

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

Regarding an application by Robertson Engineering,)	<u>FINAL ORDER</u>
PC for approval of a preliminary plat to divide a 16.46-)	LUDIII21-0007
acre parcel into 63 lots in the R5 zone east of SE Grace)	(Chelatchie Meadows
Avenue at SE 28 th Circle in the city of Battle Ground)	Subdivision)

A. SUMMARY

1. The applicant, Robertson Engineering, PC, requests approval to divide the 16.46-acre tract located east of SE Grace Avenue at SE 28th Circle, consisting of four parcels known as 2709, 2801, and 2815 SE Grace Avenue and an unaddressed parcel; also known as Tax Assessor Parcels 194382-000, 194355-000, 194338-000, and 194357-000 (the “site”), into 63 residential lots and six tracts for access, stormwater, and open space, pursuant to the density transfer provisions. The applicant also requests approval of a road modification to vary from the intersection spacing requirements of the Code.

a. The site and abutting properties to the north and south are zoned R5 (Residential, five units per acre maximum density). Properties to the east are zoned R3 (Residential, three units per acre maximum density). Properties to the west, across SE Grace Avenue, are zoned MU-R (Mixed Use Residential).

b. The site is currently developed with a single-family residence, two manufactured dwellings, and associated outbuildings. The site contains three wetlands: Wetland A, a Category III wetland in the northwest portion of the site, Wetland B a Category II wetland in the northeast portion of the site, and Wetland C/D, a Category III wetland in the southeast portion of the site.¹ The site also contains Oregon white oak trees. The applicant proposed to fill Wetland A. The applicant proposed to preserve Wetlands B and C/D and the majority of the associated buffers as well as all of the oak trees in proposed open space tracts in the eastern portion of the site, Tracts E and F.

c. The applicant will construct a new single-family detached dwelling on each of the proposed lots. 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 a proposed on-site storm water facility for treatment and detention. The applicant will discharge treated stormwater to the on-site wetlands at less than predevelopment rates.

d. The applicant will extend a new public street, proposed SE 28th Way, into the site from SE Grace Avenue, opposite existing SE 28th Circle. SE 28th Way will extend east and then curve south as SE 12th Place to intersect SE 29th Street, proposed as a half-width street improvement on the south boundary of the site. The applicant will

¹ The site also contains a small isolated wetland, identified as Wetland C in the applicant’s Wetland Delineation Report. However, that wetland is exempt from regulation due to its size and isolation. The wetland identified as Wetland D in the Delineation is identified as Wetland C on the development plans. Therefore, the examiner refers to the wetland in the southeast corner of the site as Wetland C/D.

extend a stub street, proposed SE 11th Place, to the north boundary of the site to allow for further extension when the abutting property redevelops. The applicant will also construct SE 10th Place extending north from the west end of SE 29th Street, and SE 29th Way, an east-west street between SE 10th Place and SE 12th Place. The applicant will also provide a pedestrian accessway, proposed Tract C, between the west end of SE 29th Way and SE 28th Way.

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 August 10, 2021 (the "Staff Report") as modified at the hearing. The applicant accepted those findings and conditions, as modified, without exceptions. Two persons testified orally and in writing with questions about the development. Disputed issues or concerns in the case include the following:

- a. Whether the proposed development complies with the wetland and critical area protection requirements of the Code;
- b. Whether the applicant is providing wetland mitigation within the same "watershed" as the site; and
- c. Whether the applicant can be required to provide access to the landlocked parcel east of the site.

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 September 1, 2021.² 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.

² The hearing was originally scheduled for August 17, 2021. However, the hearing was rescheduled as the public notice included an incorrect link for the online hearing.

a. He noted that the applicant proposed to subdivide the 16.46-acre site into 63 lots pursuant to the city's density transfer ordinance. The applicant proposed to retain 6.46-acres of the 16.46-acre site as protected open space, leaving ten acres of developable area. The ten-acre developable portion of the site can be developed with a maximum 50 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 50 lots allowed on the developable portion of the site is 60 lots. Therefore, the applicant must eliminate three of the proposed lots in order to comply with the density transfer ordinance.

b. The site contains four wetlands identified as Wetlands A-D in the applicant's Wetland Delineation Report.³ Wetland C is a small isolated wetland that is exempt from regulation. The applicant proposed to fill Wetlands A and C and retain Wetlands B and D and the majority of the associated buffers in proposed Tracts E and F. The applicant will mitigate for all wetland and buffer impacts by purchasing credits at the Terrace Mitigation Bank.

c. He noted that the city's Transportation System Plan shows SE 40th Street extending to Ms. Robinson's triangular shaped parcel abutting the east boundary of the site.

3. City engineering technician Kelly Uhacz testified that proposed Lot 8 can access proposed SE 28th Avenue if such access meets spacing requirements. Otherwise the applicant will need to provide a private street serving Lots 8-10. He requested the examiner modify the finding on page 4 of the Staff Report and condition A.5.i to require shared access for Lots 5 and 6, rather than Lots 6 and 7.

4. Engineer Jeremy Fick appeared on behalf of the applicant, Robertson Engineering, PC.

a. He noted that the applicant intends to eliminate one of the lots in the northwest corner of the site in order to comply with the density transfer ordinance. Therefore, there is no need for a shared driveway or private road and condition A.5.h can be deleted.

b. He noted that BGMC Table 17.106-2 requires 25 feet of street frontage for lots in the R5 zone. Therefore, any shared driveways may be 25 feet wide, with 12.5 feet on each lot.

c. He requested the examiner hold the record open for two weeks to allow the applicant an opportunity to submit additional testimony and evidence regarding the requirements of the wetland and critical areas ordinances.

³ Wetland D is identified as Wetland C on the applicant's plans, as Wetland C in the applicant's Wetland Delineation Report is exempt from regulation.

5. Holly Robinson testified that she owns the 2.25-acre triangular shaped parcel abutting the east boundary of the site, Parcel 194436000. This parcel is landlocked, with no existing access to any public street. She questioned whether the applicant can extend streets from this site to provide access to that parcel.

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

a. For two weeks, until September 15, 2021, for anyone to submit additional written testimony and evidence regarding the requirements of the wetland and critical areas ordinances; and

b. For a third week, until September 22, 2021, to allow anyone to respond to any comments submitted during the first two weeks of the open record period; and

c. For a fourth week, until September 29, 2021, to allow the applicant to submit a final written argument.

7. No new testimony or evidence was submitted during the second open record period. Therefore, pursuant to the applicant's request, the examiner closed the record at 5:00 p.m. on September 22, 2021. The following exhibits were submitted during the open record period:

a. Exhibit 8, a Memorandum dated September 14, 2021, from attorney LeAnne Bremer on behalf of the applicant;

b. Exhibit 9, a letter from the U.S Army Corps of Engineers dated September 3, 2019; and

c. Exhibit 10, a Memorandum dated September 15, 2021, from Mr. Cramer.

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, as modified at the hearing. The applicant accepted those findings and conditions, as amended.

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

3. The applicant proposed to fill all of Wetland A and portions of the buffers for Wetlands B and C/D to accommodate the proposed development. 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 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. BGMC Table 18.260-1 and BGMC Table 18.260.060.C(2) provide that 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.”

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 report. 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 A is a Category III wetland, where BGMC Table 18.260-1 expressly allows residential development. No development is proposed within the Category II wetland on the site.

4. 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. 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.

5. The applicant cannot be required to extend access to Parcel 194436-000, the Robinson's 2.25-acre triangular shaped parcel abutting the east boundary of the site. Requiring the applicant to extend access to the adjacent parcel would constitute an exaction without compensation. In order to require such an exaction, the city must demonstrate that the exaction is reasonable and for a legitimate public purpose. There is no public interest in providing access to an existing landlocked parcel. *Unlimited v. Kitsap County*, 50 Wn.App. 723, 727, 750 P.2d 651 (Wash. App. 1988). The Robinsons may be able to provide access to Parcel 194436-000 through the abutting parcel to the south, which they also own. In addition, the city plans for the future extension of SE 30th Street south of the site, which may provide access to the Robinsons' parcel.

a. There is a public interest in providing access roads in compliance with the city's intersection spacing and cross-circulation requirements. However, the wetlands on the eastern portion of the site prevent the applicant from extending streets through that portion of the site.

D. CONCLUSION

Based on the above findings and discussion, the examiner concludes that LUDIII21-0007 (Chelatchie Meadows 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 LUDIII21-0007 (Chelatchie Meadows 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 60 lots, update plans as needed and submit for final review/acceptance.
2. Adjust plans so the proposed island at the west entrance allows for 20 feet of fire apparatus access width.
3. Provide the location of "No-Parking-Fire Lane" signs along at the following locations:
 - a. One (1) side of the proposed Local A Half Street
 - b. In front of proposed storm water collection treatment vaults at reduce roadway widths.
4. 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.

5. Submit final engineering plans:
 - a. Showing adequate half-street improvements, based on pavement testing, for SE Grace Avenue, "Major Collector Option 1", including sidewalk, planter strip, curb/gutter and asphalt.
 - b. Showing full-street improvements, for SE 28th Way, "Local A", including sidewalk, planter strip, curb/gutter and asphalt.
 - c. Showing full-street improvements, for SE 29th Way, "Local A", including sidewalk, planter strip, curb/gutter and asphalt.
 - d. Showing full-street improvements, for SE 29th Street, "Local A", including sidewalk, planter strip, curb/gutter and asphalt.
 - e. Showing full-street improvements, for SE 10th Place, "Local A", including sidewalk, planter strip, curb/gutter and asphalt.
 - f. Showing full-street improvements, for SE 11th Place, "Local A", including sidewalk, planter strip, curb/gutter and asphalt.
 - g. Showing full-street improvements, for SE 12th Place, "Local A", including sidewalk, planter strip, curb/gutter and asphalt.
 - h. Showing access to lots 8-10 meeting the applicable private street requirements in BGMC 12.116.140 based on 3-4 lots/units, or revise these lots to comply with shared driveway or individual access requirements.
 - i. Showing access to lots 5 and 6 as a shared driveway off of SE 29th Way or SE 10th Place in compliance with the frontage requirements of BGMC Table 17.106-2 and BGMC 16.125.110.
 - j. Showing an additional two-feet of ROW dedicated to the city for SE Grace Avenue.
 - k. Containing a combined landscaping and driveway plan.
 - l. Showing sight distance and vision clearance triangles.
 - m. Containing a signing and striping plan.
 - n. Containing a street lighting plan having LED decorative cobra type units for SE Grace Avenue and LED acorn units for the other streets.
 - o. Showing traffic calming devices on all public streets.
 - p. Showing driveways that meet the requirements of BGMC 12.116.243, Table 17.106-2, and 16.125.110.
 - q. Showing traffic mitigation at Grace Avenue & East Main Street, SR 503 & SW Eaton Boulevard, and SW 20th Avenue & SW Eaton Boulevard or indicating that mitigation fees will be paid in lieu of the improvements.
 - r. Showing the traffic mitigation at S. Parkway Avenue and SW Eaton Blvd or meeting one of the other options in lieu of the improvements.
 - s. Showing water lines extending to extreme property lines.
 - t. Showing each residential lot having its own individual water service
 - u. Showing a portion of FE-28 (12-inch), if applicable, depending on northern termination of FE-27 sewer line being installed in SE Grace Avenue.
 - v. Showing sewer lines extending to extreme property lines.
 - w. Showing each lot having its own individual sanitary lateral.
 - x. Showing fire hydrants meeting spacing requirements throughout the subdivision.

- y. Showing a stormwater facility that meets the requirements of BGMC 18.250.
 - z. Showing grading and erosion control in conformance with applicable city standards and standard construction details.
6. 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.
 7. Submit a hydrology report that addresses all requirements found in BGMC 18.250.
 8. Submit a SWPPP that meets Department of Ecology requirements.
 9. Submit proof of engineering plan approval by Clark Public Utilities for the water improvements.
 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. The applicant is required to provide an updated mitigation plan prior to final engineering approval to include the following items:
 - a. Submit a 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. 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.

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 for the failing intersection of Grace Avenue & East Main Street or pay the mitigation fees of \$25,826.55.
3. 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 \$27,599.94.
4. 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 \$26,344.98.

5. Construct the mitigation measures for the failing intersection of SW 20th Avenue & SW Eaton Boulevard or pay the mitigation fee of \$16,039.80.
6. Meet one of the options for the mitigation measure at S. Parkway Avenue and SW Eaton Boulevard
7. Submit a final plat:
 - a. That shows easements for public utilities not located in the right-of-way.
 - b. With the following note: “No fences are allowed in the sight distance triangle.”
 - c. With the following note: “All utilities are to be located outside of the sidewalk section and to be underground where possible.”
 - d. With the following note: “The city of Battle Ground has no responsibility to improve or maintain the private streets, 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. With a note identifying the party responsible for the required landscaping/parkway associated with double and reverse frontage lots.
 - h. That shows where any control monuments have been placed.
 - i. That shows the dedication of any public roads or alleys.
8. Redesign Lots 5, 6 9 and 10 to flag lot standards (BGMC 16.125.110).

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 Stormwater Facility Maintenance Agreement meeting requirements of BGMC 18.250.310(A)(1) for review and approval prior to recording.
5. Submit to the city of Battle Ground a Stormwater Maintenance Covenant meeting the requirements of BGMC 18.250.310(B)(2) for the stormwater treatment structures for review and approval prior to recording.
6. Submit complete sets of as-built drawings for all required public improvements for streets and roads, stormwater drainage and control, sanitary sewer and water services, as applicable prior to the issuance of the occupancy permit for review and approval by the Engineering Department. Upon acceptance by the Engineering Department, submit prior to the issuance of the occupancy permit, one (1) Mylar set, (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 an AutoCAD format and separate/individual TIFF and PDF format files.

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 system and stormwater system.

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.

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 R5 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.
 4. Applicant responsible for adhering to any and all conditions identified by the Department of Ecology and obtaining any required approvals.
 5. Applicant responsible for adhering to any and all conditions identified by the Battle Ground Public Schools and obtaining any required approvals.
 6. Applicant responsible for adhering to any and all conditions identified by the Southwest Clean Air Agency and obtaining any required approvals.

APPEAL

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

DATED this 29th day of September 2021.

A handwritten signature in black ink, appearing to read 'Joe Turner', is written over a horizontal line. The signature is fluid and cursive.

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