

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

2 Phil Olbrechts, Hearing Examiner

3

4 RE: In the Matter of the Application of 5 Anna Nelson, on behalf of Landed 6 Gentry Development, Inc. 7 For Approval of a Preliminary Plat	8 LUP 6-23 Gages Crossing Preliminary Plat DECISION UPON JUDICIAL REMAND
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10 WHEREAS, by Order dated September 18, 2024 the Skagit County Superior Court
11 remanded the Findings, Conclusions and Decision issued by the City of Burlington
12 Hearing Examiner on February 24, 2024 with directions for revision and correction,
and

13 WHEREAS, the Order prohibited any further public hearing on the Decision, NOW
14 THEREFORE

15 **DECISION**

16 The February 24, 2024 Findings, Conclusions and Decision issued by the Burlington
17 Hearing Examiner for the above-captioned matter is revised and corrected as required
18 in the Order Remanding with Instructions and Dismissing Petition issued by Skagit
19 County Superior Court on September 18, 2024, attached as Exhibit A. To the extent
that there are any findings of fact or conclusions of law in the February 24, 2024
Decision that conflict with or are inconsistent with the September 18, 2024 court order,
those provisions shall be disregarded, and the court order shall control.

20 Dated this 7th day of October 2024.

21 
22 Phil A. Olbrechts
23 City of Burlington Hearing Examiner

24 **APPEAL RIGHT AND VALUATION NOTICES**

25 This decision may be appealed to the Burlington City Council within fourteen days as
provide by BMC 14A.05.190C2, quoted as follows:

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Permit Decisions. Hearing examiner decisions on Type III project permit applications may be appealed to the city council by any party of record. Hearing examiner decisions may be appealed only if, within 14 calendar days after written notice of the decision is mailed, a written appeal is filed with the director.

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.



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SKAGIT COUNTY CLERK
SKAGIT COUNTY, WA

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**IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SKAGIT**

LANDED GENTRY DEVELOPMENT,
INC, a Washington Corporation;
GAGES CROSSING, LLC, a
Washington limited liability company,

No. 24-2-00548-29

Petitioners,

v.

~~PROPOSED~~

agreed

CITY OF BURLINGTON, a
Washington municipal corporation,

**ORDER REMANDING WITH
INSTRUCTIONS AND DISMISSING
PETITION**

Respondent.

23

The Court, having considered the papers and pleadings on file herein, and good cause appearing; hereby REMANDS this matter back to the City Hearing Examiner with instructions to amend its Decision consistent with this Order.

To the extent that there are any findings of fact or conclusions of law in the Decision that conflict with or are inconsistent with this Order, those provisions shall be disregarded, and this Order shall control;

The Hearing Examiner shall make the following revisions and corrections to the Decision within twenty (20) days of the date of this Order, noting that the below provisions of the Decision that are in strike-through should be removed from the Decision and underlined sections should be added to the Decision:

III. SUMMARY OF DECISION

The request for preliminary approval of a plat to subdivide a 13.36-acre property located at 900 South Pine Street into 89 residential

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EXHIBIT "A"

1 townhouse lots, with associated clearing, grading, stormwater and
2 utility improvements, and street improvements, is **DENIED**.
3 APPROVED with conditions. The proposal, including the preliminary
4 plat application, Shoreline Substantial Development Permit ("SSDP")
5 application, critical areas review application, and site plan review
6 application, complies with the requirements of the Burlington Municipal
7 Code ("BMC"). ~~does not comply with the requirements of the~~
8 ~~Burlington critical areas ordinance to provide an adequate buffer~~
9 ~~between the proposed development area and a fish and wildlife habitat~~
10 ~~conservation area, namely, the portion of Gages Slough that crosses~~
11 ~~the subject property near its south end.~~

12 1. The Hearing Examiner shall make the following additions to the **SUMMARY OF**
13 **RECORD:**

14 Hearing Examiner Open Record Hearing Date:

15 The Hearing Examiner held an open record hearing on the request on
16 January 18, 2024, using remote access technology.

17 Post-Hearing Briefing:

18 The Hearing Examiner held the hearing record open until February 20,
19 2024, to allow additional briefing regarding the City of Burlington
20 Habitat Critical Areas code.

21 Hearing Examiner Written Decision:

22 The Hearing Examiner issued its original Decision February 29, 2024.

23 Administrative Appeal:

24 The Applicant submitted a written statement of appeal dated March 13,
25 2024 to support the appeal of its application to City Council.

26 City Council Administrative Appeal Hearing Date:

27 The City Council voted to decline to consider the Applicant's appeal of
the Hearing Examiner's Decision pursuant to BMC 14A.05.190.C.2 on
May 9, 2024.

Judicial Appeal – Land Use Petition Act ("LUPA"):

Applicant submitted a Petition for Land Use Appeal Under Chapter
36.70C RCW on May 28, 2024, challenging the final decision from the
City. LUPA Appeal resolved by the Superior Court's Order Remanding
with Instructions.

1 2. The Hearing Examiner shall make the following additions to the **SUMMARY OF**
2 **RECORD**, as it pertains to the administrative appeal record to City Council:

The following exhibits were entered as part of the Administrative
Appeal Record to the City Council:

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EXHIBIT "A"

- 1 44. Hearing Examiner Decision dated February 29, 2024
2 45. Notice of Hearing Examiner Decision to Parties of Record
3 dated February 29, 2024
4 46. Applicant's Notice of Appeal to City Council dated March 13,
5 2024
6 47. Applicant's Proposed Revised and Corrected Findings and
7 Conclusions

8 The following additional exhibits, offered in Superior Court, are also
9 entered into the record:

- 10 48. Stipulation and Agreed Order to Remand with Instructions
11 49. Applicant's Shoreline, Wetland and Fish and Wildlife
12 Assessment, revised August 19, 2024

13 3. The Hearing Examiner shall remove Findings 19, 20, 21, and 22 of the Decision
14 under Critical Areas: Habitat Conservation Areas in their entirety and replace them with the
15 following Findings:

16 19. The Applicant's technical memorandum concurred that Gages
17 Slough, including Wetland A, is regulated as an HCA under this
18 definition. The BMC does not identify standard buffer widths for HCAs.
19 Instead, the buffer is calculated using the following Washington State
20 Department of Fish and Wildlife guidelines, adopted by BMC
21 14.15.380.B.: T. Rentz, A. Windrope, K. Folkerts, and J. Azerrad,
22 Riparian Ecosystems, Volume 2: Management Recommendations
23 (2020) and Habitat Program, Washington Department of Fish and
24 Wildlife, Olympia. In summary, these guidelines establish riparian
25 buffers for sites where there is a waterbody containing an active
26 channel and an Ordinary High Water Mark ("OHWM"), these buffers
27 are based on a particular location's "site potential tree height"
 ("SPTH"). Exhibit 42.

 20. In its post-hearing technical memorandum, the Applicant's
biologists also explained the limitations of the guidelines as applied to
Gages Slough. The Applicant's biologists suggest that pursuant to the
WDFW guidelines considering site-specific conditions, the existing
wetland buffers provide adequate protection. Moreover, the two
hundred thirty-five (235)-foot SPTH of the Douglas Fir was not an
appropriate buffer measurement in this instance, because Gages
Slough lacks an active channel and OHWM:

In summary, the proposed development has considered the
riparian buffer widths recommended based on the SPTH
associated with the site for both red alder and Douglas fir.
However, these SPTH recommendations were developed to
identify the riparian buffers for active channels. As Gages
slough is functionally disconnected from the Skagit River and

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EXHIBIT "A"

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therefore disconnected from an active channel. The riparian buffer widths recommended by the SPTH include both the "riparian zone" and the "zone of influence" adjacent to the active channel. However, as there is no active channel and the slough functions as a riparian zone itself, it should only require a buffer that accounts for the "zone of influence". This zone of influence is generally accounted for by the wetland buffer protections. As such, the existing wetland buffers appear to provide an adequate level of protection. Furthermore, the buffer restoration through planting of native trees, shrubs, and groundcover provided along the western portion of Gages Slough will provide a marked improvement over the existing active agricultural conditions. Exhibit 42.

4. The Hearing Examiner shall make the following revision to Finding 23 of the Decision:

City staff reached out to WDFW for guidance on the question of whether to apply its HCA buffer regulations to Gages Slough. On January 29, 2024, the City contacted WDFW using the email address WDFW has established for local government assistance requests. As of February 15, 2024, the City had not received a response from WDFW. Exhibit 41. On August 1, 2024, the City received a response from WDFW. Exhibit 48.

In its second post-hearing memo, City staff similarly determined that Gages Slough is an HCA, citing BMC 14.15.360.B.4 ("Habitat conservation areas are designated by definition in this title and are referenced as follows . . . Designated species and habitats of local importance including, but not limited to the Gages Slough, Burlington Hill, and Skagit River Corridor special management areas"). City staff also determined that Gages Slough is a stream "type S" water, such that the riparian buffers in BMC 14.15.380.B would apply, "but that the resulting buffer may be smaller, and no more restrictive, than the wetland buffer that has already been applied to the site." Exhibit 41.

5. The Hearing Examiner shall make the following additional Findings, following Finding 23.

24. A site assessment was conducted by Soundview Consultants LLC and the results were provided in Exhibits 17A, 17B, 19A and 42. The site assessments confirmed the findings of the City of Burlington's Shoreline Master Program ("SMP"), as approved by the Department of Ecology ("Ecology"), which states that the direct river connection between the Skagit River and Gages Slough was eliminated in 1899 with the construction of the Sterling Dam. Exhibits 17A, 17B, 19A and 42.

1 25. In its post-hearing memorandum, the City confirmed that
2 Gages Slough is functionally separated from the Skagit River both
3 upstream and downstream. Gages Slough does not share an
4 upstream connection to the Skagit River, and the downgradient
5 connection is controlled via pump. This also precludes fish from
6 entering Gages Slough. Exhibit 41.

7 26. City staff also identified the same SPTH-based buffering
8 methodology as the Applicant's biologist and noted that this
9 methodology replaced the previous fixed buffer widths for different
10 water types. City staff recommended that the permit Applicant's
11 environmental consultant evaluate the site and identify the appropriate
12 riparian habitat buffers based on site specific characteristics using the
13 WDFW guidance materials required by BMC 14.15.380.B. The City
14 further recommended adding a condition requiring the submittal and
15 approval of a revised habitat assessment, mitigation plan, and design
16 drawings prior to the approval of a grading permit or construction
17 permits. The City stated:

18 As the City understands this system, WDFW has replaced the
19 previous recommendations, employing fixed buffer widths for
20 different water types, with a "tree height potential" system that
21 uses site specific ecological factors to identify an appropriate
22 buffer width based on the height of the mature tree canopy
23 that would be expected to occur on a site under natural
24 conditions. The online mapping tool referenced above can be
25 used to identify the tree height potential for different sites.

26 For the site subject to the current permit review, the online
27 tool returns two different results. While most of the site
28 appears to have a tree height potential of one hundred five
29 (105) feet, another area of the site has a tree height potential
30 of two hundred thirty-five (235) feet (see figures 1 & 2). The
31 WDFW guidance (section 2.3.4 (c) page 26) includes specific
32 instructions for making site specific determinations in urban
33 areas or highly modified environments. Consistent with this
34 guidance and BMC 14.15.060, the City recommends that the
35 permit applicant's environmental consultant evaluate the site
36 and identify the appropriate riparian habitat buffers based on
37 site specific characteristics using the WDFW guidance
38 materials required by BMC 14.15.380.B. Plans and other
39 project documents should be amended to identify the location
40 of the relevant buffers and to address any applicable
41 mitigation requirements. Exhibit 41.

42 6. The Hearing Examiner shall remove Finding 24 of the Decision.

43 7. The Hearing Examiner shall add the Following Findings under a
44 new heading, "Shoreline Master Program":

45 ORDER TO REMAND WITH
46 INSTRUCTIONS AND DISMISS - 5

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1. Because the bored water line work is consistent with the definition of "development" in BMC 18.03.040 & RCW 90.58.030, a SSDP is required to ensure consistency with the regulatory requirements identified above (WAC 173-27-150(2)). Washington State Department of Ecology ("DOE") regulations state that an SSDP may only be granted when it can be shown that a proposed development is consistent with; (a) the policies and procedures of the Shoreline Management Act; (b) applicable DOE regulations; and (c) the City's Shoreline Master Program ("SMP") (WAC 173-27-150(1)). DOE regulations also permit the City to attach conditions to an SSDP. Exhibit 1, Staff Report, pages 14 and 15; Exhibit 19A.

2. In accordance with BMC 18.03.170, the City's SMP consists of both the goals and policies of the City's comprehensive plan applicable to shorelines, and the use and development regulations identified in Chapter 18 BMC. The project site has a shoreline environment designation of "Urban Conservancy" ("UC") (BMC 18.07.040.A.3.b). The proposed work involves the installation of an underground water line. Utilities, such as water lines, are permitted in the UC shoreline environment (BMC 18.16.010). Exhibit 1, Staff Report, page 15.

3. The SMP requires that pipelines be located to assure no net loss of shoreline ecological functions and, where feasible, outside the shoreline area, to cause minimum harm to the shoreline, and consistent with the SMP environment designation (BMC 18.16.110.B.2 & C.1). The proposed waterline will be installed using subsurface boring techniques. No surface disturbances or vegetation impacts will occur. The bore pits providing access to the pipeline will both be located outside the wetland and wetland buffer, and beyond the boundaries of SMA/SMP jurisdiction. Therefore, there will be no impacts to the shoreline environment. Exhibit 1, Staff Report, page 15; Exhibit 17B.

8. The Hearing Examiner shall make the following revisions to

Finding 34 of the Decision:

34. City staff noted that a landscaping plan is required for this project and must demonstrate compliance with the City's landscaping standards. *BMC 17.81.020; BMC 17.81.050*. A minimum of 15 percent of the site must be landscaped. *BMC 17.81.060.C*. Landscaping plans must either include a design for an automatic irrigation system or employ a draught tolerant landscaping plan. *BMC 17.81.060.D.2*. Street frontage landscaping, consisting of a strip at least ten feet wide planted with street trees at intervals of 30 feet, must be provided along all street frontages. *BMC 17.81.070.B.1*. Landscaping areas must be used, to the maximum extent possible, to treat, store, or infiltrate storm-water runoff. *BMC 17.81.060.E*. A "type IV" buffer is required between the proposed development and the adjacent BNSF right-of-way. A type IV buffer requires either (a) a masonry wall and a buffer 15 feet in width, or (b) a solid site-obscuring fence and a buffer 25 30

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EXHIBIT "A"

1 feet in width. Under both options a hedge must be established using
2 triangulated rows of evergreen trees planted at intervals of 15 feet,
3 combined with a mixture of shrubs. BMC 17.80.110.B.4. Exhibit 1,
4 Staff Report, page 9; Exhibit 40B, Corrections to Staff
5 Recommendation.

6 9. The Hearing Examiner shall make the following corrections to
7 Finding 40 of the Decision:

8 40. Applicant Representative Anna Nelson recommended using
9 the road nomenclature in Exhibit 20. She testified that the Applicant
10 had submitted a transportation analysis in Exhibit 30 that showed that
11 the road system will meet City standards for traffic. She testified that
12 the Applicant would provide transportation impact fee credits as
13 summarized in Exhibit 36.

14 Ms. Nelson testified that the PUD had capacity for water and sewer.
15 The requested shoreline permit was for a utility line to run under Gages
16 Slough. The Applicant would also provide upgrades to the City's
17 existing water and sewer systems. Ms. Nelson testified that the open
18 spaces would include mini-parks with recreational opportunities for
19 future residents.

20 Ms. Nelson brought up Exhibit 37, which identified a section of land
21 that the Applicant originally thought was part of the BNSF property but
22 was actually part of the Applicant's property. She cited Exhibit 38 to
23 show that she would provide a 25-foot buffer adjacent to the railway,
24 as required, according to Ms. Nelson, by City codestate law.

25 Ms. Nelson requested that the preliminary plat approval be for five
26 years as allowed by City code for preliminary plat approval, not two
27 years as recommended in the staff report. She also clarified that the
Applicant would dedicate the wetland tracts rather than provide
easements.

Ms. Nelson pointed out that the Applicant had updated its report, in
Exhibits 19A and 19B, to acknowledge that Wetland 1 is a Category II
wetland. She cited Exhibit 17BD to show that the Applicant plans to
replant the north portion of the wetland buffer. *Testimony of Anna
Nelson.*

10-. The Hearing Examiner shall make the following corrections to Finding 50, Staff

Recommendations:

50. City staff reviewed the application and recommended that the
proposed subdivision, shoreline substantial development permit,
critical areas review, and site plan review be approved, with conditions.
The Applicant did not object to any of the proposed conditions, as
corrected and clarified by City Staff at the hearing. Exhibit 1, Staff

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1 Report, pages 21 through 27; Testimony of Brad Johnson; Testimony
2 of Anna Nelson; Testimony of Brian Gentry; Exhibit 36; Exhibit 40B,
Corrections to Staff Recommendation.

3 11. The Hearing Examiner shall make the following additional
4 Findings in Post-Hearing Changes:

5 Following the hearing, on January 29, 2024 City staff e-mailed WDFW
6 for guidance and issued a memo regarding the applicability of FWHCA
7 regulations to Gages Slough. Exhibit B, Appendix H contained in
8 Exhibit 48. City staff continued to recommend approval with an
additional condition to provide WDFW further opportunity to comment
on a revised habitat assessment and mitigation plan. Exhibit 41.

9 12. The Hearing Examiner shall make the following additional Findings
after Post-Hearing Changes:

10 Changes Following Administrative and Judicial Appeals

11 On August 1, 2024, WDFW provided guidance around WDFW's
12 Riparian Management Recommendations ("RMR"). In his e-mail
13 correspondence to Anna Nelson, WDFW's Alexander Richard stated:

14 In reviewing Landed Gentry's proposed development project
15 along Gages Slough, WDFW was engaged to provide
16 guidance on when to utilize the RMR's Site Potential Tree
17 Height buffer guidance, and its applicability to the Gages
18 Slough system. In short, I concur with Soundview
19 Consultant's interpretation that Gages Slough is a wetland
20 disconnected from adjacent waterbodies and not a stream,
where SPTH buffers would be recommended under the RMR.
The proposal to restore functions on both sides of the slough,
and maintain a wetland buffer of one hundred fifty (150) feet
is intended to provide a net ecological gain. This appears to
be consistent with BMC 14.15.150 Critical area and buffer
mitigation requirements

21 ...

22 WDFW commends the City of Burlington for implementing the
23 Department's Best Available Science recommendations into
24 its municipal code for critical area regulations. Gages Slough
25 is a unique system, but it's classification as a wetland would
make it unsuitable for applying the SPTH buffers as
recommended in the RMR. I believe the 150 foot proposed
wetland buffer is adequate for protecting the critical area's
functions. Exhibit 48 – Exhibit A.

26 13. Under Conclusions, the Hearing Examiner shall revise revision to
27

1 "Criteria for Review" to "Criteria for Subdivision Review."

2
3 14. Under "Criteria for Subdivision Review," the Hearing Examiner
4 shall cite the following applicable code provisions for review:

5 Criteria for Site Plan Review

6 BMC 14A.05.160.C. provides that no land use permit application shall
7 be approved unless the proposal complies with all applicable
8 Burlington Municipal Code requirements.

9 BMC 14A.05.160.D. provides that conditions may be attached to a
10 land use permit if necessary to enforce requirements of Burlington
11 Municipal Code or ensure consistency with the Comprehensive Plan.

12 Criteria for Shoreline Substantial Development Permit

13 Washington State Department of Ecology ("DOE") regulations state
14 that an SSDP may only be granted when it can be shown that a
15 proposed development is consistent with; (a) the policies and
16 procedures of the SMA; (b) applicable DOE regulations; and (c) the
17 City's SMP (WAC 173-27-150(1)). DOE regulations also permit the
18 City to attach conditions to an SSDP.

19 15. The Hearing Examiner shall make the following revisions to
20 Conclusion 1 of Conclusions Based on Findings:

21 The proposal complies with ~~most of the~~ all applicable municipal code
22 requirements, ~~excluding the critical areas ordinance~~. The City Council
23 Hearing Examiner agrees with ~~the majority of~~ City staff's analysis. The
24 City provided reasonable notice of the proposal. Numerous public
25 comments were received. The City Department of Community
26 Development acted as lead agency, reviewing the proposal under
27 SEPA, and determined that, with mitigation measures, the proposal
would not have any probable significant adverse environmental
impacts. The MDNS was not appealed.

The MDNS would require the Applicant to provide numerous onsite
and off-site improvements aimed at protecting pedestrian safety. The
prohibition of turns onto East Sharon Avenue was one of the MDNS
conditions, and a significant source of dismay to the neighbors who
use East Sharon Avenue to access their own homes. Following the
hearing, the City determined that the prohibition of turns onto East
Sharon Avenue could be waived, thereby alleviating what the Hearing
Examiner concludes would be the single largest impact this proposal
would impose on its neighbors.

The issues relating to traffic and parking appear to be adequately

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1 addressed through the proposed conditions of approval and the site
2 design itself, which exceeds minimum parking requirements. The
3 Hearing Examiner is sympathetic to the argument that this subdivision
4 would change the existing neighborhood character, which is rural
5 residential and agricultural, but the Hearing Examiner accepts the
6 analysis of Brad Johnson that the City intentionally sought, through its
7 Comprehensive Plan, to focus development in this area, as the city
8 has grown up around what was once farmland. Farming activity has
9 ceased on the property, so the proposed used is not inconsistent with
10 current uses.

11 The Hearing Examiner is satisfied that the proposed stormwater
12 system, as described by Gary Sharnbroich, not only meets but
13 exceeds the standards required of it. It appears capable of handling
14 not only expected flooding conditions, but flooding conditions even
15 greater than those expected.

16 The Hearing Examiner agreed with City staff's analysis with regard to
17 lot size, lot coverage, impervious surface coverage, setbacks, access,
18 density, open space, building length, design review, off-site
19 improvements, schools, pedestrian routes, utilities, and services,
20 including the recommended conditions of approval related thereto. The
21 Hearing Examiner agrees with City staff that more information is
22 required to be depicted on site plans or other documents regarding the
23 landscaping, lighting, garbage and recycling area, and utility
24 easements. There is no reason to suppose the required standards
25 cannot be met, however, so it would be appropriate to condition
26 approval on meeting the standards.

27 The conclusions described above are also sufficient to conclude that
the proposed subdivision would comply with RCW 58.17.110(2)(a), in
that the subdivision makes adequate provision for public health, safety,
and general welfare and for such open spaces, drainage ways, streets
or roads, alleys, other public ways, transit stops, potable water
supplies, sanitary wastes, parks and recreation, playgrounds, schools
and schoolgrounds, and all other relevant facts, including sidewalks
and other planning features, that assure safe walking conditions for
students who walk to and from school. Findings 1-524.

16. The Hearing Examiner shall make the following revisions to
Conclusion 2 of Conclusions Based on Findings:

2. ~~The proposal does not comply with the critical areas ordinance and Shoreline Master Program, because it does not provide the required 235-foot buffer around Wetland A, a fish and wildlife habitat conservation area.~~ The Hearing Examiner concludes that the proposal is compliant with most, but not all, of the critical areas ordinance. The Hearing Examiner accepts the typing and delineation of Wetland A and Wetland 1. The Applicant's post-hearing memorandum, Exhibit 42, depicted the 300-foot buffer surrounding the

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1 off-site Wetland 1. Accommodating the 300-foot buffer would not
2 require any changes to the proposal. The evidence supports a
3 conclusion that Wetland A, the onsite wetland, is properly typed as a
4 Category III wetland, with a 150-foot standard buffer. The Skagit River
5 System Cooperative, which raised the possibility that Wetland A could
6 also be a Category II wetland, did not respond to the Applicant's most
7 recent typing of Wetland A. By a preponderance of the evidence,
8 therefore, the Hearing Examiner concludes it is a Category III wetland.

9
10 The Hearing Examiner also accepts the Applicant and City's post-
11 hearing analyses, in Exhibits 41 and 42, that Gages Slough, while it is
12 a regulated waterbody under the Shoreline Management Act, does not
13 benefit from a 200-foot shoreline buffer as a "shoreland" under RCW
14 90.58.030(2)(d). Gages Slough is properly characterized as a wetland
15 "associated" to the Skagit River. See RCW 90.58.030(2)(d)
16 (distinguishing regulated waterbodies that have a 200-foot shoreland
17 from "all wetlands and river deltas associated with the streams, lakes,
18 and tidal waters which are subject to the provisions of this chapter").
19 The City notes, in its post-hearing memo, that the City could have
20 provided additional buffering for Gages Slough as an associated
21 wetland but explicitly declined to do so in the City's Shoreline Master
22 Program. Therefore, the Hearing Examiner concludes that a 200-foot
23 buffer around Wetland A is not a requirement of the Shoreline
24 Management Act.

25
26 In addition to being a wetland, Wetland A is also a fish and wildlife
27 habitat conservation area (HCA), as the City and Applicant each
acknowledged in their post-hearing memos. Gages Slough is defined
as such in the code, and no party disputes that characterization as it
applies to Wetland A. As an HCA, Wetland A is subject to a buffer to
be determined according to the WDFW-endorsed methodology set
forth in BMC 14.15.380.B. The City and the Applicant, in attempting to
applying that methodology, each determined that the appropriate
standard buffer would be 235 feet, based on the site-potential tree
height ("SPTH") for a Douglas fir at the location of Wetland A could be
two hundred thirty-five (235) feet or less based on site-specific
conditions. However, the Applicant acknowledged such a large buffer
would not be appropriate based on the site-specific conditions,
because Gages Slough lacks an active channel and thus an Ordinary
High Water Mark ("OHWM"). Instead, the proper buffer would be
The only buffer provided, however, is the 150-foot standard buffer for
Wetland A as a Category III wetland. Findings 1-55.

The City Code no longer uses standard dimensional fifty (50) to two
hundred (200)-foot riparian buffers. Instead, the City recently adopted
a new Code that incorporates by reference the WDFW Guidelines.
Based on site-specific conditions shown in the Applicant's site
assessment and confirmed by the City and WDFW, Gages Slough is
functionally separated from the Skagit River both upstream and
downstream. Gages Slough does not share an upstream connection
to the Skagit River, and the downgradient connection is controlled via

1 pump. Accordingly, Gages Slough does not contain an active channel.
2 The presence of an active channel is critical to the riparian buffer
3 delineation process outlined by WDFW. Because Gages Slough lacks
4 an active channel and is not a stream, the methodology outlined in
5 WDFW Guidelines cannot be used to determine the appropriate buffer,
6 as explained by WDFW's site-specific e-mail guidance from August 1,
7 2024. The Applicant found, and the City and WDFW agreed, that due
8 to site-specific conditions, resulting buffer may be smaller, and no
9 more restrictive, than the wetland buffer that has already been applied
10 to the site. As explained by the Applicant's biologist, and recently
11 concurred to by WDFW, the one hundred-fifty (150) foot wetland buffer
12 provides an adequate level of protection. Therefore, the Hearing
13 Examiner concludes that the one hundred fifty (150) foot wetland
14 buffer is the appropriate HCA buffer for Gages Slough.

9 The critical areas ordinance does provide a process to reduce the
10 standard buffer of an HCA. The process is as follows (with emphasis
11 added in bold):

12 ~~Once buffers are established, they shall not be altered except as~~
13 ~~allowed below. Riparian buffer not currently meeting the minimum~~
14 ~~standards shall be restored; provided, that such restoration does not~~
15 ~~conflict with other provisions of this chapter. In implementing buffer~~
16 ~~widths other than the standard riparian buffers identified above, the~~
17 ~~director shall provide opportunity for review and comment from~~
18 ~~appropriate federal, state or tribal natural resource agencies to~~
19 ~~ensure the use of best available science. These comments shall be~~
20 ~~included in the public record along with the basis and rationale for~~
21 ~~requirement or approval of any such nonstandard buffers.~~

22 1. ~~Increasing Buffer Widths. The city may increase the standard~~
23 ~~buffer widths on a case-by-case basis, or to establish nonriparian~~
24 ~~buffer widths, when such buffers are necessary to protect priority fish~~
25 ~~or wildlife (e.g., great blue heron nesting colonies, osprey or cavity~~
26 ~~nesting ducks) using the HCA. This determination shall be supported~~
27 ~~by appropriate documentation from the Departments of Ecology and~~
~~Fish and Wildlife, showing that the increased buffer width is reasonably~~
~~related to the protection of the fish and/or wildlife using the HCA.~~
~~Decreasing Buffer Widths.~~

28 2. ~~Decreasing standard buffers will be allowed only if the~~
29 ~~applicant demonstrates that all of the following criteria are met:~~
30 a. ~~A decrease is necessary to accomplish the purposes of the proposal~~
31 ~~and no reasonable alternative is available; and~~
32 b. ~~Decreasing width will not adversely affect the fish and wildlife~~
33 ~~habitat functions and values; and~~
34 c. ~~If a portion of a buffer is to be reduced, the remaining buffer area~~
35 ~~will be enhanced, using native vegetation, artificial habitat features,~~
36 ~~vegetative screening and/or barrier fencing as appropriate to improve~~
37 ~~the functional attributes of the buffer and to provide equivalent or better~~
38 ~~protection for fish and wildlife habitat functions and values; and~~
39 d. ~~The buffer width shall not be reduced below 25 percent of the~~
40 ~~standard buffer width unless no other feasible options exist and that~~
41 ~~no net loss of HCA riparian functional values will result, based on a~~

1 functional assessment provided by the applicant utilizing a
2 methodology approved by the city.
3 BMC 14.15.380.B.

4 The Hearing Examiner concludes that the above-cited procedure for
5 reducing the standard width of an HCA buffer has not been followed
6 here. First, the proposed reduction of the buffer from the standard 235
7 feet to the proposed 150 feet was not submitted to "appropriate federal,
8 state or tribal natural resource agencies" as required by BMC
9 14.15.380.B. At most, according to the City's memo, the City reached
10 out to WDFW by email on January 29, 2024, to ask about the
11 applicability of the HCA buffer in BMC 14.15.380.B. WDFW never
12 responded. The Hearing Examiner does not agree that WDFW is the
13 only "appropriate" agency to ask. Mr. Johnson agreed at the hearing
14 to reach out to both the Department of Ecology and WDFW, not just
15 WDFW. Ecology is an appropriate agency to contact not only because
16 of its general subject-matter expertise with regard to wetlands, waters,
17 and habitat, but also because Ecology is identified by name in BMC
18 14.15.380.B.1 as one of the agencies to be contacted in the case of
19 expanding an HCA buffer. Granted, the proposal here is to reduce an
20 HCA buffer, but Ecology should still have been consulted, given the
21 importance of Gages Slough as compared to a more run-of-the-mill
22 HCA. In addition, the record does not show any attempt to obtain
23 feedback on the proposed HCA reduction from federal or tribal
24 agencies, as required by BMC 14.15.380.B. The notice these
25 agencies received of the project only identified Wetland A as a
26 Category III wetland with a proposed standard buffer. The notice did
27 not identify Wetland A as an HCA with a proposed reduced buffer,
because the characterization of Wetland A as an HCA only arose
following the hearing, after public notice was complete. The agencies'
silence with regard to a proposal involving a standard wetland buffer
cannot be taken as assent to a proposal involving a reduced HCA
buffer, because the HCA is subject to a higher level of protection than
the wetland. In addition, the City did not solicit the feedback of the
Skagit River System Cooperative (SRSC), a tribal natural resources
contractor for several tribes, even though Mr. Johnson characterized
SRSC as "experts" when it came to Gages Slough. These recognized
tribal experts should have been asked to review a proposed reduction
in the HCA buffer—not just the proposed standard buffer of a wetland.

Besides this procedural defect in failing to solicit comments from
appropriate agencies, the Hearing Examiner is not satisfied that the
proposed reduction complies with criteria in BMC 14.15.380.B.2.a and
.B.2.b. Under criterion BMC 14.15.380.B.2.a, the reduction may only
be approved if "no reasonable alternative is available." The Applicant's
posthearing memo, in which the Applicant acknowledges for the first
time that an HCA buffer is required under the code, does not even
attempt to argue that there is no reasonable alternative available
except to reduce the buffer. It appears to the Hearing Examiner that a
reasonable alternative is available: retain the buffer and develop fewer
units, or smaller units, or units located in other parts of the project. The

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EXHIBIT "A"

1 Applicant's decision to develop 89 units was not driven by any kind of
2 code requirement, such as a minimum density requirement.
3 Therefore, it is not unreasonable to reduce the number of units, or
4 otherwise reconfigure the units, if that is what is necessary to
accommodate the buffer. It is not the case that a 235-foot buffer would
preclude all reasonable development of the property.

5 In addition, the Hearing Examiner is not satisfied that criterion BMC
6 14.15.380.B.2.b is met. That criterion requires a finding that
7 "decreasing width [of the buffer] will not adversely affect the fish and
8 wildlife habitat functions and values." The Applicant's posthearing
9 analysis on this point compares the proposed 150-foot buffer against
10 existing conditions. Not surprisingly, given the former agricultural use
11 of the subject property, the Applicant determines that a 150-foot buffer,
12 with associated restoration plan, would be preferable to existing
13 conditions. But the Applicant is making the wrong comparison. The
14 correct comparison, under BMC 14.15.380.B.2.b, would be to compare
15 the proposed 150-foot buffer against the standard 235-foot buffer.
16 Only then could a determination be made addressing whether
17 reducing the buffer would still protect fish and wildlife habitat functions
18 and values. That analysis is missing.

19 Because the Hearing Examiner cannot conclude that the proposal
20 meets the requirements in BMC 14.15.380.B for the reduction of an
21 HCA buffer, the Hearing Examiner cannot conclude that the proposal
22 complies with all sections of the municipal code. Nor does this appear
23 to be the kind of relatively minor issue that could be rectified through
24 conditioning. The Hearing Examiner is unwilling to write a condition
25 that approves the subdivision subject to a recommendation by
26 appropriate state, federal, and tribal agencies that the HCA buffer may
27 be reduced, because such a condition could place undue pressure on
those agencies not to rock the boat of an already approved
subdivision. The agencies should be given a chance to comment on
a proposal, not on a land use decision that has already been made.
For the same reason, it would not be appropriate to approve the
subdivision contingent on a finding by the Applicant's biologist that
reducing the HCA will not adversely affect habitat. Again, such a
condition would place an undue pressure on the biologist to affirm a
decision that has already been made rather than provide an objective
analysis of the facts prior to a decision being made. It would also
deprive the Hearing Examiner of the opportunity to establish further
conditions of approval related to a buffer reduction, should those
conditions prove necessary and appropriate.

Nor is the Hearing Examiner willing to approve the subdivision
contingent on a revised site plan that accommodates a 235-foot HCA
buffer around Wetland A. Unlike the case of Wetland 1, where the
300-foot Category II wetland buffer, originally missing from the site
plans, could be added to the site plans without affecting the proposed
development, the addition of a 235-foot buffer for Wetland A would, in
the words of the Applicant's post-hearing memo, "effectively encumber

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EXHIBIT "A"

1 nearly the entire southern parcel." The southern parcel is home to
2 multiple dwelling units, part of an access road, a stormwater tract, and
3 an open space tract. A buffer across this parcel cannot easily be
4 accommodated without major changes to the proposed plat. This is
5 too large an issue to be accommodated through conditioning.
6 Therefore, because the proposal does not comply with the critical
7 areas ordinance and cannot be brought into compliance through
8 conditioning, the Hearing Examiner concludes that it must be denied,
9 per BMC 16.10.080.B.3. The failure to comply with the critical areas
10 ordinance is also grounds to deny the proposal under RCW
11 58.17.110(2)(b), because it is not in the public interest to approve a
12 subdivision that does not comply with the local critical areas code.
13 Findings 5; 14-29; 39-50.

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17. The Hearing Examiner shall make the following revisions to
Conclusion 3 of Conclusions Based on Findings:

1. The Hearing Examiner will separate the shoreline substantial development permit application and site plan review application comply with the municipal code requirements and will not rule on them here. The shoreline permit for the bored water line and the site plan review are both integral parts of the overall project. The Hearing Examiner Consistent with BMC 14A.05.060, which allows consolidating all applications under the higher classification application (i.e., preliminary plat), the Hearing Examiner is the decision maker for all requested permits.

In accordance with BMC 18.03.170, the City's SMP consists of both the goals and policies of the City's comprehensive plan applicable to shorelines, and the use and development regulations identified in Chapter 18 BMC. The project site has a shoreline environment designation of "Urban Conservancy" (UC) (BMC 18.07.040.A.3.b.). The proposed work involves the installation of an underground water line. Utilities, such as water lines, are permitted in the UC shoreline environment (BMC 18.16.010).

The SMP requires that pipelines be located to assure no net loss of shoreline ecological functions, cause minimum harm to the shoreline, and be located outside the shoreline area where feasible, and shall be consistent with the SMP environment designation (BMC 18.16.110.B.2 and C.1). The proposed waterline will be installed using subsurface boring techniques. No surface disturbances or vegetation impacts will occur for the water line. The bore pits providing access to the water line will both be located outside the wetland, and beyond the boundaries of SMA/SMP jurisdiction. Therefore, there will be no impacts to the shoreline environment. Finding 31-34. As such, the Shoreline Substantial Development permit is granted.

The conclusions described above are also sufficient to conclude that

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1 the proposed site plan review application complies with the site plan
2 review approval criteria found in BMC 14A.05.160C. Findings 1-55.

3 believes it would only lead to procedural confusion if he were to issue
4 a decision approving either of these applications while at the same
5 time denying the preliminary plat. Nevertheless, the Hearing Examiner
6 will not deny these applications because it is likely they could both
7 have been approved if the preliminary plat had been approved. BMC
8 14A.05.060 provides that "Projects requiring more than one type of
9 decision should, whenever possible, be consolidated under the higher
10 classification." Here, where the central component of the project is the
11 preliminary plat, which is hereby denied, it no longer makes sense to
12 consolidate the other applications into the same hearing. Approval of
13 the shoreline permit would result in a water line to nowhere, a clearly
14 unreasonable outcome, while approval of the site plan would result in
15 a site plan that could not reasonably be built, because there would be
16 no lots. Therefore, the Hearing Examiner will separate the shoreline
17 permit application and site plan review application from this preliminary
18 plat decision, and will not rule on either of these permit applications,
19 and will leave it to the Applicant whether to pursue these permit
20 applications on a separate track. Should the Applicant decide to
21 abandon these applications in the wake of this decision, the Hearing
22 Examiner expects the City to refund any application fees associated
23 with the abandoned applications. Finding 2.

14 18. The Hearing Examiner shall make the following revisions to the
15 Decision:

16 Based upon the preceding findings and conclusions, the request to
17 subdivide a 13.36-acre property located at 900 South Pine Street into
18 89 residential townhouse lots, with associated clearing, grading,
19 stormwater and utility improvements, and street improvements, is
20 DENIED APPROVED subject to City staff recommended conditions of
21 approval.

19 19. The Hearing Examiner shall include the following Conditions of
20 Approval:

21 The following are corrected and revised General Conditions of
22 approval:

23 1. This approval shall not be construed to authorize any
24 development or site modifications beyond those described in the
25 application and shown on the approved plans. The approved plans
26 shall be the plans and other project documents attached to, or
27 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

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1 and other project documents attached to, or referenced in, this
2 decision and any amendments or minor modifications thereto. Minor
3 modifications include, but are not limited to, those necessary to
4 implement any changes requested by the Building Official, Fire
5 Marshall, or City Engineer are permitted when necessary to ensure
6 compliance with established regulatory requirements.

7 3. This approval shall expire five (5) years from the date of
8 approval. The date of approval for this decision shall be the date the
9 Hearing Examiner's decision is signed. A final plat shall be submitted
10 to the City of Burlington prior to the expiration of this approval.

11 4. This permit does not authorize the location, design,
12 construction or installation of any signs. No signs may be installed
13 unless authorized by a sign permit.

14 5. The property owner, developer, and all contractors shall be
15 responsible for complying with all applicable laws and regulations
16 pertaining to erosion control and water quality, including obtaining a
17 Washington State Department of Ecology Construction Storm- Water
18 General Permit. Any additional erosion control or construction
19 management practices prescribed by the City Engineer or Building
20 Official shall be immediately implemented.

21 Grading Permit and Site Development:

22 6. A grading permit is required prior to beginning any clearing,
23 filling, excavation, building, construction, or other site development
24 work.

25 7. A demolition permit is required prior to demolishing any
26 building or structure. No grading permit shall be issued until the
27 approval has been obtained from the Northwest Clean Air Agency.

8. Prior to the issuance of a grading permit civil engineering plans
shall be submitted to, and reviewed by, the City Engineer for
compliance with applicable stormwater, site development, and
engineering requirements. A final stormwater plan shall be included
with the civil plans and the plans shall include LID measures. 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.

b. Existing conditions, construction entrance, demolition
and TESC plans.

c. Details sheet depicting ADA compliant ramps, aprons,
and sidewalks.

d. Waterline plan and profile.

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e. Sanitary sewer plan and profile.

f. Site grading and drainage plan.

g. Waterline specifications.

h. Fiber optic conduit and vaults along all street frontages, connecting to any adjacent fiber optic conduit and vaults, and connecting to each building.

i. Pedestrian access paths and crosswalks consistent with the SEPA MDNS conditions.

j. Plans, cross section drawings, signage, and striping plans for the proposed private streets demonstrating compliance with the alternative private street standards in BMC 17.85.150. Specifically, amended street plans shall be included that:

i. Illustrate the use of contrasting paving materials to delineate pedestrian paths along Exhibit 20 tracts "E", "F", and "G". Consistent with finding "36" and applicable code requirements, these paths may be flush with the road surface and included within the proposed road width.

ii. Signs shall be posted at each entrance to the private street system advising "shared street system, yield to pedestrians and cyclists - drive slowly." The precise format and language of the required signs shall be approved by the City Engineer.

iii. Contrasting pavement types, surfaces, paint, or pavement markers shall be used to delineate parking lanes.

iv. Exhibit 30 Tract "J" shall be extended to abut the northern boundary of the site and the street and sidewalk shall be stubbed out to the northern site boundary.

k. Any fire access requirements identified by Burlington Fire Marshal.

l. Temporary construction fencing identifying the wetland buffer edge. No clearing, grading, development, or ground disturbing activities may take place until this fencing is installed.

9. No grading permit shall be approved or issued until a revised habitat assessment, mitigation plan and design drawings have been submitted to, and approved by, the Community Development Department. The revised habitat assessment and mitigation shall be

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routed to WDFW to provide WDFW the opportunity to comment.

10. 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 the following:

a. The landscaping plan shall be prepared by a landscape architect licensed in the State of Washington.

b. The landscaping plan shall demonstrate compliance with all applicable landscaping code requirements including but not limited to the requirements of this permit.

c. Street trees shall be provided at intervals of 30 feet or less along all street frontages. The landscaping plans shall, at a minimum, be amended to include additional street trees meeting this requirement along the west side of tract "J" and along both sides of tract "J" to its southernmost extension at lots "83 and "84".

d. If a draught tolerant landscaping plan is used in place of a permanent irrigation system, the landscape architect shall prepare a temporary irrigation and monitoring plan to ensure the landscaping is fully established before eth temporary irrigation system is removed. Any dead, dying, or damaged landscaping shall be removed and replaced. The landscape architect shall submit a monitoring report to the City one year after the completion of the landscaping work verifying the landscaping is fully established. As an alternative to this condition, a permanent landscape irrigation plan may be submitted.

11. Details shall be provided, either on the civil plans, or the landscaping plans, for an open rail fence along the outer edge of the wetland buffer.

12. No grading permit shall be issued or approved until a revised outdoor lighting plan has been submitted and approved. The revised lighting plan shall be consistent with all applicable code requirements and shall reflect the following changes:

a. Manufacture's specifications shall be provided for each proposed outdoor lighting fixture type. Documentation shall be provided for each lighting fixture demonstrating that all proposed outdoor lighting fixtures are full-cutoff designs and dark sky rated.

b. All exterior lighting shall be directed downwards and fully hooded, screened, or optically focused.

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c. The lighting plan shall show light levels and spill over for the entire site including the stormwater pond and wetland tracts to the south. Spillover into the wetland protection tracts shall not exceed 0.1 foot-candles.

d. Freestanding light fixtures shall be limited to a maximum height of fourteen (14) feet.

e. Documentation shall be provided demonstrating compliance with applicable Washington State Energy Code requirements.

Final Plat Requirements

13. A final plat shall be submitted within five (5) years of this approval. The final plat shall be consistent with the requirements for a final plat in Title 16 BMC and Chapter 58.17 RCW.

14. Restrictions, dedications, easements, and other plat notes shall be included on the face of the final plat. At a minimum, the following shall be included:

a. Notes shall be included identifying the purpose of each tract and limiting development consistent with the intended purpose of each tract.

b. An access and utility easement shall encompass the road system, including sidewalks and pedestrian paths.

c. Building setback restrictions.

d. Lot and block numbers shall be included.

e. Building and impervious surface coverage limits for each lot.

f. All stormwater infrastructure, including LID features and ponds, shall be included in an easement granting the City of Burlington access for the purpose of inspection, maintenance, repair, and replacement.

g. All sewer infrastructure shall be included in an easement granting the City of Burlington access for the purpose of inspection, maintenance, repair, and replacement.

h. A conservation easement shall be granted to the City of Burlington for the tracts containing wetlands or wetland buffers. The conservation easement shall prohibit all development, clearing, grading, dumping, filling, and the removal of native vegetation. The City of Burlington shall also be granted access to the tracts containing the wetland and wetland buffer for the

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purposes of monitoring, maintenance, and restoration.

i. A note shall be included specifying that the City of Burlington has no responsibility for maintaining or repairing private roads.

j. Plat language shall be consistent with all applicable Burlington Municipal Code requirements, laws, and regulations, including but not limited to Title 16 BMC and Chapter 58.17 RCW. All plat language shall be reviewed and approved by the Community Development Department prior to approval. If language is specified by the Community Development Department, the specified language shall be used.

k. The final plat shall be amended for consistency with the final approved civil plans and the conditions of this permit.

15. No final plat approval shall be granted until:

a. Final civil engineering as built drawings have been submitted to the City Engineer for approval. No final as built drawings shall be approved until all site improvements, utilities, infrastructure, sidewalks, traffic calming measures, and signage required by the conditions of this decision or Burlington Municipal Code have been completed and inspected by City Engineer.

b. A private road maintenance agreement shall be submitted to the City Engineer for review and approval. Once approved, the road maintenance agreement shall be recorded with the Skagit County Auditor's office.

c. Lot corners, monumentation, and other survey requirements shall be fully completed consistent with the requirements of Title 16 BMC, Chapter 58.17 RCW, and other applicable laws and regulations. The City Engineer shall inspect the site and verify compliance with applicable survey and monumentation requirements.

d. A wetland monitoring plan shall be submitted to the Community Development department for review and approval.

e. All wetland mitigation activities, plantings, and other requirements shall be fully addressed. Wetland mitigation requirements shall, at a minimum, include:

i. The wetland mitigation plantings and mitigation activities identified in the approved final approved mitigation plan shall be completed and inspected by the Community Development Department.

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ii. Open rail fencing, consistent with the design shown on the approved plans and the conditions of this permit, shall be installed along the buffer edge, or where applicable, the outer edge of the protective tract including the wetland and wetland buffer.

iii. In addition to any mitigation planting work identified in the mitigation plan, all remaining undeveloped areas of the wetland buffer north of Gages Slough shall be completely replanted with suitable native species.

iv. A conservation easement encompassing all portions of the enhanced wetland buffer located on the applicant's property shall be conveyed to the City through a dedication shown on the face of the final plat.

v. Enamel coated metal signs with the following language shall be installed at intervals of 50 feet around the perimeter of the proposed wetland buffer:

Protected Wetland Area
No Dumping – Do Not Disturb
Thank you!

Building and Occupancy Conditions:

16. No building permits shall be issued until a final plat has been recorded.

17. Any group of townhouse dwellings including more than four units shall be designed by a licensed architect and shall comply with the design requirements in BMC 17.20.080. The revised plans shall include details for consolidated waste collection points. The building plans submitted for any such group of townhouse units shall be signed and stamped by a licensed architect.

18. The design or floor plan for unit 83 shall be revised so the entrance faces a public or private street.

19. No final occupancy or final building permit inspections shall be approved for any residential unit until documentation has been provided showing the finished floor elevations of the unit is one foot or more above the base flood elevation. This documentation can be provided in the form of a letter from a licensed surveyor. This is a City of Burlington requirement and not a requirement of the National Flood Insurance Program. Therefore, formal FEMA flood elevation certificates are not required.

20. All fire and life safety requirements identified by the Building

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Official and Fire Marshal shall be fully addressed.

20. Pursuant to RCW 36.70C.140, the Court may remand for further proceedings on terms "it finds necessary to preserve the interests of the parties and the public, pending further proceedings or action by the local jurisdiction." In this case, because the parties already conducted a robust open record hearing and closed record appeal hearing, no additional public hearing shall be held on this matter.

21. This action is hereby dismissed without costs or fees to either party.

DONE this 18 day of Sept., 2024.



JUDGE/COMMISSIONER

Presented By:

CSD ATTORNEYS AT LAW P.S.



Timothy D. Schermetzler, WSBA #49737
Megan D. Holmes, WSBA #61251
Attorneys for Petitioner

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