



EXHIBIT "1" - Staff Report

Conditional Use Permit Recommendation & SEPA Determination

Date: March 23, 2023

Project: East-West Connector Road Project (CUP 1-23)

Location: New Right-of-Way from the Intersection of South Walnut Street and East McCorquedale Road to Burlington Boulevard

Parcel(s): P116513, P105310, P116512, P24256, P24257, P24246, and P24245

Applicant: Brian Dempsey, City of Burlington Engineering Department

Staff: Brad Johnson, Community Development Director BJ

Summary:

On January 12, 2023 the Community Development Department received an application for a conditional use permit to construct an extension of East McCorquedale Road from its intersection with South Walnut Street to the intersection of Burlington Boulevard and Costco Drive. The proposed street extension will involve approximately 55,555 square feet of clearing, 2,000 cubic yards of excavation and 2,000 yards of fill. After reviewing the applicant's proposal, the conditions of the surrounding area, and the relevant approval criteria, the Community Development Department recommends the Hearing Examiner issue a Conditional Use Permit for the proposed development.

Findings:

1. The proposed development will extend East McCorquedale Road from its current terminus at South Walnut Street approximately 1,000 feet to the west where it will terminate at the intersection of Burlington Boulevard and Costco Drive. The project will involve clearing, grading, paving, the installation of street lights and utilities, and associated landscaping work. The buffer of a regulated wetland, Walnut Pond, will be impacted by the proposed construction and wetland buffer mitigation is included in the project.
2. As illustrated on attached exhibit "2" the right-of-way (ROW) for the new road alignment will be assembled from portions of seven separate parcels. The ROW will vary in width

from approximately 60 feet to approximately 90 feet where it intersects with Burlington Boulevard.

3. The surrounding land uses are mixed and include retailers, eating and drinking establishments, a church, a laboratory, and a hotel. A small City owned park also surrounds Walnut Pond. The park and contains a protected wetland, regional storm-water infrastructure, and a walking path.
4. The majority of the ROW alignment is completely vacant, level, and covered with grass and gravel and small areas of pavement. A bike shop (Skagit Cycle Center) is located near the western end of the alignment. As part of a related project the bike shop will be demolished and reconstructed south of the proposed ROW. The entire project site is located in a regulated floodplain. The applicable FEMA Flood Insurance Rate Map (FIRM) depicts the area as being within an A-7 flood zone and having a base flood elevation of approximately 30 feet. Walnut Pond, a regulated wetland, is located near the eastern end of the alignment, adjacent to South Walnut Street. The road alignment will pass through, and impact, the northern portion of the protective buffer associated with Walnut Pond.
5. As exhibit “3” depicts, the road alignment will be located in an area zoned C-1. Under the City’s comprehensive plan, the C-1 zone is associated with the C-B (Commercial/Business) comprehensive plan designation. The land on the east side of South Walnut Street (abutting the eastern end of the proposed road, is zoned C-2 (Heavy Commercial and M-1 (Industrial). The C-2 and M-1 zoning designations are both associated with the HC-I (Heavy Commercial/Industrial) comprehensive plan designation.
6. Pursuant to BMC 17.05.090.E, uses that are not listed as permitted or conditional in any zone are considered conditional uses. Because public streets are not listed as a permitted or conditional use in any of Burlington’s zoning designations the proposed road alignment is classified as a conditional use and requires a conditional use permit.
7. Conditional use permits are classified as “type III” permits. Type III permit decisions must be made by the City Hearing Examiner (BMC 14A.05.060.C.7).
8. The application for this permit was submitted on January 12, 2023. Following the submittal of a land use application the City is required, within 28 days, to determine whether or not the application constitutes a “complete” application. Eight days after the application was received, on January 20, 2023, the City determined the application was complete and notified the applicant (exhibits “4” and “5”).
9. Once an application has been deemed complete, public notice of the application is required and a 14 day comment period must be provided (BMC 14A.050.100 & 14A.05.090.C). In accordance with these requirements, notice of the proposed development was published in the Skagit Herald, mailed to surrounding property owners,

and public notice sign was posted on the site (exhibit “6”). The public comment period began on January 20, 2023 and ended on February 3, 2023. The Community Development Department did not receive any comments during the comment period.

10. Low impact development (LID) techniques, such as rain-gardens, permeable pavements, and bio-retention, must be incorporated into the design of all new development unless demonstrated to be infeasible through an engineering analysis (BMC 17.70.135.C & 17.85.140.E). In addition, landscaping areas must be used, to the maximum extent possible, to treat, store, or infiltrate storm-water runoff. The application materials included a geotechnical evaluation and a preliminary drainage report. The plans indicate that landscaped bio-retention areas will be provided to manage storm-water, thereby addressing the City’s LID requirements.
11. A landscaping plan is required for this project and must demonstrate compliance with the City’s landscaping standards (BMC 17.80.020 and 17.80.050.A). The landscaping plan must be prepared by a licensed landscape architect (BMC 17.80.070.E). A landscaping plan prepared by a licensed Landscape Architect, was included with the application.
12. The City’s landscaping code (Chapter 17.80 BMC) was drafted to address more typical development projects. As such, most of the requirements cannot be applied to the proposed road. Due to the unique characteristics of this project, landscaping requirements are addressed in the conditional use approval criteria section of this report.
13. As documented in a wetland report provided with the application (exhibit “7”), a category III wetland, Walnut Pond, is located to the south of the project site near the intersection of the proposed street and South Walnut Street. A protective buffer 150 feet in width is required around all category III wetlands (BMC 14.15.185-1).
14. Generally development is not permitted in wetland buffers; however, buffers may be reduced if mitigation is provided and it can be shown, based on accepted scientific knowledge and practices, that the proposed mitigation will provide the same level of protection as the existing buffer (BMC 14.15.150.A.3 & 14.15.150.C). The applicant’s environmental consultant submitted a report which thoroughly addresses the City’s wetland protection requirements. The wetland report includes a mitigation plan; however, based on the conditions of a SEPA MDNS issued by the City on July 2, 2021 (exhibit “8”) the wetland mitigation plan was revised to include restoration of all buffer areas between the street right-of-way and the wetland (exhibit “2”). The civil plans include two sheets depicting the mitigation work, but there’s no information documenting that these revised mitigation plans were prepared by qualified wetland professional as required by BMC 14.15.110.C & 14.15.200.B. The SEPA MDNS also required that the applicant’s wetland report be revised to quantify the exact area of the buffer that would be impacted by road construction. Because it is visually evident that the buffer restoration/enhancement activities will exceed the area impacted by road construction, these issue can be addressed

through a condition of approval requiring a revised mitigation report or addendum (conditions “6” and “8”).

15. Wetland buffer mitigation areas must be protected from encroachment with signs, permanent edge markers, and, where appropriate, fencing (BMC 14.15.185.E.2 & 3). The City’s critical area regulations also require that critical areas, buffers, and mitigation sites be identified and permanently protected through a recorded “Protected Critical Area” (PCA) notice (BMC 14.15.160). The SEPA MDNS issued for the proposed road included conditions requiring the installation of open rail fencing, signage, and the recording of a PCA notice. The plans provided by the applicant do not include details for the required fencing or signage. Therefore, these items should be addressed prior to the approval of final construction drawings (conditions “7” and “11”).
16. Creating the right-of-way for the proposed road will require conveyances and dedications from a number of property owners. In order to comply with State and local platting laws (Chapter 58.17 RCW and Title 16 BMC) by avoiding the creation of additional parcels, the individual conveyances and dedications will need to be combined and merged with an existing City-owned property through an approved Boundary Line Adjustment (BLA) process (condition “13”).
17. Conditional Use Permits must be consistent with all of the criteria enumerated in BMC 14A.05.080. For purposes of clarity the applicable criteria have been addressed individually below:
 - a. *The use will have no more adverse effect on the health, safety or comfort of persons living or working in the area, and will 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.*

The applicant is proposing to construct an extension of an existing city street to connect South Walnut Street to Burlington Boulevard. The proposed street will include two general purpose travel lanes, a center left turn lane, sidewalks, and a multi-use path along the southern side of the street alignment. The street is consistent with other streets and public infrastructure located in the immediate vicinity of the project site and throughout the city.

Traffic, access, and loading - The proposal involves the construction of a public street. The purpose of the proposed street is to provide access to developable

land located south and east of South Walnut Street and to balance traffic volumes between Burlington Boulevard and other north-south travel routes. The project is consistent with the City's objective to shorten travel distances by improving accessibility, reducing circuitry, and enhancing street network densities. The City's long range transportation planning policies suggest projects like this should help to limit, or reduce, per-capita vehicles miles traveled by reducing trip distances. The project will also provide an important bicycle/pedestrian connection between Burlington Boulevard, where frequent transit service is available, and potential development sites east of South Walnut Street.

When the La Quinta hotel, which borders the proposed road to the north, was developed, the La Quinta developer was required to provide pedestrian access stub-outs to the northern edge of the proposed road right-of-way. The La Quinta developer and the City of Burlington executed a development agreement (exhibit "9") which obligated to the City to extend these stub-outs to connect with the sidewalk along the proposed road. The stub-outs and connections are necessary in order to address the pedestrian access requirements of BMC 17.54.090.A. The required pedestrian access connection points are not shown on civil plans. As a condition of approval the plans should be revised to include the required pedestrian access points (condition "6" & exhibit "10").

Conclusion: Provided the pedestrian access connections described above are provided all transportation and access impacts will be adequately mitigated.

Refuse and service areas –As a public street no refuse or service areas are included. This criterion is not applicable.

Utilities – Electrical power will be extended along the right-of-way to serve the proposed right-of-way. In accordance with the Skagit County Coordinated Water Plan and the City's fire code, hydrants and fire supply lines will be required at various points along the street. The plans are unclear with respect to hydrant locations and water line routing. Under BMC 12.28.085, fiber optic communications conduit and vaults are required along all street frontages. No fiber optic conduit or vaults are shown on the plans.

Conclusion: Fire hydrants, water supply lines, and fiber optic conduit and vaults must be provided and shown on the plans. A condition should be added to require revised plans (condition "6")

Screening and buffering – A landscaping plan was included with the application. The landscaping plan was prepared by a licensed landscape architect in accordance with BMC 17.80.070.E. The City's landscaping code includes a

number of specific exemptions (BMC 17.80.020). Public streets are not among the listed exemptions; however, with the exception of the street tree planting requirements in BMC 17.80.080, the landscaping code does not include provisions that can be easily applied to linear transportation projects.

In most cases the right-of-way not used for travel lanes or sidewalks has been used for bio-retention cells, which are landscaped with a robust assortment of groundcover, shrubs, and grasses. The bio-retention cells also have slopes that may make the installation of traditional street trees problematic. Street trees are shown along the southeastern portion of the right-of-way, but in other locations trees are located on private property and labeled as “conceptual”. Despite the limitations posed by the bio-retention cells, there are several areas where street trees can be installed. Specifically, adequate area exists for street tree plantings along the northwestern extension of the right-of-way, immediately south of the La Quinta property (see exhibit “10”).

Additional landscaping is also required under the terms of a development agreement the City executed with owner of the adjoining La Quinta property (exhibit “9”). As part of the agreement the property owner conveyed land to the City for the road construction project. In exchange, the City agreed to provide a permanent access point from the new road, block the existing temporary access, and provide landscaping between the adjoining streets and the La Quinta property. The affected areas are located near the northwest and southwest corners of the La Quinta property. While the landscaping plans included with the application illustrate landscaping work near the southwest corner of the La Quinta property, no information is provided with respect to the required restoration work at the northwest corner. Both areas can accommodate street trees as required by BMC 17.80.080.A. In order to address the City’s obligations under the development agreement, and provide trees as required by the Burlington Municipal Code, revised landscaping plans should be submitted prior to the approval of final construction drawings (condition “7”)

Conclusion: A significant amount of landscaping has been provided; however, additional landscaping and street trees are needed in order to comply with the terms of the La Quinta development agreement, the intent of the City’s street tree code (Chapter 12.20 BMC), the street frontage landscaping requirements in BMC 17.80.080, and to provide shade, minimize aesthetic impacts, and reduce urban heat island effects (condition “7” & exhibit “10”).

Setback, open space, and structures – This criterion is not applicable.

Hours and manner of operation – This criterion is not applicable.

Noise, lights, dust, odor, fumes and vibration – The proposed street will increase localized noise, light, fume, and vibration impacts associated with vehicle travel. However, all of the impacted properties are also adjacent to South Walnut Street and Burlington Boulevard where heavy traffic volumes are present, suggesting that the relative increase will be minor. Provided adequate landscaping is provided these impacts can be minimized (condition “7”).

- b. *The proposal is in accordance with the goals, policies and objectives of the comprehensive plan*

The Burlington Comprehensive Plan includes a number of policies relevant to the proposed development, including:

Housing Policy 4.B: “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 life styles”. The proposed street will serve and associated housing development abutting the southern edge of the right-of-way. This infill site could not be developed absent the proposed street. By improving access the proposed street will provide opportunities for infill housing.

Housing Policy 10.B “Pedestrian and transit links shall be encouraged to provide good public access to open space, parks, and recreation areas” Frequent transit service is currently available along Burlington Boulevard. Skagit Transit is planning on initiating a circulator route that will serve South Walnut Street. The proposed street will provide pedestrian and bicycle connections between these two transit lines and will provide pedestrian and transit access to abutting properties and developments located south and east of Walnut Street.

Business, Commercial, and Industrial Policy 1.A: “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.” The proposed street will facilitate the development of vacant properties that cannot be developed without access improvements and will improve access to other undeveloped parcels south and east of Walnut Street.

Business, Commercial, and Industrial Policy 3.D: “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...” As noted in this report, the landscaping plan submitted by the applicant includes street trees along a portion of the street frontage. In order to ensure consistency with this policy additional street trees should be provided (condition “7”).

- c. *The proposal complies with all the requirements of this title (zoning code).*

As documented in this report the proposal complies with all applicable code requirements or can comply with all applicable code requirements through the application of reasonable conditions of approval.

- d. 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.*

The properties surrounding the development site are zoned for a variety of mixed-use residential, commercial, and light industrial uses including apartment buildings, stores, eating and drinking establishments, hotels storage buildings, etc. The proposed road is similar to other arterial streets in the vicinity of the projects site and incorporates additional landscaping and design features to ensure compatibility with surrounding properties.

- e. The proposal will not adversely affect the public infrastructure.*

Provided the required fire supply lines, hydrants, and fiber optic conduit and vaults are provided the project will be consistent with this criterion (condition “6”).

SEPA Determination:

A SEPA Mitigated Determination of Non-Significance (MDNS) was issued for this project on July 2, 2021 (exhibit “8”). The MDNS was not appealed and is final and binding on this project.

Permit Recommendation:

The Community Development Department has reviewed the applicant’s proposal and determined that it can comply with applicable Burlington Municipal Code requirements subject to the conditions of approval identified below. The Community Development Department hereby respectfully recommends the Hearing Examiner approve Conditional Use Permit application CUP 1-23 *subject to* the following conditions of approval:

General Conditions:

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 dated July 2, 2021, 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. The permit holder and all contractors conducting work for the permit holder 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.

Grading Permit and Site Development:

5. A grading permit is required prior to beginning any clearing, filling, excavation, building, construction, or other site development work.
6. Prior to the issuance of a grading permit civil engineering plans shall be submitted to, and reviewed by, the City for compliance with applicable storm-water, site development, and engineering requirements. The civil engineering plans must include the following specific information:
 - a. The civil plans shall depict the temporary access closure the associated curbing, sidewalk, landscaping restoration described in the approved development agreement between the City of Burlington and the owner La Quinta/Bigfoot Java property, including providing a connection between the onsite pedestrian path and sidewalk running along Burlington Boulevard as shown on attached exhibit “10”; and
 - b. The civil engineering plans shall clearly depict the location of all existing and proposed fire hydrants and associated water lines consistent with Burlington Fire Marshal requirements and the Skagit County Coordinated Water System plan; and,
 - c. Details shall be provided for the open rail fencing and signage required around the Walnut Pond buffer and mitigation areas as specified in the SEPA MDNS issued July 2, 2021 (exhibit “8”); and,

- d. Fiber optic conduit and vaults shall be provided along all street frontages consistent with the requirements of BMC 12.28.095; and,
 - e. Connections shall be provided between the pedestrian path stub-outs on the La Quinta property and the sidewalk running along the northern edge of the proposed street as shown on attached exhibit “10”.
 - f. The plan sheets depicting the proposed wetland mitigation shall include a notation referencing the mitigation report, including the author’s name, they are based on or shall otherwise clearly identify the name of wetland professional responsible for the plans.
7. No grading permit shall be approved or issued until a final landscaping plan has been submitted to, and approved by, the Community Development Department. The final landscaping plan shall be consistent with, and incorporate, any of the changes made to the final civil engineering plans and shall specifically address the following:
- a. At least four additional street trees shall be included along the northwestern portion of the right-of-way as shown on attached exhibit “10”; and,
 - b. Consistent with the approved La Quinta development agreement the landscaping plans shall show how the street frontage landscaping will be restored once the temporary “right-in-right-out” access is removed. The landscaping in this area should be consistent with conceptual plans provided by the La Quinta developer.

Final Inspection Conditions:

- 8. A revised wetland report or report addendum shall be provided that quantifies the total area, in square feet, of the wetland buffer impacted by the road construction project. This document shall also verify, or cross reference, the plan sheets included in the civil engineering plans showing the mitigation work.
- 9. Civil engineering “as-built” drawings shall be submitted to, and approved by, the City.
- 10. No as-built drawings shall be approved until Community Development and Public Works have inspected the completed work and verified that all of the infrastructure and improvements shown on the approved plans or otherwise required by the conditions of this permit have been completed or installed including, but not limited to, sidewalks, crosswalks, landscaping, pedestrian access connections, and fiber optic communications conduit.

11. No as-built drawings 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. Open rail fencing shall be installed between the road right-of-way and the wetland buffer or mitigation areas as more particularly shown on the approved plans.
 - c. Enamel coated metal signs with the following language shall be installed at intervals of 50 feet around the perimeter of the wetland buffer and/or mitigation area:

Protected Wetland Area
No Dumping – Do Not Disturb
Thank you

- d. A protected critical area (PCA) notice, approved by the Community Development Department, shall be recorded with the Skagit County Auditor. The PCA notice shall include a survey or drawing accurately depicting the location and delineated boundaries of the wetland, buffer, and mitigation area.
12. No as-built drawings shall be approved until the Fire Marshal as inspected and approved any fire hydrants or associated fire supply lines.
13. A boundary line adjustment (BLA) shall be submitted to the Community Development Department for review and recording. The required BLA shall combine the individual right-of-way conveyances and merge them with an existing City-owned property so that no additional parcels are created.

Appeals:

Conditional Use Permits are type III decisions. The Hearing Examiner’s decision may be appealed in accordance with the applicable procedures identified in Title 14A of the Burlington Municipal Code. For information on appeal procedures please contact the Community Development Department.