BEFORE THE LAND USE HEARING EXAMINER
FOR THE CITY OF BATTLE GROUND, WASHINGTON

Regarding an application by Olson Engineering, Inc. for approval of a preliminary plat to divide 33-acres into 139 lots, west of SE Grace Avenue at NE Cedar Drive in the City of Battle Ground	))))	**FINAL ORDER** **LUDIII: 18-0006 (Cedar Heights Subdivision)**

A. SUMMARY

1. The applicant, Olson Engineering, Inc., requests approval to divide the 33-acre site into 139 residential lots and tracts for wetlands/open space, parks, stormwater facilities, and private drives. The site is located west of SE Grace Avenue at NE Cedar Drive. The legal description of the site is Tax Assessor Parcel 194327-000 (the "site").

a. The site, the property bounded by the site and SE Grace Avenue, and properties to the west of the site are zoned City of Battle Ground R5 (Residential, 5 units per acre maximum density). Properties to the north are zoned City of Battle Ground MU-R (Mixed Use Residential). Properties to the east, across SE Grace Avenue, are zoned City of Battle Ground R3 (Residential, 3 units per acre maximum density) and Clark County R1-20 (Residential, 20-acre minimum lot size). Properties to the south are zoned Clark County R-5 (Rural, 5-acre minimum lot size).

b. The site is currently vacant except for a natural gas easement crossing the southwest corner of the site.

c. The site contains wetlands in the northwest corner and near the southern boundary, as well as three small off-site wetlands along the north boundary of the site. There are three Type Ns (non-fish bearing) streams in the southeastern portion of the site. The applicant proposed to retain the on-site streams, wetlands and the majority of the associated buffers within proposed Tracts A, D, and G.

d. The applicant proposed to develop a new single-family detached dwelling on each of the proposed lots. All proposed lots comply with the dimensional requirements of the R5 zone.

e. The applicant will construct half-width frontage improvements along the site's SE Grace Avenue frontage and extend three new public streets, proposed SE 35th, 37th, and 39th/40th Streets through the site into the site from SE Grace Avenue to the eastern boundary of the site. The applicant will construct SE 35th and 37th Streets as neighborhood collector streets. The applicant will construct SE 39th/40th Street as a major collector. The applicant will construct additional local streets and two shared accesses in Tracts F and I to provide access to the proposed lots.

f. The City of Battle Ground will provide domestic water and sanitary sewer service to the site. The applicant will collect storm water from all impervious areas on the site and convey it to one of two proposed storm water facilities, in proposed Tracts

E and H in the southeast portion of the site for treatment and detention. The applicant will discharge treated stormwater to the on-site streams in proposed Tract G at less than predevelopment rates.

g. The applicant also proposed two parks in proposed Tracts B and C.

2. The City issued a Mitigated Determination of Nonsignificance ("MDNS") for the subdivision pursuant to the State Environmental Policy Act ("SEPA"). The SEPA determination was not appealed and is now final.

3. City of Battle Ground Hearing Examiner Joe Turner (the "examiner") conducted a public hearing to receive testimony and evidence about the application. City staff recommended the examiner approve the preliminary plat subject to conditions. See the Staff Report to the Hearing Examiner dated April 22, 2019, (the "Staff Report") as amended by Exhibit 29. The applicant accepted those findings and conditions, as amended, without exceptions. Seven persons testified orally and/or in writing with questions and concerns about the proposed development. Other persons testified in writing. Disputed issues or concerns in the case include the following:

a. Whether the City provided adequate notice of the hearing and proposed development;

b. Whether the MDNS is subject to review and whether the City demonstrated *prima facie* compliance with SEPA's procedural requirements;

c. Whether the applicant is required to demonstrate the compatibility of the proposal with the surrounding area;

d. Whether the development will exceed the capacity of area streets or create a hazard;

e. Whether the applicant's traffic study adequately considered the traffic impacts of the development

f. Whether adequate sight distance will be available at the proposed intersections;

g. Whether additional road improvements are required to accommodate the development;

h. Whether stub streets can be further extended across adjacent properties in the future;

i. Whether construction on the site will impact adjacent properties;

j. Whether the applicant is required to preserve trees along the south boundary of the site;

k. Whether the ditch on the south boundary of the site is a protected stream;

l. Whether the site is within the mapped 100-year floodplain;

m. Whether the development will increase, concentrate, or block stormwater runoff on adjacent properties; and

n. Whether the applicant should be required to install a fence along the boundaries of the site to buffer adjacent properties.

4. Based on the findings provided or incorporated herein, the examiner approves the revised preliminary plat (Exhibit 23) subject to the conditions at the end of this final order.

B. HEARING AND RECORD HIGHLIGHTS

1. The examiner received testimony at a public hearing about this application on April 30, 2019. All exhibits and records of testimony are filed at the City of Battle Ground. At the beginning of the hearing, the examiner described how the hearing would be conducted and how interested persons could participate. The examiner disclaimed any *ex parte* contacts, bias or conflicts of interest. The following is a summary by the examiner of selected testimony and evidence offered at the public hearing.

2. City planner Emily Lutz summarized the Revised Staff Report, Exhibit 29. She noted that the applicant submitted an amended preliminary plat, Exhibit 23, which shifted proposed Lots 126 and 127 outside of the wetland in Tract A.

3. City engineer Ryan Jeynes testified that the crash data from the City and WSDOT can be inconsistent. Proposed SE 7th Avenue will be limited to right-in/right-out movements at the intersection with SE 37th Street, due to the reduced intersection spacing from proposed SE 8th Avenue. He agreed with the applicant's request to delete condition A.8. The City will deal with the required address change.

4. Engineer Kurt Stonex testified on behalf of the applicant. He accepted the findings and conditions in the Revised Staff Report, Exhibit 29 as amended at the hearing, without exceptions.

a. There is no need for a landscape buffer between this development and the small off-site wetlands north of the site. This development will impact the buffers of the off-site wetlands. The applicant will mitigate for those buffer impacts as indirect wetland impacts. The applicant also owns the abutting property north of the site, which is proposed for development as "Cedar Heights North." The applicant intends to build a full-width roadway to serve both developments, which will eliminate the off-site wetlands and mitigate for their removal. He agreed to a condition of approval requiring a landscape buffer if SE 35th Street is constructed as a half-width improvement.

b. In analyzing crash history data, it is the industry standard to rely on the Department of Transportation data, rather than local data. The applicant's traffic engineer has reviewed the City crash data and will submit a response within two days. However, the City's crash data shows fewer accidents than the WSDOT data for this area.

c. He requested the examiner delete condition A.8. The applicant will coordinate with the owners of the adjacent property regarding the address change. However, the applicant has no authority to make the change.

d. Adequate sight distance is available at the proposed SE 37th Street/SE Grace Avenue intersection, based on the applicant's traffic analysis. Based on neighbor's testimony, sight distance may be more limited on the east side of SE Grace Avenue, at the intersection of NE Cedar Drive. However, the applicant is not required to address that issue, because this development will not generate additional traffic on NE Cedar Drive.

e. This development will generate less than 10 trips through the intersection of SE Grace Avenue and Main Street. Therefore, the applicant was not required to review the operation of this intersection as part of the traffic analysis. However, the applicant will be required to contribute a pro-rata share of the cost of planned improvements to this intersection.

f. The roads on this site will not connect to private streets west of the site. The applicant will extend streets to the boundaries of the site to allow for further extension when abutting properties redevelop. The applicant will install barricades at the ends of the on-site roads to prevent vehicular access to abutting properties.

g. The applicant cannot locate the stormwater facilities in the northwest corner of the site, as requested by Mr. Goodman. The stormwater system will use gravity flow to collect stormwater runoff from the site. The site slopes downhill from the northwest to the southeast, descending 15 to 20 feet in elevation across the site. Therefore, the applicant must locate the stormwater facilities in the southeast corner of the site to allow for gravity flow.

h. The development will not increase, and may reduce, the rate of stormwater runoff leaving the site. The applicant is required to detain stormwater runoff and release it based on historic forested conditions, a lower rate than the existing pasture.

i. Construction of SE 40th Street will not cause erosion impacts on the Aull's property. The applicant will construct a retaining wall on the south boundary of the site to support the street. The City required a street in this location. However the "flag stem" portion of the site in this area is only 50 feet wide and must accommodate 36 feet of roadway improvements. Therefore, a retaining wall is necessary and the location of the road is very limited.

j. Construction of SE 40th Street will have no impacts on Salmon Creek, which is located on the far side of SE Grace Avenue from the site.

5. Carol Opatrny noted that the Staff Report failed to address all of the issues she raised in her written testimony, Exhibit 27.

a. The crash data in the traffic analysis only considered crashes occurring between January 2013 and September 2018. The applicant should be required to review accidents during the six months between October 2018 and the hearing. Accidents have occurred during the 23 years she has lived in this area. The section of SE Grace Avenue was modified due to the number of accidents occurring in the area.

b. This development will generate an additional 1,400 Average Daily Trips ("ADT") on roads in the area. That additional traffic will increase congestion and reduce safety on area roads.

c. There is a topographic sag on SE Grace Avenue south of NE Cedar Drive, which limits sight distance at the existing SE Grace Avenue/NE Cedar Drive intersection. The topography blocks views of northbound vehicles on SE Grace Avenue. Existing residents know to wait before turning onto SE Grace Avenue in order to accommodate potential northbound traffic.

d. She objected to any lots on this site taking direct driveway access from SE Grace Avenue.

e. She questioned whether the applicant will construct a school bus pullout and/or bike lane improvements on SE Grace Avenue.

6. Mark Burroughs, president of the Viewcrest Acres 1 Neighborhood Association, expressed concerns with the potential for future development west of the site. The Viewcrest Acres development consists of 16, two and ½ to five-acre lots west of the site. The CC&Rs for that development prohibit lots smaller than two and ½ acres. Therefore, there is no need to extend streets west of the site.

7. James Schullar summarized his email testimony, Exhibit 28.

a. He objected to the City's issuance of an MDNS for this development; the proposed development is inconsistent with existing development in the surrounding rural area and will have a significant impact on the surrounding area.

b. He noted that SE 142nd/Grace Avenue is a narrow rural road. Traffic generated by this development will exceed the capacity of the street and create a hazard. It is difficult to turn on and off of this street under existing conditions. The additional traffic generated by this development will exacerbate those problems.

c. He questioned who will be responsible for maintaining the private streets within the site.

d. The applicant should be required to provide a fence and/or hedge along the west boundary of the site to buffer this development from the existing larger lots to the west.

8. Leon Goodman objected to the density of the proposed development, arguing that it will conflict with the acreage lot developments in the surrounding area. The northwest corner of the site is within the 100-year floodplain. Development on this site may increase flooding on his property, abutting the west boundary of the site. The applicant should be required to install a culvert to accommodate runoff from his property that currently flows onto the site. He urged the applicant to locate the stormwater facilities in the northwest corner in order to expand the open space and enhance the natural area buffer between the site and his property. He objected to any proposal to connect streets on this site to the existing private streets to the west. He requested the examiner continue the hearing, as he only learned of the development the day before the hearing.

9. James Mason questioned whether the applicant will widen the section of SE Grace Avenue between proposed SE 37th and 40th Streets.

10. Janis Aull testified on behalf of herself and her husband, Bill Aull; they own the property abutting the south boundary of the site.

a. There is an existing culvert and ditch on the south boundary of the site, which drains water from their property. Water flowing through this culvert and ditch should be regulated as a Type N stream, as it is similar to the streams noted on the site.

b. She questioned how the applicant will accommodate runoff from this culvert, as the applicant proposed to construct SE 40th Street on top of the existing culvert. Removal of the culvert would cause stormwater runoff to backup and flood their property.

c. Their property is at a different elevation than the site. Therefore, construction of SE 40th Street will create steep embankment adjacent to their property. She questioned how the applicant will prevent soil erosion on this slope from depositing sediment on their property.

d. She expressed concerns that this development will increase traffic on her driveway, as drivers will mistake her driveway for SE 40th Street.

e. Construction on the site is likely to impact the roots of the mature trees on the northern boundary of their property, which could affect the survival of the trees.

f. The applicant should be required to shift SE 40th Street to the north in order to avoid these impacts.

11. Patrick Kennedy expressed concern with the lack of sight distance at the existing intersection of SE Grace Avenue and NE Cedar Drive. There was a fatal collision

at this intersection 15 years ago. The County regraded SE Grace Avenue to improve sight distance, but the intersection remains hazardous. A dip in the road south of NE Cedar Drive obscures views of vehicles traveling northbound on SE Grace Avenue. The lack of sight distance will cause a greater hazard for vehicles turning left from SE 37th Street onto SE Grace Avenue. An accident took out the stop at this intersection roughly 18 months ago. In the winter ice frequently forces the closure of SE Grace Avenue. He opined that runoff from SE 40th Street may impact Salmon Creek east of the site.

12. At the end of the hearing the examiner held open the public record for two days, until May 2, 2019, to allow the applicant to submit an analysis of the City's crash The examiner held the record open for an additional week, until May 9, 2019, to allow the public an opportunity to submit additional testimony and evidence. The examiner held the record open for a final week, until May 16, 2019, to allow the applicant to submit a closing argument.

C. DISCUSSION

1. City staff recommended approval of the revised preliminary plat (Exhibit 23), based on the affirmative findings and subject to conditions of approval in the Revised Staff Report (Exhibit 29). The applicant accepted those findings and conditions, as modified, without exceptions.

2. The examiner concludes that the affirmative findings in the Revised Staff Report show that the revised preliminary plat (Exhibit 23) does or can comply with the applicable standards of the Battle Ground Municipal Code (the "BGMC") and the Revised Code of Washington, provided that the applicant complies with recommended conditions of approval as modified herein. The examiner adopts the affirmative findings in the Staff Report as his own, except to the extent they are inconsistent with the following findings.

3. The examiner finds that the City provided adequate notice of the hearing. The City published and posted notice of the hearing and mailed notice of the hearing to the owners of properties within 500 feet of the site and other listed persons as required by BGMC 17.200.070.F. The Code does not require that notices be received; all public notices are deemed to have been received when the notice is mailed. Multiple forms of notice are required, in part, to provide a measure of overlap, so that if notice in one form is not effective (e.g., when a mailed notice is not required or received), another form of notice will be effective (e.g., published or posted notice). The neighborhood was well represented at the hearing and in the written record. Residents of the neighborhood testified clearly and succinctly regarding issues of concern to them. The examiner held the record open to allow the public additional time to review and comment on the application.

4. The City determined, based on the application materials and public and agency comments, that there are no probable significant adverse environmental impacts associated with this proposal that cannot be avoided or mitigated through the conditions of approval included in the MDNS. Therefore, the City, as the lead agency, determined

that an environmental impact statement was not needed and issued an MDNS for this project. Several persons objected to the City's issuance of an MDNS for this development. However, the City's SEPA determination was not appealed within the 15 day deadline set out in BGMC 18.145.030. Therefore the City's SEPA determination is final.

a. Even if the City's SEPA determination were subject to review, the examiner is required to give "substantial weight" to the City's determination. (WAC 197-11-680(3)(a)(viii) implementing RCW 43.21C.090) The examiner must uphold the SEPA determination unless he is "left with the definite and firm conviction" that the County made a mistake." *Preserve Our Islands v. Shorelines Hearings Board*, 133 Wn. App. 503, 539 (2006).

b. The purpose of the SEPA process is to ensure consideration of environmental issues that are not addressed by the Code.

> SEPA is a procedural statute designed to ensure that local governments consider the environmental and ecological effects of major actions to the fullest extent. SEPA's purpose is to provide decision makers with all relevant information about the potential environmental consequences of their actions and to provide a basis for a reasoned judgment that balances the benefits of a proposed project against its potential adverse effects.

City of Des Moines v. Puget Sound Reg'l Council, 108 Wn.App. 836, 849, 988 P.2d 27 (1999).

c. In this case, the majority of concerns raised by opponents of this application are addressed by the Code. The issues raised in the comments were fully considered in the findings related to the applicable code provisions. The proposed development complies with the Code, based on the findings in the Revised Staff Report and this Final Order. Other potential environmental and ecological effects were considered through the SEPA process and the MDNS. The examiner finds that the City satisfied its burden of demonstrating *prima facie* compliance with SEPA's procedural requirements.

5. Concerns were expressed about the density of development proposed and its impact on the character of the area. However, the density proposed for this site is within the range permitted by the comprehensive plan map designation and zoning of the site. Although the proposed lots are smaller than adjacent lots, the uses are not incompatible. In addition, this area was recently brought into the urban area and zoned for urban development. Therefore the character of this area is urban, not rural.

a. The applicant is proposing to provide single-family detached residences adjacent to existing single-family development. Even if the subdivision will have an adverse impact on property values --- and there is no substantial evidence to that effect in

the record --- protection of property values and consistency with adjoining lot sizes are not relevant to the applicable approval criteria.

b. Development of this site will cause an incremental loss of privacy for existing residents in the area. What is now a vacant 33-acre parcel will be developed with 139 new homes. But the Code does not prohibit development from having an impact on privacy. The intensity of the proposed development, including setbacks from adjacent properties, is consistent with the current zoning of the site.

c. The examiner understands residents' displeasure with the growth around them, but this growth was foreseeable and is in the broader public's interest. The site and surrounding properties are zoned R5. As large lots are sold, presumably they will be developed to the maximum extent allowed.

6. This development will generate additional traffic on streets in the area. That increased traffic will be perceptible to area residents. However, based on the applicant's traffic analysis, it will not exceed the capacity of the streets nor create a hazard. All affected intersections will continue to operate at acceptable levels of service. There is no substantial evidence to the contrary.

a. The traffic study was prepared by a licensed professional engineer based on actual traffic volumes, including traffic generated by all previously approved developments in the City as well as a "background growth factor." The background growth rate is based on the overall average for the City. Trip generation estimates are based on the Institute of Traffic Engineers Trip Generation Manual (the "ITE manual"), a nationally accepted engineering reference source for projecting the amount of traffic likely to be generated by various categories of uses. Neighbors' unsupported opinions of about the potential impacts of increased traffic do not have enough probative value to rebut the expert testimony of the applicant's engineer.

i. The applicant's engineer also reviewed the City and WSDOT accident data for all affected intersections. The crash rate at all or the intersection is below the City's "action level" of 1.0 accidents per million entering vehicles. See Exhibits 7, 35, and 39. The examiner understands that the accident history may not reflect all of the accidents in the area; not all accidents are reported. However, there is no substantial evidence that this location experiences an unusually high number of unreported accidents. The accident history is the best evidence available. The accident data does not mean there are no accidents in the area, only that this area does not pose an unusual risk of accidents.

ii. The applicant is not required to consider traffic from potential future development. Future developments will be subject to separate review and must include traffic generated by this development in their traffic analyses.

b. The applicant's traffic engineer measured the available sight distance at the proposed intersections on SE Grace Avenue and determined that adequate sight distance is available to meet the requirements of BGMC 12.116.220.B. This section

requires 500 feet of sight distance, based on the posted 50 mph speed limit on this section of SE Grace Avenue. See Exhibits 7 and 39. The engineer measured sight distance as specified in this Code section, from a driver's eye height of three and one-half feet above the roadway surface, at least fifteen feet from the edge of the street, to an object height four and one-half feet above the roadway surface. Neighbors disputed the engineer's determination, arguing that the topography of the Grace Avenue roadway obscures the view of northbound vehicles approaching the NE Cedar Drive intersection. Neighbors' observations are substantial evidence. However, the examiner finds that the expert testimony by the applicant's traffic engineer, which is based on actual measurements of the available sight distance, is more persuasive than neighbors' testimony. The applicant should be required to confirm the available sight distance once construction of the SE 37th Street /SE Grace Avenue intersection is completed. A condition of approval is warranted to that effect.

c. The examiner acknowledges that more traffic on area streets will increase congestion and resulting delays and may pose an increased risk for drivers, cyclists and pedestrians in the area. Higher vehicular traffic volumes create a marginally higher risk for pedestrians and bicyclists. It may well warrant a heightened degree of attentiveness to traffic when driving, cycling or walking in the neighborhood. However those risks are consistent with the location of the site in the urban area where City plans call for the sort of development being proposed. Reasonably prudent drivers will observe the posted speed limit and if necessary, further reduce their speed to accommodate changing road conditions, narrower roadways, inclement weather, and other conditions. Unfortunately not all drivers are prudent. Nevertheless, there is no evidence that the development proposed in this application will contribute a disproportionate share of imprudent drivers. If necessary the City can address such issues by providing increased enforcement on streets in the area.

i. The examiner has no authority to reduce the posted speed limit on SE Grace Avenue. However, the City may choose to reduce the speed limit on this roadway to be consistent with the urban level of development that will occur on this site.

d. Snow, ice and similar adverse weather conditions will affect vehicle travel on area roads, forcing drivers to slow down and potentially modify their travel routes and timing. Some roads may be impassable, forcing drivers to modify their trips. Some drivers may stay home or leave later, reducing the volume of traffic on the roads during peak hours. However such severe weather events are relatively infrequent. The applicant is not required to consider such infrequent weather events in the traffic analysis.

7. The applicant is not required to widen the section of SE Grace Avenue between proposed SE 37th and 40th Streets, because the applicant does not own the necessary right-of-way. This section of roadway will be widened improved when the abutting property is further developed.

8. No lots will take direct access from SE Grace Avenue. All of the lots will take access from proposed streets within the site. Lots 1 and 2 will access proposed 39th/40th

Street via a shared access in Tract F and Lots 87 and 88 will access SE 9th Avenue via a shared access in Tract I.

9. The applicant proposed to construct half-width improvements for SE 35th and 40th Streets.[1] The "half-width" improvements includes a 5-foot sidewalk and five-foot planter strip on one side and 26 feet of roadway pavement. The proposed pavement width is sufficient to accommodate two-way traffic. Parking will be prohibited on these partial width streets until future developments on the adjacent properties complete the full-width roadway improvements.

10. The applicant is required to extend street stubs to the boundaries of the site in order to comply with the cross-circulation requirements of BGMC 12.116.200, which requires street connections every 500-feet. These street stubs will be further extended when abutting properties redevelop. The public streets on this site will not connect to private streets on surrounding properties, unless and until those streets are improved to public standards and accepted by the City.

a. The examiner understands that some of the surrounding properties are subject to CC&Rs that require larger minimum lot sizes and otherwise limit redevelopment. However, future owners of those properties may choose to modify the CC&Rs to allow additional development. Street stubs are necessary to accommodate the potential for such future development.

11. Construction of required improvements for this development will not impact private properties in the area. All development must occur on the site or within public rights-of-way or easements. The School District may change the location of bus stops, including creation of a consolidated bus stop for the surrounding area. However, decisions regarding the location of bus stops is entirely within the School District's authority.

12. The examiner finds that construction of SE 40th Street will not cause prohibited impacts to the Aull property south of the site. The applicant is required to construct SE 40th Avenue within the 50-foot wide flagpole portion of the site. The applicant does not own the property north of this flagpole portion of the site. Therefore, the applicant cannot shift this roadway to the north.

a. The applicant will construct a retaining wall to accommodate the elevation difference between the site and the adjacent property and ensure the stability of the hillside and road. The roadway will also cross a small area within the flagpole portion of the site that is mapped as "potentially unstable slope." See Exhibit 3. The applicant's Geotechnical engineer reviewed the proposed development and determined that construction is feasible. Exhibit 9. However, additional site specific geotechnical review is required for construction within the steep sloped areas of the site, including some sections of SE 40th Street. The design of the roadway improvements, including the

[1] At the hearing Mr. Stonex testified that the applicant owns the abutting property north of the site and may choose to construct SE 35th as a full-width improvement to serve development on both properties.

retaining wall and additional geotechnical review, will occur through the final engineering process, subject to review and approval by the City engineers. Absent an easement or similar agreement, the applicant has no right to enter onto adjacent properties to construct the required improvements.

b. The applicant will preserve the existing ditch that flows parallel to the Aull's driveway and the drainpipe from the Aull property that currently discharges to this ditch. See Exhibit 39. Construction of this development will prevent stormwater from the site from flowing into this ditch, which may reduce the volume of runoff in the ditch.

c. Construction on this site will not cause erosion or sediment deposition on adjacent properties. The applicant will be required to install erosion control measures prior to undertaking any ground disturbing activity on the site. The applicant must maintain those erosion control measures during construction on the site. Once construction is completed required landscaping and improvements will stabilize the soil and prevent erosion.

d. Grading and construction on the periphery of the site may adversely affect trees on adjoining properties by damaging roots that cross the property line. However state law provides that the applicant has a right to cut any branches or roots that extend onto this site. The Code does not regulate such impacts. Owners of adjoining properties have a right of remedy in superior court if the applicant's actions cause prohibited damage to adjoining properties. They should consult a lawyer to advise them about such rights. However it is in the applicant's interest to avoid such impacts in order to avoid potential liability.

e. Drivers are unlikely to mistake the Aull's private driveway for a public road. The proposed SE 40th Street will be clearly distinguishable from the Aull's private driveway due to the significantly different design, signage, and markings required for the public roadway.

f. Proposed SE 40th Street will locate vehicular traffic near the boundary of the Aull property. Vehicles operating on the proposed road will generate noise, headlight glare, and other impacts that will be detectable on the adjacent property. However the Code does not prohibit such impacts. To the contrary, they are an inevitable consequence of development in the urban area.

13. The examiner finds, based on the expert testimony of the applicant's biologists, that the ditch on the south boundary of the site is not a regulated stream. Therefore, no buffer is required. This is consistent with County GIS mapping, which shows a wetland in the southwest corner and riparian habitat in the far southeast corner of the Aull property. See Exhibit 3.

14. Contrary to Mr. Goodman's testimony, no portion of the site is located within the mapped 100-year floodplain. See Exhibit 3.

15. The examiner finds that the proposed development will not increase or concentrate stormwater runoff onto adjacent properties. To the contrary, the proposed development is likely to reduce the volume of runoff flowing onto adjacent properties. Based on the topographic maps in the record, stormwater falling on the site under existing conditions sheet flows downhill from northwest to southeast. The applicant proposed to collect stormwater from roads, sidewalks, driveways, roofs, and other impervious surfaces and convey it to one of two proposed on-site stormwater facilities for treatment and detention. Treated stormwater will be released to the existing on-site streams at less than predevelopment rates.

a. The Code and state law prohibit the applicant from blocking surface stormwater that currently flows onto the site or increasing or concentrating the stormwater flows onto adjacent properties. The applicant must design the stormwater system on the site to accommodate runoff that currently flows onto the site from adjacent uphill properties and to ensure that the development does not direct additional runoff onto adjacent downhill properties. The applicant's final stormwater plan may employ a variety of methods to collect and direct stormwater runoff, based on the volume, rate and location of expected stormwater flows. The City will review the applicant's final engineering design to ensure that the proposed development complies with these requirements.

b. The applicant cannot locate the stormwater facilities in the northwest corner of the site as requested by Mr. Goodman. As Mr. Stonex noted at the hearing, the stormwater system relies on gravity flow. Therefore, the treatment and detention facilities must be located near the topographic low point in the southeast portion of the site.

c. Development on this site will not impact Salmon Creek, which is located more than 300 feet southeast of the site, across SE Grace Avenue. Stormwater from this site will eventually enter Salmon Creek after flowing through adjacent properties as it does under existing conditions. However, the applicant will treat all stormwater runoff from roads, sidewalks, driveways and other pollution generating surfaces prior to discharging it to the on-site streams. The applicant will release runoff to the streams at less than predevelopment rates in order to ensure the development does not increase downstream flooding.

16. It was argued that the applicant should be required to fence the site to separate the proposed development from adjacent properties. BGMC 17.131.080 establishes standards for landscaping and screening. Based on Table 17.131-1, no screening or buffering is required where land zoned for single-family detached residential development adjoins other land zoned for single-family detached residential, mixed use residential, or rural development. There is no basis for concluding residents of the proposed subdivision will pose a hazard to the use of abutting properties or will be reasonably likely to trespass on abutting properties. The owners of abutting properties have adequate legal (civil) recourse to address any trespass problems that may arise. The owners of most surrounding properties are free to install a fence along on their properties to reduce the potential for trespass and enhance privacy.

D. CONCLUSION

Based on the above findings and discussion, the examiner concludes that the revised plat (Exhibit 23) of LUDIII: 18-0006 (Cedar Heights Subdivision) should be approved, because it does or can comply with the applicable standards of the Battle Ground Municipal Code and the Revised Code of the State of Washington, subject to conditions of approval necessary to ensure the final plat and resulting development will comply with the Code.

E. DECISION

Based on the findings, discussion, and conclusions provided or incorporated herein and the public record in this case, the examiner hereby approves the revised plat (Exhibit 23) of LUDIII: 18-0006 (Cedar Heights Subdivision), subject to the following conditions of approval:

Conditions of Approval

A. Prior to Engineering Approval:

1. Submit final engineering plans, for review and approval by staff, pertaining to transportation, sewer, water, grading, erosion control, stormwater, driveways, street lighting, and landscaping prepared and stamped by a registered engineer in the state of Washington.
2. Submit final engineering plans:
   a. Showing adequate half-street improvements, based on pavement testing, for SE Grace Avenue, "Major Collector Option 1", including sidewalk, planter strip, curb/gutter and asphalt.
   b. Showing adequate half-street improvements, for SE 40th Street, "Major Collector Option 1", including sidewalk, planter strip, curb/gutter, and asphalt.
   c. Showing adequate half-street improvements, for SE 35th Street, "Neighborhood Collector", including sidewalk, planter strip, curb/gutter, and asphalt.
   d. Showing full width improvements to SE 39th Street to "Major Collector Option 1" standards, including sidewalk, planter strip, curb & gutter, and asphalt.
   e. Showing full width improvements to SE 37th Street and SE 6th Avenue to "Neighborhood Collector" standards, including sidewalk, planter strip, curb/ gutter, and asphalt.
   f. Showing full width improvements to SE 36th Street, SE 38th Street, SE 7th Avenue, SE 8th Avenue and SE 9th Avenue to "Local A" standards, including sidewalk, planter strip, curb/gutter, and asphalt.
   g. Showing SE 36th Street (Tract "I") and SE 39th Street (Tract "F") meeting the applicable private street requirements per BGMC 12.116.140 based on 1-2 lots/units.
   h. Showing SE 9th Avenue meeting the intersection spacing of 250-feet from SE Grace Avenue.
   i. Showing SE 7th Avenue being a right-in/right-out intersection with SE 37th Street.

j. Containing a combined landscaping and driveway plan.
k. Showing sight distance and vision clearance triangles.
l. Containing a signing and striping plan.
m. Containing a street lighting plan having LED decorative cobra type units for SE Grace Avenue and LED acorn units for the other streets.
n. Showing traffic calming devices on all public streets.
o. Showing driveways that meet the requirements of BGMC 12.116.243
p. Showing traffic mitigation at SW Eaton Boulevard & SR 503, SW Eaton Boulevard & SW 20th Avenue or indicating that mitigation fees will be paid in lieu of the improvements.
q. Showing water lines extending to extreme property lines.
r. Showing each residential lot having its own individual water service
s. Showing FE-26 (30-inch), FE-27 (27-inch), a portion of FE-28 (15-inch), if applicable, depending on northern termination of FE-27 sewer lines being installed in SE Grace Avenue, and a portion of FM-D (12-inch).
t. Showing sewer lines extending to extreme property lines.
u. Showing each residential lot having its own individual sanitary lateral.
v. Showing fire hydrants meeting spacing requirements throughout the subdivision.
w. Showing a stormwater facility that meets the requirements of BGMC 18.250.
x. Showing grading and erosion control in conformance with applicable city standards and standard construction details.

3. Provide a revised traffic study that incorporates City of Battle Ground crash data and potential mitigations.
4. Provide a photometric plan for all access points, intersections, frontage roads out to centerline, and any existing lights to ensure that proposed lights meet IES RP-8-00 standards.
5. Submit a hydrology report that addresses all requirements found in BGMC 18.250.
6. Submit a SWPPP that meets the requirements of BGMC 18.250.050(B).
7. Submit proof of engineering plan approval by Clark Public Utilities for the water improvements.
8. Submit a construction cost estimate for required public and applicable private improvements for review and approval by the City Engineering Department
9. Following the City Engineer's acceptance and approval of the construction cost estimate, pay the required engineering plan review and construction inspection fee that is two (2) percent of the estimated costs of construction minus the $500.00 due at engineering plan submittal.

B. <u>Prior to Final Plat Approval:</u>

1. Construct all required public improvements and gain engineering acceptance or provide appropriate bonding.
2. Construct the mitigation measures or pay the mitigation fees for the failing intersections.
3. Submit a final plat:
   a. That shows easements for public utilities not located in the right-of-way.

b. With the following note: "No fences are allowed in the sight distance triangle."
c. With the following note: "All utilities are to be located outside of the sidewalk section and to be underground where possible."
d. With the following note: "The City of Battle Ground has no responsibility to improve or maintain the private streets, including streetlights and signs, contained within, or private streets providing access to, the property designed in this development."
e. With a note describing the maintenance responsibilities of each lot owner for the private streets.
f. With a note specifying the party/s responsible for long-term maintenance of stormwater facilities.
g. That shows where any control monuments have been placed.
h. That shows the dedication of any public roads or alleys.
i. Clearly show the location of all required "No Parking – Fire Lane" signage for this development.
a. Note that such signage shall be required on both sides of tracts I and F.
j. Re-design lot 1 to meet 25-foot frontage requirement.
k. With the following note: "All new structures shall conform to the setbacks and building height of the R5 zoning district."
l. Update tract B's and A's square footage under density calculations to reflect the acreage shown in the Wetland Delineation Report.
m. With the following note: "Critical areas shall be maintained and owned by either the developer or HOA."
n. Show permanent signage and fencing per 18.270.050 along the outer perimeter of the wetland buffer.
o. Redesign lots 21 and 8 to be outside of geotechnical buffer.
p. Place the geotechnical and habitat buffer plus the three Type N streams in a single tract.

4. Submit a two-year stormwater maintenance contract for review and/or approval.
5. If LID improvements are incorporated into the project, provide appropriate stormwater covenants.
6. Provide certification that private streets were built per BGMC 12.116.140.
7. Submit a private maintenance agreement for private streets.
8. Submit an updated Wetland Mitigation Plan addressing Ecology's modified habitat score ranges.
9. Provide evidence of wetland mitigation credits.
10. Submit a post-construction sight distance analysis confirming adequate intersection sight distance at the SE 37th Street /SE Grace Avenue intersection.

C. <u>Prior to Engineering Acceptance:</u>

1. Construct all public improvements, if applicable, and go on a walkthrough with City of Battle Ground Engineering Staff and correct any deficiencies as determined by City staff.
2. Submit a letter showing that fire flow requirements per BGMC 15.105.180 and 15.105.190 can be met.
3. Submit to the City of Battle Ground a two-year/20-percent maintenance bond for

all completed and accepted public improvements.

4. Submit to the City of Battle Ground a Stormwater Facility Maintenance Agreement meeting requirements of BGMC 18.250.310(A)(1) for review and approval prior to recording.
5. Submit complete sets of as-built drawings for all required public improvements for streets and roads, stormwater drainage and control, sanitary sewer and water services, as applicable prior to the issuance of the occupancy permit for review and approval by the Engineering Department. Upon acceptance by the Engineering Department, submit prior to the issuance of the occupancy permit, one (1) Mylar set, two (2) 11x17 paper sets of As-Built record drawings and one (1) 3.5-inch disk (s) or compact disc version of the as-built drawings in AutoCAD, PDF, and TIF formats.

D. <u>Prior to Construction of the Site:</u>

1. Receive signed and approved engineering plans from the City of Battle Ground.
2. Receive an approved ROW permit from the City of Battle Ground.
3. Submit a surety bond meeting the requirements of BGMC 12.118.110.
4. Submit a Certificate of Liability Insurance meeting the requirements of BGMC 12.118.120.
5. Erect and conduct erosion control measures consistent with the approved Erosion Control Plan and City of Battle Ground erosion control standards.
6. Submit evidence that an individual on-site has successfully completed formal training in erosion and sediment control by a recognized organization acceptable to the City.
7. Conduct a pre-construction conference with City engineering and planning staff. Contact the Planning Customer Service Clerk at (360) 342-5047 to schedule an appointment.

E. <u>Prior to Creation of Impervious Surface:</u>

1. Except roofs, the stormwater treatment and control facilities shall be installed in accordance with the approved final engineered plans and in accordance with the City of Battle Ground stormwater regulations.

F. <u>Prior to Building Construction:</u>

1. Acquire the required building permits as outlined in Title 15 above.
2. Provide documentation that the required fire hydrants have been installed, tested, and approved in accordance with City of Battle Ground engineering standards.
3. All new structures shall conform to setbacks, design, parking, and building height requirements of the R5 zoning district and BGMC's residential chapter.

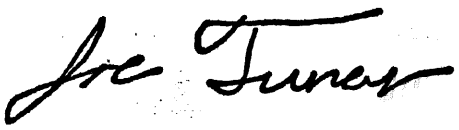
G. <u>Prior to Certificate of Occupancy:</u>

1. Complete all building permit requirements of the City of Battle Ground Building Division.
2. Prior to occupancy the applicants shall provide a letter that states the purveyor can supply the required amount of fire flow required.

H. Other

1. If any cultural resources are discovered in the course of undertaking the development activity, the State of Office of Historic Preservation and Archaeology and the City of Battle Ground Planning Department must be notified.
2. Coordinate with Williams NW Pipeline Company and other applicable state agencies to obtain any necessary approvals in regards to the natural gas pipeline located on site.
3. Adhere to all recommendations in the final *Critical Areas Assessment and Mitigation Plan* agreed upon with Department of Ecology and Army Corps of Engineers.
4. Coordinate any water quality recommendations in reference to Ecology's e-mail dated March 6, 2019.
5. Coordinate any air quality recommendations and receive applicable permits in reference to SWCAA's e-mail received March 5, 2019.
6. Applicant shall limit construction hours per BGMC, which states construction activity for commercial development may occur from 7 am to 9 pm Monday through Friday, 8 am to 9 pm on weekends.
7. Follow a standard Inadvertent Discovery Plan during ground disturbance per DAHP's e-mail correspondence dated March 5, 2019.
8. All aspects of this project shall adhere to Columbia West Geotechnical Study.

DATED this 23 day of May 2019.



Joe Turner, AICP
City of Battle Ground Land Use Hearing Examiner

APPEAL

This Final order may be appealed to the Washington Superior Court per RCW 36.70C within 21 calendar days after the issuance of the decision.