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March 14, 2022

RE: Notice of Decision - Stevens Road Apartments – CUP 6-21

The City of Burlington Hearing Examiner has approved Conditional Use Permit CUP 6-21 (Stevens Road Apartments). A copy of the Hearing Examiner's decision is attached to this Notice.

The Hearing Examiner's decision, and the associated SEPA threshold determination, may be appealed in accordance with the appeal procedures for type III permit decisions identified in the Burlington Municipal Code 14A.05.190.C. Any appeal must be filed within 14 days of the date of this notice. The date of this notice is March 14, 2022. You may contact the Community Development Department for more information on filing an appeal.

Please let me know if you have any questions or concerns.

Thank you,

A handwritten signature in black ink that reads "Brad Johnson". The signature is written in a cursive, flowing style.

Brad Johnson,
Community Development Director

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF BURLINGTON**

In the Matter of the Application of)	No. CUP 6-21
)	
Sage Homes Northwest)	Stevens Road Apartments CUP
)	
)	
)	
<u>For a Conditional Use Permit</u>)	FINDINGS, CONCLUSIONS, AND DECISION

SUMMARY OF DECISION

The request for a conditional use permit to allow for construction of a residential development consisting of seven, three-story buildings with 156 dwelling units, a community building, and 290 to 300 parking spaces, with associated improvements, on three undeveloped parcels totaling approximately 5.42 acres located on Stevens Road, approximately 300 feet west of the intersection at Stevens Road and South Goldenrod Road, is **APPROVED**. Conditions are necessary to address specific impacts of the proposed development.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held an open record hearing on the request on February 15, 2022, using remote access technology. The record was left open until February 22, 2022, to allow for the submission of additional comments on the proposal.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

Brad Johnson, City Community Development Director
Michael Hoffman, Applicant Representative
David Smoots
David Svaren
Steve Crider
Laurel Suttles
Michael Ranger

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, dated January 26, 2022
2. Aerial Site Photograph, undated
3. Zoning Map, undated
4. Boundary and Topographic Survey, dated May 10, 2021

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5. FEMA Flood Insurance Rate Map, undated
6. Department of Ecology Shoreline Master Plan Handbook, dated October 2017
7. Complete Application Letter, dated October 1, 2021; Notice of Application, issued October 6, 2021
8. Public Comments:
 - A. Comments from Mike and Michelle Ranger, dated October 10, 17, 25, and 29, 2021
 - B. Comments from Damon Schwetz, dated October 10 and 11, 2021
 - C. Comment from Darron Drake, dated October 14, 2021
 - D. Comment from Michael Fohn, Hopper Road, LLC, dated October 15, 2021
 - E. Comments from David Smoots, dated October 18, 20, and November 30, 2021
 - F. Comments from Steve Crider, dated October 18 and 20, 2021
 - G. Comment from Brad, Craig, and Laura Dick, dated October 19, 2021
 - H. Comment from Dustin Henkin, dated October 19, 2021
 - I. Comments from David Svaren, dated October 19 and 20, 2021
 - J. Comment from Jerry Thompson, dated October 19, 2021
 - K. Comment from Joel Zediker, dated October 19, 2021
 - L. Comment from Karen Sorsdal, dated October 19, 2021
 - M. Comment from Laurel and Russell Suttles, dated October 19, 2021
 - N. Comment from Aaron and Megan Curbow, dated October 19, 2021
 - O. Comment from Sirilo Soria, dated October 19, 2021
 - P. Comment from Vanessa Redford, dated October 19, 2021
 - Q. Comment from Connie Small, dated October 20, 2021
 - R. Comment from Dave Cross, dated October 20, 2021
 - S. Comment from Dora Reuble, dated October 20, 2021
 - T. Comment from W.L. and Martha Queen, dated October 20, 2021
 - U. Comment from Sandra Gendron, dated October 20, 2021
 - V. Comment from Tony Wisdom, dated October 12, 2021
 - W. Comments from Nora Kammer, dated January 12 and 13, 2022
9. Project Narrative, dated January 5, 2022
10. Landscaping Plans (10 Sheets), dated September 23, 2021
11. Building Elevation Plans (2 Sheets), dated September 24, 2021
12. Site Plan, dated September 20, 2021
13. Wetland Site Assessment with Buffer Mitigation Plan and Floodplain Habitat Assessment, Bachman Environmental, LLC, dated September 16, 2021
14. Traffic Impact Analysis, Gibson Traffic Consultants, Inc., dated April 2021
15. Supplemental Traffic Memorandum, Gibson Traffic Consultants, Inc., dated December 21, 2021
16. City Fire Marshal Requirements for Inspections and Review of New Projects, dated October 12, 2021
17. SEPA Environmental Checklist, dated September 23, 2021
18. Land Use Permit Application, dated August 23, 2021

19. Revised Site Plan, dated August 20, 2021
20. Supplemental Pages from Institute of Transportation Engineers Manual, 7th Edition
21. Request for Notice Publication, dated January 31, 2022
22. Notice of Public Hearing, dated January 31, 2022.
23. Large Sign Installation Certification, dated November 16, 2021
24. Photographs of Posted Notice, dated November 12, 2021
25. Additional Public Comments:
 - A. Comments from Dave Smoots, dated February 15, 16, and 17, 2022, with City Responses, dated February 16 and 17, 2022
 - B. Comments from Sandra Gendron, dated February 16 and 17, 2022, with City Response, dated February 17, 2022
 - C. Comment from Cody Topping, dated February 20, 2022
 - D. Comment from Sandy Eastwood, dated February 20, 2022
 - E. Comment from W. L. Queen, dated February 21, 2022
 - F. Comment from David Griffith, dated February 22, 2022
 - G. Comment from Robin Ozaki, dated February 22, 2022
 - H. Comment from Diana Siegfried, Mellissa Griffith, and David Griffith, dated February 20, 2022

The Hearing Examiner enters the following findings and conclusions based upon the testimony and exhibits admitted at the open record hearing:

FINDINGS

Application and Notice

1. Mariela Feliciano, H+dIT Collaborative, LLC, on behalf of Sage Homes Northwest (Applicant), requests approval of a conditional use permit (CUP) to allow for construction of a residential development consisting of seven, three-story buildings with 156 dwelling units, a community building, and 290 to 300 parking spaces.¹ Associated improvements would include landscaping, stormwater management features, utilities, and an extension of Bouslog Road through the subject property to connect to Stevens Road. The property consists of three contiguous parcels totaling approximately 5.42 acres located along Stevens Road, approximately 300 feet west of the intersection at Stevens Road and South Goldenrod Road.² *Exhibit 1, Staff Report, pages 1 and 2; Exhibit 2; Exhibits 9 through 12; Exhibit 13; Exhibit 18; Exhibit 19.*

¹ The application materials state that 300 parking spaces would be provided, but the Applicant's site plan depicts 290 parking spaces. *Exhibit 1, Staff Report, page 1; Exhibit 12; Exhibit 18.* As further discussed later in this decision, the 290 parking spaces depicted on the site plan would exceed minimum parking requirements.

² The subject parcels are identified by Skagit County Tax Parcel Nos. P127092, P127094, and P127097. *Exhibit 1, Staff Report, page 1.*

2. The City of Burlington (City) determined that the application was complete on October 1, 2021. On October 6, 2021, the City provided notice of the application by mailing notice to property owners within 600 feet of the subject property, posting notice on the City's website, and publishing notice in the *Skagit Valley Herald*, with a comment deadline of October 20, 2021. Notice of the application was not posted on-site until November 12, 2021, and, therefore, the comment period was extended until November 26, 2021. The City's notice of application materials stated that information about the open record hearing associated with the application would be distributed to any party requesting such information. The City received several comments on the proposal from members of the public in response to its notice materials. The majority of the comments were submitted by residents living along or near the Markwood Road corridor to the west of the subject property and within unincorporated Skagit County. The comments generally raised concerns related to traffic and safety impacts, inadequate infrastructure, litter, wetland impacts, and impacts to property values. These comments are discussed in detail later in this decision. *Exhibit 1, Staff Report, page 3; Exhibit 7; Exhibits 21 through 24; Testimony of Brad Johnson.*

State Environmental Policy Act

3. The City acted as lead agency and analyzed the environmental impacts of the proposal under the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW). The City reviewed the Applicant's environmental checklist and other information on file and determined that, with mitigation measures, the proposal would not have a probable significant adverse impact on the environment. Accordingly, the City issued a Mitigated Determination of Nonsignificance (MDNS) on January 26, 2022. City Community Development Director Brad Johnson testified at the hearing that the City did not receive any comments specific to the environmental review of the proposal from reviewing departments and agencies and that the MDNS could be appealed as part of an appeal of the Hearing Examiner's decision. The MDNS requires the Applicant to:
 - Ensure that all construction, work, clearing, grading, filling, excavation, and other development activities comply with applicable Burlington Municipal Code requirements and with the conditions of CUP approval.
 - Ensure that all construction, work, clearing, grading, filling, excavation, and other development activities are consistent with the design specification, management recommendations, or other mitigation measures identified in the September 16, 2021, habitat assessment and mitigation plan prepared by Bachman Environmental, LLC.
 - Submit a lighting plan demonstrating that all outdoor lighting would be screened, hooded, and directed downward to ensure that the light source would not be visible from outside the perimeter of the site, would avoid casting high intensity light directly on shelter units, and would comply with the requirements of the Washington State Energy Code.

- Develop a signage plan with the City’s Public Works Department to ensure vehicle traffic is directed away from potential increased pedestrian and bicycle traffic.
- Provide bicycle racks adjacent to each residential building, within 20 feet of the primary building entrance, that are sufficiently sized to provide one rack for every four dwelling units and mounted on concrete or another approved hard surface. Provide a bike rack with at least six spaces adjacent to the proposed community building.
- Provide lighting to illuminate the mid-block crossing located on the southerly extension of Bouslog Road.

Exhibit 1, Staff Report, pages 17 through 19; Exhibit 17; Testimony of Brad Johnson.

Comprehensive Plan and Zoning

4. The City Comprehensive Plan designates the property as “Heavy Commercial & Industrial.” City staff reviewed the proposal and determined that it would be consistent with the Comprehensive Plan, identifying the following Comprehensive Plan policies as relevant to the proposal:

- Provide opportunities for infill development of market rate housing in a variety of housing types to meet the needs of different income levels, different age groups, and lifestyles. [Housing Policy 4.B]
- All new residential developments and multifamily housing must provide for quality of life of residents, with carefully planned amenities for all age groups. Amenities shall be required, including but not limited to the following: playground, park area, recreation facility, meeting facility. [Housing Policy 6.A]
- Location and design of parking shall be carefully examined to ensure that pedestrian safety, building aesthetics, access to common areas, accessory storage areas, and landscaping are accommodated efficiently and safely. [Housing Policy 6.B]
- Provide opportunities for housing developments in Downtown and in other commercial areas that are of appropriate design and materials to encourage density near public transit and places of employment. [Housing Policy 7]
- Single purpose residential is allowed in commercial areas that are better suited for residential than commercial uses. [Housing Policy 7.E]
- Pedestrian and transit links shall be encouraged to provide good public access to open space, parks, and recreation areas. [Housing Policy 10.B]
- Development and redevelopment of vacant and underutilized land shall be encouraged and guided to complement the existing land use base where the land is fully utilized. [Business, Commercial, and Industrial Policy 1.A]
- Mixed-use development is encouraged to create a balance of incomes, jobs, and housing. [Business, Commercial, and Industrial Policy 1.B]

- Street trees shall be encouraged as part of new development and changes in existing development. Trees shall be carefully selected to enhance rather than detract from businesses. [Business, Commercial, and Industrial Policy 3.D] *Exhibit 1, Staff Report, pages 2, and 9 through 17.*

5. The property is zoned Heavy Commercial (C-2). The purpose of the C-2 zoning district is “to provide for the location of and grouping of enterprises which may involve some on-premises retail service but with outside activities and display or fabrication, assembling, and service features.” *Burlington Municipal Code (BMC) 17.55.030*. The C-2 zone is “intended to accommodate uses which are oriented to automobiles either as the mode or target of producing the commercial service.” *BMC 17.55.030*. The primary permitted uses in the C-2 zone generally consist of commercial uses that are heavier in type than those commercial uses permitted in more restrictive commercial zoning classifications. *BMC 17.55.030; BMC 17.55.050*. Multifamily dwellings are, however, permitted in the C-2 zone with a conditional use permit, provided that an applicant demonstrates that the site is better suited for housing rather than commercial development. *BMC 17.55.070.A*. The proposal’s compliance with this site suitability requirement is addressed in detail later in this decision. *Exhibit 1, Staff Report, pages 2 through 4; Exhibit 3.*
6. Multifamily residential development in the C-2 zone is generally limited to a base density of one dwelling unit per lot plus one additional unit for every 3,000 square feet of lot area, but additional density may be added through the purchase of credits from the City’s Agricultural Heritage Program.³ *BMC 17.55.070.A; BCC 17.25.090.B*. The Applicant proposes to develop 156 dwelling units, which exceeds the allowed base density of 82 units on the three lots totaling 5.42 acres. Accordingly, the Applicant would be required to purchase credits through the Agricultural Heritage Program to provide for the remaining proposed density. The maximum building height permitted in the C-2 zone is generally 45 feet.⁴ *BMC 17.55.090.E*. The Applicant submitted building elevation drawings showing that the proposed buildings would be under the 45-foot height limit. *Exhibit 1, Staff Report, page 7; Exhibit 11.*
7. The C-2 zone does not have any required minimum building setback requirements. *BMC 17.55.090.C*. Special setback restrictions apply, however, when multifamily development adjoins a single-family zone. Specifically, the required setback from adjoining single-family zones is two feet for every foot of building height. *BMC 17.70.120.A*. The western side of the development site abuts an area of detached residential development, and the proposed buildings would have a height of

³ The Agricultural Heritage Program is a transfer/purchase of development rights program allowing densities to be increased within the city by purchasing credits, the proceeds of which are used to purchase development rights to agricultural land located outside the city. *Exhibit 1, Staff Report, page 4.*

⁴ This maximum building height may be increased if certain conditions are met. *BMC 17.55.090.E.*

approximately 38 feet, resulting in a transition zone setback requirement of 76 feet. The building located closest to the western property line would be set back approximately 90 feet from the western property line, in compliance with the minimum transition setback requirement. *Exhibit 1, Staff Report, page 7; Exhibit 12.*

8. The proposed multifamily residential development would be required to comply with landscaping standards under Chapter 17.80 BMC. *BMC 17.80.020.* City staff reviewed the Applicant's landscaping plans and determined that, with conditions, the project would comply with these standards. Specifically, City staff determined that the project would provide 72,608 square feet of landscaping on-site, exceeding the minimum 26,613 square feet (10 percent of gross site area) of landscaping required for the project. *BMC 17.80.070.* City staff further determined:

- Although the Applicant's landscaping plan shows that required street frontage landscaping would be provided along Stevens Road, no street trees are shown along the southerly extension of Bouslog Road. Therefore, City staff proposes a condition requiring that the Applicant submit a revised landscaping plan depicting the required street trees.
- The landscaping plan illustrates the required landscaping strips and trees along the perimeter lot lines.
- There would be approximately 119 exterior parking spaces, and therefore 12 trees must be provided. The Applicant's landscaping plan indicates that 25 trees would be provided, exceeding the City's minimum requirements.
- The landscaping plan does not include an irrigation system. Therefore, City staff recommends a condition requiring the Applicant to revise the landscaping plan to include an irrigation system and requiring that the irrigation system be installed before the City's final building inspection.
- The proposed landscaping along the western property line abutting adjacent single-family residential development exceeds the City's minimum standards for separation buffers. Proposed fencing would be required to be at least 6 feet high and made of a solid site-obscuring material. City staff recommends a condition of approval, requiring the Applicant to provide construction details for the fence.

Exhibit 1, Staff Report, pages 4 through 7, and 21 through 23; Exhibit 10; Exhibit 11; Exhibit 12.

9. Pedestrian access is required from all adjoining streets and should be designed to provide a logical circulation system between adjoining developments. *BMC 17.85.120.A.* The proposed development would include a continuous sidewalk along Stevens Road from the western edge of the site to South Goldenrod Road. Bouslog Road would be extended south through the site to intersect with Stevens Road, and sidewalks would be provided along both sides of Bouslog Road. The proposed development would also include a complete system of internal pedestrian paths that connect each building to adjoining streets and common areas. City staff reviewed the proposal and determined that it would

substantially comply with pedestrian access and circulation system requirements but that: a pedestrian connection must be provided between the northeast corner of the site and the adjacent development; crosswalks must be provided where a pedestrian path crosses a street; and a more direct access route must be provided between Stevens Road and the sidewalk accessing “Building G.” City staff provided notations on the site plan for these required changes and recommends that the changes noted on the site plan be required as a condition of CUP approval. *Exhibit 1, Staff Report, pages 8, 20, and 21; Exhibit 12; Exhibit 19.*

10. The application materials state that 300 parking spaces would be provided to serve the proposed development, but the Applicant’s site plan depicts only 290 parking spaces. City staff determined, however, that 290 parking spaces would exceed the minimum 265 parking spaces required for the proposed development. *BMC 17.85.050; BMC 17.85.060.* City staff also determined that the Applicant’s proposal to manage on-site stormwater through a system of subsurface infiltration pipes and landscaped bio-retention cells would adequately address the City’s low impact development requirements. *BMC 17.70.135.C; BMC 17.85.140.E.* The Applicant would be required to provide construction details demonstrating that all trash enclosure areas would be adequately screened with appropriate fencing or walls. *BMC 17.80.105.* The Applicant would also be required to submit a lighting plan demonstrating that appropriate outdoor lighting would be provided for common areas (including parking lots, access streets, and pedestrian paths) and would be fully hooded, screened, and directed away from the individual apartment units, adjoining properties, and public rights-of-way. *BMC 17.50.070.A; BMC 17.25.050.A.7; BMC 17.85.115.G; BMC 17.70.110.A.* *Exhibit 1, Staff Report, pages 6 and 7; Exhibit 4; Exhibit 12; Exhibit 18.*

11. Gibson Traffic Consultants, Inc., prepared a Traffic Impact Analysis (TIA), dated April 2021, which analyzed the anticipated traffic impacts of the proposal to develop 156 apartment units. The TIA determined that the proposed development would generate 849 new average daily trips, with 56 new AM peak-hour trips and 69 new peak-hour trips. City staff reviewed the TIA and determined that the anticipated traffic generated by the proposal would be comparable to, or less than, other uses permitted outright in the C-2 zone, such as retail stores, eating and drinking establishments, hotels, car lots, and hospitals. The TIA also determined that all studied intersections would continue to operate at acceptable levels of service (LOS) following a full build-out of the proposal. Following concerns raised by members of the public that the proposed development would have adverse traffic impacts to the Markwood Road corridor located to the west of the property, Gibson Traffic Consultants submitted a supplemental traffic memorandum, which notes that trips generated by the proposed development would not likely utilize the Markwood Road corridor for connections to the north for the following reasons:
 - There are no unique attractions along the Markwood Road corridor.
 - The Markwood Road corridor does not provide unique connectivity.

- The South Goldenrod Road corridor to the east of the property provides better connectivity to the north since it has a higher speed limit, is wider, and has less side friction (driveways, park vehicles, etc.).
- The site would include an extension of Bouslog Road to Stevens Road. *Exhibit 1, Staff Report, pages 10 through 12; Exhibit 14; Exhibit 15; Exhibit 20.*

Existing Site, Surrounding Property, and Critical Areas

12. The approximately 5.42-acre property is currently vacant and undeveloped apart from the remnant of a foundation from a single-family residence that was previously on the site. Vegetation on the site primarily consists of tall grass, blackberries, and scattered trees. The existing topography is relatively level, with an elevation change of approximately 3 feet across the property. As discussed in further detail below, an offsite Category II wetland (Gages Slough) with a standard 300-foot protective buffer is located approximately 150 feet to the south of the property. Properties to the north and east are also within the C-2 zoning district and are developed with various commercial uses, including light industrial buildings, an indoor shooting range, a car dealership, and a healthcare equipment retail business. Property to the south, across Stevens Road, is zoned Semi-Public (R-S) and consists of undeveloped City-owned property in which Gages Slough is located. Property to the west is outside of the city's municipal boundaries and contains low-density residential development. *Exhibit 1, Staff Report, page 2; Exhibit 2; Exhibit 3; Exhibit 13.*
13. As noted above, Gages Slough is located approximately 150 feet to the south of the property, across Stevens Road. Gages Slough is a Category II wetland that is hydraulically connected to the Skagit River and is within the jurisdiction of the Washington State Shoreline Management Act and the City Shoreline Master Program, Title 18 BMC. The jurisdiction of the SMP is confined to the wetland areas of Gages Slough and does not extend upland. Accordingly, City staff determined that no shoreline permits would be required for the current proposal. *BMC 18.07.010; RCW 90.58.030(2)(d) and (e). Exhibit 1, Staff Report, page 2; Exhibit 2; Exhibit 6; Exhibit 13.*
14. The City's critical areas regulations require that Category II wetlands have a 300-foot protective buffer from high impact land uses, which includes residential development of more than one dwelling unit per acre. *BMC Table 14.15.185-1; BMC Table 14.15.185-2.* This required buffer may be reduced, however, if mitigation would be provided and it can be shown, based on accepted scientific knowledge and practices, that the proposed mitigation would provide the same level of protection as the existing buffer. *BMC 14.15.150.A.3, 14.15.150.C.* Bachman Environmental, LLC, prepared a wetland site assessment and buffer mitigation plan for the proposal, dated September 16, 2021. The assessment notes that the buffer associated with Gages Slough Category II wetland extends over approximately half of the subject property and that this portion of the buffer

area provides little functional benefits to the wetland due to it being segmented from the wetland by Stevens Road.

The Applicant proposes to eliminate the 79,170 square feet of on-site buffer area to facilitate the development project. The Applicant would mitigate for this buffer reduction by enhancing, at a one-to-one ratio, buffer area within the City-owned property to the south through the removal of invasive species and planting of diverse native trees and shrubs. Bachman Environmental determined that the proposed buffer mitigation measures would improve habitat functions within the connecting upland areas. City staff reviewed the proposed mitigation plan and determined that, with conditions, it would comply with applicable critical areas regulations. These conditions would require the Applicant to submit a survey showing the delineated wetland and wetland buffer boundaries, install fencing and signage identifying the edge of the wetland buffer, and install temporary construction fencing between the southern edge of Stevens Road and Gages Slough. The Applicant would not be required to record a conservation easement because the adjacent wetland is owned by the City. *Exhibit 1, Staff Report, pages 2, 8, and 9; Exhibit 2; Exhibit 4; Exhibit 12; Exhibit 13.*

15. The eastern portion of the property is located within a regulated A-7 floodplain with a base flood elevation of 26 feet. The ground elevations on the site range from 24.5 feet to 27.9 feet. Bachman Environmental prepared a floodplain habitat assessment for the proposal, dated September 16, 2021. The floodplain habitat assessment determined that the nearest listed fish species and critical habitats are located in the Skagit River, approximately 4,200 feet from the site. The assessment further determined that the project may affect, but would not likely adversely affect, fish species and critical habitat. To ensure that the project would not significantly impact floodplain ecology, all clearing, grading, construction, and development activities associated with the proposal would be required to be consistent with the design specifications, management recommendations, or other mitigation measures identified in the floodplain habitat assessment. *Exhibit 1, Staff Report, pages 2 and 18; Exhibit 5; Exhibit 13.*

Conditional Use Permit

16. As noted above, multifamily residential development is allowed in the C-2 zone with a conditional use permit, provided that an applicant demonstrates that the site is better suited for housing than commercial development. *BMC 17.55.070.A*. The Applicant submitted a project narrative addressing this requirement, which describes the challenges experienced by the prior property owner, Michael Fohn, in developing the site for commercial purposes. The narrative includes a letter from Fohn, which notes that, early on in his development effort, it became clear that it would be difficult to build out the road and utility infrastructure required to support commercial development on the west side of I-5. He explained that the existing road system within the city on the west side of I-5 is narrow and does not provide adequate access to support commercial businesses,

resulting in several commercial parcels in this area remaining undeveloped. Mr. Fohn further explained that efforts to develop these parcels for commercial uses have also encountered resistance from residents of neighborhoods to the west. With respect to the three subject parcels, he noted that potential commercial developers have indicated that the lots are either too small or too large to accommodate their needs. He stated that the current proposed residential development would be well suited for the site because it would fit the current configuration of the lots, would be of a sufficient scope to absorb the costs of building out the required street and utility extensions, and would address a pressing housing need in Skagit County. *Exhibit 1, Staff Report, pages 3 and 4; Exhibit 9.*

17. City staff reviewed the Applicant's project narrative and provided the following additional analysis addressing how the site would be better suited for residential development:

- In the interest of managing transportation demand and improving convenience and accessibility, the City has in recent years made efforts to promote residential development in commercial areas to provide housing close to employment and services. Very little housing exists on the west side of I-5, and the proposed development would improve the balance of residential and commercial development in the area.
- There is a tremendous demand for housing, especially more affordable housing types such as apartments, and this demand is particularly acute in cities such as Burlington where a large segment of the workforce is engaged in lower paying retail and service work.
- The City anticipates that by the year 2036, 60 percent of new housing units will need to be attached units, and the City further anticipates that the bulk of these units will be provided in large multi-unit buildings located in commercial areas.
- The City has documented a decline in average household size and a corresponding increase in the number of small households and households without children. These demographic trends support an increased need for smaller attached housing units.
- The proposed development site is uniquely located to take advantage of the Tammi Wilson Trail, which provides a direct route for pedestrians and cyclists to access the City's commercial core along South Burlington Boulevard.
- The site abuts a large tract of land containing Gages Slough held by the City for conservation and stormwater management purposes, and this tract provides a unique open space amenity for the proposed development.

Exhibit 1, Staff Report, pages 3 and 4.

18. City staff also analyzed several aspects of the proposal to ensure that it would be compatible with surrounding development. Specifically, City staff analyzed the following aspects of the proposal and determined:
- Traffic, access, and loading: The proposed development would not result in traffic impacts that differ significantly from other uses permitted in the C-2 zone. The proposal is entirely residential and would generate vehicle traffic volumes comparable to, or less than, other uses permitted in the C-2 zone, such as retail stores, eating and drinking establishments, hotels, car lots, and hospitals. The proposal would include a number of access improvements including: improving the northern half of Stevens Road to City standards between South Goldenrod Road and the western project boundary; extending Bouslog Road south through the site to intersect with Stevens Road; providing continuous sidewalks along Stevens Road between South Goldenrod Road and the western project boundary; providing continuous sidewalks along Bouslog Road between its current terminus and Stevens Road; providing a complete internal pedestrian circulation system; and creating a vehicle connection to the private access easement along the northern property boundary, thereby providing an additional connection between the development site and South Goldenrod Road. The Applicant's traffic reports demonstrate that the project would not cause any intersections to fall below an adopted level of service standard. The supplemental report indicates that most of the traffic generated by the proposed development would travel by Stevens Road or Bouslog Road to reach nearby highways or commercial areas. Markwood Road does not provide a shortcut to any destination and represents a longer, more circuitous, and less obvious route between the site and SR-20 than a route utilizing Stevens Road and South Goldenrod Road.
 - Refuse and service areas: The proposed development would generate waste volumes less than other uses permitted in the C-2 zone, would include screening for all garbage enclosures, and would not have any outdoor service or storage area. The proposed development would include two trash enclosures. The proposed trash enclosures would be adequately screened with landscaping, and a fence or wall would be constructed around each enclosure as a condition of approval. Other uses permitted in the C-2 zone would be subject to the same standards and would also have required trash enclosures. Other uses permitted in the C-2 zone, such as hospitals, vehicle repair facilities, lumber yards, and restaurants have the potential to generate larger amounts of waste, or potentially more hazardous waste, than the proposed development. Other uses permitted in the C-2 zone, such as hotels and offices, generate waste that would be similar to the proposed residential use. With respect to service areas, the proposed residential use would have no outdoor storage yards or service areas. In comparison, many of the uses permitted in the C-2 zone commonly include large service areas. Examples of such uses include building trades, equipment rental facilities, gas stations, lumber yards, car lots, and vehicle repair facilities.

- Utilities: The utility demands imposed by the proposed development are within the capacity of service providers and would be provided at the time of development. The proposed development would not impact service to surrounding users. In addition, the service level requirements of the proposed development are not greater than those imposed by other uses permitted in the C-2 zone such as hospitals, hotels, and restaurants. Adequate utilities would be required as a condition of approval, and all utility connections and upgrades must be constructed as a condition of the development permit process.
- Screening and buffering: The proposed development would meet or exceed the landscaping requirements for other permitted uses in the C-2 zone. The proposed landscaping would be provided in excess of the minimum zoning requirements, a solid, site-obscuring fence six feet in height would be installed along the western boundary of the site, and a landscaped buffer strip 20 feet in width would be provided between the proposed development and the residential area to the west.
- Setbacks, open space, and structures: The site plan features common open spaces areas between the proposed buildings, and a system of pedestrian paths links each of the buildings to the open space areas. The site plan also features an outdoor play area, a playground, benches, and picnic tables. A 20-foot-wide landscaped buffer would be provided along the western property line to separate the proposed development from the residential areas to the west. The building nearest the western property line would have a setback of approximately 90 feet. The proposed development would provide adequate open space, buildings would be adequately separated from one another and from adjacent property lines, and the scale of bulk of the proposed structure would comply with the same regulations that apply to all other uses in the C-2 zone.
- Hours and manner of operation: Because the proposed development is residential rather than commercial, this criterion is not applicable.
- Noise, lights, dust, odor, fumes, and vibration: The proposed use is primarily residential. Residential uses are not associated with vibration, fumes, odor, or dust impacts. The SEPA MDNS associated with the project contains a condition requiring that all outdoor lighting fixtures be screened, hooded, and directed downwards so that the light source is not directly visible beyond the property boundaries. The MDNS also requires that exterior lights be designed and oriented to avoid casting high intensity light directly on the individual residential units. The landscaping and fencing included in the proposal would serve to buffer the residential units from lighting and glare impacts from neighboring commercial and industrial uses.

Exhibit 1, Staff Report, pages 9 through 17.

19. City staff reviewed the CUP request and determined that, with conditions, the proposal would satisfy the specific criteria for CUP approval under BMC 14A.05.140, noting:

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- The proposed development would result in impacts that are similar to, or less significant than, those associated with other common uses permitted in the C-2 zone.
- The proposal would be consistent with several Comprehensive Plan policies by: filling a critical need for affordable market rate housing; providing recreational open space amenities; providing a direct connection to the Tammi Wilson Trail, which provides pedestrian and bicycle access under I-5 and to the city's commercial core; providing a complete network of pedestrian paths throughout the residential development; extending Bouslog Road to provide a connection to Stevens Road; locating residential development in an employment area; developing parcels that have been vacant for some time; creating a better mix of housing and employment on the west side of I-5 than currently exists; and providing landscaping that would include street trees along the property's frontage with Stevens Road and Bouslog Road.
- The proposal would comply with all applicable code requirements or can comply with all applicable code requirements through the application of reasonable conditions of approval.
- The proposed development would have little, if any, impact on the design, character, or appearance of the area. Properties to the north and east of the subject property are developed with a variety of commercial and light industrial uses that include storage buildings, car lots, contractor offices, and retail stores. The uses to the west, in unincorporated Skagit County, are largely low density residential. The proposed development would be comprised of residential buildings. Aesthetically, these buildings would feature higher quality finishes, more detailed facades, and would be less bulky than large retail or light industrial buildings otherwise permitted in the C-2 zone.
- This proposal would have little or no impact on public infrastructure. Traffic volumes associated with residential uses are typically lower than those associated with commercial and industrial uses, the Applicant submitted a TIA demonstrating that no significant traffic impacts would result from the proposal, and a range of street and sidewalk improvements would be provided.

Exhibit 1, Staff Report, pages 9 through 17.

Written Comments

20. As noted above, the City received several comments on the proposal from members of the public. Specifically:
- Mike and Michelle Ranger expressed concerns about the proposal's traffic impacts, safety impacts, and potential changes to the surrounding neighborhood. They also inquired about whether the proposal would include affordable housing units.
 - Damon Schwetz stated that he would prefer that the site be developed with light industrial and commercial uses. He noted that the proposed multifamily

apartment project would require design changes for Stevens Road because it is currently too narrow to handle the existing traffic volume. He also expressed concerns that the additional traffic generated from the proposal would result in increased litter on the road. In addition, Mr. Schwetz inquired about whether the proposed apartments would include affordable housing units.

- Darron Drake requested to be informed about when the public hearing would be held for the project.
- Michael Fohn expressed support for the project, noting that it would help alleviate the current housing shortage.
- David Smoots expressed concerns that the existing road infrastructure could not handle additional traffic generated from 156 new apartments units without major improvements. He also inquired about the Applicant's justification for asserting that the property would be better suited for apartments than commercial uses permitted outright in C-2 zoning district.
- Steve Crider stated that he opposes the project and commented that he did not receive notice of the proposed development. He noted that the density and scale of the project is contrary to the intended long-term development plan historically experienced in the neighborhood. Mr. Crider expressed concerns that the traffic outlet shown in the plan would send a large flow of traffic from the apartments onto Stevens Road, which is currently so narrow that two cars have difficulty passing by one another. He also expressed concerns about the project's impacts to Gages Slough. In addition, Mr. Crider stated that he is concerned about the lack of outdoor space for children.
- Craig and Laura Dick requested more information about the project, including the time and date of the public hearing.
- Dustin Henkin commented that he is interested in learning more about the project and would like to attend the public hearing.
- David Svaren requested more information about the project, including the time and place of any public hearings, a copy of the application, traffic study reports, site plan, any city reports, and any information concerning the issue of whether the site is better suited for housing rather than commercial development. He noted that apartment complexes are not contemplated in the C-2 zone except under exceptional circumstances, which do not exist. Mr. Svaren stated that he is concerned that the proposed housing would be located close to a shooting range immediately to the north. He also noted that the additional traffic generated by the proposed development would require substantial improvements to the intersection of Stevens Road and South Goldenrod Road.
- Jerry Thompson expressed concerns that the road infrastructure on the west side of the freeway would not be able sustain the additional traffic generated by the proposed development. He is also expressed concerns that a large apartment complex would decrease rural home values in the neighborhood.
- Joel Zediker asked to receive notice of the open record hearing.

- Karen Sorsdal asked to receive notice of the open record hearing.
- Laurel and Russell Suttles raised concerns about the project's traffic impacts.
- Aaron and Megan Curbow noted that they have serious concerns about the project.
- Sirilo Soria asked to receive all public meeting notifications and public record information about the project, including environmental impact information.
- Vanessa Redford requested more information about the project.
- Connie Small expressed concerns about the proposal's impacts to the existing neighborhood.
- Dave Cross noted that Stevens Road already has traffic safety problems, including corner cutting and excessive vehicle speed. He stated that both traffic and the presence of children have increased along the road and that he is concerned about vehicles on the road cutting into his property. Mr. Cross further commented that the project would negatively impact the neighborhood and its property values.
- Dora Reuble requested more information about the project.
- W.L. and Martha Queen raised concerns about the project's impacts to existing residential areas in the vicinity.
- Sandra Gendron noted that the small neighborhood cannot withstand the high-density traffic arising from the project and disputed the Applicant's traffic estimates. She also raised concerns about the project's impacts to the wetlands located across the road from the site.
- Tony Wisdom requested to be added as a party of record.
- Nora Kammer requested more information concerning the project and expressed concerns about its impacts to Gages Slough.

Exhibit 8.

Testimony

21. City Community Development Director Brad Johnson testified generally about the proposal and how City staff reviewed the application for consistency with the Comprehensive Plan, zoning ordinances, specific criteria for a CUP, and the criterion for deciding whether the site would be better suited for residential rather than commercial purposes. He described how the Applicant's project narrative and City staff's analysis provide sufficient reasons to determine that the commercially zoned property would be better suited for residential development. Mr. Johnson stated that there is no set limit on the amount of bonus density that would be allowed on the site through the purchase density credits from the Agricultural Heritage Program but that, ultimately, the maximum density for the site would be limited through building height, bulk, and setback requirements. He noted that a Category II wetland (Gages Slough) is located to the south of the subject property, on City-owned property across Stevens Road, with a standard 300-foot buffer that extends over nearly half of the project site. Mr. Johnson stated that the Applicant proposes to eliminate the 79,170 square feet of on-site buffer area to facilitate the development, stressing that the proposed mitigation to improve remaining

buffer areas south of Stevens Road would meet the City's critical areas requirements that the proposed mitigation would occur outside of the shoreline jurisdiction. He noted that the City reviewed the environmental impacts of the proposal and issued an MDNS, explaining that the MDNS is included with the City staff report. Mr. Johnson explained that the SEPA determination could be appealed together with an appeal of the Hearing Examiner's decision in this matter to the Superior Court. He testified that notice of the hearing was published and posted in accordance with the City's notice requirements.

Testimony of Mr. Johnson.

22. Applicant Representative Michael Hoffman testified that he reviewed comments from members of the public raising concerns about the proposal. He noted that the Applicant has worked with a wetland biologist and a civil engineer to develop best practices to protect the wetland consistent with the City's environmental policies. Mr. Hoffman stated that on-site buffer provides little functional benefit to the wetland because it is separated from the wetland by Stevens Road and because it has been previously cleared. He explained that the proposed development would include open space areas, including play areas located between the buildings. Mr. Hoffman also explained that there would be a designated gathering open space and that the development would provide a direct connection to the wetland area across the street, which would provide an asset to the community. He stated that the Applicant submitted a traffic impact analysis and supplemental traffic memorandum that considered the project's anticipated traffic impacts to streets west of Bouslog Road, which concluded that traffic generated from the proposal would not cause affected intersection to operate below adopted service standards and would not substantially impact the Markwood Road corridor. Mr. Hoffman asserted that the proposed residential use would not have any greater impacts than the commercial uses permitted outright in the C-2 zone and noted that the site has remained undeveloped for years with little interest in developing it for commercial uses. He added that the present interest in residential use suggests that the site is a desirable location for residential development. *Testimony of Mr. Hoffman.*

23. David Smoots testified that he opposes to the project. He raised concerns about the notice provided for the application, noting that he received a letter of notice for the development but that other neighbors nearby to the north did not. Mr. Smoots stated that a notice sign was installed on the property after the applicable comment period had ended, which prevented members of the public from commenting on the proposal. He also stated that he sees no reason why the property would be better suited for residential use rather than commercial, asserting that there are other commercial uses that would be ideal for the property. In support of this assertion, Mr. Smoots pointed out that the property immediately north was developed with a commercial use a year ago. He also raised concerns that the intersection of Stevens Road and South Goldenrod Road could not handle the increased traffic generated by the proposed residential development.

Testimony of Mr. Smoots.

24. David Svaren testified that residential development is not favored in the C-2 zone. He noted that the Burlington Municipal Code requires an affirmative finding that the site is better suited for housing than commercial development and asserted that the Applicant's project narrative and City staff's analysis are inadequate to support such a finding. Mr. Svaren disputed that the project's location near Gages Slough would provide a unique open space amenity, noting that Gages Slough is a hazard and that a child recently drowned there. He also noted that surrounding properties, some contiguous to the site, are being developed with commercial uses without the problems identified by the Applicant in the project narrative. Mr. Svaren testified that there is a need for commercial development in Burlington and that the City has recently addressed this need by rezoning areas to accommodate commercial development. He adds that one property adjacent to the site is a shooting range. Mr. Svaren raised concerns that notice of the application was not appropriately posted on-site. *Testimony of Mr. Svaren.*
25. Steve Crider testified that Stevens Road is a glorified gravel "cow path" that has only recently become a blacktop road, and that it is currently too narrow for cars to easily pass one another. Mr. Crider suggests that the road would have to be significantly upgraded on both sides to accommodate increased traffic, which would adversely impact the Gages Slough wetland. He stated that more new housing is needed in the area but that he believes the proposed development would be too large and not suitable for the site. *Testimony of Mr. Crider.*
26. Laurel Suttles raised concerns about the traffic impacts of the proposal, stating that the existing road system could not handle the additional traffic. She also raised concerns about potential harm to children from the additional traffic. Ms. Suttles asked whether the Applicant would expand fire department and police protection and how the proposed development would impact the community in those respects. She stated that she is concerned about additional garbage on the road, which would also affect the wetland area. *Testimony of Ms. Suttles.*
27. Michael Ranger testified that would like the Hearing Examiner to consider the impact the three-story buildings would have on his home. He added that the road would have to be widened, impacting his property significantly. Mr. Ranger suggested that there would need to be a roundabout or stop light at the intersection of Bouslog Road and Stevens Road to allow cars to get out in the mornings. He testified that Gages Slough is a disgusting disaster with a homeless camp and attracts criminal activity. Mr. Ranger stated that he experiences frightening people in his neighborhood as a result, which causes problems that did not happen before a bridge was installed. He also testified that he believes the proposed trail would not prove to be a nice amenity. *Testimony of Mr. Ranger.*

28. In response the concerns raised by members of the public at the hearing, Mr. Hoffman testified that the public notice sign was installed on the property on November 12, 2021, and that the comment period had been extended two weeks beyond that date. Regarding concerns about the existing condition of Stevens Road, he explained that it would be widened and would include parallel parking along the north side. Mr. Hoffman stated that the City's development standards recommend that zoning be a transitional process and that, although the proposed multifamily residential development may appear to be an abrupt transition from the existing lower density residential development to the west, full commercial development would have an even greater impact. He noted that Gages Slough is under the control of the City and that the Applicant is ready to work with the City toward its improvement. Mr. Hoffman also stated that transitional residential use would feature more people on the site and surrounding areas, making it less attractive for illegal activity or homeless encampments. He noted that garbage on the property would be contained, given the provision of trash receptacles and fencing surrounding the site. *Testimony of Mr. Hoffman.*
29. In response to concerns expressed by members of the public at the hearing, Mr. Johnson acknowledged that the public notice sign was not posted on the property until after the notice of application was published, but he stated that the public comment period was extended commensurate with the date the sign was posted. He also noted that public comments were accepted up until the date of the hearing. Mr. Johnson explained that the code does not provide specific criteria for determining whether a site would be better suited for residential rather than commercial purposes, but that the information provided by the Applicant, along with City staff's analysis, supports the conclusion that it would be. He also explained that the City Public Works Department reviewed the Applicant's TIA and supplemental memorandum and determined that the project would not cause affected streets and intersections to fall below the established level of service standards. Mr. Johnson stressed that the proposed residential use would have impacts similar to, or less than, the commercial uses that would be allowed outright in the C-2 zone. He noted that, with the proposed on-site improvements, the proposed development would not adversely impact the provision of utilities and that fire impact fees would address the proportional share of system-wide impacts on fire and life safety systems arising from the development. *Testimony of Mr. Johnson.*

Additional Materials

30. In light of the concerns raised by members of the public at the hearing about whether notice of the project had been properly provided, the Hearing Examiner ruled that the record would be left open for an additional week, until February 22, 2022, to allow for the submission of additional material addressing this issue and to allow members of the public to submit written comments on the proposal. *Oral Ruling of Hearing Examiner.*

31. In response to the Hearing Examiner's oral ruling, the Applicant submitted a Large Sign Installation Certification, dated November 16, 2021, attesting that a notice sign meeting City specifications was posted on-site on November 12, 2021, as well as photographs of the posted notice. *Exhibit 23; Exhibit 24.*
32. The following additional comments were submitted by members of the public in response to the Hearing Examiner's oral ruling to leave the record open until February 22, 2022:
- Dave Smoots submitted comments asserting that the notice sign was not posted on the property until December 20, 2021, and that the comment period was stated to end on November 28, 2021. The City provided a response to Mr. Smoots' additional comments, which included an attachment of the sign installation certification and posted notice photographs. The City's response also noted that the record was left open to allow any members of the public to submit additional comments on the proposal.
 - Sandra Gendron stated that, although the City was required to mail notice of the application only to residents of property within 300 feet of the project site, it would have been prudent for the City to provide notice to her entire neighborhood. She also stated that she does not recall seeing a notice posted at the site. Ms. Gendron asserted that the Applicant had not demonstrated that the site would be more suitable for residential housing than commercial development. She also asked whether comments submitted after the hearing but before February 22, 2022, would be included in the public record. The City provided a response to Ms. Gendron's comments, which noted that the City would not have any issue posting the additional comments on the City website.
 - Cody Topping raised concerns about the proposal's traffic impacts, particularly impacts to the Markwood Road corridor, noting existing issues with vehicles speeding on the road and posing safety issues for pedestrians.
 - Sandy Eastwood raised concerns about the proposal's traffic impacts to Stevens Road, noting that the road is inadequate to accommodate increased traffic. She also expressed concern that the proposed development would negatively impact the rural community residing along the Markwood Road corridor.
 - W.L. Queen raised concerns about the proposal's traffic, noise, and litter impacts, as well as impacts to property values.
 - Diana Siegfried, Melissa Griffith, and David Griffith stated that they oppose the proposed development and assert that the Applicant has not demonstrated that the site would be better suited for housing. They also stated that the traffic impacts on the surrounding neighborhood and on Gages Slough have been vastly underestimated.
 - Robin Ozaki stated that she has concerns about the proposal's impacts to Gages Slough, noting there are egrets, falcons, geese, ducks, swans, and bald eagles that

use this space as their habitat. She also expressed concerns about the project's traffic impacts and impacts to local roads.

Exhibit 25.

Staff Recommendation

33. Mr. Johnson testified that City staff recommends approval of the conditional use permit, with conditions. Mr. Hoffman stated that the Applicant understands and would comply with the recommended conditions. *Exhibit 1, Staff Report, pages 8 through 10; Testimony of Mr. Johnson; Testimony of Mr. Hoffman.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner is vested with the duty and authority to hold public hearings and render decisions on Type III land use decisions, including conditional use permit requests. *BMC 14A.05.140; BMC 17.120.120.*

Criteria for Review

The Hearing Examiner shall only approve a request for a conditional use permit if it is consistent with the following criteria:

1. The use would have no more adverse effect on the health, safety or comfort of persons living or working in the area, and would be no more injurious, economically or otherwise, to property or improvements in the surrounding area, than would any use generally permitted in the district. Among matters to be considered are traffic flow and control, access to and circulation within the property, off-street parking and loading, refuse and service areas, utilities, screening and buffering, signs, yards and other open spaces, height, bulk and location of structures, location of proposed open space uses, hours and manner of operation, and noise, lights, dust, odor, fumes and vibration; and
2. The proposal is in accordance with the goals, policies and objectives of the comprehensive plan; and
3. The proposal complies with all the requirements of this title; and
4. The proposal can be constructed and maintained so as to be harmonious and appropriate in design, character, and appearance with the existing or intended character of the general vicinity and provides a high quality of development; and
5. The proposal would not adversely affect the public infrastructure.

BMC 14A.05.140.D.

In addition to the above criteria, proposals for multifamily residential development within the C-2 zoning district must show that the “site is better suited for housing than commercial development.” *BMC 17.55.070.A.*

The criteria for review adopted by the City Council are designed to implement the requirement of Chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with City development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040*.

Conclusions Based on Findings

- 1. With conditions, the use would have no more adverse effect on the health, safety or comfort of persons living or working in the area, and be no more injurious, economically or otherwise, to property or improvements in the surrounding area, than would any use generally permitted in the C-2 zoning district.** The City provided reasonable notice of the application and opportunity to comment on the proposal. Although notice of the application was not posted on-site until November 12, 2021, (after expiration of the October 20, 2021, comment period provided in the notice mailed to property owners within 600 feet of the subject property and published in the *Skagit Valley Herald* on October 6, 2021) the City extended the comment deadline until November 26, 2021, to account for the late posted notice. In addition, the Hearing Examiner left the record open until February 22, 2022, to allow for the submission of additional comments on the request, ensuring that any member of the public wishing to comment on the proposal would have adequate opportunity to do so. Despite any initial issues regarding notice being properly posted on-site, the City received numerous comments on the proposal from members of the public, which generally raised concerns about the proposal's traffic impacts, impacts to Gages Slough, and the site's suitability for residential development.

The Applicant submitted a Traffic Impact Analysis (TIA) prepared by Gibson Traffic Consultants, Inc., which demonstrates that the proposed multifamily residential use would generate traffic volumes comparable to, or less than, other commercial uses permitted outright in the C-2 zoning, such as retail stores, eating and drinking establishments, hotels, car lots, and hospitals. The TIA determined that intersections affected by the proposal's anticipated increase in traffic would continue to operate at acceptable levels of service following a full build-out of the project. Gibson Traffic Consultants also prepared a supplemental traffic memorandum in response to public concerns about traffic from the proposed development impacting Markwood Road, which determined that residents of the proposed apartment complex would not likely utilize Markwood Road as a connection to the north. Bachman Environmental, LLC, prepared a wetland site assessment and buffer mitigation plan addressing the proposal's impacts to Gages Slough, a Category II wetland with a standard 300-foot buffer that extends across nearly half of the project site. The Applicant proposes to eliminate the 79,170 square feet of buffer extending onto the property, which in its current state provides little functional benefit for the wetland because it is separated from the wetland by Stevens Road. As mitigation, the Applicant would enhance, at a one-to-one ratio, remaining wetland buffer

areas across Stevens Road. Bachman Environmental determined that the proposed buffer mitigation would improve habitat functions, and City staff determined that, with conditions, the proposed mitigation plan would comply with applicable critical areas regulations.

The Applicant would provide landscaping in excess of the City's minimum requirements and in excess of landscaping that would be required of other uses permitted outright in the C-2 zone, including landscaping that would provide a sufficient separation buffer from existing low density residential development to the west along the Markwood Road corridor. Proposed trash enclosures would be adequately screened with a fence or wall, as required for other uses permitted in the C-2 zone, which have the potential to generate larger and potentially more hazardous waste than the proposed residential use. There is sufficient capacity to provide water, electricity, sewer, phone, and internet services to the site, and the proposed development would not adversely impact utility services for surrounding properties. The proposed residential use would not result in vibrations, fumes, odor, or dust impacts.

The proposed development would include a continuous sidewalk along Stevens Road from the western edge of the site to South Goldenrod Road, sidewalks along both sides of the Bouslog Road extension, and a system of internal pedestrian paths that would connect each building to adjoining streets and common areas. The project would also provide parking spaces in excess of the City's minimum requirements and would provide recreational open space amenities that would benefit the health and safety of residents while also enhancing the aesthetics of the site. The City analyzed the environmental impacts of the proposal and determined that, with mitigation measures, the proposed development would not have a significant adverse impact on the environment. Accordingly, the City issued a Mitigated Determination of Nonsignificance (MDNS) on January 26, 2022. As conditioned, the proposed multifamily residential development project would result in impacts that are similar to, or less significant than, other uses permitted outright in the C-2 zoning district.

Conditions, as detailed below, are necessary to ensure that the proposed development adequately mitigates for potential impacts to the surrounding neighborhood, satisfies the criteria for a CUP, and complies with all other local, state, and federal requirements.

Findings 1 – 33.

2. **The proposal would be in accord with the goals, policies, and objectives of the City's Comprehensive Plan.** The Comprehensive Plan designates the subject property as Heavy Commercial and Industrial. City staff reviewed the proposal and determined that it would be consistent with the Comprehensive Plan. The Hearing Examiner concurs with City staff's assessment. The proposed residential development would provide needed multifamily housing on undeveloped land within a commercial area well suited

for such development due to its location near an existing pedestrian and bicycle trail that provides access the city's commercial core along South Burlington Boulevard, while providing residents with open space amenities, landscaping exceeding minimum requirements, and a complete system of internal pedestrian paths. *Findings 4 – 11.*

- 3. With conditions, the proposal would comply with all the requirements of the municipal code, including the requirement under BMC 17.55.070.A that the site is better suited for housing than commercial development.** The Applicant and City staff provided analyses supporting the conclusion that the site would be better used for housing rather than for commercial purposes. The three subject parcels have remained vacant and undeveloped for a number of years. The previous owner of the parcels explained the difficulties in attracting commercial development of the site due to the existing road and utility infrastructure on the west side of I-5 and due to the size, configuration, and locations of the lots. In contrast, the site is well suited for multifamily residential development due to the demand for housing in this location of the city and the proximity of the site to Tammi Wilson Trail. In addition, locating a multifamily residential project on the southwestern corner of this commercial zone along Stevens Road would serve as a transition buffer between commercial businesses and low-density residential development to the west within unincorporated Skagit County. As proposed and conditioned, the project would comply with all applicable code requirements and would meet or exceed all development standards for the C-2 zoning district, including requirements related to parking, landscaping, building heights, pedestrian access, setbacks, and screening. As addressed above in Conclusion 1, the Applicant's mitigation plan addressing the project's impacts to the Gages Slough wetland buffer would comply with the requirements of the City's critical areas ordinance. Conditions, as detailed below, are necessary to ensure that the proposal complies with all municipal code requirements. *Findings 1 – 3, 5 – 33.*
- 4. The proposal would be constructed and maintained to be harmonious and appropriate in design, character, and appearance with the existing or intended character of the general vicinity and would provide a high quality of development.** Properties adjacent to the subject property are generally developed for commercial uses and are primarily characterized by light industrial buildings, an indoor shooting range, a car dealership, and a healthcare equipment retailer. Although the proposed use would be residential, the development would include open space areas and would have a direct connection to the Tammi Wilson Trail, which parallels Gages Slough and provides a grade separated route for pedestrians and cyclists under I-5 and connecting to the city's commercial core. Parking areas are distributed throughout the site, eliminating the appearance of large overwhelming paved areas. Additional landscaping buffers, such as fencing, would be provided, as required whenever a commercial site abuts an area of detached residential development. All loading, storage, and outdoor service areas would be screened from view. Each building would be lower than the maximum permitted

height. Pedestrian access would provide a logical circulation system between adjoining developments. The proposed development would meet or exceed the landscaping requirements for other permitted uses in the C-2 zone. As designed, the proposed use would have little or no impact on the design, character, or appearance of existing industrial and commercial development in the vicinity. *Findings 1 – 3, 5 – 33.*

- 5. The proposal would not adversely affect the public infrastructure.** As discussed above in Conclusion 1, the proposed development would generate vehicle traffic comparable to, or less than, that generated by industrial and commercial uses permitted in the area and would not adversely impact utility services for surrounding properties. Accordingly, the proposal would have little or no impact on public infrastructure. *Findings 1 – 33.*

DECISION

The request for a conditional use permit to allow for a residential development consisting of seven, three-story buildings containing 156 dwelling units, a community building, and 290 to 300 parking spaces, with associated improvements, on three undeveloped parcels totaling approximately 5.42 acres located on Stevens Road, approximately 300 feet west of the intersection at Stevens Road and South Goldenrod Road is **APPROVED**, with the following conditions:⁵

1. This approval shall not be construed to authorize any development or site modifications beyond those described in the application and shown on the approved plans. The approved plans shall be the plans and other project documents attached to, or referenced in, this decision.
2. Except as otherwise required by the conditions of approval identified in this decision and the associated SEPA threshold determination, all work, construction, and development activities shall conform to the approved plans. The approved plans shall be the plans and other project documents attached to, or referenced in, this decision. Minor modifications necessary to implement any changes requested by the Building Official, Fire Marshall, or City Engineer are permitted when necessary to ensure compliance with established regulatory requirements.
3. This approval shall expire two years from the date of approval. The date of approval for this decision shall be the date the Hearing Examiner's decision is signed.
4. This permit does not authorize the location, design, construction, or installation of any signs. No signs may be installed unless authorized by a sign permit.

⁵ Conditions include both legal requirements applicable to all developments and requirements necessary to mitigate the specific impacts of this development.

5. The permit holder, and all contractors employed by the permit holder, shall be responsible for complying with applicable workplace health and safety requirements including emergency proclamations and public health orders. This permit does not waive, or authorize a violation of, any such requirements. For information regarding workplace restrictions related to the COVID-19 virus should be directed to the Washington State Business Response Center or the Washington State Department of Labor and Industries: <https://coronavirus.wa.gov/business-workers>.
6. The total impervious surface coverage of the development authorized by this decision shall not exceed 80 percent. For purposes of interpreting this condition the definition of “impervious surface” shall be the definition provided in BMC 17.06.455.
7. Storage, handling, and disposal of hazardous substances shall be limited to minor quantities which are clearly secondary and incidental to the primary use permitted by this decision.
8. The property owner, developer, and all contractors shall be responsible for complying with all applicable laws and regulations pertaining to erosion control and water quality, including obtaining a Washington State Department of Ecology Construction Storm-Water General Permit. Any additional erosion control or construction management practices prescribed by the City Engineer or Building Official shall be immediately implemented.
9. A grading permit is required prior to beginning any clearing, filling, excavation, building, construction, or other site development work.
10. Prior to the issuance of a grading permit civil engineering plans shall be submitted to, and reviewed by, the City Engineer for compliance with applicable stormwater, site development, and engineering requirements. A stormwater plan shall be included with the civil plans and the plans shall reflect the LID measures shown on the approved site plan, including the proposed rain gardens and bio-retention cells. The civil engineering plans must include the following specific information:
 - a. Vicinity map legal description, survey notes, sheet index, legend, list of contacts, and signature blocks; and
 - b. Existing conditions, construction entrance, demolition and TESC plans; and
 - c. Details sheet depicting ADA compliant ramps, aprons, and sidewalks; and
 - d. Waterline plan and profile; and
 - e. Sanitary sewer plan and profile; and
 - f. Site grading and drainage plan; and
 - g. Waterline specifications; and
 - h. Fiber optic conduit and vaults along all street frontages, connecting to any adjacent fiber optic conduit and vaults, and connecting to each building; and

- i. A signage plan consistent with the SEPA MDNS conditions;
 - j. Street lighting along the Bouslog Road extension, including the pedestrian crossing lighting required by the SEPA MDNS conditions;
 - k. The required bicycle racks, pads, and access paths;
 - l. The pedestrian path revisions noted on the site plan (exhibit 12) shall be addressed;
 - m. Civil plans shall reflect the fire access, underground fire line, and other fire suppression and access related comments identified in the October 12, 2021, letter from the City Fire Marshal.
11. No grading permit shall be approved or issued until a revised landscaping plan has been submitted to, and approved by, the Community Development Department. The revised landscaping plan shall be consistent with all applicable landscaping code requirements and include the following specific changes:
- a. Plans and specifications for a landscape irrigation system shall be provided; and
 - b. The plan shall provide street trees along both sides of Bouslog Road at intervals of approximately 30 feet;
 - c. Root barriers shall be provided for all tree plantings near curbs, gutters, and sidewalks.
12. An outdoor lighting plan shall be submitted with the grading permit application and no grading permit shall be issued until the outdoor lighting plan has been reviewed and approved by the Community Development Department. The outdoor lighting plan shall illustrate the location and type of each proposed outdoor lighting fixture, including freestanding lights and building mounted lights. The lighting plans shall address the following specific requirements:
- a. All lighting fixtures shall be permanently directed downwards and fully hooded, screened, or optically focused so the light source is not directly visible beyond the site boundaries;
 - b. The lighting plan shall demonstrate that light sources will not shine directly into, or at, individual residential units;
 - c. Freestanding light fixtures within 30 feet of the western property boundary shall be limited to a maximum height of 15 feet;
 - d. Pedestrian scale lighting in the form of bollards, low free standing light fixtures, or building mounted lights shall be provided to illuminate all pedestrian paths, bicycle racks, play equipment, and building entrances;
 - e. All parking and vehicle circulation areas shall be illuminated;
 - f. Manufacturer's specifications shall be provided for each proposed outdoor lighting fixture type;
 - g. Documentation shall be provided demonstrating compliance with applicable Washington State Energy Code requirements.

13. Prior to beginning any clearing, development, or construction, temporary high visibility fencing shall be installed along the southern edge of Stevens Road to protect the Gages Slough wetland and wetland buffer. This fencing shall be installed and inspected by the Community Development Department prior to beginning any grading or site development work.
14. The building permit application shall include plans and specifications for the proposed trash enclosure. The trash enclosures must be constructed using a solid, site-obscuring fence or masonry wall six feet in height. If a fence is used, it shall be constructed of solid wood. Chain-link fencing may also be used provided it has a dark colored coating, such as green or black, and matching privacy slats are used.
15. The building permit application shall include plans and specifications for the required open rail fencing along Gages Slough. The open rail fencing shall have a maximum height of four feet and shall be sufficient to discourage pedestrian traffic while permitting the passage of wildlife.
16. No building permit shall be issued until density credits have been purchased to exceed the base density limit. Based on number of lots comprising the development site (3), the area of the site (236,139 square feet), and the Applicant's proposed development (156 dwelling units), a total of 75 density credits must be purchased through the Agricultural Heritage Program.
17. No final occupancy or final building permit inspection shall be approved until all of the following actions have been completed:
 - a. All of the wetland mitigation plantings and mitigation activities identified in the approved mitigation plan shall be completed and inspected by the Community Development Department.
 - b. The perimeter of the proposed wetland buffer shall be surveyed and a copy of the survey identifying the location of the wetland and revised buffer boundaries shall be submitted to the Community Development Department.
 - c. Open rail fencing, consistent with the design shown on the approved building plans and the conditions of this permit, shall be installed along the revised buffer edge along the southern edge of Stevens Road.
 - d. Enamel coated metal signs with the following language shall be installed at intervals of 50 feet around the perimeter of the proposed wetland buffer:

Protected Wetland Area
No Dumping – Do Not Disturb
Thank you

18. The landscape irrigation system and all required landscaping shall be installed prior to final occupancy approval. The landscaping and landscape irrigation system shall be consistent with the landscaping plan required by this decision.
19. All sidewalks, paths, crosswalks, and other pedestrian access improvements shown on the approved plans or required by a condition of approval shall be constructed or installed prior to final occupancy approval.
20. Trash enclosures, consistent with the designs shown on the approved building plans, shall be installed prior to final occupancy approval.
21. Fencing, consistent with the design shown on the approved building plans and the conditions of this permit, shall be installed along the western boundary of the site.
22. All clearing, grading, stormwater improvements, and utilities shall be consistent with the civil engineering plans approved by the City Engineer, and no final occupancy shall be granted until the civil improvements have been inspected by the City Engineer.
23. No final occupancy or final building permit inspection shall be approved until civil engineering “as-built” drawing have been submitted to, and approved by, the City Engineer.

Decided this 3rd day of March 2022.



ANDREW M. REEVES
Hearing Examiner
Sound Law Center