



3. A land use permit and site plan review are required for any development involving more than three dwelling units, because the applicant is proposing to construct 42 units, a land use permit is required (14A.05.160.A.1 and A.2).
4. The applicant's proposal is not exempt from State Environmental Policy Act (SEPA) requirements because it involves the construction of nine or more dwellings (BMC 14.10.120.A). Land use permits that are not exempt from SEPA requirements are classified as "type II decisions" (BMC 14A.05.060.A.4 & B.4).
5. Because the proposal requires a land use permit, and because the proposal is classified as a type II review, the Community Development Department is authorized to review, and approve, the applicant's permit request (BMC 14A.060.B).
6. Following the submittal of a land use application the City is required to determine whether or not the application constitutes a "complete" application (BMC 14A.05.050.B and RCW 36.70B.070). The application for this permit was received on September 6, 2024. On September 19, 2024, the City determined the application was deemed complete.
7. 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, and a public notice sign was posted on the site. The public comment period began on September 19, 2024, and ended on October 4, 2024. The Community Development Department received 5 public comments with concerns about traffic congestion and possibly having this multi-unit complex lower their property value. The City also received one comment from Skagit River System Cooperative regarding flood displacement concerns.
8. Low impact development (LID) techniques must be incorporated into the design of all new developments unless demonstrated to be infeasible through an engineering analysis (BMC 17.70.135.C). LID techniques are intended to mimic natural, predevelopment, hydrologic processes by utilizing natural on-site features, site planning techniques, and distributed storm-water management practices. LID techniques commonly include things such as bio-retention, rain gardens, permeable pavements, green-roofs, and dispersion (BMC 17.01.050). The applicant provided a landscaping plan, a stormwater report, a soils report, and a habitat assessment. In the storm water report it states that there will be catch basins on site for storm water and will also have permeable pavers. Therefore, complying with the code.

9. A landscaping plan and compliance with the City's landscaping standards is required (BMC 17.81.050) and the landscaping plan must be prepared by a licensed landscape architect (BMC 17.81.050.B). The application included a landscaping plan and shows it was prepared by a landscape architect.
10. An automatic irrigation system or draught tolerant landscaping plan will be required (BMC 17.81.060.D). The plans show an irrigation system and therefore comply with the code.
11. In accordance with BMC 17.81.110.A, all loading, storage, and outdoor service areas must be screened from view, using either a wooden fence or a masonry wall, and a landscaped buffer must be provided between the enclosure and the adjoining property line (excluding the area required for the door or gate to the enclosure). The buffer must be at least six feet wide if a fence is used, or five feet wide if a masonry wall is used (BMC 17.81.110.B). The plans provided show an area for the trash enclosure but do not show how the screening requirements will be met. As a condition of approval, plans must be submitted for a trash enclosure and the landscaping plan must be amended to clarify how the enclosure will be screened and to provide details for the fencing of the area (See condition "7").
12. Perimeter landscaping strips, at least five feet in width, must be provided along the south, west and east property lines (BMC 17.81.070 and 17.81.080). One tree is required for every 30 feet of required perimeter landscaping (BMC 17.81.080.B). The landscaping plans appear to show the correct amount of trees per 30 feet, but there are no dimensions making it hard to tell if the perimeter landscaping strip is at least 5 feet in width. As a condition of approval, the plans shall be revised showing the dimensions of the perimeter landscaping strip (See condition "7")
13. For street frontage landscaping, a landscaping strip with a minimum width of ten feet shall be provided along all public and private streets and street trees shall be provided at intervals of 30 feet on center except as minimally necessary to accommodate obstructions such as traffic control signs, bus stops, utilities, required site lines, and driveways (BMC. 17.81.070.A&B.1). On the landscaping plans, the landscaping strip does not appear to have a minimum width of ten feet but there does appear to be 1 tree per 30 feet along the street frontage. As a condition of approval, the landscaping strip shall be widened to 10 feet and the dimensions shall be shown on the plans (See condition "7").
14. The maximum building and impervious surface coverage limit for the MUR-1 zone is 70 percent (BMC 17.30.100.D). Impervious surfaces include buildings, conventional pavement, and compacted gravel. Permeable pavement, engineered pavers, grass

grid, green-roofs, and open slotted decking may be included in impervious surface calculations at a rate of 50 percent (two square feet of permeable pavement equals one square foot of impervious surface coverage) (BMC 17.01.050). The site will have 63 percent impermeable surface coverage which complies with code.

15. The maximum permitted height in the MUR-1 zone is 45 feet (BMC 17.30.100.E). All residential buildings shall be setback at least 20 feet from parcels zoned RD. Any portion of a building higher than 25 feet or containing more than two stories shall be setback at least 40 feet from parcels zoned RD (BMC 17.30.090.10.A). This property is abutting a RD zone along the eastern, southern, and western property lines. The plans show a portion of the buildings will be set back 20 feet from the property line and will meet the 25-foot height limit and the rest of the building will be setback 40 feet from the transitional zone and therefore meet the building height requirements for the transitional zones.
16. Minimum building separation for Primary structures is 30 feet and for accessory structures it is 10 feet (BMC.17.30.100.C). The plans show the buildings being separated by a minimum of 30 feet and therefore complying with the code.
17. The applicable building setback requirements are as follows (BMC 17.30.100.B):
  - a. Front (E Rio Vista): 10 feet
  - b. Street side: 10 feet
  - c. Side (East and West property lines): Normally would be 5 feet, however the zone RD is on this side which then requires a 20-foot set back which the plans show.
  - d. Rear (South property line): Normally would be 10 feet, however the zone RD is on this side which then requires a 20-foot set back which the plans show.

The proposed project comply with the setback requirements.

18. 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 & 17.70.105.A). 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). Light fixtures are limited to a maximum height of 14 feet, a maximum illumination level of 5-foot candles, and a maximum spillover of 0.1-foot candles in areas adjoining an RD zone (the south, west, and east property lines). In order to demonstrate compliance with these requirements a

lighting plan and drawings or specifications from the lighting manufacturer should be provided to the Community Development Department for approval (condition “g”).

19. Improved right-of-way is required for access to all new developments. East Rio Vista is classified as a secondary arterial. Sidewalks along secondary arterials must be at least eight feet wide (BMC 12.28.130.K.2) and the existing sidewalk is currently only five feet wide. The portion of the sidewalk abutting the project site will need to be widened to eight feet and the plans do not show how wide the sidewalk will be. As a condition of approval, the plans must be revised to show the sidewalk along East Rio Vista widened to 8 feet (See condition “6”).
  
20. Pedestrian access is required from all adjoining streets and should be designed to provide a logical circulation system (BMC 17.85.120.A and 17.25.050). Sidewalks and pedestrian paths must be at least five feet in width (BMC 17.85.120.E.2). The plans show an adequate pedestrian path in most areas except the south end of the trash enclosure where the sidewalk abruptly ends but the plans do show the sidewalk will be 5 feet in width. As a condition of approval, the plans shall be revised to show the sidewalk that ends to the south of the trash enclosure will be connected to the street frontage sidewalk along East Rio Vista Avenue (See condition “6”).
  - Once the sidewalk that stops next to the south end of the trash is connected to the street sidewalk along East Rio Vista Avenue, there shall then be a marked cross walk where the accessible route crosses vehicular routes of travel as you enter the site. As a condition of approval, the plans shall be revised to show a marked crosswalk (See condition “6”).
  - “Pedestrian paths shall form a circulation system that minimizes conflicts between pedestrians and vehicle traffic and provides direct and convenient access to all buildings. For residential and industrial buildings, pedestrian paths shall connect the primary building entrances to adjacent streets and pedestrian access paths” (BMC.17.85.120.D) On the east side of building A, where the street sidewalk curves in, that shall be revised on the plans to be eliminated and the pedestrian path show on the plans by building A shall be connected straight North to the street sidewalk, see exhibit “B” for reference. (See condition “6”).
  
21. Parking for residential development must be provided as follows (BMC 17.85.060.A):
  - a. One- and two-bedrooms units: 1 space

- b. Units with three or more bedrooms: 2 spaces
- c. Developments within 1,320 feet of a transit stop are eligible for a 25 percent reduction in parking requirements (17.85.060.D).
- d. Residential accessory uses, such as the proposed community building and office, do not require separate parking.

Based on the unit count provided with the meeting materials, applying the transit access deduction would reduce the number of required parking spaces from 42 to 32. The plans show that there will be 54 parking spaces provided and therefore meet the code for parking.

- 22. New developments must also provide indoor and outdoor bicycle parking For bicycle parking there must be 1 spot for every 4 dwelling units (BMC.17.85.060.A-1). There are 42 units, a space per 4 dwelling units would mean that there must be 10.5 bicycle parking spaces. The plans show that there will be 11 bicycle spaces and therefore meet the code.
- 23. Telecommunications conduit and vaults must also be provided wherever excavations within the right-of-way occur and between the proposed dwellings and the street (BMC 12.28.095 and 17.20.060.G). Civil engineering plans must be submitted demonstrating compliance with these requirements (see condition “6”).
- 24. The project site is in the regulatory floodplain. A floodplain permit and floodplain habitat assessment is required for all development in the floodplain. A floodplain permit application and habitat assessment were provided demonstrating compliance with applicable floodplain regulations.
- 25. All new developments are required to connect to the sanitary sewer system (BMC 13.04.020). As a condition of approval civil plan and sewer details must be provided consistent with the requirements of BMC 13.04.040 (see condition “6”)

**SEPA Determination:**

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.

**SEPA MDNS Conditions:**

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. The applicant is in the process of receiving a NEPA. It is not yet complete and therefore the City has required the applicant to do a SEPA approval. The NEPA is anticipated to be completed by May 1, 2025. An environmental review is being conducted for this project under the National Environmental Policy Act (NEPA). Under WAC 197-11-610, agencies may use NEPA documents to satisfy SEPA requirements. The National Marine Fisheries Service (NMFS) and the Federal Emergency Management Agency (FEMA) are agencies with expertise is assessing, and appropriately mitigating the impacts of floodplain development on species listed under the Endangered Species Act (ESA). In order to ensure all floodplain habitat impacts are mitigated to a level of non-significance, all development activities shall comply with any conditions, recommendations, or management practices contained in the NEPA document(s) for this project. This requirement shall apply in addition to any other conditions or requirements imposed by this permit decision or by the Burlington Municipal Code.
3. The applicant shall provide the NEPA documentation to the City once the applicant has received it.

**SEPA Appeals:** This determination may be appealed using the appeal procedures applicable to the underlying permit decision.

**Permit Decision:**

The Community Development Department has reviewed the applicant’s proposal and determined that it can comply with applicable Burlington Municipal Code requirements provided the following conditions of approval are fully implemented. Therefore, the Community Development Department hereby approves land use permit application LUP 4-24 *subject to* the following conditions of approval:

**General:**

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 is October 10, 2024.
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. A grading permit is required prior to beginning any clearing, filling, excavation, building, construction, or other site development work. No building permit will be issued until a grading permit has been approved and issued.
6. No grading permit shall be issued until civil engineering plans have been submitted to and reviewed by the City Engineer for compliance with applicable stormwater, site development, and engineering requirements. The civil plans shall show all proposed and required site improvements, including, but not limited to, sanitary sewer, stormwater, parking, paving, sidewalks, and pedestrian paths. The civil plans submitted with the grading permit application must include the following specific information and revisions:
  - a. Fiber optic conduit and vaults shall be provided wherever street, sidewalk, alley, or ROW excavations are proposed and between adjoining public ROWs and the proposed building. Fiber optic conduits and vaults must comply with the applicable requirements identified in BMC 12.28.095.
  - b. Show that the sidewalk along East Rio Vista will be widened to 8 feet in width.
  - c. Show that the sidewalk to the east will be extended to go behind the trash enclosure and will be connected to the street sidewalk along East Rio Vista Avenue.

- d. A marked crosswalk shall be provided along the vehicular access where you drive into the site.
  - e. Plans shall be revised to show the pedestrian path next to building A be connected straight to the street sidewalk, and where it currently shows the connection will be revised to be taken out. Please refer to exhibit “B”.
  - f. Civil plans shall address sewer design criteria in Chapter 13.04 BMC and the attached comments from the City Sewer Supervisor. At a minimum, civil plans shall include trench details and the length and slope of side sewer lines.
7. No grading permit shall be approved or issued until a landscaping plan has been submitted and reviewed by the Community Development Department. The landscaping plan shall be consistent with all applicable landscaping code requirements and:
  - a. A landscaped buffer at least five feet wide shall be provided around the trash enclosure(s) and this buffer must be planted with small and medium sized shrubs. A physical screening of either a fence or wall of a minimum of 6 feet in height must be provided.
  - b. The plans shall show the dimensions of the street frontage landscaping strip of 10 feet in width.
  - c. The plans shall show the dimensions of the perimeter landscaping strip of 5 feet in width.
8. All the landscaping and landscape plantings shown on the approved landscaping plan shall be installed prior to approval of a final building permit or occupancy inspection. The “approved landscaping plan” shall be the landscaping plan signed by the Community Development Department.
9. All outdoor lighting and light fixtures shall be located, hooded, screened, and directed downwards so that the light source is not visible beyond the property boundaries or from a public right-of-way. A lighting plan showing the location of all outdoor lighting fixtures and manufacturers’ information and specifications for each light fixture shall be submitted with the building permit application. All exterior light fixtures shall be dark sky rated, limited to a maximum fixture height of 14 feet, a maximum illumination level of five-foot candles, and a maximum spillover at the south, west, and east property lines

of 0.1-foot candles. No building permit shall be issued unless the lighting plan clearly demonstrates compliance with this condition.

10. 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. The as-built drawings shall not be approved until all of the infrastructure, utilities, sidewalks, walkways, storm-water improvements, LID measures, and other civil improvements shown on the approved civil plans, or required by the conditions of this permit, have been completed and inspected by the City Engineer for consistency with the approved plans and compliance with applicable Burlington Municipal Code requirements.
11. The permit holder, and contractors employed by the permit holder, shall be responsible for complying with all applicable water quality and erosion control laws, regulations, and codes. Any erosion control or water quality measures prescribed by the Building Official, City Engineer, or Washington State Department of Ecology shall be promptly implemented.

Building Permit Conditions: No building permit shall be issued until the following conditions have been addressed.

12. Building permits shall be required for all buildings and shall include design details for the proposed trash enclosure.
13. Documentation showing full compliance with the Washington State Energy Code shall be provided, including information related to outdoor and freestanding light fixtures.
14. All requirements identified by the Burlington Fire Marshal shall be addressed.

Occupancy Requirements: No final occupancy or final building permit inspection shall be granted until the following conditions have been addressed.

15. 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.

16. All sidewalks, paths, crosswalks, and other pedestrian access improvements shown on the site plan or required by a condition of approval shall be shown on the civil engineering plans and shall be constructed or installed prior to final occupancy approval.
17. 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.
18. The trash enclosure screening shall be installed prior to final occupancy approval.
19. Civil engineering “as-built” drawings shall be submitted to, and approved by, the City Engineer.
20. Outdoor lighting shall be consistent with the approved outdoor lighting plan. The development shall be inspected by the Community Development Department to verify compliance with the approved plan.

**Appeals:**

This is a type II decision and 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 Planning Department.

Exhibits:

- A – Approved Preliminary Plans
- B – Marked Preliminary Plans
- C – Sewer Supervisor Comments