

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

Regarding an application by Hayward Uskoski and Associates for approval of a preliminary plat to divide a 19.89-acre parcel into 43 lots in the R3 zone at 2800 SE 17 th Avenue in the city of Battle Ground)	<u>FINAL ORDER</u>
	LUDIII21-0010
	(Bloomquist Subdivision)

A. SUMMARY

1. The applicant, Hayward Uskoski and Associates, PC, requests approval of a boundary line adjustment and a subdivision on an existing 22.04-acre tract consisting of Tax Assessor Parcels 194421-000 and 194422-000, also known as 2800 SE 17th Avenue.

a. The lot line adjustment will modify the boundary between parcels 194421-000 and 194422-000 to create a 2.16-acre parcel for the existing residence at 2800 SE 17th Avenue (modified Parcel 194422-000) and a 19.89-acre parcel for the proposed subdivision (modified parcel 194421-000, the “site”). The site surrounds parcel modified Parcel 194422-000 on three sides, abutting the north, west, and south boundaries of modified Parcel 194422-000. The Chelatchie Prairie Railroad abuts the west boundary of the site.

b. The applicant then requests approval to divide the 19.89-acre site into 43 residential lots and tracts for open space, private roads, and stormwater facilities.

c. Modified Parcel 194422-000 is currently developed with a residence and associated outbuilding. No additional development is proposed on that parcel with this application. There is an accessory structure on the site, which the applicant will remove to accommodate the proposed development. The applicant will construct a new single-family detached dwelling on each of the proposed lots on the site.

d. The applicant also requests approval of two road modifications: to vary from the intersection spacing requirements of the Code on SE 17th Avenue between SE 26th Street & SE 27th Street (250-feet required, 203-feet proposed) and to allow an overlength cul-de-sac at the end of SE 15th Circle.

e. The site, abutting properties to the east and south, and properties west of the north and south portions of Parcel 194422-000, across the Chelatchie Prairie Railroad, are zoned R3 (Residential, three units per acre maximum density). Properties west of the center of Parcel 194422-000 are located in unincorporated Clark County and zoned R1-20 (Residential, 20,000 square foot minimum lot size). Properties to the north are zoned A (Airpark). Properties to the west of Parcel 194421-000, across the Chelatchie Prairie Railroad, are zoned R-5 (Residential, five units per acre maximum density).

f. An unnamed stream, designated fish and wildlife habitat, bisects the site from north south. There are steep slopes and unstable soils near the stream and within the southern portion of the site. The buffer of an offsite wetland extends onto the site from

the west. The applicant proposed or is required to preserve the wetland and stream buffers and areas of steep slopes and unstable soils within open space tracts.

g. The applicant will construct a new single-family detached dwelling on each of the proposed lots. Clark Public Utilities (“CPU”) will provide domestic water service to the site. The city of Battle Ground will provide sanitary sewer service. The applicant will collect storm water from impervious areas on the site and convey it to a proposed on-site storm water facility for treatment and detention. The applicant will discharge treated stormwater to the on-site stream at less than predevelopment rates.

h. The applicant will extend SE 27th Street into the site from its existing terminus at the east boundary of the site. SE 28th Way will extend west to intersect proposed SE 17th Avenue, which will extend from the north boundary of the site to the north boundary of Parcel 194422-000. The applicant will extend a new public street proposed SE 26th Street, west of SE 17th Avenue, across the on-site stream, before curving north and stubbing to the north boundary of the site to allow for further extension when the abutting property redevelops. The applicant will extend another new roadway, proposed SE 25th Way, between SE 26th Street and the west boundary of the site to allow for future extension across the Chelatchie Prairie Railroad. The applicant will extend another new roadway, proposed SE 15th Circle, south of SE 25th Way to provide access to proposed lots on the west side of the stream. SE 25th Way will terminate in a cul-de-sac near the south end of the site. The applicant will dedicate additional right-of-way to allow for the future extension of this road across the Chelatchie Prairie Railroad.

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 November 19, 2021 (the “Staff Report”) as modified at the hearing. The applicant accepted those findings and conditions, as modified, without exceptions. Two persons testified orally with questions about the development. Other persons testified in writing, Exhibits 27, 28, and 29. 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 traffic generated by the proposed development will exceed the capacity of area streets or otherwise create a hazard;

c. Whether the applicant’s traffic analysis adequately accounts for projected traffic growth during non-Covid times;

d. Whether a traffic signal is warranted at the intersection of SE Eaton Boulevard/NE 199th Street and NE 157th Avenue;

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

f. Whether the Washington Department of Ecology (“ECY”) and the U.S. Army Corps of Engineers (the “Corps”) have any authority to review the wetland delineation and mitigation plan for this 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 December 2, 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 adjust the boundaries between the two tax lots that make up the site, creating a 2.16-acre parcel for the existing residence and a 19.89-acre site for further subdivision. The 19.89-acre site could be developed with a maximum 59 lots. The applicant proposed to create 43 lots and tracts for access, open space, and stormwater. The site contains fish and wildlife habitat and a buffer for an offsite wetland, which the applicant is required to preserve in separate tracts.

b. He noted that the applicant’s attorney submitted a memo objecting to certain Staff Report findings regarding the ECY’s jurisdiction over the wetland buffer on the site. The city intended to provide an opportunity to the applicant to coordinate with ECY, as additional approvals may be required by that agency. The city did not intend to defer the city’s authority over wetlands to ECY.

3. City engineer Ryan Jeynes testified that the city’s Transportation System Plan (the “TSP”) requires the extension of proposed SE 15th Circle to the west, across the Chelatchie Prairie Railroad. The current TSP does not require the extension of SE 25th Street. However, the city is currently in the process of updating the TSP and may include that street extension in the updated version.

a. He noted a typographical error on page 6 of the Staff Report. The finding for “BGMC 12.116.290(A) Criteria #2” should refer to SE 17th Avenue, not NE

14th Street. In addition, the finding should refer to stop signs at the southbound leg of the SE 26th Street/SE 17th Avenue intersection and the northbound leg of the SE 27th Street/SE 17th Avenue intersection.

c. He noted that the applicant's traffic engineer based the traffic analysis on prior traffic counts conducted before the onset of Covid. Those traffic counts were increased by a two-percent growth rate to determine current and future non-Covid background traffic volumes.

d. The Manual on Uniform Traffic Control Devices (the "MUTCD") recommends basing posted speed limits on the 85th percentile traffic speed, because drivers will drive the speed at which they feel comfortable based on the conditions of the roadway. Drivers will continue to travel at the same speed, regardless of the posted speed limit. Based on city speed studies, the 85th percentile speed on the section of SE Eaton Boulevard/NE 199th Street near NE 157th Avenue is 54 mph. Therefore, the city will not lower the speed limit on this section of roadway.

4. Planner Thomas Ellis, attorney LeAnne Bremer, and traffic engineer Han Lee appeared on behalf of the applicant, Hayward Uskoski and Associates, PC.

a. Mr. Ellis accepted the findings and conditions in the Staff Report, with the exception of the wetland findings noted in Ms. Bremer's memo.

b. Ms. Bremer summarized her Memorandum dated December 1, 2021 (Exhibit 30). She noted that ECY and the Corps have no authority to review or approve the applicant's wetland delineation and mitigation plan. Such review and approval is within the exclusive jurisdiction of the city. There are no federal jurisdictional wetlands on or near the site. Therefore, the Corps has no jurisdiction in this case. The applicant may coordinate with ECY, but ECY has no approval authority. She requested the examiner delete the statement "[t]he condition **the applicant be responsible for coordinating with the Department of Ecology to obtain their wetland delineation approval, update plans accordingly and provide the City with the updated wetland delineation and mitigation plan for the record.**" p. 29 of the Staff Report (bold text in original).

c. Mr. Lee testified that traffic volumes on area roadways have decreased significantly due to changes in travel practices resulting from Covid. Therefore, the city of Battle Ground and other jurisdictions in the region utilize older traffic counts multiplied by an annual growth factor to determine current and future non-Covid traffic volumes. The traffic study also includes projected traffic volumes from developments proposed, approved, and developed after the date of the traffic count, which accounts for the majority of traffic growth. Based on those counts, traffic volumes have increased by more than 32-percent at some intersections in the city. The two-percent background growth rate is intended to account for growth in traffic from outside the area that is not included in the development traffic counts.

i. The traffic study looked at the crash rate at intersections within the study area, including the intersection of SE Eaton Boulevard/NE 199th Street and NE 157th Avenue. The traffic study utilized reported crashes occurring during the five year period prior to May 3, 2021. The fatal crash noted by Mr. McAleer occurred after that date and therefore was not included in the analysis. The crash rate at that intersection is 0.2 crashes per year over the five year period reviewed in the analysis, which indicates that there are no systemic issues at this intersection.

ii. Sight distance at this off-site intersection is a maintenance issue for the city and the county. The city has jurisdiction over the west side of the intersection and the county over the east.

iii. The applicant has no authority to reduce the posted speed limit on SE Eaton Boulevard/NE 199th Street. Any change in the speed limit must be approved by the city and the county. Setting speed limits is a complex issue and there are standards and practices that must the jurisdiction must follow. Basing speed limits on the 85th percentile travel speed is an accepted national standard, as it is difficult to enforce speed limits below the speed that drivers feel comfortable with. Enforcement is not a long-term solution as drivers will return to their comfort speed once enforcement ceases.

5. John McAleer expressed concern with the increased traffic generated by the proposed development.

a. He questioned the validity of the applicant's traffic counts that were conducted during the summer of 2020, when traffic was limited due to Covid. The two-percent growth rate used in the traffic analysis is too conservative. Based on his observations of traffic volumes on SE Eaton Boulevard/NE 199th Street traffic have increased by at least 20-percent.

b. The posted speed limit on SE Eaton Boulevard/NE 199th Street increases from 40 to 50 mph west of the site and many drivers exceed that limit. Traffic from this development, the previously approved Cedars Landing subdivision, and another ten-acre parcel that is currently proposed for development will all utilize the intersection of SE Eaton Boulevard/NE 199th Street and NE 157th Avenue. There was a recent fatal crash at this intersection. The city trimmed vegetation on the west side of that intersection, which improved sight distance. However, the city should reduce the posted speed to increase safety at that intersection. Increased traffic generated by this development will exacerbate these hazards. The city should reduce the posted speed limit on this roadway to increase public safety.

6. Kathy McAleer noted that NE 157th Avenue provides the only access to this and other developments in the area. The section of SE 17th Avenue north of the site is a private road, which will not provide access to the site. The single access may limit emergency response times and access. SE Eaton Boulevard/NE 199th Street carries a large volume of school related traffic and the volume of traffic on this roadway is increasing rapidly. She argued that a traffic signal is warranted at the intersection of SE Eaton Boulevard/NE 199th Street and NE 157th Avenue.

7. The examiner closed the record at the conclusion of the hearing and announced his intention to approve the application, subject to the conditions of approval in the Staff Report, as modified at the hearing.

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 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. 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. The Code does not require that notice be mailed to the owners of properties that are more than 500 feet from the site. Multiple forms of notice are required, in part, to provide a measure of overlap, so that if notice in one form is not effective (e.g., when a mailed notice is not required or received), another form of notice will be effective (e.g., posted notice).

4. The proposed development will increase the volume of traffic on area streets. That increase in traffic 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 in the surrounding area and their observations of traffic volumes on area roadways. As Mr. Lee testified, the majority of the traffic growth results from traffic generated by previously approved developments, which is accounted for in the applicant's traffic analysis as "in-process" traffic.

i. The volume of in-process traffic is determined based on the number of lots proposed by all vested or approved developments within the analysis area that were not generating traffic when the pre-Covid traffic counts used in the analysis were performed.

ii. 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 that was not captured by the in-process traffic counts.

iii. Future traffic volumes are estimated by combining counts of existing, in-process, the background growth rate, and site generated traffic. 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. The recent fatal crash at the intersection of SE Eaton Boulevard/NE 199th Street and NE 157th Avenue, while tragic, is not evidence that this intersection is hazardous. As Mr. Lee noted, that crash rate at this intersection is well below the level indicating a potential design hazard.

b. 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.

i. The applicant has no authority to reduce the speed limit on streets in the area. That is within the exclusive jurisdiction of the city and county Area residents can petition the city and/or county to review the posted speed limit and consider reducing it to a lower speed. However, As Mr. Jaynes and Mr. Lee noted, the posted speed limit is based on a variety of engineering and other considerations.

c. A traffic signal is not warranted at the intersection of SE Eaton Boulevard/NE 199th Street and NE 157th Avenue, which is projected to continue operating at Level Of Service "A" with the additional traffic generated by this development.

5. A single road, NE 157th Avenue, provides the only 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. However, this is an 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 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.

a. The Fire District required that the applicant provide a secondary emergency access or install emergency fire sprinklers in all of the homes on the site. This is required by condition A.2.u. NE 17th Avenue north of the site is an existing private road that appears to serve the existing residence on the site. Therefore, the applicant may have easement rights to utilize this roadway for emergency access. However, the existing roadway may be inadequate to serve as an emergency access. Therefore, the applicant can either improve NE 17th Avenue to serve as an emergency access or install sprinklers in the proposed homes.

b. This development will facilitate the provision of a secondary access in the future by extending SE 15th Circle and SE 25th Way to the west boundary of the site and the northern extension of NE 26th Street and NE 17th Avenue to the north boundary of the site. These streets can be further extended in the future and provide a secondary connections to the surrounding street system when the abutting properties redevelop.

6. The examiner finds that the ECY and the Corps have no authority to review or approve the applicant's wetland delineation and mitigation plans. Such review is subject to the city's exclusive authority. The Washington Pollution Control Act (RCW 90.48) authorizes ECY to address unauthorized impacts to wetland and other waters of the state. However, as the applicant notes, state law gives the City exclusive authority to adopt and implement critical areas ordinances (RCW 36.70B.030) and approve preliminary plats (RCW 58.17). The statement "[t]he condition **the applicant be responsible for coordinating with the Department of Ecology to obtain their wetland delineation approval, update plans accordingly and provide the City with the updated wetland delineation and mitigation plan for the record**" at p. 29 of the Staff Report is incorrect and should be deleted.

D. CONCLUSION

Based on the above findings and discussion, the examiner concludes that LUDIII21-0010 (Bloomquist 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 LUDIII21-0010 (Bloomquist Subdivision), subject to the following conditions of approval:

Conditions of Approval

CONDITIONS OF APPROVAL

A. Prior to Engineering Approval:

1. Submit final engineering plans, for review and approval by staff, pertaining to transportation, sewer, water, grading, erosion control, stormwater, driveways, street lighting, and landscaping prepared and stamped by a registered engineer in the state of Washington.
2. Submit final engineering plans:
 - a. Showing extension of SE 27th Street built to “Neighborhood Collector” standards, including sidewalk, landscape strip, curb & gutter, and asphalt.
 - b. Showing SE 17th Avenue built to “Neighborhood Collector” standards including sidewalk, landscape strip, curb & gutter, and asphalt.
 - c. Showing SE 26th Street, SE 25th Way, and SE 15th Circle built to “Local A” standards including sidewalk, planter strip, curb/gutter and asphalt.
 - d. Showing 50-foot right-of-way dedication at the end of the cul-de-sac to the western property line.
 - 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.
 - 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 traffic mitigation at 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.
 - l. Showing water lines extending to extreme property lines.
 - m. Showing each residential lot having its own individual water service
 - n. Showing sewer lines 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. Hydrants shall meet the 700-foot lateral spacing requirement.
 - 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 “No Parking-Fire Lane” signage required at both sides of the head of cul-de-sac and a minimum of one sign posted within the cul-de-sac. Corresponding sign details shall be required.
 - t. If SE 17th St is to be considered emergency access, it must be paved to a minimum clear width of 20 feet and proposed gate/bollards must be equipped with knox key entry.
 - u. Showing separate access road requirements in accordance with 2018 IFC Section D107. Clearly identify how compliance will be achieved by either adding additional access or providing fire sprinkler coverage for all new single family residences.
 - v. Showing stop signs on northbound SE 17th Avenue at SE 27th Street and on

southbound SE 17th Avenue at SE 26th Street.

3. Revise any applicable street names per staff's review of Sec. 12.116 of this report.
4. 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.
5. Submit a hydrology report that addresses all requirements found in BGMC 18.250. Submit a SWPPP that meets Department of Ecology requirements.
6. Submit a final critical areas report and mitigation plan including the below items. If grading occurs prior to engineering approval, this condition will be required prior to any ground disturbance.
 - a. The updated and confirmed size of the overall proposal.
 - b. Submit a final delineated habitat boundary, mapping the identified riparian and priority habitat along with the corresponding buffer boundaries.
 - c. Submit wetland mitigation plan that assures mitigation requirements of BGMC 18.260.120 and 18.260.130.
 - d. Submit a wetland mitigation plan showing that any stormwater facility located in the wetland buffer meets criteria listed in 18.270.070.
 - e. All wetlands and buffer areas over 5,000 square feet shall be included in critical area tracts.
7. Demonstrate compliance with the buffer activities regulations of BGMC 18.280.090.
8. Showing proof of engineering plan approval by Clark Public Utilities for the water improvements.
9. Submit a construction cost estimate for required public and applicable private improvements for review and approval by the City Engineering Department
10. 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.

B. Prior to Construction of the Site:

1. Receive signed and approved engineering plans from the City of Battle Ground.
2. Receive an approved ROW permit from the City of Battle Ground.
3. Submit a surety bond meeting the requirements of BGMC 12.118.110.
4. Submit a Certificate of Liability Insurance meeting the requirements of BGMC 12.118.120.
5. Erect and 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.

C. Prior to Creation of Impervious Surface:

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

D. Prior to Engineering Acceptance:

1. Construct all public improvements, if applicable, and go on a walkthrough with City of Battle Ground Engineering Staff and correct any deficiencies as determined by City staff.
2. Submit a letter provided by the applicant showing that fire flow requirements per BGMC 15.105.180 and 15.105.190 can be met.
3. Submit to the City of Battle Ground a two-year/20-percent maintenance bond for all completed and accepted public improvements.
4. Submit to the City of Battle Ground a Stormwater Facility Maintenance Agreement meeting requirements of BGMC 18.250.310(A)(1) for review and approval prior to recording.
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, (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.
6. If LID improvements are incorporated into the project, provide appropriate stormwater covenants.
7. Submit a signed Bill of Sale for sewer system and stormwater system.

E. Prior to Final Plat Approval:

1. Construct all required public improvements and gain engineering acceptance or provide appropriate bonding.
2. Construct the mitigation measures for the failing intersection of SR 503 & SW Eaton Boulevard or pay the mitigation fee of \$18,399.96.
3. Construct the mitigation measures for the failing intersection of SW 20th Avenue & SW Eaton Boulevard or pay the mitigation fee of \$16,039.80.
4. Submit a final plat:
 - a. Demonstrating compliance with the R3 zone district's dimensional requirements (IE lot size, average, density, etc.)
 - b. Including a separate tract for all critical areas and their corresponding buffer (IE the identified wetland and wildlife habitat critical areas/buffers).
 - c. Demonstrating the buildings to be retained on Adjusted Parcel 194422-000 are in compliance with the dimensional standards of the R3 zone district.
 - d. With critical area tracts designated on the face of the plat or recorded drawing in a format approved by the city attorney and include the restrictions of BGMC 18.260.180.C. Critical area tracts shall be recorded

- on all documents of title of record for all affected lots.
- e. With an overlaid public access easement over the proposed trail and a note requiring the developer shall establish a mechanism to assure perpetual care and maintenance of the trail.
 - f. That shows easements for public utilities not located in the right-of-way.
 - g. With the following note: "Fences higher than 42-inches will not be allowed in the front yards."
 - h. With the following note: "All utilities are to be located outside of the sidewalk section and to be underground where possible."
 - i. With a note specifying the party/s responsible for long-term maintenance of stormwater facilities.
 - j. With the following note should Conditions A.2.t and A.2.t not be met: "Fire sprinkler systems shall be required for all new single-family residences."
 - k. That shows where any control monuments have been placed.
 - l. That shows the dedication of any public roads.
 - m. That shows 50-foot right-of-way dedication at end of cul-de-sac to western property line.
 - n. Showing building envelopes.
 - o. Showing trails overlaid with a public access easement.
 - p. With the following note: "All households shall conform to the neighborhood design standards as listed in BGMC 17.106.040."
 - q. With the following note: "All new structures shall conform to the setback and building heights of the underlying zoning district."
 - r. With the following note: "Building permits and impact fees will be calculated and shall be paid at the time of permit issuance."
 - s. With a note specifying maintenance responsibilities for the onsite critical area tracts, and open space tracts (it will need to be privately owned and maintained either the HOA, developer, abutting property owners, etc.).
 - t. With a note specifying perpetual care and maintenance responsibilities for the on-site trails (it will need to be privately owned and maintained either the HOA, developer, abutting property owners, etc.).

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.
5. All new development shall comply with the required parking minimum of Table 17.133-1.

G. Prior to Certificate of Occupancy:

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

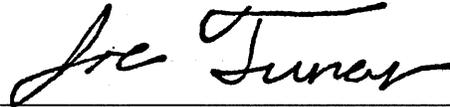
H. Other/General Conditions

1. The applicant shall be responsible for recording with the Clark County auditor within ninety days of the date of the written decision or simultaneously with the overall proposed Type III Subdivision.
2. A condition will require all trails to be built to City standards specified in 12.116.070 and either connect to an existing trail or to existing pedestrian right-of-way to establish access to the proposed amenity.
3. 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.
4. Applicant shall limit construction hours per BGMC 9.42.010, which states sounds originating from construction sites, including but not limited to sounds from construction equipment, power tools and hammering, between the hours of nine p.m. and seven a.m. on weekdays and nine p.m. and eight a.m. on weekends.
5. The critical areas tracts shall be maintained and owned by either the developer or HOA.
6. Applicant responsible for obtaining any required approvals from the Department of Ecology.
7. Adhere to all recommendations of the final Wetland Delineation and Mitigation Plan.
8. Applicant responsible for adhering to any and all conditions and fees identified by the Battle Ground Public Schools and obtaining any required approvals.
9. Applicant responsible for adhering to any and all conditions identified by the Southwest Clean Air Agency and obtaining any required approvals.
10. If site disturbance is over an acre or the project reasonably expects to cause a violation of any water quality standards, and stormwater discharges to surface Waters of the State, a CSWGP is required.

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 8th day of December 2021.

A handwritten signature in black ink that reads "Joe Turner". The signature is written in a cursive style with a horizontal line underneath the name.

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