



PLANNING & PERMIT CENTER

Phone: (360) 755-9717

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Land Use Permit Application

Application Type *(check all that apply)*

Permit Number(s): **PLAN 24-0027**

- Plan Review
- Conditional Use Permit
- Boundary Line Adjustment
- Temporary Use Permit
- Sign Permit
- Preliminary Land Division
- Final Land Division
- Address Assignment
- SEPA Review

- Grading/Site Development Permit **LUP 13-24**
- Critical Areas Review
- Flood Development Permit
- Variance
- Shoreline Permit
- Accessory Dwelling Unit
- Zoning Map Amendment
- Zoning Text Amendment
- Appeal

Property Information

Address 900 S Pine St Burlington WA 98233		
Parcel Number(s) P72179, P133596, P133597, P72178, P72181, P62772 and P62771		
Public Sewer: <input type="checkbox"/> Yes <input type="checkbox"/> No	Public Water: <input type="checkbox"/> Yes <input type="checkbox"/> No	Lot/Site Area

Contacts

Applicant

Name Kiera Wright	Company
Address 024 S Pine St Burlington, WA 98233	
Phone (313) 727-8425	Email kierasue@aol.com
Primary Contact: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

Owner

Name Gages Crossing LLC	Company
Address 900 S Pine St Burlington WA 98233	
Phone	Email
Primary Contact: <input type="checkbox"/> Yes <input type="checkbox"/> No	

Project Information

Project description: <i>Appeal to City Re LUP 6-23 Hearing Examiner decision 10/18/24</i>	
Is a new building being constructed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If yes: Footprint (sq. ft.): _____ Total floor area (sq. ft.): _____
Does this project involve an addition to an existing building? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If yes: Existing floor area (sq. ft.): _____ Proposed floor area (sq. ft.): _____
Is a building, or a portion of a building, being demolished? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If yes: Footprint of demo (sq. ft.): _____

Signature and Authorization

I certify under penalty of perjury that I am the owner or authorized agent of the property subject to this application and the information furnished by me is true and correct to the best of my knowledge. I certify that all laws and regulatory requirements applicable to the work authorized by the permit shall be met. I grant permission for City staff and the City's authorized agents to enter property and areas covered by this permit for the sole purpose of inspecting work completed under this permit application and enforcing provisions related to the issuance or approval of the permit. I understand that this is an application, not an authorization or approval.

[Signature] 10/30/24
 Owner or authorized agent Date

Staff Information

Date received: <i>10-30-2024</i>	Date complete:	Date Issued or closed:
Permit number: LUP 13-24	Related permit numbers: LUP 6-23, LUP 6-24	
SEPA exempt: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Exemption reason:	
FDP required: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Exemption reason:	
BSA required: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Exemption reason:	
Zone: R-A	Comprehensive Plan Designation: RA	Special Planning Area:

October 30, 2024

VIA EMAIL AND HAND DELIVERY

City of Burlington

ATTN: City Council

833 Spruce Street

Burlington, WA 98233

RE: APPEAL OF HEARING EXAMINER DECISION for LUP 6-23 PRELIMINARY SUBDIVISION, GAGES CROSSING

Permit No: LUP 6-23 (Subdivision) LUP 6-24 (Appeal)

Appeal: Hearing Examiner decision dated October 18, 2024

Appellant: Kiera Wright, Homeowner

Applicant: Landed Gentry Development, Inc.

Property Owner: Gages Crossing, LLC

Appeal Body: City Council

Property Site: 900 South Pine Street, Burlington, WA 98233

Parcel Nos.: P133596, P133597, P72178, P72179, P72181, P62772, and P62771

City of Burlington City Council:

I respectfully submit this APPEAL to the second Hearing Examiner's decision granting the above-referenced Application No. LUP 6-23, following the Applicant's appeal of the denial from the first Hearing Examiner's decision to permit the platting and development of 89 townhomes at 900 South Pine St. per BMC 14A.05.190.C.2: Hearing examiner decisions on Type III project permit applications may be appealed to the city council by any party of record. This is being submitted within the 14 days of the October 18, 2024 notification of the parties of record. The fee has been paid to City Hall on 10/30/2024.

Grounds for Appeal:

- **Error 1:** The Hearing Examiner incorrectly classified Gages Slough as disconnected from adjacent water bodies, despite guidelines from the Washington Department of Fish and Wildlife (DFW) stating that man-made barriers do not negate fish passage. The City of

Burlington's 2023 Comprehensive Plan also recognizes Gages Slough's connection to the Skagit River and WDFW's classification of Gages Slough as fish habitat.

- Everyone agrees that Gages Slough is a Habitat Conservation Area (HCA). As of May 2023, the BMC now requires that riparian buffers for an HCA be based on DFW guidelines, which uses site-potential tree heights (SPTH) to determine riparian buffer width.
 - This project was the first time this code had been applied to any project. For Gages Slough at that location, the SPTH was measured using Douglas Fir, at 235-feet.
 - In a post-hearing technical memorandum, the applicant argued that the WDFW guidelines were limited as applied to Gages Slough and that the Douglas Fir was not an appropriate buffer measurement because while Gages Slough is a riverine wetland, it lacks an active channel and an ordinary high-water mark (OHWM). DFW weighed in and agreed that the slough is "disconnected from adjacent waterbodies and not a stream, where SPTH buffers would be recommended under the RMR."
 - This was in error, or should have at least been reopened for public comment and evaluation. DFW's own guidelines provide that man-made barriers do not preclude passage for purposes of determining fish habitat. *See* Washington Department of Fish and Wildlife. 2019. Fish Passage Inventory, Assessment, and Prioritization Manual. Olympia, Washington.
 - The Comprehensive Plan also provides that: "The slough is mapped as fish habitat by WDFW and provides important floodplain, water quality, and stormwater management functions." *See* Section 4.5.1.
 - Even if Gages Slough is ultimately disconnected from the Skagit River, it is not treated as such by the City Code or DFW and it was in error to fail to follow these rules as-written.
- **Error 2:** The Hearing Examiner erred with it deferred to the required 150-foot buffer for a category 3 wetland.
 - The BMC and WDFW guidelines for urban and highly modified areas mandate a site-specific analysis "considering nearby sites with unaltered vegetation or selecting a representative site with similar bank height and gradient conditions to identify adequate riparian vegetation delineation for both protection and restoration." Rentz, R., A. Windrope, K. Folkerts, and J. Azerrad. 2020. Riparian Ecosystems, Volume 2: Management Recommendations. Habitat Program, Washington Department of Fish and Wildlife, Olympia ("DFW Guidance"), section 2.3.4(C).
 - Rather than default to the 150-foot buffer for category III wetlands, the Hearing Examiner should have required a wetlands assessment that considered nearby, similar sites.
- **Error 3:** The description of the 150-foot buffer as a "net gain" was erroneous; the proposed buffer represents a decrease from the existing 13.13-acre buffer to an impermeable development. Therefore, consultation with all agencies *and* compliance with BMC 14.15.380B criteria was required.

- **Error 4:** The Hearing Examiner failed to consult with Ecology and local tribes in addition to DFW for the buffer recalculation, deviation from BMC requirements, and buffer decrease criteria, contrary to BMC requirements.
- **Error 5:** The determination that the current use is not agricultural overlooked the applicant's own admission that farming activities ceased only recently (only 2 years ago for the chicken farm and just one year for hay, which activities ceased only when the developer purchased the property for this proposal). Purchasing agricultural land for development should not be considered indicative of current use.
- **Error 6:** The Hearing Examiner recognized a change in neighborhood character but did not adequately consider the significance of maintaining the rural residential character as articulated in the Comprehensive Plan.
- **Error 7:** The decision to waive the prohibition of turns onto East Sharon Avenue addressed one concern but did not sufficiently address the broader traffic impacts on surrounding streets, where increased traffic flow is anticipated.

Thank you for your attention to this matter in **NOT** approving this development to proceed as you have heard multiple months of public comments from the neighbors, community, and local agencies about preserving the climate resiliency via the wetlands, decreasing greenhouse gas emissions, maintaining the character of the agricultural and historical neighborhood, and the essence of Burlington which is community. You are all elected representatives of the neighbors of this appeal with professional and personal work experiences along with educational backgrounds in the fields of science and the environment and know that this is not a beneficial or sustainable endeavor.

Sincerely,

Kiera Wright