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

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| Regarding an application by Wapiti Ventures for approval of a preliminary plat to divide 37.38-acres into 125 lots in the R-5 zone east of SR 503 and south of NE 254th Street, in the City of Battle Ground **Subdivision)** | ) ) ) ) | **FINAL ORDER** **PR 48-2019** **(Wapiti Hills** |

## A. SUMMARY

1. The applicant, Wapiti Ventures, requests approval to divide the 37.38-acre site into 125 residential lots and open space tracts for critical areas and stormwater facilities. The site is located east of SR 503 and south of NE 254th Street. The legal description of the site is Tax Assessor Parcels 226983-000, 226928-000, 986029-160, 226984-000, 227013-000 (the "site").

a. The site and abutting properties to the south, northwest, and northeast, are zoned R-5 (Residential, 5 units per acre maximum density). Properties to the north, east, and west (across SR 503) are located in unincorporated Clark County and zoned County R5 (Rural, five-acre minimum lot size).

b. A seasonal, non-fish bearing (Type Ns) stream flows westerly through the southern portion of the site. There is a Category 3 wetland in the northwest corner of the site. The stream extends offsite to the east and the wetland extends offsite to the north and west. The site also contains an Oregon white oak. The applicant proposed to retain the wetland and the majority of the stream and associated buffers within open space tracts. A proposed stormwater facility will impact a portion of the wetland buffer. The extension of NW 6th and 8th Avenues will impact the stream buffer. The wetland buffer impacts are exempt from mitigation requirements pursuant to section 18.270.070 of the Battle Ground Municipal Code (the "BGMC"). The applicant will mitigate for impacts to the stream buffer by enhancing the remaining buffer on the site. The applicant proposed to remove the oak tree and mitigate for that removal by planting two additional oak trees on the site.

c. The site is currently developed with a single-family residence, a mobile home, and associated outbuildings. The applicant proposed to remove all of the existing structures and develop a new single-family detached dwelling on each of the proposed lots. All proposed lots comply with the dimensional requirements of the R-5 zone.

d. The applicant will extend NW 6th and 8th Avenues through the site from their proposed termini at the south boundary of the site - within the River Bend subdivision - to the north boundary of the site. NW 8th Avenue will intersect NE 254th Street at the north boundary of the site. The applicant will construct half-width frontage improvements along the site's NW 254th Street frontage. In addition, the applicant will extend three additional stub streets to north boundaries of the site, proposed NW 6th, 7th, and 9th Avenues, and three stub streets to the east boundary, proposed NW 30th, 32nd, and

33rd Streets, to allow for further extension when the abutting properties redevelop. The applicant will construct NW 32nd and 33rd Streets to the boundaries of the site. The applicant will dedicate right-of-way for NW 30th Street. The on-site portion of this street will be constructed when the abutting property to the east redevelops and extends the roadway across the wetland buffer. The applicant will provide additional streets within the site to provide access to the proposed lots.

e. Clark Public Utilities (CPU) or the City of Battle Ground will provide domestic water and the City of Battle Ground will provide sanitary sewer service to the site.[1] The applicant will collect storm water from all impervious areas on the site and convey it to one of two proposed storm water facilities located in the northwest and southeast corners of the site for treatment and detention. The applicant will discharge treated stormwater into the on-site stream and wetlands at less than predevelopment rates.

2. The applicant also requests termination of the rezone covenant recorded December 28, 2011, that limits development on the site to those uses allowed in the City's EC (Employment Campus) zone and prohibits access to the north of the site. The examiner will make a recommendation to the City Council on this issue and the City Council, in coordination with the owners of properties subject to the Covenant, will make the final decision as to whether to terminate or modify the covenant.

3. 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.

4. 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 February 25, 2020 (the "Staff Report"). Contested issues in this case include:

a. Whether the City Council and the applicant have the authority to modify the zoning covenant adopted by Clark County when the site and surrounding properties were added to the Battle Ground UGA;

b. Whether the City Council and the applicant should agree to delete Section 2.a of the Covenant, which limits development on properties subject to the Covenant to those uses allowed in the City's Employment Campus zone;

c. Whether the City Council and the applicant should agree to modify or delete Section 2.b of the Covenant, which prohibits access north of the site, onto NE 254th Street;

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[1] The water purveyor that will serve the site is dependent upon pending negotiations between the City and CPU.

d. Whether the proposed lot sizes and development density are required to be compatible with the character of the area and meet the dimensional standards of the R-5 zone;

e. Whether the opinion survey cited by neighbors is relevant to the approval criteria for this development;

f. Whether NE 254th and NE 249th Streets will provide the primary access to the site;

g. Whether the development will exceed the capacity of NE 254th Street or create a hazard;

h. Whether construction traffic should be allowed on NE 254th Street;

i. Whether construction of the proposed roads will cause prohibited impacts to the on-site stream; and

j. Whether the proposed development will cause significant impacts to surface or groundwater quality in the area.

5. Based on the findings provided or incorporated herein, the examiner approves the preliminary plat 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 March 4, 2020. 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 planning supervisor Emily Lutz summarized the Staff Report.

a. She noted that the City adopted a comprehensive plan amendment and zone change for the site and the abutting property to the south in 2017, which changed the zoning of those properties to R-5. The City recently approved the River Bend subdivision on the abutting property south of the site. The applicant proposed to subdivide the 37.5-acre site into 125 lots for single-family detached homes and open space tracts for streams, wetlands, and stormwater facilities.

b. The applicant will extend NW 6th and 8th Avenues into the site from their proposed termini at the south boundary of the site, within the recently approved the River Bend subdivision. The applicant also proposed to provide access to NE 254th Street abutting the north boundary of the site.

c. She submitted two new exhibits: a letter from the applicant's attorney (Exhibit 48) and an email from a neighboring resident (Exhibit 49).

3. City community development director Sam Crummett testified that Clark College was considering the development of a northern campus in approximately 2012. The City was interested in attracting the college to Battle Ground. Therefore, the City requested that Clark County adopt an "out of cycle" UGA expansion, bringing the site and certain surrounding properties into the UGA and zoning those properties for employment purposes. As part of the rezone, the County and the owners of the affected properties entered into a rezone agreement (the "Covenant") that limited uses on the site to those uses allowed in the EC zone (Section 2.a of the Covenant) and prohibited any access to NE 254th Street (Section 2.b of the Covenant). Clark College chose not to build on the rezoned properties. The City of Battle Ground later annexed the properties that were subject to the Covenant into the City and changed the comprehensive plan and zoning designations of the affected properties to Residential (R-5). By its terms, the Covenant is binding on the parties and their successors. The City of Battle Ground is the successor to the County and the applicant is the successor to the prior owner of the site.

a. The City was unaware of the existence of the Covenant at the time it annexed the affected properties and amended the comprehensive plan and zoning designations for the site and other properties affected by the Covenant. The Covenant did not appear in the title records for the River Bend subdivision property. The City only became aware of the Covenant during review of the current subdivision application.

b. The Covenant's prohibition on access to NE 254th Street conflicts with the City's comprehensive plan, which promotes a "grid-like" transportation pattern. The provision of the Covenant that limits uses on the affected properties to uses allowed in the EC zone conflicts with the City's comprehensive plan designation of those properties as Urban Low Density Residential.

c. Therefore, he requested the examiner make a recommendation to the City Council to enter into an agreement with the owners of properties subject to the Covenant to terminate the Covenant as part of the decision in this case. He opined that the City provided adequate notice of the proposed Covenant amendment. The City provided notice of the public hearing as required by Code and area residents were well aware of the Covenant, as they brought the Covenant to the City's attention.

d. He requested the examiner add a condition of approval requiring amendment of the Covenant to delete the portion of the Covenant limiting uses on the site to those allowed in the EC zone prior to civil plan approval for any portion of the site. He requested the examiner add a condition of approval requiring amendment of the Covenant to delete or modify the prohibition on access to NE 254th Street prior to civil plan approval of Phase 4, the only phase abutting NE 254th Street. The applicant should be required to provide a City approved turnaround at the northern terminus of NW 8th Avenue if the City Council prohibits all access to NE 254th Street. A turnaround is not necessary if access to NE 254th Street is allowed or limited to emergency vehicles only.

e. He noted that the streets within the River Bend subdivision south of the site will provide the primary access to the site, as these streets provide the most direct access to the majority of destinations. NE 254th Street provides a less direct route for most trips.

4. City engineer Ryan Jaynes noted that the site is currently within the service area boundaries of Clark Public Utilities ("CPU") for the provision of potable water. CPU and the City are currently negotiating transfer of the site into the City's water service area boundary. He requested the examiner modify condition A.2.r to require CPU approval of the applicant's water utility plans if the site is not moved into the City and City review of such plans if the site is moved into the City.

a. Condition A.3 requires that the applicant provide a traffic study addendum reviewing the Level Of Service ("LOS") and safety at the intersection of NE 132nd Avenue and NE 249th Street. He requested the examiner modify condition A.3 to require that the applicant provide any mitigation identified by the required analysis.

b. He requested the examiner modify condition D.2 require that the applicant plant two, two-inch caliper, Oregon white oak trees on the site as mitigation for removal of an existing Oregon white oak tree.

c. He requested the examiner add a condition of approval requiring that the applicant construct the off-site portion of NW 6th Avenue to connect with the proposed street improvements within the North Bend subdivision.

d. He noted that sight distance restrictions caused by hills and curves in the roadway are not uncommon. Similar restrictions exist on many roadways in the area. The City can address these limitations with signage warning drivers of the limitations.

5. City attorney Ken Harper agreed with Mr. Crummett's summary of the Covenant. He noted that Section 4 of the Covenant provides for amendment, modification, or termination of the Covenant by action of the parties. However, it does not provide a mechanism for such modification. Therefore, the City intends to utilize the procedures for site-specific rezones in BGMC 17.146.030.A(2).

6. Planner Michael Andreotti, civil engineer John Meier, attorney Jamie Howsley, and traffic engineer Frank Charbonneau appeared on behalf of the applicant, Wapiti Ventures.

a. Mr. Andreotti noted that the applicant proposed to develop the site with 125 lots, not 102 as Ms. Lutz stated. He accepted the findings and conditions in the Staff Report without objections. He summarized the applicant's response to the concerns raised by neighboring residents, Exhibit 45.

i. The applicant proposed to develop the site below the maximum density allowed by the R-5 zoning on the site. All proposed lots exceed the minimum lot size requirements of the Code.

ii. The majority of traffic from the site will travel south through the River Bend subdivision. NE 254th Street does not provide a direct route for most vehicle trips to and from the site. This development will not provide access to NE 254th Street until Phase 4, the last phase of the development, is completed. In the meantime, all residents of the site will have to travel south, which will create a habitat for these residents.

iii. The applicant will route all construction access through the River Bend subdivision. Construction vehicles and equipment will only access NE 254th Street as necessary to improve NE 254th Street and to construct stream crossings.

iv. This development will dedicate right-of-way for proposed NW 30th Street, which will provide for a future connection to NE 249th Street. However, the applicant will not construct NW 30th Street at this time. This connection will be constructed when the abutting properties east of the site redevelop.

v. The applicant will collect and treat stormwater runoff from all roads, driveways, sidewalks, and other impervious surfaces on the site. The applicant will release treated stormwater into the on-site stream and/or wetlands at less than predevelopment rates.

b. Mr. Meier testified that the applicant will construct the off-site portion of NW 6th Avenue across Tract M of the North Bend subdivision in order to connect with the proposed street improvements within the North Bend subdivision.

i. NE 254th Street is a County road. Therefore, the applicant should be required to demonstrate that the road conditions comply with County standards for offsite streets, Section 40.350.030.B(6)(b)(2) of the Clark County Code. NE 254th Street is designated a rural access road with a carrying capacity of 2,000 average daily trips ("ADT"). Traffic from this development, combined with existing traffic on NE 254th Street, will not exceed the capacity of this roadway. Traffic volumes will be well below 2,000 ADT.

c. Mr. Howsley argued that the City provided adequate notice of the proposed Covenant change. Neighboring residents and their attorney brought the issue to the attention of the City. The City provided all required notice of the public hearing.

i. The City has the authority to modify or terminate the Covenant, based on the terms of the Covenant. The City took the place of the County when it annexed the properties affected by the Covenant.

ii. The Covenant limited uses on the site to those allowed in the EC zone in order to attract Clark College. That did not happen. Therefore, the purpose of this restriction has expired. The City has rezoned the affected properties to residential. The City should have amended the covenant as part of the rezone process. However, the City

was unaware of the existence of the Covenant, due to a title error. Therefore, the City must address the issue in this proceeding.

iii. He requested the examiner adopt a condition requiring modification of condition 2.a of the Covenant prior to final plat approval of any phase of this development and modification of condition 2.b prior to plan review of Phase 4.

d. Mr. Charbonneau testified that he did not note any sight distance issues on NE 254th Street. Sight distance requirements only apply at intersections. There are vertical and horizontal curves on the road that limit views of oncoming traffic. However, that is not unusual. Similar conditions exist on many roadways in the area and do not create a significant hazard.

7. Charles Ross summarized his written testimony, Exhibit 50.

a. He objected to any access to 254th Street from this site. Such access is optional, it is not required by the Code. In the Covenant, the City committed to not use that roadway for access to the site. There has been no analysis of the conditions of NE 254th Street and its ability to accommodate traffic from this development. NE 254th Street is hazardous under existing conditions. The pavement is narrow and shoulders are limited or non-existent. Vertical and horizontal curves and vegetation limit sight distance. Improving sight distance would require regrading of the roadway and shoulders.

b. The Covenant limits development on the site to those uses allowed in the EC zone. He questioned how the City can change the Covenant and approve residential uses on the site. Neighboring residents were not informed of the proposal to amend the Covenant through a zone change process.

8. The examiner closed the record at the end of the hearing and announced his intention to approve the application subject to the conditions in the Staff Report.

## C. DISCUSSION

1. City staff recommended approval of the preliminary plat, based on the affirmative findings and subject to conditions of approval in the Staff Report, as amended at the hearing. The applicant accepted those findings and conditions, as amended, without exceptions.

2. The examiner concludes that the affirmative findings in the Staff Report show that the preliminary plat 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.

The Covenant

3. As discussed at the hearing, Clark County and the applicant's predecessors in interest entered into a "Covenant Running With The Land" (the "Covenant"), which included the following conditions in Section 2:

a. The use of the property shall be consistent with Comprehensive Plan policy in Chapter 13 which limits expansion of Urban Growth Boundaries not based on a new planning horizon to 100 acres or less for employment. Therefore the use of the property shall be limited to those uses in the Employment Campus zone listed as permitted or conditional in Table 17.120-1 of the City of Battle Ground's Municipal Code as attached in exhibit "B".

b. No access to or from any future development on the property will be to the north of the property.

4. Section 4 of the Covenant provides:

> **Binding.** This covenant shall remain in full force and effect until amended, modified or terminated by the action of Applicants and Clark County in zoning proceedings appropriate for that purpose.

5. Section 7 of the Covenant provides:

> **Successors.** This covenant and all of its provisions, and each of them, shall be binding upon Applicant, and any and all heirs, assigns and successors in interest into whose respective ownership the real property may pass, and any obligations made herein by Applicants shall be enforceable against all of their heirs, assigns and successors of interest into whose ownership real property may pass, and all of them.

6. Section 8 of the Covenant provides:

> **Annexation, Incorporation, Successors, and Assigns.** Subject to the terms hereof, the provisions of this Covenant shall extend to, bind and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and assigns. This Covenant shall be recorded with the real property records of Clark County. This Covenant is binding on the parties hereto, their successors and assigns, including the city, town, or municipality that assumes jurisdiction through incorporation or annexation of the area covering the property by this Covenant. The terms of this Covenant shall be binding on all successors, assigns or future parties in interest, including, but not limited to and through future annexation or incorporation of area in which the development exits [sic].

7. Pursuant to Sections 7 and 8 of the Covenant, the City steps into the shoes of the County and the applicant and the owners of other properties subject to the Covenant step into the shoes of the former property owners. The City and the current property

owners are bound by the terms of the Covenant, including the right to amend, modify or terminate the Covenant pursuant to Section 4.

8. Pursuant to Section 4 of the Covenant, the City and the current property owners have the ability to amend, modify, or terminate the Covenant, "[i]n zoning proceedings appropriate for that purpose." In this case, the City proposed to have the examiner consider terminating the conditions in Section 2 of the Covenant through this public hearing process and make a recommendation to the City Council. The City Council will make the final decision regarding the Covenant, consistent with the process for review and approval of site-specific rezone requests in BGMC 17.146.030A.2. The examiner finds that the proposed process is a "[z]oning proceedings appropriate for [the] purpose" of modifying the Covenant and therefore it is consistent with the terms of the Covenant.

9. The examiner finds that the City provided adequate notice of the potential Covenant amendment. Section 4 of the Covenant provides for amendment of the Covenant "[i]n zoning proceedings appropriate for that purpose." Therefore, the City will follow the site specific zone change procedures set out in BGMC 17.146.030.A(2), with the examiner making a recommendation to the City Council and the City Council making the final decision. The public was well aware of the Covenant, as they brought the issue to the City's attention. The City provided all required notice of the public hearing held on March 4, 2020. Numerous residents submitted written testimony regarding the proposed development generally and the Covenant issue specifically. The City Council will consider any amendments to the Covenant at future public hearings.

10. The examiner finds that it would be appropriate to delete Section 2.a of the Covenant, which limits development on the properties subject to the Covenant to those uses allowed in the City's EC zone.

a. The examiner interprets the reference to the, "[C]omprehensive Plan policy in Chapter 13…" in Section 2.a of the Covenant to refer to Chapter 14 of the Clark County 20-Year Comprehensive Growth Management Plan 2004 – 2024 (the "2012 County Comprehensive Plan"), the version of the Clark County Comprehensive Plan in effect in 2012, when the Covenant was drafted. The Covenant's reference to "[C]omprehensive Plan policy in Chapter 13…" appears to be a typographical error. Chapter 13 of the 2012 County Comprehensive Plan addresses shoreline master program goals and policies. The cited language is actually in Chapter 14 of the 2012 Comprehensive Plan. Chapter 14 of the 2012 County Comprehensive Plan provided, in relevant part:

> With the following exceptions, UGA boundary reviews and expansions not based on a new planning horizon shall occur no more frequently than every three years:
>
> a) Expansions of 100 acres or less, limited to employment:
> …

b. As discussed at the hearing, the site and surrounding properties subject to the Covenant were added to UGB subject to the conditions in the Covenant in an effort to attract Clark College to develop a new campus on those properties. Presumably, uses on the site were limited to those allowed in the EC zone in order to facilitate the development of a college campus and to allow expansion of the UGA outside of the three year planning horizon pursuant to Chapter 14 of the 2012 County Comprehensive Plan in effect at that time. That purpose, attracting college development to the City of Battle Ground, expired when the College chose to develop its new campus elsewhere in the County.

c. Given that change in circumstances, the City Council determined these properties were better used for residential development. The City Council doubtless considered and addressed the comprehensive plan amendment criteria in BGMC 17.146.040.B and the zone change criteria in BGMC 17.146.040.C when it annexed the properties subject to the Covenant, amended the comprehensive plan designation, and rezoned the properties.

d. Termination of Section 2.a of the Covenant is necessary to implement the Council's decision and its vision for future development of these properties. Section 14 of the 2012 County Comprehensive Plan (erroneously cited as Chapter 13 in the Covenant) does not preclude future zone changes for properties subject to out of sequence UGA expansions. The plain language of Sections 4 and 7 of the Covenant expressly allow for amendments of the Covenant by the parties or their successors, pursuant to "zoning proceedings appropriate for that purpose." (Section 4 of the Covenant). Therefore, the examiner recommends the City Council enter into an agreement with the owners of the properties subject to the Covenant to delete Section 2.a of the Covenant in order to allow these properties to develop under the current Residential plan designation and R-5 zoning.

11. The examiner further finds that the City should modify or delete Section 2.b of the Covenant, which prohibits access "[t]o the north of the property" and precludes street connections to NE 254th Street.

a. This condition conflicts with the City's "Legacy Standards" adopted in 1999 and referenced in Chapter 2 of the City of Battle Ground Comprehensive Plan 2015-2035 (the "Battle Ground Comprehensive Plan") which, "[p]rescribes … street networks that connect in a grid pattern when possible," "[a]re intended to provide a more efficient transportation system that allows people the choice of walking, biking or driving to their destination," and "[g]uide the development of new subdivisions that are better integrated with surrounding neighborhoods and the City-at-large." Section 2 of the Battle Ground Comprehensive Plan. This condition also conflicts with BGMC 12.116.200, which requires cross streets provided at intervals not greater than five hundred feet in length and connection to existing streets abutting a development site.

i. Section 2.b of the Covenant prohibits access to NE 254th Street, forcing all traffic between this street and NE 254th Street to utilize two roads, NW 6th and 8th Avenues, for north-south circulation. This development and the prior River Bend

subdivision to the south provided opportunities for additional cross-circulation by extending stub streets to the east boundaries of these development sites, proposed: NW "G," 30th, 31st, and 33rd Streets. However, those street stubs will not be extended and provide additional opportunities for cross-circulation until the adjacent properties redevelop and connect to those street stubs. Allowing access to NE 254th Street from this development would provide a third option that would allow traffic from this development to disperse onto multiple streets, reducing congestion on NW 6th and 8th Avenues, and providing an alternative route for some trips in this area, consistent with the City's Legacy Standards and BGMC 12.116.200.

b. As discussed below, although NE 254th Street is not improved to current standards, it is not inherently hazardous. If the City Council deletes Condition 2.b and allows connection to NE 254th Street, traffic from this development will not exceed the capacity of the street and the applicant will be required to ensure that the roadway complies with County standards for off-site access roads. Future development on lands abutting this street within the UGA will be required to improve the portions of this street abutting those properties to urban standards.

c. However, roughly half of NE 254th Street is currently located outside of the existing city limits, within rural unincorporated Clark County. Allowing direct access to this street would direct urban traffic onto an underimproved rural roadway. The City Council could choose to limit to access to NE 254th Street to emergency vehicles, pedestrians, and bicyclists only, installing bollards or similar barriers to prevent non-emergency motor vehicle traffic from accessing this street. The City could choose to limit access on a permanent basis, or as a temporary measure, until adjacent properties redevelop and improve portions of the roadway. In the future, the City may choose to annex the remaining properties south of NE 254th Street, as the street would serve as the northern edge of the UGA in this area. Future development on properties south of the road would improve the roadway to urban standards and street connections to NE 254th Street from this site and other developments would allow for additional cross-circulation opportunities.

d. The examiner recommends that the City not retain the total prohibition on access to NE 254th Street as required by the current language of Section 2.b. At a minimum, the examiner recommends the City Council modify Section 2.b to allow emergency vehicle access to NE 254th Street. However, the choice between allowing full access and emergency access only is a policy choice best left to the City Council, based on the considerations discussed above. Therefore, the examiner recommends the City Council enter into an agreement with the owners of the properties subject to the Covenant to modify or delete Section 2.b of the Covenant, consistent with the above discussion.

12. The examiner understands that the Covenant was recorded with the deeds to the properties subject to the Covenant. If the City and the owners of the properties affected by the Covenant reach an agreement to modify or terminate the conditions of the Covenant, the property owners should record a revised Covenant (if Condition 2.b is modified to limit access to the north to emergency vehicles) or record a document indicating that the Covenant has been terminated and is no longer in effect (if Condition

2.b is terminated, eliminating the purpose of the Covenant). A condition of approval is warranted to that effect for this development. Such a condition will have no effect on the other properties that are subject to the Covenant, as the examiner has no jurisdiction over those properties. However, it is likely in the best interest of the other property owners to record such documents for their properties.

The Subdivision

13. 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. 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, increased noise, and other impacts for existing residents in the area. What is now a largely vacant 37.38-acre parcel will be developed with 125 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. Such impacts are only one of the many consequences of living in or near an urban area.

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 R-5. As large lots are sold, presumably they will be developed to the maximum extent allowed.

d. The opinion survey cited by several neighbors is not relevant to the approval criteria for this development. The survey represents the views and desires of existing residents who responded to the survey. The City Council may use the results of that survey in future planning and zoning decisions. But this development is subject to the laws in effect when this application was filed.

14. Contrary to the concerns expressed in the public comment letters, NE 254th and NE 249th Streets will not provide the primary access to the site.

a. The City recently approved the River Bend subdivision on the abutting property south of the site. That development will extend two stub streets, proposed NW 6th and 8th Avenues, to the north boundary of that development, the south boundary of the

site. With this development, the applicant will extend those streets into the site, providing direct access between the site and NW 25th Street to the south.

b. If the City Council approves a modification of the Covenant, this development will also provide access to NE 254th Street.

i. Based on the applicant's traffic analysis, half of the site generated traffic will use NW 6th and 8th Avenues to travel to and from the site. The other half will utilize NE 254th Street, when that connection is constructed. (See Figure 7a of Exhibit 8). NE 254th Street is designated a rural access road with a carrying capacity of 2,000 ADT. Traffic from this development combined with existing traffic on NE 254th Street will be well below 2,000 ADT and will not exceed the capacity of this roadway.

ii. The applicant proposed to develop the site in four phases, beginning on the southern portion of the site and moving north. Therefore, this development will not provide access to NE 254th Street until Phase 4 is constructed.

iii. The City Code does not provide minimum standards for off-site streets. The majority of NE 254th Street is a County roadway. The applicant agreed to comply with the County's off-site street requirements in Section 40.350.030.B(6)(b)(2) of the Clark County Code. This section requires that NE 254th Street:

> [H]ave an all-weather driving surface, with an unobstructed roadway width of twenty (20) feet; except in those cases where the preexisting road is eighteen (18) feet wide, additional widening to twenty (20) feet is not necessary. Any preexisting roadway narrower than eighteen (18) feet shall be widened to the full twenty (20) foot standard.

The applicant agreed to demonstrate that existing NE 254th Street meets this standard or improve the roadway as necessary to bring it into compliance. A condition of approval is warranted to that effect.

iv. There is no dispute that NE 254th Street does not provide optimum travel conditions. There are no sidewalks and the pavement is narrow with little or no shoulder. Sharp curves and hills limit views of oncoming vehicles. However this does not mean that the street is unsafe. Many streets in the area are in this same condition. These conditions are obvious. Reasonably prudent drivers will observe the posted speed limit and, if necessary, further reduce their speed to accommodate changing road conditions. Unfortunately not all drivers are prudent enough to observe posted speed limits and road conditions. However there is no evidence that the development proposed in this application will contribute a disproportionate share of imprudent drivers. The examiner encourages area residents to contact local law enforcement agencies to request enhanced enforcement of traffic laws in this area if necessary to ensure compliance with speed limits and other traffic regulations.

(A) Higher traffic volumes create a proportionally higher risk for drivers, pedestrians and bicyclists. In response reasonably prudent people exercise more care personally and with family members. 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. The applicant is not required to construct offsite sidewalks and other road improvements on 254th Street, beyond those necessary to comply with Section 40.350.030.B(6)(b)(2) of the Clark County Code, because it would be disproportionate to the impact of the development on the need for such facilities. Applicants are not required to remedy all perceived and existing deficiencies in the vicinity of a development. The Code requires an applicant to mitigate impacts a development causes or to which it contributes significantly. Although the proposed development contributes to problems with substandard streets in the area, those problems exist largely because of existing development. It would be inequitable to require an applicant to bear the full burden of improvements where the proposed development is only responsible for a small portion of the problem. The need for sidewalks and other street improvements is one that exists generally along streets in the area, and is a need to which all adjoining properties contribute, not just the lots being created in this case. Sidewalks and other improvements in the area will interconnect over time as other properties in the area develop, but the applicant is not required to make such connections at this time.

v. The applicant proposed to route the majority of construction traffic to the site via NW 6th and 8th Avenues. Construction vehicles and equipment will only utilize NE 254th Street as necessary to construct the new intersection of NW 8th Avenue and NE 254th Street, construct stream crossings to extend NW 6th and 8th Avenues into the site, and if necessary to improve NE 254th Street. A condition of approval is warranted to that effect.

b. No access is proposed to NE 249th Street at this time. The applicant will dedicate half-width right-of-way for proposed NW 30th Street in the southeast corner of the site, between proposed NW 6th Avenue and the east boundary of the site. The proposed right-of-way will allow for future extension and connection with NE 249th Street. However, the applicant will not construct NW 30th Street or provide access to NE 249th Street at this time. Future developers will construct road improvements within the right-of-way created by this development as part of future developments on adjacent properties to the east.

i. Future construction of NW 30th Street will impact a portion of the stream buffer. However, such impacts are allowed by BGMC 18.280.090.B. The future developer who constructs the roadway improvements will be required to mitigate for the buffer impacts pursuant to this section.

15. The proposed development will generate increased traffic on area streets. That increased traffic will be perceptible to area residents. However, the total volume of traffic will not exceed the capacity of those streets nor create a hazard, based on the applicant's traffic study. All intersections impacted by this development will continue to operate at acceptable levels of service.

16. The applicant is required to perform additional traffic analysis addressing Level Of Service and safety at the NE Dublin Road/NE 249th Street/NE 132nd Avenue intersection. See condition of approval A.3. The applicant should be required to implement any mitigation measures recommended by that analysis. Condition of approval A.3 should be modified to that effect.

17. The proposed development will not have a significant impact on surface or groundwater quality in the area. The applicant will collect and treat stormwater runoff from all streets, sidewalks, driveways, and other pollution generating impervious surfaces on the site. The applicant will also collect runoff from roofs and other non-pollution generating surfaces. The applicant will detain stormwater runoff in one of two stormwater facilities on the site, releasing it into the on-site streams or wetlands at less than predevelopment rates.

a. Untreated stormwater runoff from NE 254th Street will continue to surface flow off of the roadway and into adjacent grassy ditches and swales. Additional traffic from this development will cause a proportional increase in the volume of pollutants flowing off of this roadway. However, the road is located more than 1,000 feet from the Lewis River. As noted in the Geotechnical Report (Exhibit 6) groundwater in this area is between 15 and 125 feet below ground surface ("bgs"). As noted in Exhibit 45, the site is located in a Category 2 Critical Aquifer Recharge Area ("CARA") with a five to ten year travel time for surface water to reach groundwater wells in the area. Runoff from the roadway will surface flow through fields, pasture, and forest, and/or percolate through the soil, which will filter the water and remove the majority of pollutants prior to reaching the river or groundwater.

18. Development on the site will cause some impacts to the wetland and stream buffers. The applicant will minimize impacts to the stream channel by installing a 24-inch culvert to convey the stream beneath the proposed roadway. The applicant will mitigate for stream buffer impacts through buffer averaging, increasing the size of the stream buffer elsewhere on the site in order to compensate for areas of buffer impacted by the roadway as allowed by the Code. The Code allows construction of stormwater facilities within wetland buffers. The development will not impact the wetland itself.

19. Clearing and development on this site will eliminate habitat for wildlife,. But the Code does not prohibit such an effect. To the contrary, it is an inevitable consequence of concentrating new development in the urban area. None of the animals observed on this site is listed as endangered or threatened. They are commonly observed in the urban area. Their presence is less likely after the site is developed, but that is to be expected. There is no substantial evidence that any endangered or threatened species exist on the site.

## D. CONCLUSION

1. Based on the above findings and discussion, the examiner recommends the City Council and the owners of the properties affected by the Covenant:

a. Agree to terminate condition 2.a of the Covenant, which limits uses on the properties subject to the Covenant to those allowed in the EC (Employment Campus) zone;

b. Agree to modify or terminate condition 2.b of the Covenant, which prohibits access to the north; and

c. Record a revised Covenant or a document indicating that the Covenant has been terminated in its entirety.

2. The examiner further concludes that PR 48-2019 (Wapiti Hills 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 PR 48-2019 (Wapiti Hills 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 NE 254th Street, "Neighborhood Collector", including sidewalk, planter strip, curb/gutter and asphalt.
   b. Showing adequate half-street improvements, for NW 30th Street, a Local A, including sidewalk, planter strip, curb and gutter, and asphalt and necessary right-of-way dedications or provide documentation from a wetland consultant, acceptable to the City Engineer, that it is infeasible to construct NW 30th Street.
   c. Showing full width improvements to NW 8th Avenue and NW 6th Avenue to "Neighborhood Collector" standards, including sidewalk, planter strip, curb & gutter, and asphalt.
   d. Showing full width improvements to all other streets to "Local A" standards, including sidewalk, planter strip, curb & gutter, and asphalt.
   e. Containing a combined landscaping and driveway plan.
   f. Showing sight distance and vision clearance triangles.
   g. Containing a signing and striping plan.
   h. Containing a street lighting plan having LED acorn units.

i. Showing traffic calming devices on all public streets.
j. Showing any recommend improvements to the intersection of NE 132nd Avenue and NE 249th Street.
k. Construct NW 6th Avenue and NW 8th Avenue to NW 25th Street, as shown on the approved River Bend subdivision plans, unless they have already been completed.
l. Showing any necessary improvements to NE 254th Street/NE Dublin Road/NE 132nd Avenue per County Code 40.350.030.B.6.b.1 and where vegetation needs to be removed within the ROW to have adequate sight distance. These plans will need to be approved by Clark County as it is in their ROW.
m. Showing driveways that meet the requirements of BGMC 12.116.243.
n. Showing traffic mitigation at SR 503 & NW Onsdorff Boulevard, Grace Avenue & East Main Street, SR 503 & SW Eaton Boulevard, and SW 20th Avenue & SW Eaton Boulevard or indicating that mitigation fees will be paid in lieu of the improvements.
o. Showing that the secondary traffic mitigation at SR 503 & SW Eaton Boulevard or meeting one of the other options in lieu of the improvements.
p. Showing water lines extending to extreme property lines.
q. Showing each residential lot having its own individual water service.
r. Show water plans approved by the City of Battle Ground if the site is moved into the City of Battle Ground's service area or water plans approved by CPU if this area is not moved into the City of Battle Ground's service area.
s. Showing sewer lines extending to extreme property lines.
t. Showing each lot having its own individual sanitary lateral.
u. Showing pump station PS-B and force main FM-B, as shown on the approved River Bend subdivision plans, unless they have already been completed.
v. Showing fire hydrants meeting spacing requirements throughout the subdivision.
w. Containing a photometric plan for all access points, intersections, streets, frontage roads out to centerline, and any existing lights to ensure that proposed lights meet IES RP-8-00 standards.
x. Showing a stormwater facility that meets the requirements of BGMC 18.250.
y. Showing grading and erosion control in conformance with applicable city standards and standard construction details.
z. Showing one construction entrance, which doesn't connect to NE 254th Street.
aa. Showing the pedestrian trail meets the surface requirements listed in 18.260.090a.
bb. Showing trail to be within a public access easement of at least 12 feet in width, per BGMC 17.128.040.2.
cc. Showing trial meets the standards specified in 12.116.070.
dd. Update street names, if applicable.
ee. Critical area tracts shall be on the engineering plans and also recorded with the plat.
ff. Include fence placement and sign details meeting the wetland buffer demarcation of 18.270.050.
gg. Include fence placement and sign details meeting the habitat buffer demarcation of 18.280.070.

hh. Showing the stormwater facility meets the standards listed in 18.270.070.
ii. Showing construction of the off-site portion of NW 6th Avenue as necessary to connect with the proposed street improvements within the North Bend subdivision.

3. Provide a Traffic Study Addendum addressing LOS and safety at the intersection of NE 132nd Avenue and NE 249th Street and provide any required mitigation identified in the Traffic Study Addendum.
4. Submit a hydrology report that addresses all requirements found in BGMC 18.250.
5. Submit a SWPPP that meets Department of Ecology requirements.
6. Submit a mitigation plan with the following:
   a. Demonstrate what minimization measures are being utilized that satisfies the criteria listed in table 18.270.090-8 (buffer reduction).
   b. Per BGMC 18.260.180 all wetlands and buffer areas over 5,000 square feet shall be included in critical area tracts.
   c. Per BGMC 18.260 and 18.280.100.A1, provide a detailed buffer enhancement plan for the seasonal stream.
   d. Per BGMC 18.260.120, provide a mitigation plan for direct and indirect impacts to the seasonal stream.
7. Submit a construction cost estimate for required public and applicable private improvements for review and approval by the City Engineering Department
8. 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.
9. Obtain City Council record an amended Covenant deleting Condition 2.a, which limits uses on the site to those allowed in the EC zone.
10. Complete one of the following prior to engineering approval for Phase 4:
    a. Record an amended Covenant modifying Condition 2.b, which prohibits access north of the site, and provide City approved barriers limiting motor vehicle access to 254th Street to emergency vehicles only;
    b. Record a document indicating that the Covenant has been terminated in its entirety; or
    c. If the City Council chooses to retain Condition 2.b of the Covenant, provide a City approved turnaround at the northern terminus of NW 8th Avenue.

**B. <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.

**C. Prior to Creation of Impervious Surface:**

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.

**D. Prior to Engineering Acceptance:**

1. Construct all required public improvements mentioned above in the findings, if applicable, and go on a walkthrough with City of Battle Ground Engineering Staff and correct any deficiencies as determined by City staff.
2. Two, two-inch caliper, Oregon White Oak trees shall be planted and inspected by City staff.
3. Wetland and habitat buffer signage shall be installed and inspected by City staff.
4. Submit a letter from the applicant showing that fire flow requirements per BGMC 15.105.180 and 15.105.190 can be met.
5. Submit to the City of Battle Ground a two-year/20-percent maintenance bond for all completed and accepted public improvements.
6. 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.
7. 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.

**E. Prior to Final Plat Approval:**

1. Construct all required public improvements and gain engineering acceptance or provide appropriate bonding.
2. Construct the mitigation measures for the failing intersection of SR 503 & NW Onsdorff Boulevard or pay the mitigation fees of $196,777.89.
3. Construct the mitigation measures for the failing intersection of Grace Avenue & East Main Street or pay the mitigation fees of $10,330.62.
4. Construct the mitigation measures for the failing intersection of SR 503 & SW Eaton Boulevard or pay the mitigation fee of $49,066.56.
5. Construct the mitigation measures for the failing intersection of SW 20th Avenue & SW Eaton Boulevard or pay the mitigation fee of $2,291.40.
6. Meet one of the options for the secondary mitigation measure at the intersection of SR 503 & SW Eaton Boulevard.
7. Submit a final plat:
   a. That shows easements for public utilities not located in the right-of-way.
   b. That shows all critical areas over 5,000 square feet in a separate tract.
   c. That shows the pedestrian trail in a 12-foot wide public easement.
   d. With the following note: "No fences are allowed in the sight distance

triangle."

e. With the following note: "All utilities are to be located outside of the sidewalk section and to be underground where possible."
f. With the following note: "All new structures shall conform to the setback and building heights of the R5 zoning district."
g. With the following note: "Building permits and impact fees will be calculated and paid at the time of permit issuance."
h. With the following note: "Wetland buffer demarcation shall comply with BGMC 18.270.050."
i. With the following note: "Habitat buffer demarcation shall comply with BGMC 18.280.070."
j. With the following note: "Critical area tracts are to be privately owned and maintained."
k. With the following note: "Trail shall be privately owned and maintained."
l. That shows where any control monuments have been placed.
m. That shows the dedication of any public roads or alleys.

8. Submit a two-year stormwater maintenance contract for review and/or approval.
9. Submit a maintenance plan, or other acceptable a mechanism, to assure perpetual care and maintenance of the trail.
10. If LID improvements are incorporated into the project, provide appropriate stormwater covenants.
11. Submit a signed Bill of Sale for sewer, stormwater, and water systems.
12. Prior to Final Plat approval of Phase 4, demonstrate that NE 254th Street complies with the offsite street standards of Section 40.350.030.B(6)(b)(2) of the Clark County Code County

**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.

**H. <u>Other</u>**

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. Submit a copy of the boundary line adjustment to the Community Development Department within 30 calendar days of recording.
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 with Ecology on any necessary review, permits, and approvals in

reference to Ecology's e-mail dated October 23, 2019.

5. Coordinate any air quality recommendations and receive applicable permits in reference to SWCAA's e-mail received October 21, 2019.
6. Construction vehicle and equipment traffic is prohibited on NE 254th Street, except as minimally necessary to construct stream crossings or improvements to NE 254th Street.

DATED this 20 day of March 2020.

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.