



**EXHIBIT "1"**  
*Staff Report*

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## Conditional Use Permit Recommendation & SEPA Determination

**Date:** May 24, 2023

**Project:** Stevens Road Apartments – Phase II (CUP 3-22)

**Location:** Intersection of Bouslog Road and Stevens Road

**Parcel(s):** P23887 and P23886

**Applicant:** Brett Treloar, Sage Homes Northwest

**Staff:** Brad Johnson, Community Development Director

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### Summary:

On December 19, 2022 the City received an application for a conditional use permit to construct a mixed use development consisting of two three-story multiunit buildings containing a total of 48 dwelling units, and one mixed use building containing ten dwelling units and 1,902 square feet of commercial space. The project will involve clearing, grading, and the installation of related landscaping, storm-water, and utility improvements.

### Findings:

1. The proposed development includes the construction of two three-story multiunit buildings containing a total of 48 dwelling units, and one mixed use building containing ten dwelling units and 1,902 square feet of commercial space. The project will also include related landscaping, storm-water, and utility improvements. The project is associated with, and will further expand an adjacent residential development that was previously approved under Conditional Use Permit CUP 3-22.
2. As illustrated on attached exhibit "2" the project site is located immediately north of West Stevens Road. The site consists of two separate parcels with a total area of approximately 1.73 acres (75,527 sq. ft.).
3. At the time the application was received and determined to be complete the property was zoned "C-2" (Heavy Commercial) and was subject to a comprehensive plan designation of

“HC-I” (Heavy Commercial and Industrial). The properties to the north, west, and east were also zoned “C-2”. The property south of Stevens Road is owned by the City of Burlington and was zoned “R-S” (Semi Public) and subject to a comprehensive plan designation of “C-B” (Commercial and Business). On May 11, 2023 the Burlington City Council adopted revised zoning and comprehensive plan maps (exhibit “3”).

4. The surrounding land uses to the north and east include light industrial buildings, an indoor shooting range, a car dealership, and a healthcare equipment retailer. The area to the west is currently being developed by the permit applicant for multifamily residential. The property south of Stevens Road is undeveloped, owned by the City of Burlington, and contains Gages Slough, a regulated wetland (exhibit “2”).
5. The project site adjoins Steven Road along its southern boundary and is bordered by Goldenrod Road to the east. The property is completely undeveloped and is entirely covered by grasses, shrubs, and gravel.
6. Based on current FEMA Flood Insurance Rate Maps (FIRMs) it appears the property is located in regulated floodplain and designated as an A-7 flood zone. The site has a base flood elevation of 27 feet. Gages Slough is located near the site to south of the Stevens Road. Gages Slough is a regulated wetland that is hydraulically connected to Skagit River and within the jurisdiction of the Washington State Shoreline Management Act (SMA) and the City’s Shoreline Master Program (SMP). The jurisdiction of the SMP is confined to the wetland areas of Gages Slough and does not extend upland (BMC 18.07.010 & RCW 90.58.030(2)(d) & (e)).
7. Pursuant to BMC 17.55.070.A, multifamily dwellings are permitted in the C-2 zone with a conditional use permit.
8. 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).
9. The application for this permit was submitted on December 19, 2022. 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. On January 20, 2023 the City determined the application was complete and issued a notice of application and a completeness determination (exhibit “4”).
10. Once an application has been determined to be 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. The public comment period began on January 23, 2023 and ended on February 6, 2023. It is the City’s practice to accept, and

consider, any comments submitted prior to the preparation of the staff report/Hearing Examiner recommendation.

11. The City received two comment letters during the comment period. One comment letter from the Washington State Department of Ecology (DOE) (exhibit “5”). In their comment letter DOE requested that the City takes steps to ensure compliance with applicable Washington State water quality regulations. The second comment letter was submitted by the Skagit River Systems Cooperative (SRSC) (exhibit “6”). SRSC highlighted concerns with the project’s wetland buffer impacts and the applicant’s proposed mitigation for wetland buffer impacts. SRSC noted that (a) the proposed mitigation overlapped substantially with a mitigation area created for a previous project, (b) that portions of the proposed mitigation overlapped with established and maintained road right-of-way, (c) that portions of the propose mitigation would be located in areas with established woody vegetation, and would therefore not achieve the stated mitigation values, and that (d) the proposed monitoring period was inadequate. The Community Development Department largely concurs with the concerns noted by SRSC and, as result, asked that the applicant submit a revised wetland report and mitigation plan.
  
12. Multifamily development is permitted in the C-2 zone “provided the applicant demonstrate the site is better suited for housing than commercial development” (BMC 17.55.050.070). The proposed development will largely consist of multifamily residential units. However, the building located closest to Goldenrod Road will include approximately 1,902 square feet of commercial space. The application materials indicate this space may be used to house offices, personal services, or a small gym. The applicant submitted a narrative with arguments in support of the proposed residential uses and compliance with the requirements of the C-2 zone. The Community Development Department finds many of these arguments persuasive, but is unsure of whether they reach the threshold for demonstrating the site would be better used for housing than commercial purposes. Community Development requests that the Hearing Examiner independently evaluate the proposal for consistency with the BMC 17.55.050.070.A. The Examiner may wish to give weight to the following factors when evaluating the project:
  - a. 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 and provide housing that is 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 this area.
  
  - b. 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.

- c. By the year 2036 the City anticipates that 60 percent new housing units will need be attached units and the City further anticipates that the bulk of these units will be provided in large multiunit buildings located in commercial areas;
  - d. 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;
  - e. This 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 Burlington Boulevard;
  - f. The site abuts a large tract of land containing Gages Slough held by the City for conservation and storm-water management purposes and this tract provides a unique open space amenity for the proposed development;
  - g. The applicant is proposing to utilize the ground floor of the building that abuts Goldenrod Road for commercial purposes;
  - h. Community Development has long struggled to implement BMC 17.55.050.070.A which the department regards as being excessively vague. This code section lists housing as a conditional use in the C-2 zone but states: *Multifamily dwellings, either single purpose or as part of a mixed use development where the street frontage is primarily residential; provided, that an additional criterion for approval is that the site is better suited for housing than commercial development and the project complies with the standards in BMC 17.25.050(A) and 17.25.090(B).* This code provision contains no meaningful standards by which to determine whether or not a site is “better suited” for housing than commercial development. When evaluating excessively vague code provisions it is the policy of the Community Development Department to give weight to the interests of the property owner or permit applicant unless doing so would be contrary to established City policies or the public interest. In this particular case there were no conflicting policies in place when the application was determined to be complete, the project would support an important public policy by providing needed housing, and finally, the relevant code provision has since been revised to include more prescriptive criteria, thereby eliminating the risk of precedent setting.
13. At the time this application was received and determined to be complete multifamily development in the C-2 zone was limited to a base density of one dwelling unit per lot plus one additional unit for every 3,000 sq. ft. of lot area. The then applicable provisions of the

C-2 zone also provided that additional density could be added by purchasing credits through the City's Agricultural Heritage Program (BMC 17.55.070.A & 17.25.090.B). The Agricultural Heritage Program is transfer/purchase of development rights program that allows densities to be increased within the City of Burlington by purchasing credits, the proceeds of which are used to purchase development rights to agricultural land located outside the City. The development site is comprised of two individual lots with a combined area of 1.73 acres (75,527 square feet). As such, a maximum of 27 units would be permitted on the lot under the base density limit (two dwellings for the two existing lots plus 25 units for every 3,000 square feet of site area). Because the applicant is proposing to construct 58 dwelling units, they will be required to purchase 31 density credits through the Agricultural Heritage Program (condition "15")

14. 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 submitted with the application (exhibit "7") and adequately depicts the proposed landscaping.
15. A minimum of ten percent of the site must be landscaped (BMC 17.80.070). The landscaping plans submitted with the application include a calculation table which identifies the amount of landscaping required and the amount of landscaping proposed. Based on the calculation table the site has a gross area of 75,527 square feet, meaning that 7,553 square feet (ten percent of the gross site area) of landscaping must be provided. The table further indicates that 26,770 square feet of landscaping (35 percent of the gross site area) will be landscaped. Therefore, the project exceeds the City's minimum area requirements.
16. Street frontage landscaping must be provided along all street frontages and must include a landscaping strip with a minimum width of ten feet and one street tree must be provided for every 30 feet of street frontage (exclusive of driveway approaches and access road) (BMC 17.80.080.B). The plans indicate the required street frontage landscaping will be provided along Stevens Road and Goldenrod Road.
17. Landscaping strips must be provided along interior lot lines and must have a minimum width of five feet. In addition, one tree must be provided for every 30 feet of perimeter landscaping buffer (BMC 17.80.090.A & C). These requirements do not apply to areas occupied by buildings or connecting driveways (BMC 17.80.090.D). The landscaping plan illustrates the required landscaping strips and trees along the north property line. Because the proposed development will further extend the ongoing development to the west, the property boundary separating the two phases is not considered a site perimeter and no perimeter landscaping is required in this location.

18. 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 addressing the potential for onsite infiltration and the use of LID techniques, and a preliminary storm-water design. Both reports were prepared by licensed professionals as required by Burlington Municipal Code. The storm-water information provided by the applicant describes onsite storm-water being managed using a system of subsurface infiltration pipes and landscaped bio-retention cells. The proposed storm-water management system adequately addresses the City's LID requirements.
  
19. Parking lot landscaping is required for parking lots with 20 or more parking spaces. At least 15 square feet of landscaping must be provided for each parking space, exclusive of exterior spaces (spaces located adjacent to a perimeter property line), and one tree must be provided for every 150 square feet of required parking lot landscaping (BMC 17.80.100.A) . The landscaping plans indicate the proposed development will include 68 parking spaces. As such, at least 1,201 square feet of landscaping is required and a total of 7 trees must be provided. The landscaping plans include a table demonstrating compliance with these requirements. Specifically, the landscaping plans indicate that 1,201 square feet of parking lot landscaping, and 7 trees will be provided. The proposed parking lot landscaping exceeds the City's minimum requirements for landscaped area and meets the City's requirements for trees.
  
20. The City of Burlington requires that landscape irrigation be provided (BMC 17.80.060.H). The landscaping plan does not include an irrigation system. As a condition of approval the landscaping plan should be revised to include an irrigation system and the irrigation system should be installed before the City's final building inspection (condition "10").
  
21. The site plan for the project depicts two trash enclosure areas, one located near the southeast corner of the site and the other located along the northern property line. In accordance with BMC 17.80.105.A, all loading, storage, and outdoor service areas must be screened from view, using either a fence or a masonry wall, and a landscaped buffer must be provided between the enclosure and adjoining property lines. The buffer must be at least six feet wide if a fence is used or five wide if a masonry wall is used (BMC 17.80.105.C.2). No plans or specifications were provided for the enclosures making it impossible to determine if fences or masonry walls are being proposed. The trash enclosure near the southeast corner of the site will be screened by a City of Burlington sewer lift station to the east, by buildings to north and west, and by landscaping to the south. The trash enclosure located along the northern property adjoins a landscaping buffer to the north, but no screening is provided to the east or west. In order to address these issues landscaping buffers will be required along the east and west edges of the enclosure and additional plantings will be necessary along the northern edge of the

enclosure. As a condition of approval the applicant will need to provide construction details for a fence or wall around each enclosure and will need to submit a revised landscaping plan demonstrating compliance with the City’s screening requirements (condition “10”).

22. The maximum permitted building height in the C-2 zone is normally 45 feet. The C-2 zone allows buildings to exceed this height if the portions of the building exceeding the normal height limit are setback one foot for each foot of height the building exceeds 45 feet (BMC 17.55.090.E). The architectural plans submitted with the application include detailed elevation drawings (exhibit “7”) showing that each building will be lower than the maximum permitted height. As such, the proposed buildings will comply with the applicable height limit for the C-2 zone.
23. For multifamily developments in the C-2 zone, outdoor lighting must be provided for common areas, including parking lots, access streets, and pedestrian paths (BMC 17.25.070.A & 17.25.050.A.7). All outdoor lighting fixtures must be fully hooded, screened, and directed downwards so that the light source is not visible from the adjoining properties or the public right-of-way (BMC 17.85.115.G & 17.70.110.A) and to direct light and glare away from individual apartment units (BMC 17.25.050.A.7). In order to demonstrate compliance with this requirement, a lighting plan and specifications for each exterior lighting fixture must be provided (see permit condition “11” and SEPA condition “3”).
24. The residential buildings will contain a total to 58 dwelling units, including 12 studios, 6 one bedroom units, and 34 two bedroom units, and 6 three bedroom units. For one and two bedroom units, parking must be provided at a rate of 1.5 spaces per unit, plus one additional guest spaces for every three units. For three bedroom units, two parking spaces are required for each unit plus one additional guest space for every three units. Studio apartments are not listed in the parking requirements section of the Burlington Municipal Code. In such instances the Community Development Department is authorized to specify the number of required spaces based on other similar uses (BMC 17.85.060.A). Accessory dwelling units, adult family homes, live work units, duplex dwellings, single family homes, and townhouses are all residential uses similar to studio apartments. These uses require only one parking space per unit. Based on this analysis the Community Development Department concludes that one parking space must be provided for each studio unit. No guest parking is required for the studio units. Parking requirements may be met using both off-street spaces and on-street spaces adjacent to the development site (BMC 17.85.050.B.5).
25. The proposed development includes the construction of 68 off-street and 10 on-street parking spaces. On-street parking spaces may be used to satisfy parking requirements (BMC 17.85.050.B.3). In addition, the adjoining development to the west will share parking with the proposed development. The adjoining development was required to provide 265 parking spaces but included a total of 290, resulting in a surplus of 25 which are available

to support the current development. As demonstrated in the table below the proposal will exceed the City’s minimum parking requirements.

Unit Type	Number of Units	Parking Spaces per Unit/Total Required	Guest Parking	Total
Studio	12	1	None	12
One Bedroom	6	1.5 / 9	2	11
Two Bedroom	34	1.5 / 51	11	62
Three Bedroom	6	2 / 12	2	14
<b>Total Parking Required</b>				<b>99</b>
<b>Total Parking Provided</b>				<b>103</b>

26. 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). As part of the proposed development a continuous sidewalk will be provided along Stevens Road from the western edge of the site to Goldenrod Road. In addition the existing curb cuts along Goldenrod Road will be removed to establish a continuous sidewalk along the eastern edge of the development. The plans depict a system of internal pedestrian paths which connect each building to adjoining streets and common areas. The proposed pedestrian access and circulation system substantially complies with the City’s pedestrian access requirements; however, as noted on the attached site plan (exhibit “10”) the pedestrian path along the south side of “Building 10” must be extended west to provide access from Goldenrod Road and connections must be provided to all the entrances in “Building 10”. As condition of approval the changes noted on the approved site plan shall be addressed (condition “9”).
  
27. As documented in a wetland report (exhibit “8”) prepared by Shawn Sweeny of Wetland Resources Inc. (WRI), a qualified environmental consultant, a category II wetland is located to the south of the project site adjacent to Stevens Road. A protective buffer 300 feet in width is required around all category III wetlands (BMC 14.15.185-1).
  
28. 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 WRI report included with the initial application materials addresses the City’s wetland protection requirements. This report states that 69,062 square feet of buffer will be impacted by the development and includes a mitigation plan consisting of a enhancing the remaining buffer area and wetland area located south of Stevens Road on a 1:1 ratio.
  
29. During the comment period the City received a letter from the Skagit River Systems Cooperative (SRSC). In their letter SRSC noted that portions of a mitigation area proposed in the WRI report overlapped with an existing established mitigation areas created in conjunction with a Skagit County road project and area with established woody vegetation (exhibit 6”). SRSC further noted that these area could not be used for mitigation since they

were already fully planted with established woody vegetation and that little or no mitigation benefit would be derived from restoring or enhancing areas that had already been restored. SRSC also expressed concerns regarding mitigation located in an established and maintained road right-of-way and, what they are argued, was an inadequate monitoring period. The Community Development Department concurs with the concerns noted by SRSC and, in response, requested that the applicant provide a revised wetland report and mitigation plan.

30. In response to the City's request for a revised wetland report and mitigation plan, WRI submitted a revised wetland report and mitigation plan dated April 6, 2023. The revised WRI report changes the location of the proposed restoration and enhancement areas to avoid overlapping with existing mitigation sites or areas of established woody vegetation. The section 4.3 of revised WRI report shows how the lost functions and values will be replaced on at a 1:1 ratio as required by BMC 1415.210.J. Provided the mitigation work identified in the revised WRI report is fully implemented, monitored, and maintained the City's wetland protection standards will be addressed (condition "16").
31. The City's wetland protection regulations require that wetlands and wetland buffers be delineated and be permanently protected through a conservation easement (BMC 14.15.150.A.5.b & 14.15.160.A.3). In this case the adjacent wetland is owned by the City making it necessary for the City to record the conservation easement and to authorize the developer continuing access to the site for purposes of monitoring and maintaining the mitigation areas. The City has no objection to authorizing the conservation easement provided the applicant is responsible for preparing the necessary documents and exhibits and pays any required recording fees (condition "16").
32. In accordance with Burlington Municipal Code requirements, temporary construction fencing must be installed to identify and protect wetlands and wetland buffers (BMC 14.15.130.A & 14.15.185.E.1). As a condition of approval the applicant will be required to install temporary construction fencing between the southern edge of Stevens Road and Gages Slough (condition "12").
33. In order to identify the edge of wetland buffers, signs and permanent fencing must be installed (BMC 14.15.160.A.3 & 14.15.185.E). As a condition of approval the fencing and required signs must be installed (condition "16").
34. 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 a residential development with a small area for a commercial tenant. The area adjoining the development site to the south is currently zoned PC-1 (parks and conservation). The areas to the north, west, and east of the site are were, at the time the application was received, zoned C-2. The C-2 zoning designation allows a wide variety of commercial and light industrial uses, including auction houses, banks, dance halls, eating and drinking establishments, gas stations, hospitals, hotels, retail stores, and offices. On May 11, 2023, the City Council adopted a revised zoning map. The revised zoning map changes the designation of the surrounding C-2 parcels to CI-1 (Commercial and Industrial). The newly adopted CI-1 designation permits a similar mix of uses to the former C-2 zone. For the reasons discussed below, the Community Development Department finds that the proposed use will result in impacts that are similar to, or less significant, than those associated with other common uses permitted in the formerly applicable C-2 zone and the current CI-1 zone.*

*Traffic, access, and loading - The proposal is entirely residential and will 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 will include a number of access improvements including:*

*A traffic impact report evaluating impacts to arterial streets and intersections in the vicinity of the project, and a supplemental traffic assessment specifically addressing the possibility of traffic impacts along Markwood Road corridor west of the site were prepared for the first phase of the proposed development. The traffic reports prepared for the first phase demonstrate that the project will not cause any streets/intersections to fall below an adopted level of service standard. The supplemental report documents that most of the traffic generated by the proposed development will travel by Stevens Road or Bouslog Road to reach nearby highways or commercial areas. It should also be noted that 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 Goldenrod Road. The City's Public Works Department determined that the proposed second phase represented a minor change from the first phase and would not*

*materially alter the conclusions identified in the original traffic reports or cause any level of service impacts.*

*Large multi-family developments located within walking distance of commercial services and public amenities may generate significant pedestrian traffic and additional demands for bicycle amenities and transit access. The proposed development the Tammi Wilson Trail which includes an undercrossing under I-5 and provides access to the Cascade Mall property and the Burlington Boulevard corridor. To offset the potential safety impacts associated with additional pedestrian traffic and address the need for enhanced transit access, the existing pedestrian crossing at the intersection of Goldenrod Road should be improved with pedestrian activated crossing lights, the sidewalk along the Goldenrod Road frontage should be improved, and a concrete pad should be provided to accommodate a future transit stop improvement. Increased demand for bicycle amenities can be addressed by providing bicycle racks adjacent to each of the proposed buildings (condition “9” and SEPA condition “4”).*

*Conclusion: The proposed use will not result in traffic impacts that differ significantly from other uses permitted in the C-2 zone and the anticipated increase in pedestrian traffic can be mitigated through reasonable conditions of approval.*

*Refuse and service areas – The proposed development includes two trash enclosures. The City’s development regulation require that all trash enclosures be screened with vegetation and a fence or wall. As noted in this report the proposed trash enclosures are adequately screened with landscaping and a fence or wall will 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 require trash enclosures. Significantly, 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 residential development. Other uses permitted in the C-2 zone, such as hotels and offices, generate waste that is similar to the proposed residential development. With respect to service areas, the proposed residential development will 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.*

*Conclusion: The proposed use will generate waste volumes less than other uses permitted in the C-2 zone, will include screening for all garbage enclosures, and will not have any outdoor service or storage area.*

*Utilities – The City currently provides sewer service to the site, which the sewer supervisor has indicated will be adequate for the proposed use. The Skagit Public Utility District (PUD) will provide water to the site. As a condition of approving a grading permit PUD will be required to verify that sufficient water will be available for domestic and firefighting purposes. The City’s Public Works Department has reviewed the application and has not identified any sewer constraints. The City’s Information Technology Department has reviewed the application, and in accordance with City Code requirements fiber optic communications conduit and vaults will be required as a condition of approving a grading permit. Electrical, natural gas, and cable services are privately provided. The utility demands imposed by the proposed development are within the capacity of service providers, will be provided at the time of development, and the proposed development will not impact service to surrounding users. In addition the service level requirements of the proposed use are not greater than those imposed by other uses permitted in the C-2 zone such as hospitals, hotels, and restaurants.*

*Conclusion: Adequate utilities will be required as a condition of approval and all utility connections an upgrades must be constructed as a condition of the development permit process. As a condition of approving the applicant’s grading permit, engineered plans for all sewer, water, and fiber optic communications infrastructure will be required and any upgrades necessary to prevent service impacts will be required.*

*Screening and buffering – As demonstrated in the landscaping findings above, the proposed landscaping will be provided in excess of the minimum zoning requirements. The proposed landscaping will exceed the City’s minimum requirements and will therefore be consistent with the landscaping required of other uses permitted in the C-2 zone. In addition, other uses permitted in the C-2 zone, such as lumber yards, car lots, and building trade services are typically characterized by large expanses of pavement, large parking lots, and open storage yards. The Community Development Department finds that screening and buffering will be provided in excess of the normally applicable code requirements and will be equivalent to, or exceed the landscaping typically provided for other uses permitted in the C-2 zone.*

*Conclusion: As noted in the findings related to landscaping, the proposed development will meet or exceed the landscaping requirements for other permitted uses in the C-2 zone.*

*Setback, 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 for the first phase of the development, with which current proposal will share amenities, also features an outdoor play area, a playground, benches and picnic tables. The Community Development Department finds that the proposed use will provide adequate open space, buildings will be adequately separated from one another and from adjacent property lines, and scale of bulk of the proposed structure will be 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 will serve to buffer the residential units from lighting and glare impacts from neighboring commercial and industrial uses.*

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

*The Housing Element of the Burlington Comprehensive Plan in effect at the time the permit application was received included 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 development will include a variety of unit types, including larger two and three bedroom apartments, which represent a type of housing which has not been constructed in the City of*

*Burlington recently. Larger apartments will fill a critical need for affordable market rate housing for larger households and families with children.*

*Housing Policy 6.A: “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.” The proposed development will include open space areas, play areas, playground equipment, and a community room. In addition the development will have a direct connection to the Tamie 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. More general park and open space needs will be addressed through the payment of park impact fees.*

*Housing Policy 6.B: “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.” The parking areas are distributed throughout the site eliminating the appearance of large overwhelming paved areas and minimizing the distance between parking spaces and residential buildings. A complete network of pedestrian paths has been provided to link each of the buildings, parking areas, community spaces, and to provide connections to adjacent streets and developments. Notably Bouslog Road will extended south through the site and will include sidewalks on both sides, and Stevens Road will be improved from the western side boundary to Goldenrod Road. The sidewalk along Stevens Road will provide a direct pedestrian connection to the City’s Tammi Wilson trail.*

*Housing Policy 7: “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”. The proposed development will be located in an employment area and will have a direct connection, via the Tammi Wilson trail to the City’s commercial core along Burlington Boulevard.*

*Housing Policy 7.E “Single purpose residential is allowed in commercial areas that are better suited for residential than commercial uses” The applicant submitted a narrative that addresses this policy (exhibit “9”).*

*Housing Policy 10.B “Pedestrian and transit links shall be encouraged to provide good public access to open space, parks, and recreation areas” The proposed use will be located adjacent to a City owned Gages Slough open space area and will feature a direct connection to the Tammi Wilson Trail.*

*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 proposal will result in the development of a group of parcels which has remained vacant and undeveloped for some time.*

*Business, Commercial, and Industrial Policy 1.B: “Mixed-use development is encouraged to create a balance of incomes, jobs, and housing.” The development site is comprised of 5.42 acres located in a binding site plan. The other lots within the binding site plan have been developed for commercial uses and the surrounding area consists of a mix of commercial and light industrial uses. The proposed development will create a better mix of housing and employment on the west side of the I-5 than exists at present.*

*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 the Stevens Road street frontage; however, no trees are shown along the extension of Bouslog Road. As a condition of approval the applicant will be required to provide a revised landscaping plan showing street trees along both sides of Bouslog Road (condition “11”).*

- 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 proposed to the north, and east are developed for variety of commercial and light industrial uses including storage buildings, car lots, contractor offices, retail stores etc. The property to the west is currently being developed for multifamily housing. The proposed development be comprised of residential buildings. Aesthetically, these buildings will feature higher quality finishes, more detailed facades, and will be less bulky than large format retail or light industrial buildings otherwise permitted in the C-2 zone. In comparison to car lots, another common use in the surrounding area, the proposed development will feature smaller, more evenly distributed parking areas, and more landscaping and open space. The Community Development*

*Department finds that the proposed use will have little, if any, impact on the design, character, or appearance of the area.*

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

*This proposal will 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 traffic impacts assessment demonstrating no significant impact, and a range of street and sidewalk improvements will be provided with the proposed development.*

### **SEPA Determination:**

#### Mitigated Determination of No-Significance (MDNS)

The lead agency for this proposal has determined that it does not have a probable significant impact on the environment subject to the mitigating conditions of approval identified below. An environmental impact statement (EIS) is not required under RCW 43.21C.0330(2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request. This MDNS was issued after using the optional DNS process in WAC 197-11-355. There is no further comment period on the DNS.

1. With the exception of the impacts identified below, all of the impacts associated with this proposal will be adequately mitigated through the application of Burlington Municipal Code requirements. Therefore, all construction, work, clearing, grading, filling, excavation, and other development activities shall be in full compliance with applicable Burlington Municipal Code requirements and the conditions identified below under the “Permit Decision” heading.
2. This project is located in a floodplain. The National Marine Fisheries Service has determined that development in floodplains can negatively impact species protected by the Endangered Species Act (ESA). The applicant has provided a habitat assessment and mitigation plan (exhibits “8” and “9”). This plan was prepared in accordance with the guidelines and recommendations identified in the “Floodplain Habitat Assessment and Mitigation” guidance prepared by FEMA Region 10. In order to mitigate any floodplain ecological impacts to a level of non-significance all clearing, grading, construction, and development activities shall be consistent with the design specifications, management recommendations, or other mitigation measures identified in the habitat assessment.
3. The proposed development will include outdoor lighting and could result in glare and light impacts, both on adjacent developments and the residents of proposed development. Therefore, all exterior lighting and lighting fixtures shall be fully physically screened/hooded or optically focused and permanently directed downwards so that the

light source in the fixture is not visible from outside the perimeter of the site and so that direct light exposure and glare is directed away from the individual residential units. To further limit lighting and glare impacts a lighting plan shall be submitted demonstrating compliance with this condition, showing the location and type of each proposed exterior lighting fixture, and demonstrating compliance with Washington State Energy Code requirements. In addition manufacture's specifications and information shall be provided for each fixture type. All exterior lighting fixtures and outdoor lighting shall be consistent with the approved lighting plan. No final occupancy or final building permit inspection shall be granted until the exterior lighting has been inspected for consistency with the approved lighting plan.

4. Large multifamily developments located within walking distance of commercial services and public amenities may generate significant pedestrian traffic and additional demands for bicycle amenities, and demand for improved transit connections. Because the proposed development can be expected to generate additional demands for pedestrian, bicycle, and transit amenities the following conditions shall apply and must be completed prior to any final occupancy approval:
  - a. Install flashing pedestrian activated crossing lights at the Goldenrod Road pedestrian crossing connecting to the Tammi Wilson Trail;
  - b. Widen the sidewalk along the Goldenrod Road frontage to provide a continuous sidewalk at least eight in width from the northern boundary of the development site to the intersection with Stevens Road;
  - c. Provide a concrete pad for the installation of an enhanced bus stop at the existing Skagit Area Transit (SKAT) stop along the Goldenrod Road frontage. The concrete pad shall be approximately six inches thick, five feet wide, and ten feet long. Contact Brad Windler at SKAT for more information on the specific pad requirements;
  - d. Provide right-of-way dedications or access easements to the City of Burlington as necessary to accommodate the sidewalk improvements and bus stop pad;
  - e. Bicycle racks shall be provided adjacent to each building. Each rack shall be located within 20 feet of the primary building entrance and shall be sufficiently sized to provide one rack space for every four dwelling units. For example, a bike rack adjacent to a 24 unit building shall provide six rack spaces. A bike rack with at least six spaces shall be provided adjacent to the proposed community building. Bicycle racks shall be mounted on a concrete pad, or other approved hard surface.

### **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 3-23 *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, 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. 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.
6. 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.
7. 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.

Grading Permit and Site Development:

8. A grading permit is required prior to beginning any clearing, filling, excavation, building, construction, or other site development work.
9. 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 storm-water, site development, and engineering requirements. A storm-water 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. Sidewalk improvements, bus stop pad, and flashing pedestrian activated crossing lights consistent with the SEPA MDNS conditions;
  - j. The bicycle racks, pads, and access paths required by the SEPA MDNS conditions;
  - k. The pedestrian path revisions noted on the site plan (exhibit 10) shall be addressed;

- I. Civil plans shall reflect any fire access, underground fire line, and other fire suppression and access related comments identified by the City Fire Marshal;
        - m. The accessibility comments identified in the attached email from the City Building official shall be addressed (exhibit “11”);
        - n. The revised civil plans shall be consistent with the revised landscaping and site plans required by this decision.
10. 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;
  - b. Root barriers shall be provided for all tree plantings within five feet of streets, curbs, gutters, or sidewalks;
  - c. A landscaped buffer with a minimum width of five feet shall be provided along the east and west sides of the trash enclosure located along the northern property line. These buffers shall be planted with an opaque evergreen hedge and groundcover plantings;
  - d. An opaque evergreen hedge shall be planted along the northern edge of the trash enclosure located along the northern side boundary;
  - e. The revised landscaping plans shall be consistent with the revised civil engineering plans and site plan required by this decision.
11. 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 dark sky rated, 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 shall be limited to a maximum height of 14 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.
12. 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.

Building and Occupancy Conditions:

13. 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.
14. 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.
15. No building permit shall be issued until density credits have been purchased to exceed the base density limit. Based on the number of existing lots, the number of propose units, and the area of the development site a total of 31 density credits must be purchased through the Agricultural Heritage Program.
16. 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. A protected critical area notice shall be recorded with the Skagit County Auditor and the permit applicant shall be responsible for all recording fees.
- d. 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.
- e. A monitoring and maintenance plan for the wetland mitigation areas shall be submitted to the Community Development Department for review and approval. The monitoring and maintenance plan shall include provisions for reoccurring monitoring of wetland vegetation, the replacement of dying vegetation, and the protection of wetland plantings from beavers. Once approved the monitoring and maintenance plan shall be recorded with the Skagit County Auditor.
- f. 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  
Unauthorized Access Prohibited  
No Dumping – Do Not Disturb  
*Thank you*

17. 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.
18. 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.
19. Trash enclosures, consistent with the designs shown on the approved building plans, shall be installed prior to final occupancy approval.

20. All clearing, grading, storm-water 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.
21. 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.

**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.