontage by up to fifty percent if a shared driveway access easement is in place.” The examiner interprets this provision to allow abutting flag lots to each provide a 15-foot wide flag pole (one-half of the minimum 30 feet required by the Code), where the lots are subject to a shared driveway access easement. The 24-foot shared flag pole accesses proposed for Lots 1 and 3 and 6 and 7 are insufficient to comply with the Code. These lots should be modified to provide a minimum 15-foot wide flag pole portion for each lot, subject to a shared driveway access easement with the adjacent flag lot.

12. The applicant proposed to fill portions of Wetland D/E/F to accommodate proposed Lots 17-19 and 24-26 and Wetlands G, J, and K to accommodate Lots 1-7. The applicant proposed to develop additional lots within the required buffers for many of the wetlands on the site. The examiner finds that these wetland and buffer impacts are allowed by the Code.

a. The plain language of BGMC 18.270 appears to prohibit most development, including the creation of developable lots, within wetlands or buffers.

i. BGMC 18.270.080.A provides, “Activities within wetland boundaries or the filling of wetlands are generally prohibited subject to the specific standards and exceptions of this section...” BGMC 18.270.080.B-D provide exceptions to the general prohibition for road and utility crossings in all wetlands and for fences, and certain temporary activities in Category III and IV wetlands. This section does not include an exception for the creation of residential lots. Therefore, BGMC 18.270.080.A appears to prohibit the filling of wetlands for the creation of residential lots.

ii. BGMC 18.270.070 provides a similar prohibition on activities within wetland buffers, providing, “Wetland buffers shall remain undeveloped and undisturbed except for ... [stormwater facilities, road and utility crossings, fences, and certain temporary activities].” This section does not include an exception for the creation of residential lots. Therefore, BGMC 18.270.080.A appears to prohibit the creation of lots within wetland buffers.

b. However, wetlands and buffers are “critical areas” subject to the regulations of BGMC 18.260.

i. BGMC Table 18.260-1 expressly allows single-family, multi-family, and commercial/industrial development within wetlands and buffers, subject to a Critical Area Report and compliance with the avoidance, minimization, and mitigation and no net loss of critical area function requirements of BGMC 18.260.

ii. BGMC Table 18.260-1 further provides that “[i]nfrastructure improvements, utilities, public or private roads or drainage systems” are exempt from review and do not need to meet the standards of BGMC 18.260.

iii. Construction of fences within wetlands or buffers “Require Review,” meaning they “[m]ust comply with the standards of [BGMC 18.260] but no special report is needed.” BGMC Table 18.260-1 and BGMC Table 18.260.060.C(2).

c. The examiner must interpret the Code to give effect to all provisions, not render any provision meaningless, and avoid construing a statute in a manner that results in “unlikely, absurd, or strained consequences.” *Mason v. Georgia-Pac. Corp.*, 166 Wash. App. 859, 870, 271 P.3d 381 (2012). Construing BGMC 18.270 to prohibit any residential development within wetlands or buffers would render meaningless those portions of BGMC Table 18.260-1 which expressly allow such development, subject to a

critical areas permit. This interpretation is also consistent with the language of BGMC 18.270.

i. BGMC 18.270.080.A provides that “Activities within wetland boundaries or the filling of wetlands are *generally* prohibited...”

ii. BGMC 18.270.080.B(2) and C(1) provides “All activities in Category I [or Category II] wetlands are prohibited *except* for road, utility and other public purposes where there is no other practicable location or alternative for the activity.”

iii. BGMC 18.270.080.D lists certain uses that are allowed in Category III and IV wetlands and does not include the word “prohibited.”

iv. BGMC 18.270.070 allows stormwater facilities, road and utility crossings, fences, and certain temporary activities within all wetland buffers and does not include the word “prohibited.” BGMC Table 18.260-1 provides that roads, utilities, and drainage facilities are exempt from compliance with BGMC 18.260 and fences are subject to review, but do not require a Critical Area Report.

v. Reading these provisions in conjunction with BGMC Table 18.260-1, it is reasonable to interpret the Code to allow residential, commercial, or industrial development within Category III and IV wetlands and within any wetland buffer, subject to a Critical Area Report demonstrating compliance with the requirements of BGMC 18.260.

(A) BGMC 18.270.070 allows stormwater facilities, road and utility crossings, fences, and certain temporary activities within wetland buffers and BGMC 18.270.080 allows these uses within Category III and IV wetlands.

(B) BGMC Table 18.260-1 provides that roads, utilities, and drainage facilities are exempt from compliance with BGMC 18.260 and fences are subject to review, but do not require a Critical Area Report.

(C) BGMC Table 18.260-1 allows single-family, multi-family, and commercial/industrial development within wetlands and buffers, subject to a Critical Area Report and compliance with the requirements of BGMC 18.260.

(D) Therefore, although BGMC 18.270 could be more artfully written, the only way to interpret the Code to give effect to all of provisions is to find that single-family, multi-family, and commercial/industrial developments are allowed within Category III and IV wetlands and within all wetland buffers, subject to a Critical Area Report and compliance with the requirements of BGMC 18.260.

d. This interpretation is consistent with:

i. The purposes of the wetland ordinance, which requires balancing the need for the protection of natural resources with private property rights and economic

development while ensuring no net loss of wetland acreage and functions. BGMC 18.270.010.A and E;

ii. The purpose of the critical areas ordinance, which requires protection of ecologically sensitive and hazardous areas, their functions and values, while also allowing for reasonable use of private property. BGMC 18.260.010;

iii. The Battle Ground Comprehensive Plan, which provides “The protection of critical areas within the city and its UGA has been balanced against the need for continued economic development and growth. An appropriate balance has been found between these two competing goals.” P. 6-14 of the Comprehensive Plan; and

iv. The Washington State Growth Management Act, RCW 36.70A (the “GMA”). WAC 365-190-020, which implements the GMA provides, in relevant part:

...

(3) [C]lassification and designation of natural resource lands and critical areas is intended to assure the long-term conservation of natural resource lands and the protection of critical areas, and to preclude land uses and developments which are incompatible with natural resource lands and critical areas...

...

(6) Precluding incompatible uses and development does not mean a prohibition of all uses or development. Rather, it means governing changes in land uses, new activities, or development that could adversely affect natural resource lands or critical areas. For each type of natural resource land and critical area, counties and cities planning under the act should define classification schemes and prepare development regulations that govern changes in land uses and new activities by prohibiting clearly inappropriate actions and restricting, allowing, or conditioning other activities as appropriate.

e. Wetland D/E/F is a Category III wetland, where BGMC Table 18.260-1 expressly allows residential development. No development is proposed within the Category II wetlands on the site.

13. The examiner further finds that the proposed development complies with the critical areas ordinance, BGMC 18.260.

a. The Code does not prohibit all critical area impacts. It only requires that the applicant “[s]eek to avoid all impacts that degrade the functions and values of (a) the critical area(s),” minimize unavoidable impacts, and “[m]itigate to the extent necessary to achieve the activity’s purpose and the purpose of this chapter.” BGMC 18.260.115. The

Code expressly requires consideration of “[t]he activity’s purpose...” BGMC 18.260.115.B. In this case, the purpose of the activity is to develop the site with residential uses at densities allowed by the Code. This is consistent with the purpose of the wetlands and critical area ordinances, to “Balance the need for the protection of natural resources with private property rights and economic development,” BGMC 18.270.010.E, and “[p]rotect [critical] areas and their functions and values while also allowing for reasonable use of private property,” BGMC 18.260.010.

b. In this case the applicant designed the preliminary plat to avoid the highest quality forested wetlands (wetlands A, B, C, and the majority of wetland D/E/F) by concentrating development in the eastern portion of the site. The applicant proposed to preserve wetlands A, B, C and the majority of wetland D/E/F in single tract in the northwest portion of the site, thereby maintaining large patches of mature trees and dense understory vegetation. The applicant will also preserve wetlands H and I in the southeast portion of site. Although the extension of NE 180th Street will separate these two open space tracts, no development is proposed along this road section, thereby allowing wildlife to cross the road between these open space area. Overall, the applicant proposed to retain roughly 49-percent of site as open space.

c. The applicant must extend NE 180th Street through the site to intersect NE 183rd Street in order to comply with the city’s cross-circulation and emergency access requirements and the city’s Transportation Plan. The extension of these streets will cause unavoidable direct impacts to wetlands D/E/F and several wetland buffers. Connection to the existing sanitary sewer infrastructure to the northeast of the site will also cause unavoidable impacts to the same wetlands and buffers. However, BGMC 18.270.070.B and 18.270.080 expressly allow such impacts for the extension of streets and utilities. The applicant can further reduce the impact of these roadways to some extent by building curb-tight sidewalks on the street section passing between wetlands H and C. A condition of approval is warranted to that effect if this application is approved.

d. The applicant proposed to mitigate for all wetland and buffer impacts on this site by purchasing credits at Terrace Mitigation Bank, an offsite wetland bank near Burnt Bridge Creek, thereby ensuring no net loss of critical area functions as required by BGMC 18.260115.D.

i. The examiner finds that the proposed mitigation will result in no net loss of critical area functions, based on the applicant’s critical areas reports, prepared by a professional biologist. There is no equally probative substantial evidence to the contrary. Although ECY argued that the proposed wetland and buffer impacts are “excessive” and the site is “not suitable for this type of high-density residential development” (Exhibit F), they failed to provide any information or testimony demonstrating that the proposed mitigation measures will not ensure no net loss of critical area functions or otherwise violates the requirements of the BGMC.

ii. BGMC 18.270.120.A allows mitigation through the purchase of credits at a mitigation bank “in the same watershed” as the proposed development. BGMC 18.260.20(94) provides “Watershed” means an area draining to a single surface water system as shown on the city of Battle Ground wetland watershed map adopted by

reference.” The examiner cannot determine from the evidence in the record that the Terrace Mitigation Bank is located within the same “watershed” as the site, as the city of Battle Ground wetland watershed map was not included in the record for this application. Therefore, the applicant should be required to demonstrate that the Terrace Mitigation Bank is located in the same watershed as the site or modify the mitigation plan to provide mitigation within the correct watershed. A condition of approval is warranted to that effect.

14. The applicant proposed to reduce the wetland buffers pursuant to BGMC 18.270.090.C. The examiner finds that the applicant can comply with these provisions.

a. The applicant proposed to retain a 100-foot wide relatively undisturbed vegetated corridor as required by BGMC 18.270.090.C(1)(a). Tract C provides the required corridor between Wetlands A, B, C, and D/E/F. Tract D provides the required corridor between Wetlands H and I. The open space designation applied to these tracts will ensure legal protection of these corridors.

b. The applicant will implement measures to minimize the impacts of different land uses as required by BGMC 18.270.090.C(1)(b). Those measures include, but are not limited to, the planting of dense vegetation around the wetland buffer as outlined in the Wetland Mitigation Plan dated January 11, 2021. The applicant proposed to implement additional impact reduction measures as part of the final design of the development. A condition of approval is warranted requiring city approval of the final impact reduction plan.

c. The proposed buffer reductions will not eliminate all impacts to the wetland buffers on the site. As noted above, BGMC Table 18.260-1 allows residential development within wetland buffers, subject to compliance with the requirements of BGMC 18.260. The applicant will be required to mitigate for all impacts to the reduced wetland buffers.

15. There is no dispute that the wetlands on this site are interconnected to some extent. As shown in Exhibit ZT, ditches and a stream on the site transport water between several of the wetlands on the site and to Morgan Creek and its tributaries east of the site. Morgan Creek is a Type F (fish bearing) stream. It also connects to Salmon Creek, which provides habitat for threatened and endangered fish species. However, the examiner finds that the proposed development will not cause prohibited impacts to those off-site waters. The applicant will convey surface water through the site, whether produced by rainfall or from upstream flows, and discharge it to existing downstream drainageways that connect to Morgan Creek and its tributaries, replicating existing conditions.

a. Impervious areas created by the proposed development will reduce the potential for stormwater to infiltrate on the site, increasing the rate of stormwater runoff and allowing for the accumulation of pollutants in the runoff. However, the applicant will collect and detain runoff from these impervious areas, as well as from the rear yards of lots abutting the wetlands, providing treatment as necessary to remove pollutants, and releasing the treated stormwater into the existing ditches at a controlled rate equal to the runoff rate from the predevelopment forested condition on the site. The applicant will

also discharge some treated runoff into the remaining on-site wetlands in order to maintain the existing wetland hydrology. Water will continue to flow from this site into Morgan Creek at roughly the same rate, volume, and location as occurs under existing conditions.

15. The examiner finds that the proposed development will not cause or exacerbate flooding on adjacent properties. The applicant is prohibited from increasing or concentrating surface runoff onto adjacent properties or from blocking surface runoff that currently flows onto the site. Future residents of the site are subject to the same restrictions. The applicant will analyze surface flows entering and exiting the site, including the existing “Ditch 8” located on or near the south boundary of the site, as part of the required final engineering process. City engineering staff will review that analysis to ensure compliance with all applicable requirements. The applicant may modify drainageways within the developed portion of the site by installing pipes, ditches, or similar facilities to transport water through the site. However, the applicant has no authority to modify existing offsite ditches or other offsite conveyance facilities located on private property outside of easements.

a. Ms. Toelkes argues that the applicant’s contractor built a berm around part of wetland A while using equipment to clear brush on the site, causing flooding on her property. Exhibit ZK. The applicant argued that their contractor’s actions did not cause the flooding noted by Ms. Toelkes, arguing that flooding could be have resulted from any one of a number of downstream activities unrelated to development on the site, including beaver, other wildlife or human activity, falling trees, or other causes. Exhibit ZY. The examiner has no jurisdiction to determine the cause of the recent flooding issues on Ms. Toelkes’ property. Ms. Toelkes may have a cause of action in civil court if the flooding is the result of activities by the applicant, its contractors, or other persons. She should consult competent legal counsel to advise her of her rights in this regard.

b. The applicants’ clearing activities are exempt from the city’s critical areas requirements pursuant to BGMC 18.260.070.A(6), which provides an exemption for “Work necessary for land use submittals, such as surveys, soil logs, percolation tests, and other related activities...” provided the impacts are minimized and any disturbed areas are immediately restored. Area residents may file a code enforcement complaint with the city if they believe that the applicant’s activities exceeded the scope of this exemption. However, the examiner has no jurisdiction to review the applicant’s activities and determine whether they meet the requirements of BGMC 18.260.070.A(6).

16. The examiner finds that the proposed development does not pose a significant risk of groundwater contamination. As discussed above, the applicant will collect and treat stormwater runoff from all impervious areas of the site. The site is located in a Category 2 critical aquifer recharge area. However, as the applicant noted at the hearing, much of the land in the county is subject to this designation. Activities on the site will not pose a unique risk of groundwater contamination. However, fueling of construction vehicles and equipment on the site could result in spilling of gas or oil that could result in groundwater contamination. Therefore, the applicant should be required to prepare and implement a Spill Prevention, Control and Countermeasure (SPCC) plan to be used for

the duration of the construction project. A condition of approval is warranted to that effect.

17. 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 are listed as endangered or threatened. They are commonly observed in the area. Their presence is less likely after the site is developed, but that is to be expected.

a. This site is not designated as Fish and Wildlife habitat. Therefore, BGMC 18.280 is inapplicable. This chapter only applies to lands designated as fish and wildlife conservation areas. BGMC 18.280.020.

b. Neighbors argued that there is a raptor nest on the site. (Exhibit ZG). The applicant investigated and determined that the nest is used by a red tailed hawk, which is not a protected species. However, the applicant is subject to federal laws that regulate the disturbance of migratory birds, including hawks.

c. The applicant will retain areas of protected open space on the site, including the forested area in the west central portion of the site and the wetlands in the southeast portion, which will provide habitat for wildlife after the development is completed.

18. Concerns were expressed about the density of development proposed. However, the density proposed for this site is within the range permitted by the comprehensive plan map designation and zoning of the site as modified by the density transfer ordinance. Therefore, the examiner finds that the proposed lot sizes and density are consistent with applicable standards, and objections to the lot sizes and density are not supported by the law or by the facts. The Code does not authorize the city to require larger lots so that they are consistent with the size of surrounding lots. In fact, such a requirement is prohibited by the Growth Management Act (RCW 36.70B.030) as amended by the 1995 Legislature, which prohibits review of the allowed density as part of the review of the preliminary plat.

a. Development of this site will alter existing views and cause an incremental loss of privacy for existing residents in the area. What is now a vacant parcel is proposed to be developed with 34 new homes. But the Code does not prohibit development from having an impact on privacy. The Code does not regulate the design, style, appearance, or size of homes on the proposed lots and does not authorize the city to limit the location or height of individual homes, beyond those required by the setback and height requirements of the Code. The intensity of the proposed development, including allowed building heights and setbacks from adjacent properties, is consistent with the current zoning of the site. The hearings officer understands residents' displeasure with the growth around them, but this growth was foreseeable and is in the broader public's interest. This area is zoned R-3. As large lots are sold, presumably they will be developed to the maximum extent allowed by the applicable zoning. As proposed, the development will maintain a forested buffer in the northwest portion of the site which will provide a buffer between the smaller lots proposed on the site and the existing lower

density urban development on adjacent properties to the north and west of the site. Properties to the south and east are in the rural area. Significant differences in lot sizes can be expected on either side of the urban growth area boundary (the “UGA”). The Code does not require a buffer or density transition abutting the UGA.

b. 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 state or county standards. The examiner must base the decision on the laws of Clark County and Washington State.

c. BGMC 17.106.010.A is a purpose statement, not an approval criterion. The general goals of the purpose statement are implemented through compliance with the specific requirements of the approval criteria. See *Lakeside Indus. v. Thurston County*, 119 Wn. App. 886, 98, 83 P.3d 433, review denied, 281 Wn.2d 1015 (2004) (Specific zoning laws control over general purpose statements). The existing R-3 zoning is consistent with this purpose statement, to “[r]ecognize existing neighborhoods that are predominantly occupied by detached residential structures...” R-3 is the lowest density zone in the city. Nothing in the Code requires that the applicant develop the site with larger lots consistent with abutting properties.

D. CONCLUSION

Based on the above findings and discussion, the examiner concludes that LUDIII21-0001 (Cedars East Subdivision) 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 LUDIII21-0001 (Cedars East Subdivision), subject to the following conditions of approval:

CONDITIONS OF APPROVAL

A. Prior to Engineering Approval:

1. The applicant shall reduce the number of proposed lots to a total of 34 lots, update plans as needed and submit for final review/acceptance.
2. Revise plans to show 20 feet paved width at shared driveways and flag lots that provide a minimum 30 feet of street frontage or paired flag lots that each provide a minimum of 15 feet of street frontage.
3. Provide “No Parking-Fire Lane” signage at shared driveways and private road.
4. Clearly show the location of additional fire hydrant in accordance with the above requirements.
5. 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.
6. Submit final site and engineering plans:
 - a. Showing NE 180th Street and the loop road from NE 180th Street to NE 183rd Street shall be constructed to “Neighborhood Collector” standards including sidewalk, planter strip, curb and gutter, and asphalt.
 - b. Showing NE 183rd Street shall be constructed to “Neighborhood Collector” half-width standards along the northern property line, that includes a 34-foot right-of-way, 16-feet of roadway to the centerline, four-foot landscape strip and five-foot sidewalk.
 - c. Showing Tracts serving lots 1 and 3; and 6 and 7, as privately owned, maintained, and constructed to Private Street Standards per BGMC 12.116.140 for private roads serving 1-2 Lots.
 - d. Showing tract serving lots 32-36 as privately owned and maintained and constructed to Local “A” Standards per BGMC 12.116.140 for private streets serving 5 or more lots, 48-foot easement, 30-foot roadway, four-foot landscape strip and five-foot sidewalk.
 - e. Containing a combined landscaping and driveway plan.
 - f. Showing sight distance and vision clearance triangles.
 - g. Containing a signing and striping plan.
 - h. Containing a street lighting plan having LED acorn units for all streets.
 - i. Showing traffic calming devices on all public streets.
 - j. Showing driveways that meet the requirements of BGMC 12.116.243 and 12.116.246.
 - k. Showing water lines extending to extreme property lines.
 - l. Showing each residential lot having its own individual water service.
 - m. Showing sewer line FE-33(8-inch).
 - n. Showing sewer line extending to extreme property lines.
 - o. Showing each lot having its own individual sanitary lateral.
 - p. Showing fire hydrants meeting spacing requirements throughout the subdivision.
 - q. Showing a stormwater facility that meets the requirements of BGMC 18.250.
 - r. Showing grading and erosion control in conformance with applicable city standards and standard construction details.
 - s. Showing required wetland signage and fencing.
 - t. Showing curb tight sidewalks on the section of NE 180th Street abutting Tracts C and/or D.
 7. Provide a photometric plan 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.
 8. Submit a hydrology report that addresses all requirements found in BGMC 18.250.
 9. Submit a SWPPP that meets Department of Ecology requirements.
 10. Submit a construction cost estimate for required public and applicable private improvements for review and approval by the City Engineering Department.
 11. 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.
 12. Submit proof of engineering plan approval by Clark Public Utilities for water

- improvements.
13. Prior to grading or engineering approval, the applicant shall submit evidence of purchased credits.
 14. The applicant shall be responsible for recording an easement within the “pole” portion of Lots 1 and 7 to benefit Lots 3 and 6 respectively.
 15. The applicant shall provide a final wetland delineation report and mitigation plan prior to Engineering Approval.
 16. The applicant shall coordinate with the Department of Ecology and Army Corps of Engineers for any necessary permits and approvals associated with the wetland and associated mitigation.
 17. Prior to engineering approval, the applicant shall submit a mitigation plan to the City of Battle Ground for review containing:
 - a. Submit wetland mitigation plan that assures mitigation requirements of BGMC 18.260.120 and 18.260.130.
 - b. Submit a buffer averaging proposal that complies with 18.270.080, which includes showing that no buffer is reduced by more than 75-percent of its standard.
 - c. Submit a wetland mitigation plan showing that the stormwater facility located in the wetland buffer meets criteria listed in 18.270.070.
 - d. Per BGMC 18.260.180 all wetlands and buffer areas over 5,000 square feet shall be included in critical area tracts.
 - e. Coordinate with the State Department of Ecology for the proposed wetland impacts and final mitigation plan.
 - f. Adhere to all recommendations of the final Wetland Delineation and Mitigation Plan.
 - g. Implementing Land Use Impact Reduction measures in accordance with BGMC 18.270.090.C.
 - h. Demonstrating that the Terrace Mitigation Bank is located in the same “watershed” as the site or modify the mitigation plan to provide mitigation within the correct watershed.

B. Prior to Final Plat Approval:

1. Construct all required public improvements and gain engineering acceptance or provide appropriate bonding.
2. 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 \$6,133.32.
3. Construct the mitigation measures, second southbound left turn lane and receiving lane on SW Eaton Boulevard, for the failing intersection of SR 503 & SW Eaton Boulevard or pay the mitigation fee of \$5,854.44.
4. Construct the mitigation measures for the failing intersection of East Main Street & Grace Avenue or pay the mitigation fees of \$3,443.54.
5. Submit a final plat:
 - a. That shows easements for public utilities not located in the right-of-way.
 - b. With the following note: “Fences higher than 42-inches will not be allowed in the front yards.”
 - 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, including streetlights and signs, 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.

C. 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 Agreement meeting requirements of BGMC 18.250.310(A)(1) 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 set of As-Built record drawings and one (1) compact disc or USB flash drive version of the as-built drawings in AutoCAD, and separate/individual PDF and TIF format files.
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.

D. 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 conduct 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. Signage and fencing related to the wetlands on site shall be installed prior to any land alteration or construction.
9. The applicant shall submit evidence of purchased credits.

E. 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.

F. Prior to Building Construction:

1. Acquire the required building 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 and section 15.105.180 of this Staff Report.
3. All new development shall comply with the setbacks and building height of the R3 zoning district.
4. All new development shall comply with the design standards of BGMC 17.106.040.

G. Prior to Certificate of Occupancy:

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

H. Other/General Conditions

1. If any cultural resources are discovered in the course of undertaking the development activity, the Department of Archaeology and Historic Preservation (DAHP) in Olympia and the City of Battle Ground Planning Department must be notified. Failure to comply with these State requirements may constitute a Class C felony, subject to imprisonment and/or fines.
2. Applicant shall limit construction hours per BGMC, which states construction activity for commercial development may occur from 7 am to 9 pm Monday through Friday, 8 am to 9 pm on weekends. The contractor will be required to prepare a Spill Prevention, Control and Countermeasure (SPCC) plan to be used for the duration of the construction project.
3. The critical areas tracts shall be maintained and owned by either the developer or HOA.

DATED this 29th day of September 2021.



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

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.