

Notice to Parties of Record

Project Name: 5th Plain Phase Creek Phase 3

Case Number: PLD2016-00010

The attached decision of the Land Use Hearing Examiner is final unless a motion for reconsideration is filed or an appeal is filed with Superior Court.

See the *Appeals* handout for more information and fees.

Motion for Reconsideration:

Any party of record to the proceeding before the hearings examiner may file with the responsible official a motion for reconsideration of an examiner's decision within fourteen (14) calendar days of written notice of the decision. A **party of record** includes the applicant and those individuals who signed the sign-in sheet or presented oral testimony at the public hearing, and/or submitted written testimony prior to or at the Public Hearing on this matter.

The motion must be accompanied by the applicable fee and identify the specific authority within the Clark County Code or other applicable laws, and/or specific evidence, in support of reconsideration. A motion may be granted for any one of the following causes that materially affects the rights of the moving party:

- a. Procedural irregularity or error, clarification, or scrivener's error, for which no fee will be charged;
- b. Newly discovered evidence, which the moving party could not with reasonable diligence have timely discovered and produced for consideration by the examiners;
- c. The decision is not supported by substantial evidence in the record; or,
- d. The decision is contrary to law.

Any party of record may file a written response to the motion if filed within fourteen (14) calendar days of filing a motion for reconsideration.

The examiner will issue a decision on the motion for reconsideration within twenty-eight (28) calendar days of filing the motion for reconsideration.

Mailed on: October 20, 2016

DS1333

Revised 7/15/13



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**BEFORE THE LAND USE HEARINGS EXAMINER
OF CLARK COUNTY, WASHINGTON**

Regarding an application by Fifth Plain Creek LLC for) **FINAL ORDER**
preliminary plat approval to divide 11.67-acres into 44 lots in) **PLD2016-00010¹**
the R1-10 & R1-20 zones west of NE 182nd Avenue & south of) **(5th Plain**
NE 81st Circle² in unincorporated Clark County, Washington) **Creek Phase 3)**

A. SUMMARY

1. The applicant, Fifth Plain Creek LLC, requests approval to divide the roughly 11.67-acre parcel into 44 lots.

a. The subdivision parcel is located in the southwest quadrant of the intersection of NE 182nd Avenue and NE 81st Circle. The legal description of the subdivision parcel is tax lot 168622-000 (the "site"). The northeastern portion of the site and properties to the north are zoned R1-20 (Low Density Residential, 20,000 square foot minimum lot size). The remainder of the site and abutting properties to the northwest, east, and south are zoned R1-10 (Low Density Residential, 10,000 square foot minimum lot size). Properties to the west are zoned R1-7.5 (Low Density Residential, 7,500 square foot minimum lot size).

b. The 11.67-acre site was approved as a remainder lot (Lot 70) of PLD2015-00026 (5th Plain Creek Subdivision Phases I & II).³ The site is currently vacant. The applicant proposes to construct a new a single-family detached dwelling on each of the proposed lots. All proposed lots will comply with the minimum dimensional standards for the R1-10 and R1-20 zones, as modified by the density transfer provisions. Clark Public Utilities and the City of Vancouver will supply domestic water and sanitary sewer service respectively to the site.

c. The applicant also proposed to provide offsite wetland mitigation (for filling of small wetlands on the subdivision site) on a 70.39 acre parcel located in the AG-20 district north of the site (tax lot 115621-190, the "wetland mitigation site"). The wetland mitigation and a proposed pedestrian bridge across 5th Plain Creek will require a Shorelines Substantial Development Permit. A Shoreline Conditional Use permit will be required for a sewer line that will be attached to the underside of the bridge.

2. The County issued a Determination of Nonsignificance ("DNS") for the subdivision pursuant to the State Environmental Policy Act ("SEPA"). Clark County Hearing Examiner Joe Turner (the "examiner") conducted a public hearing about the application. County staff recommended that the examiner approve the application subject

¹ This decision also addresses SEP2016-00024, SHL2016-00020, HAB2016-00037, FLP2016-00008 and EVR2016-00023.

² The applicant also requests approval of a wetland mitigation site at 17212 NE 88th Street.

³ Phases 1 and 2 were previously approved for 69 lots and a future development lot (which is now proposed as Phase 3) under PLD2015-00026 (5th Plain Creek Subdivision Phases I & II).

to conditions. See the Type III Land Division and Environmental Review Staff Report and Recommendation to the Hearing Examiner dated August 10, 2016 (the "Staff Report"). The applicant accepted the findings and conditions in the Staff Report with certain exceptions. Six persons testified orally with questions and concerns about the application. Disputed issues or concerns in the case include the following:

a. Whether the County provided proper notice for the public hearing regarding this application; and

b. Whether the intersection of NE 182nd Avenue and Fourth Plain Boulevard meets County concurrency standards or will create a hazard.

3. 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 August 25, 2016. That testimony and evidence, including a video recording of the public hearing and the casefile maintained by the Department of Community Development ("DCD"), are included herein as exhibits, and they are filed at DCD. The following is a summary by the examiner of selected testimony and evidence offered at the hearing.

2. County planner Jan Bazala summarized the Staff Report and showed photographs of the site. He noted that the County approved Phases I and II of this development in December 2015. The current proposal is for Phase 3.

a. He requested the examiner add a condition of approval requiring the applicant show the side setback on proposed Lot 22, which is divided by the zoning boundary between the R1-10 and R1-20 zones.

b. The proposed soft-surface path and pedestrian bridge over 5th Plain Creek will not meet ADA requirements. Therefore the School District will provide bus service for students who live on the site.

c. The applicant posted a public notice sign on the site. The public notice sign for the prior development, Phases I and II, was still on the site when the sign company posted the public notice sign for this Phase III development. The sign company left the prior sign in place, with two signs on the site, for a few days in order to avoid confusion. The public notice sign for this development was still standing a few days prior to the hearing.

3. Engineer Kurt Stonex and attorney Steve Morasch, testified on behalf of the applicant, Fifth Plain Creek LLC.

a. Mr. Stonex accepted the findings and conditions in the Staff Report with certain exceptions.

i. The applicant will not infiltrate all of the stormwater runoff from roofs on the site. The applicant will direct excess runoff to the public storm sewer on the site. The applicant will dedicate the stormwater facilities to the County.

ii. He requested the examiner delete proposed conditions D-5.a and b, which require the applicant show the priority habitat and mitigation areas on the final plat. The applicant will show a wetland or mitigation covenant on the final plat, but will not show details such as the path and mitigation areas.

iii. The intersection of NE 182nd Avenue and NE Fourth Plain Boulevard (SR 500) was identified as needing improvement when the County removed the urban holding overlay in this area. Therefore the Board of Commissioners added this intersection to the Capital Facilities Plan so that Traffic Impact Fees (“TIFs”) generated by development in this area could be used to fund improvements to this intersection. This development will pay more than \$158,000 in TIFs, which the County can use to fund improvements to this intersection.

b. Mr. Morasch summarized his memorandum, Ex. 10. WSDOT agrees that the intersection of NE 182nd Avenue and NE Fourth Plain Boulevard (SR 500) is an “Intersection of Regional Significance,” which is subject to County standards. This intersection will operate in compliance with County standards with the additional traffic from this development and the traffic analysis did not identify any safety issues. The findings in the Final Order for Phases I and II of this development are not binding on this application. That decision did not consider CCC 40.350.020.G(1)(c) and the current traffic analysis for this development. The County implements the requirements of the Growth Management Act (“GMA”) through its concurrency ordinance. The County has a right to establish concurrency levels. The County can choose to amend its concurrency requirements in the future, but those changes will not affect this development, which must be judged based on the laws in effect when the application was filed.

4. County habitat biologist Lance Watt agreed with the applicant’s request to delete proposed conditions D-5.a and b.

5. County concurrency engineer David Jardin requested the examiner amend proposed condition C-2 to delete the reference to bioretention facilities.

a. He noted that the applicant originally proposed to develop the entire site in a single phase. The transportation study for the prior development reflected that plan and determined that mitigation would be required at the NE 182nd Avenue/NE Fourth Plain Boulevard (SR 500) intersection. Potential mitigation included realigning the intersection further west and installing a traffic signal, which was WSDOT’s preferred option. Therefore the applicant revised the development to eliminate phase 3 and meet County requirements without improving the intersection. However the applicant

subsequently noted that CCC 40.350.020.G(1)(c) authorizes approval of this development without mitigation. This section provides that developments cannot be required to mitigate their impacts in order to obtain a concurrency approval unless all three criteria listed in this section are met. In this case, the proposed development only meets two of the three standards. This provision was not considered in the prior review.

b. This development is not required to consider traffic from the Velvet Acres development, because this development application was filed first.

c. The applicant for Phases I and II requested a road modification to waive half-width frontage improvements on the section of NE 81st Circle abutting the site. Staff recommended denial of the road modification with that application, because the applicant failed to provide sufficient justification for the modification. The applicant then withdrew phase 3 from the proposal and no improvements were required for NE 81st Circle. With this current application the applicant again requests a road modification to waive these road improvements. The applicant's current road modification request provides adequate justification for the waiver.

6. Mark Georgioff questioned the adequacy of the public notice for this application. He did not see a public notice sign on the site for this application. The notice sign for the prior development remains on the site. The new sign was much smaller than the sign for the prior development and smaller than the sign for the Velvet Acres development.

a. He noted that the traffic study for Phases I and II of this development concluded that any additional traffic from this site would require improvements to the NE 182nd Avenue/NE Fourth Plain Boulevard (SR 500) intersection. The current traffic study did not require any improvements. He questioned what changed between the two analyses. There are numerous accidents and near misses at this intersection. His vehicle has nearly been rear-ended as he waits to turn left from eastbound NE Fourth Plain Boulevard (SR 500) to NE 182nd Avenue. Many accidents go unreported. This development should be denied or conditioned to improve this intersection. The applicant withdrew phase 3 from the prior development application because of the traffic impacts on this intersection.

7. Nancy Connolly reiterated Mr. Georgioff's testimony regarding the public notice sign on the site for this application.

8. Richard Bender noted that the traffic study for Phases I and II of this development concluded that the intersection of NE 182nd Avenue and NE Fourth Plain Boulevard (SR 500) had sufficient capacity for 12 additional vehicle trips. The Final Order approving Phases I and II was based on that traffic study. Therefore the Staff Report for this development conflicts with the Final Order for Phases I and II. He submitted a copy of the August 22, 2016 WSDOT letter (Ex. 24) and a list of persons who opposed the lifting of the Urban Holding zoning in this area due to traffic safety concerns (Ex. 25). The Growth Management Act ("GMA") requires that improvements

must be in place before development is approved. Therefore the applicant should be required to improve the NE 182nd Avenue/NE Fourth Plain Boulevard (SR 500) intersection as a condition of this development.

a. There were two public notice signs on the site for approximately ten days. Then the new sign was removed.

b. The Staff Report for this development conflicts with the conditions of approval for the prior development, Phases I and II, which required sidewalks, curbs and other improvements along the site's frontage on NE 81st Circle.

9. David Att testified that the roads in this area are at capacity and hazardous under existing conditions, based on his experience. Additional traffic from this development will exceed the capacity of area roads and exacerbate this hazard.

10. Frank Bereitschaft expressed concerns with the impact of this development on the NE 182nd Avenue/NE Fourth Plain Boulevard (SR 500) intersection. This intersection is currently operating at Level Of Service ("LOS") E or F. Traffic from this development will make things worse. Improvements to this intersection that are funded by Transportation Impact Fee ("TIF") funds from development in the area will not be completed for 5 or 6 years after the development is completed. The intersection will continue to pose a hazard during that time. This is inconsistent with the County's vision for safe streets and safe infrastructure.

11. Doug Faulkner questioned the calculation of v/c (volume to capacity) ratios.

12. At the end of the hearing the examiner held the record open for one day to allow the applicant an opportunity to demonstrate that the public notice sign for the current application remained on the site and for the County to submit copies of the traffic studies for the prior review of Phases 1, 2 and 3 of this development (the "2015 traffic study"), and Hearing Examiner Daniel Kearns' decision approving PLD2015-00026 (5th Plain Creek Subdivision Phases I & II). The record in this case initially closed at 5:00 p.m. on Friday August 26, 2016. The following evidence was submitted during the initial open record period:

a. A copy of Hearing Examiner Daniel Kearns' decision approving PLD2015-00026 (5th Plain Creek Subdivision Phases I & II). Ex. 26 of this 2016 application;

b. Photos showing the public notice sign posted on the site for the August 25, 2016 hearing remains on the site. Ex. 27;

c. The initial traffic study for Phases I, II and III of PLD2015-00026 (5th Plain Creek Subdivision) dated July 16, 2015. Ex. 28; and

d. The revised traffic study for Phases I and II of PLD2015-00026 (5th Plain Creek Subdivision) dated October 15, 2015. Ex. 29.

13. While reviewing the new exhibits, the examiner noted an apparent conflict between the 2015 analyses (Exs. 28 and 29) and the 2016 traffic analysis (Attachment K of Ex. 1). Therefore the examiner issued an Order Reopening the Record the record on September 6, 2016 (Ex. 30) to allow the parties an opportunity to submit additional testimony and evidence regarding this conflict. The hearings officer re-opened the record subject to the following revised schedule:

a. Until 5:00 P.M., Tuesday, September 20, 2016, for the applicant to address the apparent conflicts between the July 16, 2015 traffic study (Ex. 28) and the April 27, 2016 traffic study (Attachment K of Ex. 1).

b. Until 5:00P.M., Tuesday, September 27, 2016 for County staff to respond in writing to the new evidence submitted by the applicant;

c. Until 5:00 P.M., Tuesday, October 4, 2016, for the public to review and respond to the new evidence provided by the applicant and County staff; and

d. Until 5:00 P.M., Tuesday, October 11, 2016, for the applicant to submit a final argument, without any new evidence. Pursuant to the applicant's request, the examiner closed the record in this case at 5:00 P.M October 6, 2016.

14. The following evidence was submitted during the open record period:

a. Plans for the proposed pedestrian bridge and accompanying email, Ex. 33;

b. A Memorandum from Mr. Lee dated September 19, 2016, explaining the apparent conflicts between the 2015 and 2016 traffic studies (Ex. 34);

c. An email from Mr. Jardin dated September 27, 2016, responding to Mr. Lee's memo (Ex. 35);

d. A letter from Mr. Georgioff dated October 3, 2016, responding to Mr. Lee's and Mr. Jardin's submittals (Ex. 36); and

e. A letter from Mr. Morasch dated October 6, 2016 providing the applicant's final argument and requesting the examiner close the record (Ex. 37).

C. FINDINGS:

Only issues and approval criteria raised in the course of the application, during the hearing or before the close of the record are discussed in this section. All approval criteria not raised by staff, the applicant or a party to the proceeding have been waived as

contested issues, and no argument with regard to these issues can be raised in any subsequent appeal. The Examiner finds those criteria to be met, even though they are not specifically addressed in these findings. The following issues relate to the mandatory applicable approval criteria for this proposal and were addressed by County staff in their reports, by agency comments, by the applicant and others. The Examiner adopts the following findings with regard to each:

Public Notice

The County mailed notice of this application to the applicant, the neighborhood association, and property owners within 300 feet of the site on July 6, 2016 as required by CCC 40.510.030.E.3.a. (Exs. 2 and 3). A representative of the applicant posted notice on the site as required by CCC 40.510.030.E.3.c on July 25, 2016. (Ex. 11).

CCC 40.510.030.E.3.c(4) requires the applicant remove the sign board within fourteen (14) calendar days after final county decision on the application, including expiration of applicable appeal periods. The applicant failed to comply with this requirement for the 2015 sign board. At the time the applicant posted the public notice sign for this 2016 application, the public notice sign for PLD2015-00026 (5th Plain Creek Subdivision Phases I and II) remained on the site. Therefore the applicant left the existing 2015 sign in place alongside the 2016 sign, “for a few days.” (Bazala test. and Ex. 11). The applicant’s failure to remove the 2015 sign may constitute a violation of the Code. However that is an enforcement matter. It is not grounds for denial of this application.

Neighbors testified that the failure to remove the sign announcing the 2015 hearing caused confusion; they were unaware of the 2016 application. However there is no evidence that this procedural error limited the public’s ability to participate in the review of the application or otherwise affect their substantive rights. The public received actual notice of the public hearing and were provided with an adequate opportunity to review this application and to comment on it either orally at the hearing or in writing. 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 reopened the record for an additional four weeks in order to provide the public with further opportunities to review and comment on the application. This procedural error did not impact the public’s substantive right to participate in the review of this application.

Land Use Finding 1 – Density Transfer Lot Standards

The proposed subdivision is located within the R1-10 and R1-20 zoning districts. Because a significant portion of the site is encumbered with Shorelines, habitat and wetlands, the Density Transfer provisions of 40.220.010.C.5 are being utilized.

The specific requirements in 40.220.010.C.5.b are as follows:

- (3) The minimum lot depth of any lot abutting environmentally sensitive lands shall be fifty-five (55) feet.*

All lots exceed the 55 foot depth requirements.

(4) For parent parcels larger than two and one-half (2.5) acres:

(a) The resulting lots which abut R1-5, R1-6, R1-7.5, R1-10 or R1-20 zoned lots or parcels shall:

(i) Be at least ninety percent (90%) of the minimum lot area standard for the subject parcel;

Lots 11 through 17 do not abut R1-20 zoned lots within the Monet's Garden subdivision; NE 81st Circle lies between Monet's Garden lots and the lots of this subdivision.

Therefore subsections 4.a. i-iii do not apply to Lots 11-17. Lots 18 through 20 on the north border of the site do abut (that is, share a common property line with) other R1-20 zoned lots in Monet's Garden. Therefore Lots 18 through 20 are subject to 4.a. i-iii.

The minimum lot area for R1-20 zoned lots is 20,000 square feet. Lots 18 through 20 exceed 18,000 square feet (90% of 20,000).

(ii) Have a lot depth of not less than eighty percent (80%) of the minimum lot depth of the subject parcel;

The minimum lot depth for standard R1-20 zoned lots is 100 feet. Eighty percent of 100 feet equals 80 feet. All lots in the R1-20 zone are at least 90 feet deep.

(iii) Have a minimum lot width not less than ten (10) feet from the minimum lot width of the subject parcel.

The minimum lot width for standard R1-20 zoned lots is 100 feet. Therefore lots 18-20 must be at least 90 feet. All 3 lots meet this requirement.

In summary, all abutting lots meet the above standards in 40.220.010.C.5.b(3) and (4)(a).

(b) The resulting lots which are interior (not a part of the parent parcel abutting an adjacent property line) to the site shall conform to the lot requirements set out in Table 40.220.010-4.

Table 40.220.010-4 requires R1-10 interior lots to have at least 4,000 square feet of usable area, a 70 foot minimum width, and a 50 foot minimum depth requirement. These requirements are largely met, except that Lots 10, 28 and 29 do not meet the average width requirement of 70 feet.

In summary, all interior lots must meet the minimum lot width, depth and usable area of Table 40.220.010-4. See Condition D-2.

(5) For parent parcels two and one-half (2.5) acres or less, all lots, both exterior and interior, to be created shall conform to the lot requirements in Table 40.220.010-4.

This subsection does not apply, as the parent parcel is larger than 2.5 acres.

(6) This density transfer development provision may not be used in association with the provisions of Section 40.520.080.

This application does not utilize the Planned Unit Development provisions of Section 40.520.080.

(7) A recorded covenant shall be placed on those areas or tracts from which density is transferred prohibiting any development of the parcel or tract inconsistent with its intended use.

A habitat covenant shall be required, which will meet this code requirement. See condition D-6.

Land Use Finding 2 – Setbacks

The setbacks prescribed for the R1-10 zoning district are as follows:

Front: 10 feet or 18 feet to garage entrance
Street Side: 10 feet
Side: 7 feet
Rear: 15 feet

The setbacks prescribed for the R1-20 zoning district are as follows:

Front: 10 feet or 18 feet to garage entrance
Street Side: 10 feet
Side: 10 feet
Rear: 20 feet

With one exception, the above setbacks are correctly shown on the preliminary plat, were used in determining usable lot area, and will apply to the lots created by this plat. Proposed Lot 22 is divided by the zoning boundary between the R1-10 and R1-20 zones. Therefore a portion of the side yard setback on this lot may need to meet the 10-foot setback requirement of the R1-20 zone. See condition D-9.

Land Use Finding 3—Phasing

This phase will be developed in conjunction with Phases I and II. Per Section 40.540.040.D.4.b, each phase must be able to “stand alone” in regards to meeting transportation, stormwater, and other development regulations. See condition A-11.

Land Use Finding 4 – Manufactured Homes

The applicant has indicated that manufactured homes will not be placed on the lots in the proposed plat. Therefore, pursuant to CCC 40.260.130, manufactured homes are prohibited on any lot in this plat. See condition D-7.f.

Land Use Finding 5 – State Platting Standards (RCW 58.17)

With conditions of approval, the examiner finds the proposed subdivision will make appropriate provisions for public health, safety, and general welfare of the community. Proof of adequate water and sewer service, as well as treatment of any increase of stormwater runoff, will be provided to protect groundwater supply and integrity. Impact Fees will also be required to contribute a proportionate share toward the costs of school and transportation provisions, maintenance and services.

The site is located within the Evergreen School District. The applicant has provided a letter in Ex. 1 tab “T” from the district indicating that students within a half a mile will need to walk to school unless there are unsafe walking conditions. Discussions with Evergreen administrative staff determined that since there will be no bridge with sidewalks over 5th Plain Creek, Phase 3 students will be bused. Sidewalks within and abutting the site will provide safe walking conditions for students walking to school bus stops.

Land Use Finding 6 - Landscaping

The site and all surrounding properties are zoned R1-10 and R1-20. Per Table 40.320.010-1, no on-site landscaped buffers are required.

Land Use Finding 7 – Urban Holding

Urban Holding was lifted from this area under ORD2013-12-20. (See Ex. 12). The Developer Agreement associated with the ordinance (Exs. 5 and 5.a to that ordinance) requires an additional \$500 per lot Park Impact Fee. See conditions D-3.e, D-7.i and E-3.

The agreement also requires that future owners of the property not oppose annexation into a city. See condition D-4.

Conclusion (Land Use) The examiner concludes that the proposed preliminary plan, subject to conditions identified above, meets land use requirements of the Clark County Code.

Archaeology

The applicant has submitted an archaeological pre-determination to the Washington State Department of Archaeology and Historic Preservation (DAHP) prior to submittal of the application.

Sites were discovered that warrant further archaeological work; a permit for additional survey work from DAHP is required under RCW 27.53. Prior to the approval of final construction plan review by the county, the applicant shall provide documentation from DAHP that either confirms that no further archaeological work is necessary, or that the applicant has received and has met, or will meet, the conditions stipulated by the pending DAHP permit. See Condition A-12. In addition, a note on the final construction plans will require that if historic or archaeological resources are discovered during construction, work shall stop and DAHP and the county will be contacted. See condition A-13.a.

Conclusion (Archaeology)

The examiner finds that the proposed preliminary plan, subject to conditions identified above, meets archaeology requirements of the Clark County Code.

Shorelines

Fifth Plain Creek is considered a Shoreline of the state. Land divisions with no development within the 200-foot shoreline jurisdiction need only Shoreline Exemption review; however, this project proposes a sewer crossing and pedestrian bridge within the Shorelines jurisdiction on the site and offsite wetland mitigation within the Shorelines jurisdiction on a parcel to the north. The sewer crossing requires a Shoreline Conditional Use Permit. The bridge and wetland mitigation require a Shoreline Substantial Development permit. A separate shoreline Conditional Use Permit (SHL2016-00020) was submitted with the subdivision application.

Staff will conduct a separate review the Shoreline applications for consistency with the Shoreline code and forward a recommendation to the County's Shoreline Committee. The Shoreline Committee will in turn forward the committee's recommendation to the state Department of Ecology, which will make the final decision on the Shorelines Conditional Use permit. See condition A-18.

The trails within the Shorelines jurisdiction were reviewed and approved under SHL2015-00025.

Conclusion (Shorelines)

The examiner finds that the proposed preliminary plan, subject to conditions identified above, will meet shoreline requirements of the Clark County Code.

Habitat

Fifth Plain Creek has been designated a Type S (Shoreline) stream by the Washington Department of Natural Resources. A previous Habitat determination (HAB2012-00005) confirmed the location and designation of the stream; this determination was good for three years and expired in February 2015. County staff visited the site on July 7, 2015 and confirmed the location and designation of the stream (HAB2015-00057); this determination is still valid.

The stream is incised and very confined on the site. The Ordinary High Water Mark (OHWM) was well defined and appropriately marked by the applicant on their plans. The Shorelines designation of Fifth Plain Creek in this area is Urban Conservancy. None of the lots are within the 200-foot Shorelines jurisdiction; however stormwater facilities, a stormwater outfall, pedestrian bridge, sanitary sewer lines, and trails are proposed within the 200 foot setback.

The development plan shows the stormwater facility is approximately 110 feet from the ordinary high water mark (OHWM), with an outfall that's located approximately 85 feet from the OHWM. Four-foot wide wood chip trails are proposed on both sides of the creek. They wander with a setback that varies within 50 to 100 feet from the OHWM. The sanitary sewer line will be gravity fed and will run along the proposed pedestrian bridge and access road. (The previous plan proposed boring underneath of Fifth Plain Creek within the footprint for the proposed future 78th Street). The remainder of the sanitary sewer line will be constructed using standard trenching methods and returned to a pre-construction grade post-construction except for that section within the mature forest, which will utilize a method that avoids removal of mature vegetation.

Water for Phase III will come from the east and will not impact the wetlands or habitat areas. All impacts related to constructing the sewer lines should be temporary. Any areas currently in grass shall be reseeded with a native grass seed mixture; any tree removal necessary for installing these lines would require additional habitat and/or wetland review and appropriate mitigation for canopy loss.

Per the Habitat Conservation Ordinance, a Type S stream is afforded a 250-foot riparian habitat conservation zone (HCZ) extending horizontally from the Ordinary High Water Mark. The proposed pedestrian bridge, access road, stormwater facility, stormwater outfall and portions of lots 20-29 appear to impact the 250 foot riparian HCZ and shall require a Habitat permit. There is a proposed trail which ties into this access road as well.

Three Category IV emergent depressional wetlands (Wetlands A-C) exist on the eastern side of the parcel as indicated in the Wetland delineation and assessment report prepared by Cascadia Ecological Services, Inc. and dated April 1, 2015; this report also notes a Category III riverine wetland within the Ordinary High Water Mark for Fifth Plain Creek. No impacts are proposed within the Ordinary High Water Mark for Fifth Plain Creek. All of the Category IV wetlands will be filled as a result of this project. The applicant has proposed off-site wetland mitigation on Tax Parcel 115621190 along the south side of the forested Fifth Plain Creek riparian zone near existing wetlands.

Habitat Finding 1 - Fifth Plain Creek is classified by the Washington Department of Natural Resources as a Type S (Shoreline) stream. Per the Habitat Conservation Ordinance (CCC 40.440.010.C.1.a) a Type S stream has a riparian habitat conservation zone extending 250 feet from the Ordinary High Water Mark or to the edge of the 100 year floodplain, whichever is greater. In this case, the 250 feet is greater.

Habitat Finding 2 - The original mitigation report (dated July 20, 2015) for Phases I and II indicated a total of 1.64 acres of riparian habitat and 0.29 acres of regulated wetland will be disturbed by the project. The revised report (dated August 3, 2016, Ex. 15), which addresses impacts related to Phases II and III of this development, indicates 70,320 square feet of riparian impact (1.61 acres). The mitigation

report dated April 14, 2016 (Ex. 16) related to the proposed bridge and access road indicates 14,296 square feet of riparian impact (0.33 acres). The total riparian impact is 84,616 square feet (1.94 acres); the total riparian impact within Shoreline jurisdiction is approximately 1.06 acres (46,375 square feet).

Habitat Finding 3 - A Wetland and Habitat Mitigation plan, also by Cascadia Ecological Services (dated July 20, 2015), was included by the applicant for impacts related to Phases I and II. This report proposed a 1.64-acre mitigation enhancement area for riparian impacts. A revised mitigation plan was provided by the applicant from Cascadia Ecological Services (dated April 14, 2016) (Ex. 16) for impacts related to the proposed pedestrian bridge and access road which proposed 20,000 square feet (0.46 acres) of invasive species control and understory enhancement within the mature forest to the west of Fifth Plain Creek and north of the proposed access road. A revised mitigation plan was submitted by the applicant prepared by Cascadia Ecological Services (dated August 3, 2016) (Ex. 15) for impacts related to Phase II/III of the proposed development which proposes 75,961 square feet (1.74 acres) of invasive species control and riparian enhancement. Approximately 2.20 acres of on-site riparian enhancement are proposed as mitigation for riparian impacts, as indicated in the April 2016 (0.46 acres of understory enhancement) and August 2016 mitigation plans (1.74 acres of riparian enhancement). The applicant has proposed to remove non-native blackberry and replant these areas with native shrubs and trees along the east and west sides of Fifth Plain Creek. None of the proposed mitigation overlaps with the mitigation proposed for impacts related to Phase I (approved under HAB2015-00046).

Habitat Finding 4 - The proposed trails and stormwater facilities were addressed in Phase I of the project (PLD2015-00026; SHL2015-00025; HAB2015-00057; WET2015-00037). The proposed stormwater facility, stormwater outfall, and lot impacts have been reduced slightly (from 1.64 acres to 1.61 acres).

Habitat Finding 5 - This permit addresses the new proposed pedestrian bridge and access road, the revised Phase II and III impacts numbers related to the stormwater facility, stormwater outfall, and Lots 20-29, and mitigation areas for the riparian and wetland impacts.

Habitat Finding 6 - No mature trees are proposed to be removed within the Shoreline Jurisdiction, however existing grass, shrubs, and blackberry will be impacted for development of a Stormwater pond, stormwater outfall, and pedestrian bridge, and access road. This impact will

have an effect on shoreline functions; however, the project proposes to mitigate for the loss of permanent riparian habitat at a 1:1 ratio in areas in the outer 50% of the riparian habitat conservation zone and a 2:1 ratio for all impacts within the inner 50% of the riparian habitat conservation zone. With the mitigation proposed by the applicant, and amended by County staff, the project is anticipated to have "no net loss" of shoreline habitat functions in the long-term.

Habitat Finding 7 - The applicant had originally proposed the construction of a sanitary sewer line along the southern edge of the parcel where the proposed 78th Street corridor is located. The applicant proposed to use standard trenching methods except near Fifth Plain Creek where they proposed to bore underneath the stream. The current plan indicates that the sewer line will be placed underneath the access road for the pedestrian bridge and attached to the pedestrian bridge to traverse Fifth Plain Creek. Trenching is generally a temporary impact when grasses and pasture are impacted and can be replaced at a 1:1 ratio on-site if it is returned to a pre-construction grade and re-seeded with native grass seed; when shrubs and trees are impacted there is a temporal loss which must be accounted for at a higher rate depending on the maturity of the vegetation impacted. If trees and shrubs are proposed to be impacted as a result of these lines, their impacts (reported as canopy loss square footage) should be accounted for in the revised mitigation plan.

Habitat Finding 8 - Himalayan blackberry, trailing blackberry, and reed canary grass were noted on site. These shall be removed when encountered and replaced with native vegetation. They shall be managed against during the monitoring period.

Habitat Finding 9 - The applicant shall utilize best management practices to prevent sediment and erosion from entering priority habitat areas.

Habitat Finding 10 - Portions of a proposed four foot wide wood chip trail along both sides of the stream connect to the proposed developments within the riparian habitat conservation zone and Shoreline jurisdiction. Per the Habitat Conservation Ordinance (Table 40.440.010-1) clearing as minimally necessary for creating a four foot or narrower path using natural, wood-based surfaces in habitat areas is exempt.

Habitat Finding 11 - The area where the future 78th street corridor is proposed shall not be used for mitigation purposes.

Conclusion (Habitat)

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*PLD2016-00010, SEP2016-00024, SHL2016-00020, HAB2016-00037, FLP2016-00008 and EVR2016-00023
(5th Plain Creek Subdivision Phase 3)*

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The examiner concludes that the proposed preliminary plan, subject to conditions, meets habitat requirements of the Clark County Code. (See conditions A-13, A-15, A-16, A-18, C-3, C-4, D-5, D-6, and D-7)

Wetlands

- Wetland Finding 1 - Three Category IV emergent depressional wetlands (Wetlands A-C) exist on the eastern side of the parcel as indicated in the Wetland delineation and assessment report prepared by Cascadia Ecological Services, Inc. and dated April 1, 2015. County staff confirmed the quality and location of these wetland features on a site visit conducted July 7, 2015.
- Wetland Finding 2 - Per the Wetland Protection Ordinance, isolated Category IV wetlands smaller than 4,350 square feet in area are considered exempt. Due to their isolation, small size, and low Category ratings, wetlands B and C are exempt from County review. Wetland A is still regulated.
- Wetland Finding 3 - Wetland A will be completely filled as a result of this development (8,439 square feet of impact; 0.19 acres).
- Wetland Finding 4 - Per the Wetland Protection Ordinance, when using creation and enhancement as mitigation for a Category IV wetland, the creation portion shall be mitigated at a 1:1 ratio (0.19 acres required) and the enhancement portion shall be mitigated at a 2:1 ratio (0.38 acres required); for a total of 0.57 acres of wetland mitigation. The requirements for the US Army Corps of Engineers and/or the Washington Department of Ecology may be different.
- Wetland Finding 5 - The applicant has proposed off-site mitigation for the direct wetland impacts to wetland A on Tax Parcel 115621190 along the south side of the forested Fifth Plain Creek riparian zone near existing wetlands. The applicant proposes 0.29 acres of Wetland Creation and 0.57 acres of wetland enhancement. The proposed mitigation meets and exceeds the requirements.

Conclusion (Wetlands)

The examiner concludes that the proposed preliminary plan, subject to conditions, meets wetlands requirements of the Clark County Code. (See conditions A-13, A-15, A-16, A-18, C-3, C-4, D-5, D-6, and D-7)

Floodplain

The applicant's plan for a bridge crossing of Fifth Plain Creek shows the footings for the bridge within the flood plain (but not the floodway) of the creek. The applicant shall

obtain final floodplain approval prior to approval of construction drawings. See condition A-8.

Transportation

Transportation Finding 1 – Pedestrian/Bicycle Circulation Plan

Pedestrian circulation facilities in compliance with the Americans with Disabilities Act (ADA) are required within urban areas. When pedestrian circulation facilities are required they shall be in accordance with the provisions of Section CCC 40.350.010.

The applicant's plan indicates that there will be pedestrian improvements constructed on both sides of all proposed interior streets within the development. The applicant's plan and narrative also indicates that pedestrian improvements will also be constructed with the NE 78th Street frontage improvements from NE 182nd Avenue to end of this street at the 250-foot Riparian Habitat Conservation Area, on the east side of 5th Plain Creek, as a part of the previously approved 5th Plain Creek Subdivision Phase 2 improvements.

The applicant's plan shows proposed pedestrian paths running north/south on either side of 5th Plain Creek, which are fully within the critical area; identified as a 250-foot Riparian Habitat Conservation area and a 200-foot Shoreline area. The applicant's plan also shows the construction of a pedestrian bridge over 5th Plain Creek. The applicant shall acquire a building permit for the construction of the proposed pedestrian bridge over 5th Plain Creek. See condition A-1.a.

The applicant's narrative also states that all pedestrian facilities will be constructed to comply with ADA standards. The applicant will need to make sure that ADA ramps at "T" intersections do not fall within the individual lot driveways. See condition A-1.b.

The applicant's proposal for the construction of public pedestrian facilities shows that the development can comply with the County Code.

Transportation Finding 2 –Circulation Plan

The applicant has submitted plans and a narrative that indicate the proposed development will be served by the construction of an internal local access road network and half-width frontage improvements on NE 182nd Avenue, an Urban Collector (C-2b). The applicant's narrative suggests that the construction of these improvements, along with the spacing with existing infrastructure, will facilitate code compliant block lengths.

The examiner finds that the internal street network and proposed frontage improvements can provide cross circulation for properties to the east, west and south with the exception NE 81st Street. The applicant has submitted a road modification request for relief from the NE 81st Street frontage improvement requirements. See Finding 3, below.

The applicant's proposed road network has shown feasibility for cross-circulation and compliance with the County Code.

Transportation Finding 3 – Road Modification Request (EVR2016-00023)

The applicant has requested the following road modifications:

- *Relief from frontage improvements along NE 81st Circle*

Approval Criteria

Modifications to the standards contained in Chapter 40.350 may be granted when the applicant demonstrates at least one (1) of the following:

- a. Topography, right-of-way, existing construction or physical conditions, or other geographic conditions make compliance with standards clearly impractical for the circumstances;*
- b. A minor change to a specification or standard is required to address a specific design or construction problem which, if not enacted, will result in an unusual hardship;*
- c. An alternative design is proposed which will provide a plan that is functionally equivalent or superior to the standards;*
- d. Application of the standards of Chapter 40.350 to the development would be grossly disproportional to the impacts created;*
- e. A change to a specification or standard is required to ensure consistency with existing features adjacent to or affected by the site where those existing features are not expected to change over time.*

Applicant's Discussion

NE 81st Circle The applicant's narrative indicates that NE 81st Circle was approved under a cluster subdivision and constructed as a 20-foot wide paved section within a 40-foot wide half-width right-of-way.

The applicant's narrative claims that lots 11 through 18, which abut NE 81st Circle, will not take access from NE 81st Circle. These lots will access the proposed internal local access road, NE 80th Street. The narrative also states that there will be no project generated vehicle traffic that will utilize NE 81st Circle. The applicant has also included a construction cost estimate that has NE 81st Circle frontage improvements at \$99,641.75.

NE 81st Circle – Conclusion The applicant indicates that the proposed development plan will provide a functionally equivalent or superior design based on providing access to the proposed lots from a road constructed to urban standards instead of rural standards. Further, the applicant concludes that the \$99,641.75 frontage improvement construction costs would be grossly disproportional to the impacts created.

Staff's Evaluation

Staff reviewed the applicable factors in evaluating a road modification request as presented by the applicant and has the following findings.

The applicant has indicated that the proposed lots 11 through 18 will not be taking access to NE 81st Circle, but rather, an internal street network within the proposed 5th Plain Creek Subdivision Phase III.

Public safety, durability, cost of maintenance, function, and appearance

NE 81st Circle is a Local Residential Access road that was constructed as a part of a cluster subdivision in the mid – 1990’s. At that time the area was rural zoning. Because of the rural zoning, the rural road standards were applicable for the construction of NE 81st Circle, but, the roadway was set up to facilitate half-street improvements along the south side as future adjacent parcels developed.

Under the rural road standards NE 81st Circle was constructed to include a 20-foot wide paved travel way inside of a 40-foot wide right-of-way. The north side of the existing NE 81st Circle does not have a shoulder and is landscaped to the northern edge of the paved surface. The south side of NE 81st Circle also does not have a shoulder and is lined with grass, shrubs and trees. Although frontage improvements to NE 81st Circle would facilitate public safety and durability of the public infrastructure, the urban frontage improvements along the south side of NE 81st Circle would change the appearance and function of the roadway. The frontage improvements would also increase the cost of maintenance over a short roadway segment. Because the applicant is not proposing to access NE 81st Circle, the proposed development will not be adding vehicle trips to this road segment.

Advancing the goals of the comprehensive plan as a whole

NE 81st Circle was constructed to provide access to lots within the southern portion of the Monet’s Garden cluster development. NE 81st Circle also facilitated the possible future development of the parcel immediately south of Monet’s Garden complying with circulation standards outlined in both the County’s Development Code and Comprehensive Plan. Construction of urban frontage improvements, as a part of the proposed 5th Plain Creek Subdivision Phase III development, would not advance the goals of the County’s Comprehensive Plan because NE 81st Circle could not be extended to serve any other development in the vicinity.

Any modification shall be the minimum necessary to alleviate the hardship or disproportional impact

Because the applicant is not proposing access onto NE 81st Circle, the applicant’s request for relief from the construction of urban frontage improvements along NE 81st Circle is the minimum necessary to alleviate disproportional impact.

Examiner’s Conclusion

Contrary to the testimony at the hearing, the prior decision, PLD2015-00026 (5th Plain Creek Subdivision Phases I & II), did not require improvements to NE 81st Circle. The 2015 Final Order provided:

Hearings Examiner Final Order

PLD2016-00010, SEP2016-00024, SHL2016-00020, HAB2016-00037, FLP2016-00008 and EVR2016-00023 (5th Plain Creek Subdivision Phase 3)

The Examiner disagrees with staff and concludes that, in fact, this development in its current form will not send any trips to NE 81st Circle, and in fact, even with the future development of Lot 70 will not likely contribute any trips to this short cul-de-sac street that was designed and built to serve Monet's Gardens. Accordingly, the Examiner concludes there is no nexus between impacts of this development (as presently configured) and the requirement grants this road modification under Standard (c) and (d). When Lot 70 is proposed for development, however, the need to make half-street improvements to NE 81st Circle shall be reassessed in the context of the facts and the development proposal at that time. For now, this road modification is granted.

p. 12 of Ex. 26.

The examiner finds that the current proposal for subdivision of Lot 70 of PLD2015-00026 (5th Plain Creek Subdivision Phases I & II) will not generate any vehicular, pedestrian or bicycle traffic on NE 81st Circle. No access is proposed to this street from the site. Therefore, because the proposed access will not impact NE 81st Circle, there is no nexus between a condition of approval requiring improvements to this street and the impacts of the proposed development. A condition of approval requiring such improvements would be grossly disproportional to the impact of this development.

Therefore, based on the evaluation above the examiner Approves the road modification for relief of frontage improvements on NE 81st Circle, subject to conditions. See conditions A-4.a & D-7-c.

Transportation Finding 4 – Roads

NE 182nd Avenue is classified as an Urban Collector (C-2b). This classification requires a total half-width right-of-way of 30 feet, a paved half-width of 17 feet, curb, gutter and sidewalk. The applicant's plan shows an existing total right-of-way of 60 feet and an existing 22-foot wide paved section. The applicant will need to submit construction drawings that show the construction of half-width improvements, for NE 182nd Avenue, in compliance with Clark County Standard Drawing 7. The applicant will also need to ensure that there is a total half-width of 30 feet of right-of-way along the frontage of NE 182nd Avenue. See condition A-1-c.

The applicant's plan shows that all other internal roadways will have a proposed classification of "Urban Local Access." This classification requires a total of right-of-way of 46 feet, 28 feet of paved width, curb and gutter and sidewalks. The applicant is required to dedicate full-width right-of-way and construct full-width improvements for these roadways. The minimum standards are proposed.

Transportation Finding 5 - Driveways

The applicant's narrative indicates that all lots within the proposed development will access the interior street network and then enter the larger public street network at the intersections of NE 78th Street/NE 180th Avenue and NE 78th Street/NE 182nd Avenue.

The applicant's plan shows driveways for lots in relation to the new intersections. These corner lots appear to meet the minimum requirements. The applicant will need to submit final construction drawings that show corner lot driveways will comply with CCC 40.350.030 (B)(4)(b)(1). See conditions A-1-d and D-7-c.

Conclusion (Transportation):

The examiner concludes that the proposed preliminary plan, subject to the conditions identified above, meets the transportation requirements of the Clark County Code.

Transportation Concurrency

Concurrency Finding 1- Trip Generation

County concurrency staff has reviewed the proposed 5th Plain Creek Subdivision Phase III. The traffic study submitted indicates that the proposed development will complete the previously approved PLD2015-00026 (5th Plain Creek Subdivision Phases I & II), by dividing the previously approved remainder lot 70, 11.67 acres, into 44 single family residences. The applicant's traffic study has estimated the a.m. peak-hour trip generation at 33, p.m. peak-hour trip generation at 44 trips and an average daily trip generation (ADT) of 419 trips. The trip generation was estimated using the nationally accepted data published by the *Institute of Transportation Engineers Ninth Addition*. The proposed development site is located on parcel number 168622-000 on NE 182nd Avenue in Vancouver.

The applicant has submitted a traffic study under the provisions of Clark County Code section 40.350.020 (D)(1).

Concurrency Finding 2- Site Access

Traffic conditions are usually expressed using a scale that quantifies the ability of a facility to meet the needs and expectations of the driver. This scale is graded from A to F and is referred to as level-of-service (LOS). A driver who experiences an LOS A condition would expect little delay. A driver who experiences an LOS E condition would expect significant delay, but the traffic facility would be just within its capacity to serve the needs of the driver. A driver who experiences an LOS F condition would expect significant delay with traffic demand exceeding the capacity of the facility with the result being growing queues of traffic.

Congestion, or concurrency, level of service (LOS) standards are not applicable to accesses that are not regionally significant; however, the LOS analysis provides information on the potential congestion and safety problems that may occur in the vicinity of the site.

The traffic study indicates that the proposed subdivision will access the public road network through the previously approved and unconstructed 5th Plain Creek Subdivision Phase II development. Because access to the proposed development is dependent on the

completion of an approved but unconstructed development, the applicant may need to construct a 20-foot wide paved access road as an interim improvement. This 20-foot wide paved access road will need to be constructed within the approved rights-of-way in the 5th Plain Creek Subdivision Phase II development identified as NE 180th Avenue and NE 78th Street. The applicant will need to acquire and provide the appropriate documents to allow construction of the off-site 20-foot wide roadway. See condition A-2.

The applicant's plan also shows the construction of an interior public road network to serve as access for the proposed subdivision. The applicant's plan also shows the construction of frontage improvements along NE 182nd Avenue, but does not show any frontage improvements to NE 81st Circle. The applicant has submitted a technical road modification requesting relief from construction of frontage improvements on NE 81st Circle. The road modification is addressed and approved under Transportation Finding 3 above.

The applicant's study evaluated the level of service and found that the local street intersections analyzed will have an estimated LOS B or better, in the 2019 build-out horizon. The study also shows that the LOS was evaluated during the am and pm peak hour traffic conditions in existing and build-out scenarios. County Staff concurs with the traffic study findings.

Concurrency Finding 3- Clark County Concurrency

The proposed development is required to meet the standards established in CCC 41.350.020(G) for corridors and intersections of regional significance within 1 mile of the proposed development. Typically, the County's transportation model is used to determine what urban area developments are currently being reviewed, approved, or are under construction and in the vicinity of the proposed development. The traffic these developments generate is referred to as "*in-process traffic*" and will ultimately contribute to the same roadway facilities as the proposed development. This "*in-process traffic*" is used to evaluate and anticipate area growth and its impact on intersection and roadway operating levels with and without the proposed development, helping to determine if roadway mitigation necessary to reduce transportation impacts. Because this application was submitted prior to the Velvet Acres development proposed northeast of the site, the traffic analysis for this development is not required to consider traffic generated by the Velvet Acres development. The traffic analysis for the Velvet Acres development was required to consider traffic generated by this development.

Signalized Intersections

The County's model evaluated the operating levels, travel speeds and delay times for the regionally significant signalized intersections. This analysis showed that individual movements during peak hour traffic conditions had approach delays that did not exceed the maximum 240 seconds, or 2 cycles, of delay in the build-out year.

Therefore, County Staff has determined that this development will comply with adopted Concurrency standards for signalized intersections.

Unsignalized Intersections

County Staff has evaluated the operating levels and standard delays represented in the County's model. The County's model yielded operating levels and standard delay times with a LOS better than the minimum allowable LOS E for unsignalized intersections.

The applicant has submitted a traffic study that reports anticipated levels-of-service on individual intersection approaches. The stop controlled southbound approach of NE Fourth Plain Boulevard/NE 182nd Avenue is projected to have a level-of-service "E" in the 2019 evaluation year with the proposed development. This intersection is an "Intersection of Regional Significance," which is not subject to WSDOT concurrency standards. This intersection is subject to County concurrency standards.

The applicant's analysis is based on actual traffic counts performed on March 29, 2016 (Appendix A of the Traffic Impact Study). Mr. Georgioff noted that this traffic count was performed during Spring Break for Vancouver Schools, which may have affected traffic volumes at this intersection. (Ex. 36). However the applicant conducted additional traffic counts at this intersection on April 20 and September 15, 2016, while schools were in session. (Ex. 34). The traffic volumes observed in those traffic counts were consistent with the March 29, 2016 traffic counts.

The applicant's traffic study has analyzed the impacts of the proposed development on the intersection approach listed above to determine if mitigation requirements would be warranted per CCC 40.350.020 (G)(1)(c). This section requires that unsignalized intersections of regional significance in the unincorporated county achieve LOS E standards or better (if warrants are not met). If warrants are met, unsignalized intersections of regional significance shall achieve LOS D standards or better. The southbound approach to the NE Fourth Plain Boulevard/NE 182nd Avenue intersection will not meet this standard with traffic from this development. However the applicant can only be required to mitigate impacts to this intersection if:

- (1) The proposed development adds at least five (5) peak period trips to a failing intersection approach;
- (2) The projected volume to capacity ratio for the worst lane movement on the approach with the highest delay exceeds nine-tenths (0.9) during the peak traffic period; and
- (3) That same movement is worsened by the proposed development.

CCC 40.350.020 (G)(1)(c)

Based on the applicant's traffic analysis, this development will add at least five peak hour trips to this failing approach and traffic from this development will worsen the approach. However the volume to capacity ("v/c") ratio for the approach with the highest delay will not exceed 0.9. The southbound approach to the NE Fourth Plain Boulevard/NE 182nd Avenue intersection is projected to operate at a v/c of 0.70 during the A.M. peak hour and 0.59 during the P.M. peak hour, with traffic from this development combined with traffic

from prior developments in the area, and growth in background traffic. (Table 6 of Attachment K of Exhibit 1). Therefore the applicant cannot be required to mitigate traffic impacts to this intersection, because projected future traffic volumes will not cause the approach with the highest delay to exceed a v/c ratio of 0.9. CCC 40.350.020 (G)(1)(c)(2).

The 2016 traffic counts and LOS analysis appeared to conflict with the 2015 analysis for the 5th Plain Creek Phase I and II development, which determined that any additional traffic through the NE Fourth Plain Boulevard/NE 182nd Avenue intersection would require mitigation, because it would exceed the exceptions set out in CCC 40.350.020 (G)(1)(c). However, as Mr. Lee discussed in his September 19, 2016 memo, traffic at these intersections changed between 2015 and 2016; traffic distributed more evenly throughout the peak hour periods, which reduced the “peak hour factor” at the intersections and improved the v/c ratio. Mr. Lee conducted a third traffic count at the NE Fourth Plain Boulevard/NE 182nd Avenue intersection on September 15, 2016, which confirmed the results of his 2016 traffic analyses; that all affected intersections will meet County concurrency requirements. Mr. Lee testified that the “S” curve north of this intersection has no impact on the v/c ratio.

County concurrency staff concurs with the applicant’s findings (Ex. 35) and there is no substantial evidence to the contrary. The concerns expressed by WSDOT (Exs. 6 and 24), are not relevant. As discussed above, the NE Fourth Plain Boulevard/NE 182nd Avenue intersection is an “Intersection of Regional Significance,” which is not subject to WSDOT concurrency standards. The proposed development will meet the applicable County concurrency standards. Therefore the application must be approved.

There is no dispute that this intersection will be congested and operate near capacity. However the intersection meets the concurrency standards adopted by the County. Therefore the applicant cannot be required to improve the intersection or otherwise mitigate the impacts of traffic from this development and this development must be approved. The applicant and other developments in the area will pay TIFs that the County can use to fund planned improvements to this intersection in the future. It may take some time to collect the TIF funds and design and build improvements to these intersections and this intersection will continue to operate in a congested state during that time. That is unfortunate. However because this application complies with County concurrency requirements it must be approved. In addition, it is possible that the County may choose to use other funding sources to expedite improvements to this intersection or other developers in the area may choose to construct the needed improvements, subject to TIF credits, latecomer agreements or other reimbursement methods, in order to obtain development approval.

Opponents are correct that the Growth Management Act (the “GMA”) requires that improvements necessary to meet concurrency requirements must be in place or funded at the time development occurs. RCW 36.70A.070(6)(b). However the GMA allows local jurisdictions to define concurrency levels for services needed to support development. RCW 36.70A.070(6)(a)(iii)(B). In this case, the proposed development meets the

minimum concurrency standards adopted by the County. No additional improvements are needed for this development to meet concurrency requirements.

Concurrency Corridors

The applicant's traffic engineer has submitted a letter that discusses the road classifications of NE 182nd Avenue and NE Fourth Plain Boulevard (SR 500) at and near the intersection of these two roadways.

NE 182nd Avenue approach to NE Fourth Plain Boulevard (SR 500)

The applicant's engineer has identified NE 182nd Avenue as an Urban Collector (C-2b) as it approaches the intersection of NE 182nd Avenue/NE Fourth Plain Boulevard (SR 500). The applicant indicated that this information was gathered from the County's GIS website. The information on this website is not completely accurate.

As a part of the urban holding lift in 2013, there were portions of public roadways that were identified with a rural designation in a now urban area. These roadways were NE 88th Street between NE Ward Road and NE 182nd Avenue, NE 182nd Avenue between NE 88th Street and the southern boundary of the urban holding lift, and NE 83rd Street between NE 182nd Avenue and the eastern boundary of the urban holding lift. The County's Community Planning Department worked with the Board of County Councilors to change the roadway designations from rural to urban within the newly created urban area only as a part of the Comprehensive Plan Update so that the comprehensive plan was consistent with the new urban zoning. As a part of this new urban zoned development area, the roadway designation of NE 182nd Avenue has been changed from a Rural Collector (R-2) to an Urban Collector (C-2b) within the urban zoned development area. The NE 182nd Avenue roadway outside the urban zoned development area, including the approach to the intersection NE 182nd Avenue/NE Fourth Plain Boulevard (SR 500), has maintained its Rural Collector designation (R-2).

NE Fourth Plain Boulevard (SR 500) approach to NE 182nd Avenue

The applicant's engineer has identified NE Fourth Plain Boulevard (SR 500) as a Rural Minor Collector (R2), and a Non-Highway of Statewide Significance (Non-HSS), as it approaches the intersection of NE 182nd Avenue/NE Fourth Plain Boulevard (SR 500). The applicant indicated that this information was gathered from Washington State Department of Transportation's (WSDOT's) 2015 State Highway Log, the most current document. WSDOT has validated the applicant's findings regarding the roadway designation of NE Fourth Plain Boulevard (SR 500) via email correspondence on which the County was copied.

It shall be noted that because NE 182nd Avenue and NE Fourth Plain Boulevard (SR 500) are designated as rural collectors on approach to the intersection of NE 182nd Avenue/NE Fourth Plain Boulevard (SR 500), the applicant cannot assume that this intersection can/should be evaluated under an urban standard.

Since WSDOT has verified that NE Fourth Plain Boulevard (SR 500) is designated as a Non-HSS, NE Fourth Plain Boulevard (SR 500) is considered a State Highway of Regional Significance. Therefore, per Clark County Code (CCC) 40.350.020 (B)(2) the County's Transportation Concurrency Management System may be applied to the intersection of NE 182nd Avenue/NE Fourth Plain Boulevard (SR 500).

Evaluation of the concurrency corridor operating levels yielded volume to capacity (v/c) ratios that are compliant.

Summary

The County has determined that this development can comply with adopted Concurrency Standards for corridors, signalized and unsignalized intersections under County jurisdiction. There is no substantial evidence to the contrary.

SAFETY:

Where applicable, a traffic study shall address the following safety issues:

- traffic signal warrant analysis,
- turn lane warrant analysis,
- crash history analysis,
- roadside safety (clear zone) evaluation,
- vehicle turning movements, and
- any other issues associated with highway safety.

Mitigation for off-site safety deficiencies may only be a condition of approval on development in accordance with CCC 40.350.030(B)(6) The code states that "nothing in this section shall be construed to preclude denial of a proposed development where off-site road conditions are inadequate to provide a minimum level of service as specified in Section 40.350.020 or a *significant* traffic or safety hazard *would be caused or materially aggravated* by the proposed development; provided, that the applicant may voluntarily agree to mitigate such direct impacts in accordance with the provisions of RCW 82.02.020."

Concurrency Finding 4- Turn Lane Warrants

Turn lane warrants are evaluated at unsignalized intersections to determine if a separate left or right turn lane is needed on the uncontrolled roadway.

Review of the traffic study found that with the low right and left turning traffic volumes, turn lanes would not be warranted. Staff concurs with the applicant's findings.

Concurrency Finding 5- Historical Accident Situation

The applicant's traffic study analyzed the crash history as obtained from Clark County for the period January 1, 2011 through December 31, 2015.

The intersection crash rates, for the study intersections do not exceed thresholds that would warrant additional analysis. The studied intersections are as follows:

- NE 78th Street/NE 162nd Avenue (SR 500)
- NE Ward Road/NE 162nd Avenue (SR 500)
- NE Ward Road/NE 162nd Avenue (North)
- NE 162nd Avenue/NE Fourth Plain Boulevard
- NE 83rd Street/NE 182nd Avenue
- NE Ward Road/NE 88th Street
- NE 182nd Avenue/NE Fourth Plain Boulevard
- NE 182nd Avenue/NE 78th Street

The crash rates for all identified intersections are well below the County's action rate of 1 accident per million entering vehicles. The action rate is based on reported accidents. As noted in the testimony, some accidents are not reported. Therefore the accident history may not reflect all of the accidents in the area. However the action rate of 1 accident per million entering vehicles is based on reported accidents. There is no substantial evidence that this location experiences an unusually high number of unreported accidents. The examiner finds that the reported accident history is the best evidence available regarding the accident history for this area.

In addition, as Mr. Jardin noted in his testimony, the County must rely on reported crashes to determine the causes of crashes and identify crash trends in order to require mitigation. The County reviewed the accident history at both the County and state approaches to the NE Fourth Plain Boulevard/NE 182nd Avenue intersection. The County was unable to identify any crash trends that could be mitigated at this intersection. Speeding contributed to many of the reported accidents at this intersection. However it is difficult to mitigate those types of accidents, except through increased speed enforcement. There is no evidence that excessive accidents are the result of the design or operation of this or any other intersection within the study area.

Concurrency Finding 6- Roadside Safety (Clear Zone) Evaluation

The *Institute of Transportation Engineers (ITE) Traffic Engineering Handbook 6th Edition*, states that "The *clear roadside concept*...is applied to improve safety by providing an un-encumbered roadside recovery area that is as wide as practical..." Further, this concept "allows for errant vehicles leaving the roadway for whatever reason and supports a roadside designed to minimize the serious consequences of roadway departures."

Further, as adopted by Clark County Code (CCC) 40.350.030(C)(1)(b), the *Washington State Department of Transportation (WSDOT) Design Manual, Chapter 1600* states:

A clear roadside border area is a primary consideration when analyzing potential roadside and median features. The intent is to provide as much clear, traversable area for a vehicle to recover as practicable given the function of the roadway and the potential tradeoffs. The Design Clear Zone is used to evaluate the adequacy of the existing clear area and proposed modifications of the roadside. When

considering the placement of new objects along the roadside or median, evaluate the potential for impacts and try to select locations with the least likelihood of an impact by an errant vehicle.

For managed access state highways within an urban area, it might not be practicable to provide the Design Clear Zone distances shown in Ex. 1600-2. Roadways within an urban area generally have curbs and sidewalks and might have objects such as trees, poles, benches, trash cans, landscaping and transit shelters along the roadside.

The applicant shall consider the WSDOT Design Manual – Roadside Safety Mitigation Guidance (Section 1600.04) in the final engineering design of all proposed roadways and frontage improvements. See condition A-3.

Conclusion

The examiner concludes that the proposed preliminary plan, subject to adopted conditions, meets transportation concurrency requirements of the Clark County Code.

Stormwater

Stormwater Finding 1 - Stormwater Applicability

The provisions of Clark County Code Chapter 40.386 shall apply to all new development, redevelopment, and drainage projects consistent with the Stormwater Management Manual for Western Washington (SMMWW) as modified by CCC 40.386 and the county's stormwater manual. The project is in the urban area and exceeds thresholds for new hard surfaces and converted vegetation areas; therefore, the applicant shall comply with Minimum Requirements 1 through 9 per Clark County Stormwater Manual 2015.

No new development or redevelopment shall be allowed to materially increase or concentrate stormwater runoff onto an adjacent property or block existing drainage from adjacent lots.

Stormwater Finding 2 – Stormwater Proposal

The applicant's geotechnical study prepared by Columbia West Engineering, Inc., dated January 26, 2015, reports that the development area east of 5th Plain Creek has a gentle slope east to west and is primarily covered in grass. The project will create 15.32 acres of new impervious surface.

The applicant has provided a Statement of Feasibility and Completeness letter prepared by Olson Engineering Inc. and dated May 18, 2016. This letter indicates compliance with the code and certifies that all information required by the Stormwater & Erosion Control Ordinance chapter CCC 40.386 was included in the application submittal.

The applicant provided a Stormwater Letter prepared by Olson Engineering Inc. dated May 4, 2016. This Stormwater Letter stated that the Preliminary Stormwater Technical

Information Report, prepared by Olson Engineering Inc. dated July 23, 2015 and submitted under the previous application, PLD2015-00026 (5th Plain Creek Subdivision Phases I & II), included the stormwater collection, conveyance, treatment and discharge for the proposed 5th Plain Creek Subdivision Phase III development area. The applicant's Stormwater Letter also stated that stormwater report demonstrated that the proposed stormwater plan, consisting of a combination of infiltration, Contech StormFilter® manholes/vault units, a biofiltration swale and a detention pond will be used to treat, detain and release the stormwater generated, will meet the current requirements of the County's Stormwater Ordinance. The applicant's stormwater letter concluded that no further study is needed to support preliminary approval. Because stormwater is discharged to the Lacamas watershed phosphorus removal is required. See conditions A-5-a & A-5-b.

Stormwater runoff from the roofs of the homes to be constructed will be infiltrated on site. See conditions D-3-d and E-2.

Columbia West Engineering, Inc. performed infiltration testing on December 10 & 11, 2014. Tested infiltration rates ranged from 15 to 20 inches per hour. A factor of safety of 2 was used for infiltration facility sizing. Groundwater was encountered in test pits at depths ranging from 2 to 14 feet below ground surface. Clark County GIS indicates the depth to groundwater is approximately 10 feet below ground surface. The report specifies that all infiltration systems will be at least 5 feet above the seasonal high groundwater. Piezometers were installed at the site to monitor the groundwater in order to establish a seasonal high groundwater elevation. The study reports observed groundwater within both piezometers was approximately 14 feet below ground surface. See conditions A-5-c, C-1 & C-2.

The applicant's stormwater plan does not indicate the ownership of the stormwater facilities. At the hearing, Mr. Stonex testified that the applicant will dedicate the stormwater facilities to the County. The applicant shall identify which stormwater systems will be publically or privately owned and maintained. See conditions A-5-d, D-7-d & D-3-b.

Conclusion

The examiner concludes that the proposed preliminary plan, subject to adopted conditions, meets the stormwater requirements of the Clark County Code.

Fire Protection

Fire Protection Finding 1 – Building Construction

Building construction occurring subsequent to this application shall be in accordance with the provisions of the county's building and fire codes. Additional specific requirements may be made at the time of building construction as a result of the permit review and approval process. One and two family homes over 3,600 square feet (excluding attached garages) will have additional fire protection requirements. See condition E-4.

Fire Protection Finding 2 – Fire Flow

Fire flow in the amount of 1000 gallons per minute supplied at 20 psi for 60 minutes duration is required for this application. Water mains supplying fire flow and fire hydrants shall be installed, approved and operational prior to final plat approval. Required fire flow is based upon a single family home with up to 3,600 sq. ft. of inhabitable area. One and two family homes over 3,600 square feet (including attached garages) will have additional fire protection requirements. Clark Public Utility letter states that existing fire flow in the area is estimated at 1250 GPM @ 20 PSI. See conditions A-17.a and D-8.a.

Fire Protection Finding 3 – Fire Hydrants

Fire hydrants are required for this application. Provide fire hydrants such that the maximum spacing between hydrants does not exceed 700 feet and such that no lot or parcel is in excess of 500 feet from a fire hydrant as measured along approved fire apparatus access roads.

Unless waived by the fire district chief fire hydrants shall be provided with appropriate 'storz' adapters for the pumper connection.

The local fire district chief approves the exact locations of fire hydrants. See conditions A-17.b, A-17.c, and D-8.b.

Fire Protection Finding 4 – Fire Apparatus Access

Fire apparatus access is required for this application. The roadways and maneuvering areas as indicated in the application shall meet the requirements of the Clark County Road Standard.

Fire Protection Finding 5 – No parking

Parking is prohibited on access roads that are less than twenty-four (24) feet wide. Roads that are less than twenty-four (24) feet wide shall be posted "NO PARKING-FIRE LANE". See condition A-17.d.

Conclusion

The examiner finds that the proposed preliminary plan, subject to conditions identified above, meets the fire protection requirements of the Clark County Code.

Water and Sewer Service

Water and Sewer Finding 1 – Providers

The site will be served by the Clark Public Utilities water district and the City of Vancouver sewer district. Letters from the above districts confirm that services are available to the site.

Water and Sewer Finding 2 – Sewer

Existing sewer is located in NE 78th Street, approximately 1,900 feet west of the site. Since the preliminary approval of Phases I and II, a new plan to provide gravity sewer has been developed, which requires the under-bridge crossing of Fifth Plain Creek as opposed

to an underground boring, which would place the sewer too deep to allow for a gravity system. See Ex. 8.

Water and Sewer Finding 3 - Water

Water will be provided by Clark Public Utilities. Water is currently available in NE 81st Circle, north of the site in Monet's Garden.

Water and Sewer Finding 4 – Connection required

All lots in the proposed plat must connect to an approved public sewer and water system. A copy of the final acceptance letter from the sewer and water purveyor shall be submitted to the Health Department with the final plat mylar. The applicant shall comply with all requirements of the purveyor. See condition D-1.

Water and Sewer Finding 5 – Wells and On-site Sewer abandonment.

No wells or on-site sewage systems are noted in the application, nor noticed in the field. If either is found during construction they must be properly abandoned according to Public Health procedures. See condition A-13.j.

Conclusion

The examiner finds that the proposed preliminary plan, subject to conditions identified above, meets water and sewer service requirements of the Clark County Code.

Impact Fees

Impact Fees Finding 1

The additional residential lots created by this plat will produce impacts on schools, parks, and traffic, and are subject to School (SIF), Park (PIF), and Traffic Impact Fees (TIF) in accordance with CCC 40.610.

- Evergreen sub-area with a TIF of \$3,611.72 per dwelling
- Evergreen School District, with a SIF of \$6,989.00 per dwelling
- Park District #5, with a PIF of \$2,299 [consisting of the “regular” District 5 assessment of \$1,799 per dwelling (\$1,350 for park acquisition / \$440 for park development) plus a \$500 per lot assessment required as a condition of the releasing of Urban Holding in this area. See the developer’s agreement contained within ORD2013-12-20 found in Ex. 11.

TIF is payable prior to issuance of building permits. If a building permit application is made more than three years following the date of preliminary plat approval, the impact fees will be recalculated according to the then-current ordinance rate. See conditions D-3.e and E-3.

D. CONCLUSION

Based on the above findings and discussion, the examiner concludes that PLD2016-00010, SEP2016-00024, SHL2016-00020, HAB2016-00037, FLP2016-00008 and EVR2016-00023 (5th Plain Creek Subdivision Phase 3) should be approved, because it does or can comply with the applicable standards of the Clark County 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 foregoing findings and except as conditioned below, the examiner hereby approves PLD2016-00010, SEP2016-00024, SHL2016-00020, HAB2016-00037, FLP2016-00008 and EVR2016-00023 (5th Plain Creek Subdivision Phase 3) in general conformance with the applicant's preliminary plat and the related plans, reports and proposal. The approval is granted subject to the requirements that the applicant, owner or subsequent developer (the "developer") shall comply with all applicable code provisions, laws and standards and the following conditions. These conditions shall be interpreted and implemented consistently with the foregoing findings.

Conditions of Approval

A Final Construction Review for Land Division Review and Approval Authority: Development Engineering

Prior to construction, a Final Construction Plan shall be submitted for review and approval, consistent with the approved preliminary plan and the following conditions of approval:

- A-1 Final Transportation Plan/On-Site** - The applicant shall submit and obtain County approval of a final transportation design in conformance to CCC 40.350 and the following conditions of approval:
- a. The applicant shall acquire the appropriate building permits for the construction of the proposed pedestrian bridge over 5th Plain Creek.
 - b. The applicant shall show on the final construction plans that all pedestrian facilities will be constructed to comply with ADA standards. (See Transportation Finding 1)
 - c. The applicant shall submit construction drawings that show the construction of half-width improvements, for NE 182nd Avenue, in compliance with Clark County Standard Drawing 7. The applicant shall also ensure that there is a total half-width of 30 feet of right-of-way along the frontage of NE 182nd Avenue. (See Transportation Finding 4)

- d. The applicant shall submit final construction drawings that show that corner lot driveways will comply with CCC 40.350.030 (B)(4)(b)(1). (See Transportation Finding 5)

A-2 Final Transportation Plan/Off Site (County Concurrence) – If the proposed 5th Plain Creek Subdivision Phase III development is constructed prior to 5th Plain Creek Subdivision Phase II, the applicant shall construct a 20-foot wide paved access road within the previously approved rights-of-way locations for NE 180th Avenue and NE 78th Street. The applicant shall also provide the appropriate documents to allow construction of the off-site 20-foot wide roadway. (See Concurrence Finding 2)

A-3 Final Transportation Plan/Off Site (County Concurrence) – The applicant shall consider the WSDOT Design Manual – Roadside Safety Mitigation Guidance (Section 1600.04) in the final engineering design of all proposed roadways and frontage improvements. (See Concurrence Finding 6)

A-4 Transportation:

- a. Signing and Striping Plan: The applicant shall submit a signing and striping plan and a reimbursable work order, authorizing County Road Operations to perform any signing and pavement striping required within the County right-of-way. This plan and work order shall be approved by the Department of Public Works prior to final plat or final site plan approval. The signing and striping plan shall include “No Parking” signs along the length of NE 81st Circle. (See Transportation Finding 3)
- b. Traffic Control Plan: Prior to issuance of any building or grading permits for the development site, the applicant shall obtain written approval from Clark County Department of Public Works of the applicant's Traffic Control Plan (TCP). The TCP shall govern all work within or impacting the public transportation system.

A-5 Final Stormwater Plan - The applicant shall submit and obtain County approval of a final stormwater plan designed in conformance to CCC 40.386 and the following conditions of approval:

- a. The applicant shall submit final construction plans and a final Technical Information Report that addresses Minimum Requirements 1 through 9 including phosphorus treatment. (See Stormwater Findings 1 and 2)
- b. The applicant shall submit a letter, or documentation, from the stormwater treatment system manufacturer indicating the treatment devices were sized appropriately. (See Stormwater Findings 1 and 2)
- c. The final Technical Information Report shall include collected groundwater information from monitoring events within piezometers. (See Stormwater Findings 1 and 2)

- d. The applicant shall submit final construction plans that identify which stormwater systems will be publically or privately owned and maintained. (See Stormwater Findings 1 and 2)
- A-6 Erosion Control Plan** - The applicant shall submit and obtain County approval of a final erosion control plan designed in accordance with CCC 40.386.
- A-7 Excavation and Grading** - Excavation/grading shall be performed in compliance with CCC14.07.
- A-8** The applicant shall obtain approval of a floodplain permit prior to construction plan approval.
- A-9** All lots that directly abut other lots or parcels outside the plat shall meet the requirements in 40.220.010.C.5.b. (See Land Use Finding 1)
- A-10** All interior lots must meet the minimum lot width, depth and usable area for R1-10 and R1-20 zoned lots in Table 40.220.010-4. (See Land Use Finding 1)
- A-11** Each phase shall be designed to “stand alone” in regards to meeting transportation, stormwater, and other development regulations. (See Land Use Finding 3)
- A-12** Archaeology - Prior to the issuance of final construction permit by the county, the applicant shall provide confirmation from DAHP that either confirms that no further archaeological work is necessary, or that the applicant has received and had met, or will meet, the conditions stipulated by the pending DAHP permit.
- A-13** The following notes shall be placed on the face of the final construction plans:
- a. "If any cultural resources and/or human remains are discovered in the course of undertaking the development activity, the Department of Archaeology and Historic Preservation in Olympia shall be notified. Failure to comply with these state requirements may constitute a Class C Felony, subject to imprisonment and/or fines."
 - b. “The applicant shall only impact areas indicated on the provided plans during construction of this project. Any clearing or disturbance beyond that indicated on the plans provided would require additional habitat and shoreline review by County staff and may include additional permit and mitigation requirements. “
 - c. “The applicant shall implement the Wetland and Habitat Mitigation Plan by Cascadia Environmental Services (dated April 14, 2016 and August 3, 2016, Exs. 15 and 16), except as amended below.”

- d. “The applicant shall utilize best management practices to control erosion and prevent sediment from entering adjacent streams and riparian habitat, non-riparian habitat (Waterfowl concentrations, oak woodland), wetlands, and wetland buffers.”
- e. “The applicant shall grade all temporary impacts to pre-disturbance grades. These areas shall be replanted with native grass and herbaceous vegetation to maintain and enhance shoreline habitat ecological functions as currently exist on site at a 1:1 ratio for areas currently in grass, weeds, or blackberries; when shrubs and trees are impacted there is a temporal loss which must be accounted for at a higher rate depending on the maturity of the vegetation impacted. If trees and shrubs are proposed to be impacted as a result of these lines, their impacts (reported as canopy loss square footage) should be accounted for in the revised mitigation plan.”
- f. “The applicant shall re-seed all temporarily impacted disturbed areas which were previously grass with a native grass/vegetation seed mixture. These areas shall be maintained and monitored for 1 year to ensure grass cover has been established and covers 95% of the temporarily disturbed area. Any areas which do not meet this condition shall be replanted and monitored until conditions are met.”
- g. “Non-native vegetation (including blackberry and reed canary grass) and noxious weeds shall be removed and replanted with native vegetation (where encountered) within the temporarily disturbed areas and mitigation areas.”
- h. “Any unforeseen disturbance to the indicated riparian buffers not mentioned as a part of this permit shall be replanted with native vegetation. DES shall be notified of any additional impacts and the replanted area shall be included with the permitted restoration areas and maintained and monitored accordingly.”
- i. “The area where the 78th Street Corridor is proposed shall not be used for mitigation purposes.”
- j. “If wells or on-site sewage systems are found during construction they must be properly abandoned according to Public Health procedures.”

A-15 Final Wetland Permit approval shall be required

- a. The financial assurance required may be combined with the assurance required for the habitat enhancement.

A-16 Habitat Plan:

- a. The applicant shall provide a performance financial assurance for the proposed habitat mitigation. This may be combined with the financial assurance required for the wetland enhancement/creation.
- b. The Final Construction plan shall show location of the outer extent of the riparian habitat conservation zone, and Shoreline setbacks (Vegetation setback at 115 feet and Shoreline Area at 200 feet). Markings shall be installed prior to construction and maintained throughout the duration of construction.
- c. The location of the mitigation areas shall be indicated on the Final Construction plans.
- d. The location of all permanent and temporary impacts shall be delineated on the Final Construction Plans.
- e. The applicant shall provide financial assurances for the planting, monitoring, and maintenance of the onsite riparian habitat mitigation.
- f. The applicant shall indicate the location of the proposed trails on the plans and stake the location in the field prior to construction. Only the staked area for path construction should be disturbed during trail construction.
- g. A site plan note shall be added which states, "the four (4) foot wide wood chip trail will be field staked to avoid tree removal and minimize significant native vegetation removal."
- h. The exact location of the bore entry and exit points is not known at this time. A Habitat Permit with applicable mitigation shall be required if there are riparian habitat conservation zone impacts in relation to the water and sanitary sewer lines which were not accounted for in this preliminary review.

A-17 Fire Marshal Requirements

- a. Fire flow in the amount of 1000 gallons per minute supplied at 20 psi for 60 minutes duration is required for this application. Water mains supplying fire flow and fire hydrants shall be installed, approved and operational prior to final plat approval. Required fire flow is based upon a single family home with up to 3,600 sq. ft. of inhabitable area. One and two family homes over 3,600 square feet (including attached garages) will have additional fire protection requirements. Clark Public Utility letter states that existing fire flow in the area is estimated at 1250 GPM @ 20 PSI. (See Fire Protection Finding 2)
- b. Fire hydrants are required for this application. Provide fire hydrants such that the maximum spacing between hydrants does not exceed 700 feet and such that no lot or parcel is in excess of 500 feet from a fire hydrant as measured along approved fire apparatus access roads.

Unless waived by the fire district chief fire hydrants shall be provided with appropriate 'storz' adapters for the pumper connection.

The local fire district chief approves the exact locations of fire hydrants. (See Fire Protection Finding 3).

- c. Parking is prohibited on access roads that are less than twenty-four (24) feet wide. Roads that are less than twenty-four (24) feet wide shall be posted "NO PARKING-FIRE LANE". See Fire Protection Finding 5.

A-18 The applicant shall obtain Shorelines Conditional Use approval from the Department of Ecology. (See Shoreline Finding)

B	Prior to Construction of Development Review and Approval Authority: Development Inspection
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Prior to construction, the following conditions shall be met:

B-1 Pre-Construction Conference - Prior to construction or issuance of any grading or building permits, a pre-construction conference shall be held with the county.

B-2 Erosion Control - Prior to construction, erosion/sediment controls shall be in place. Sediment control facilities shall be installed that will prevent any silt from entering infiltration systems. Sediment controls shall be in place during construction and until all disturbed areas are stabilized and any erosion potential no longer exists.

B-3 Erosion Control - Erosion control facilities shall not be removed without county approval.

C	Provisional Acceptance of Development Review and Approval Authority: Development Inspection
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Prior to provisional acceptance of development improvements, construction shall be completed consistent with the approved final construction / land division plan and the following conditions of approval:

C-1 Stormwater:

In accordance with Section 5.1.2, Book 2 of the Clark County Stormwater Manual 2015, if the tested coefficient of permeability determined at the time of construction is at least 95 percent of the uncorrected coefficient of permeability used to determine the design rate, construction may proceed. If the tested rate does not meet this requirement, the applicant shall submit a plan to Clark County that follows the requirements in Book 1, Section 1.8.5. This plan shall address steps to correct the problem, including additional testing and/or resizing of the facility to

ensure that the system will meet the minimum requirements of this manual. (See Stormwater Findings 1 & 2)

C-2 Stormwater:

During installation of the infiltration galleries, the applicant shall demonstrate that the required minimum vertical separation to seasonal high water table for each facility as shown on the final construction plans shall be met. The systems shall be redesigned if the required separation is not achieved. (See Stormwater Findings 1 & 2)

- C-3** Permanent physical demarcation along the upland boundary of the wetland buffer area shall be installed and thereafter maintained for the wetland mitigation site. Such demarcation may consist of logs, a tree or hedge row, fencing, or other prominent physical marking approved by the responsible official. In addition, small signs shall be posted at an interval approved by the Resource Permitting and Enhancement Manager, and perpetually maintained at locations along the outer perimeter of the wetland buffer approved by the responsible official worded substantially as follows:

*Wetland and Buffer –
Please retain in a natural state*

- C-4** Permanent physical demarcation along the upland boundary of the riparian habitat conservation zone shall be installed and thereafter maintained. Such demarcation may consist of logs, a tree or hedgerow, fencing, or other prominent physical marking approved by the responsible official. In addition, small signs shall be posted at an interval approved by the Resource Permitting and Enhancement Manager, and perpetually maintained at locations along the outer perimeter of the riparian habitat conservation zone approved by the responsible official worded substantially as follows:

*Habitat Conservation Area –
Please retain in a natural state
No Dumping. No pet entry*

D	Final Plat Review & Recording Review and Approval Authority: Development Engineering
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Prior to final plat approval and recording, the following conditions shall be met:

- D-1** All lots in the proposed plat must connect to an approved public sewer and water system. A copy of the final acceptance letter from the sewer and water purveyor shall be submitted to the Health Department with the final plat mylar. The applicant shall comply with all requirements of the purveyor.

- D-2** All lots shall meet the density transfer standards in 40.220.010.C.5. (See Land Use Finding 1)
- D-3 Developer Covenant** – A “Developer Covenant to Clark County” shall be submitted for recording to include the following:
- a. Joint Driveway Maintenance Covenant - A private joint driveway maintenance covenant shall be submitted to the responsible official for approval and recorded with the County Auditor. The covenant shall set out the terms and conditions of responsibility for maintenance, maintenance methods, standards, distribution of expenses, remedies for noncompliance with the terms of the agreement, right of use easements, and other considerations, as required under 40.350.030(C)(4)(g).
 - b. Critical Aquifer Recharge Areas - "The dumping of chemicals into the groundwater and the use of excessive fertilizers and pesticides shall be avoided. Homeowners are encouraged to contact the State Wellhead Protection program at (206) 586-9041 or the Washington State Department of Ecology at 800-RECYCLE for more information on groundwater /drinking supply protection."
 - c. Erosion Control - "Building Permits for lots on the plat shall comply with the approved erosion control plan on file with Clark County Building Department and put in place prior to construction."
 - d. Responsibility for Stormwater Facilities Maintenance: For stormwater facilities for which the county will not provide long-term maintenance, the developer shall make arrangements with the existing or future (as appropriate) occupants or owners of the subject property for assumption of maintenance to the county's Stormwater Facilities Maintenance Manual as adopted by Chapter 13.26A. The responsible official prior to county approval of the final stormwater plan shall approve such arrangements. Final plats shall specify the party(s) responsibility for long-term maintenance of stormwater facilities within the Developer's Covenants to Clark County. The county may inspect privately maintained facilities for compliance with the requirements of this chapter. If the parties responsible for long-term maintenance fail to maintain their facilities to acceptable standards, the county shall issue a written notice specifying required actions to be taken in order to bring the facilities into compliance. If these actions are not performed in a timely manner, the county shall take enforcement action and recover from parties responsible for the maintenance in accordance with Section 32.04.060. (The covenant will not be required if the stormwater facilities are to be owned and maintained by Clark County.)
 - e. Impact Fees: "In accordance with CCC 40.610, the School, Park and Traffic Impact Fees for each dwelling in this subdivision are: \$ 6,989.00 (Evergreen School District), \$2,299 PIF (for Park District 5)[consisting of the “regular” District 5 assessment of \$1,799 per dwelling (\$1,350 for park acquisition / \$440 for park development) plus a \$500 per lot assessment required as a condition of

the releasing of Urban Holding in this area] and \$ 3,611.72 (Evergreen TIF sub-area) respectively. The impact fees for lots on this plat shall be fixed for a period of three years, beginning from the date of preliminary plat approval, dated October 20, 2016, and expiring on October 20, 2019. Impact fees for permits applied for following said expiration date shall be recalculated using the then-current regulations and fees schedule.” (See Impact Fee Finding)

D-4 Utility and Annexation Covenant - The following covenants shall be submitted for recording:

- a. City of Vancouver required utility covenants, and
- b. Covenant indicating that the owner or any subsequent owner of the property shall support annexation to a city.

D-5 Habitat:

- a. All Priority Habitat areas shall be delineated on the face of the Final Plat.
- b. Signage shall be posted along the habitat boundaries at an interval of one (1) per lot or every one hundred (100) feet, whichever is less, and be perpetually maintained by the homeowners in such a manner so as to sufficiently identify and protect habitat functionality. Signs shall read” Habitat Conservation Area—please retain in a natural state. No dumping. No pet entry.”
- c. A conservation covenant shall be recorded for the existing forest and riparian habitat conservation zone, as well as the riparian habitat conservation zone mitigation areas.

D-6 Wetlands:

- a. A conservation covenant shall be recorded for the offsite mitigation in a form approved by the Prosecuting Attorney as adequate to incorporate the other restrictions of Chapter 40.450 and to give notice of the requirement to obtain a wetland permit prior to engaging in regulated activities within a wetland or its buffer.

D-7 Plat Notes - The following notes shall be placed on the final plat:

- a. Sidewalks: "Prior to issuance of occupancy permits, sidewalks shall be constructed along all the respective lot frontages.
- b. Utilities: "An easement is hereby reserved under and upon the exterior six (6) feet at the front boundary lines of all lots for the installation, construction, renewing, operating and maintaining electric, telephone, TV, cable, water and sanitary sewer services. Also, a sidewalk easement, as necessary to comply

with ADA slope requirements, shall be reserved upon the exterior six (6) feet along the front boundary lines of all lots adjacent to public streets."

- c. Driveways: "All residential driveway approaches entering public roads are required to comply with CCC 40.350." "No direct driveway access onto NE 81st Circle, NE 182nd Avenue or NE 78th Street will be permitted."
- d. Roof and Crawl Space Drains: "Roof and crawl space drains are to be installed per approved construction as-built plans unless a revised plan is approved by the county. These stormwater systems will be owned and maintained by the property owner on whose lot the stormwater system is located."
- e. Privately Owned Stormwater Facilities: "The following party(s) is responsible for long-term maintenance of the privately owned stormwater facilities: _____." (This note may be deleted if the stormwater facilities are to be publically owned and maintained)
- f. Mobile Homes: "Mobile homes are not permitted on all lots subject to the requirements of CCC 40.260.130."
- g. Archaeology: "If any cultural resources and/or human remains are discovered in the course of undertaking the development activity, the Department of Archaeology and Historic Preservation in Olympia and Clark County Community Development shall be notified. Failure to comply with these State requirements may constitute a Class C Felony, subject to imprisonment and/or fines."
- h. Habitat Covenants: "Clark County Habitat Conservation Ordinance (Clark County Code Chapter 40.440) requires priority habitat areas to be maintained in a natural state. Refer to the Conservation Covenant recorded in conjunction with this plat for limitations on the maintenance and use of the wetland and wetland buffer areas identified on the face of this plat."
- i. Impact Fees: "In accordance with CCC 40.610, the School, Park and Traffic Impact Fees for each dwelling in this subdivision are: \$ 6,989.00 (Evergreen School District), \$2,299 PIF (for Park District 5) [consisting of the "regular" District 5 assessment of \$1,799 per dwelling (\$1,350 for park acquisition / \$440 for park development) plus a \$500 per lot assessment required as a condition of the releasing of Urban Holding in this area] and \$ 3,611.72 (Evergreen TIF sub-area) respectively. The impact fees for lots on this plat shall be fixed for a period of three years, beginning from the date of preliminary plat approval, dated October 20, 2016, and expiring on October 20, 2019. Impact fees for permits applied for following said expiration date shall be recalculated using the then-current regulations and fees schedule." (See Impact Fee Finding)

D-8 Fire Marshal Requirements

- a. Fire flow in the amount of 1000 gallons per minute supplied at 20 psi for 60 minutes duration is required for this application. Water mains supplying fire flow and fire hydrants shall be installed, approved and operational prior to final plat approval. Required fire flow is based upon a single family home with up to 3,600 sq. ft. of inhabitable area. One and two family homes over 3,600 square feet (including attached garages) will have additional fire protection requirements. Clark Public Utility letter states that existing fire flow in the area is estimated at 1250 GPM @ 20 PSI. (See Fire Protection Finding 2)
- b. Fire hydrants are required for this application. Provide fire hydrants such that the maximum spacing between hydrants does not exceed 700 feet and such that no lot or parcel is in excess of 500 feet from a fire hydrant as measured along approved fire apparatus access roads.

Unless waived by the fire district chief fire hydrants shall be provided with appropriate 'storz' adapters for the pumper connection.

The local fire district chief approves the exact locations of fire hydrants. (See Fire Protection Finding 3).

- D-9 Setbacks** – Side setbacks on Lot 22 shall be consistent with the zoning boundary between the R1-10 and R1-20 zones. (See Land Use Finding 2).

E	Building Permits Review and Approval Authority: Permit Services
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Prior to issuance of a building permit, the following conditions shall be met:

- E-1 Excavation and Grading** - Excavation/grading shall be performed in compliance with CCC 14.07.
- E-2 Stormwater** - The owner of each lot is responsible for obtaining approval of a plan for roof and crawl space drains with the building permit and constructing the individual onsite drainage systems. (See Finding #7)
- E-3 Impact Fees** - The applicant shall pay impact fees based on the number of dwelling units in the building, as follows:
 - a. \$6,989.00 per dwelling for School Impact Fees (Evergreen School Dist.)
 - b. \$2,299 (Park District 5) (consisting of the “regular” District 5 assessment of \$1,799 per dwelling (\$1,350 for park acquisition / \$440 for park development) plus a \$500 per lot assessment required per Developer Agreement);
 - c. \$3,611.72 per dwelling for Traffic Impact Fees (Evergreen TIF Sub-area)

If the building permit application is made more than three years following the date of preliminary land division plan approval, the impact fees shall be recalculated according to the then-current rate.

- E-4** Building construction occurring subsequent to this application shall be in accordance with the provisions of the county's building and fire codes. Additional specific requirements may be made at the time of building construction as a result of the permit review and approval process. One and two family homes over 3,600 square feet (excluding attached garages) will have additional fire protection requirements.

F	Occupancy Permits Review and Approval Authority: Building
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Prior to issuance of an occupancy permit, the following conditions shall be met:

- F-1** None

G	Development Review Timelines & Advisory Information Review and Approval Authority: None - Advisory to Applicant
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- G-1** **Land Division** - Within seven (7) years of preliminary plan approval, a Fully Complete application for Final Plat review shall be submitted.

- G-2** **Department of Ecology Permit for Construction Stormwater** - A permit from the Department of Ecology (DOE) is required if:

- The construction project disturbs one or more acres of land through clearing, grading, excavating, or stockpiling of fill material; **AND**
- There is a possibility that stormwater could run off the development site during construction and into surface waters or conveyance systems leading to surface waters of the state.

The cumulative acreage of the entire project whether in a single or in a multiphase project will count toward the one acre threshold. This applies even if the applicant is responsible for only a small portion (less than one acre) of the larger project planned over time. **The applicant shall contact DOE for further information.**

G-3 Building and Fire Safety

Building and fire, life, and safety requirements must be addressed through specific approvals and permits. This decision may reference general and specific items related to structures and fire, life, and safety conditions, but they are only for reference in regards to land use conditions. It is the responsibility of the owner, agent, tenant, or applicant to insure that Building Safety and Fire Marshal requirements are in compliance or brought into compliance. Land use decisions do not waive any building or fire code requirements.

H	Post Development Requirements
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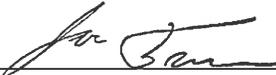
Hearings Examiner Final Order

*PLD2016-00010, SEP2016-00024, SHL2016-00020, HAB2016-00037, FLP2016-00008 and EVR2016-00023
(5th Plain Creek Subdivision Phase 3)*

Review and Approval Authority: As specified below

H-1 None

DATED this 20 day of October 2016.



Joe Turner, AICP, Hearings Examiner

Role	Company Name	Name	Address 1	Address 2	City	State	Zip Code	Email Address
Planner	Clark County	Jan Bazala						
Applicant/Owner	Fifth Plain Creek, LLC		14010A NE 3rd Ct	Ste 106	Vancouver	WA	98685	ROB@HINTONDEVELOPMENT.COM
N/H Association	Heritage Nbdh Assoc	Christie BrownSilva	13504 NE 84th Street	Ste 103-141	Vancouver	WA	98682	heritageneighborhood@gmail.com
Contact Person	Olson Engineering	Mike Odren	222 E Evergreen Blvd		Vancouver	WA	98660	MIKEO@OLSONENGR.COM
Utility Contact								
	Clark County	Desiree DeMonye						Desiree.DeMonye@clark.wa.gov
	City of Vancouver	Kristin Lehto						Kristin.Lehto@cityofvancouver.us
		Jennifer Halleck						Jennifer.Halleck@vansd.org
		Jeff Roberts						jeff@crandalgroup.com
	Department of Ecology	Mendoza, Sonia (ECY) <						
	Evergreen School Dist	Susan Steinbrenner	13501 NE 28 St	PO Box 8910	Vancouver	WA		Smen461@ECY.WA.GOV>
	DAHP	Rich Bender						bender50@comcast.net
								Gretchen.Kaehler@dahp.wa.gov
		Chris Mathews	8811 NE 21th Ave		Vancouver	WA		house2016@solberg-mathew.com
		Frank Bereitschnaft	18014 NE 85th Way		Vancouver	WA	98682	beritenergy@gmail.com
		Kathy Baghdanor	18109 NE 85th Cir		Vancouver	WA		gsmom007@hotmail.com
		Mark Walker	PO Box 820346		Vancouver	WA	98682	
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		Cindy Strom	19714 NE 91st Street		Vancouver	WA	98682	casquilter@aol.com
		Brad Kudrna	7902 NE 204th Ave		Vancouver	WA	98682	
		Pat Brown	22012 NE 83rd St		Vancouver	WA	98682	
		Mark Georgioff	21816 NE 104th Street		Vancouver	WA	98682	georgioff@comcast.net
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		JR Finch	17914 NE 81st Cir		Vancouver	WA	98682	irandcfinch@comcast.net
		Steve Morasch	805 Broadway Street	Ste 1000	Vancouver	WA	98660	stevem@landerholm.com
		Hann Lee	PO Box 1849		Vancouver	WA	98668	hlee@hleeassociates.com
		Richard Bender	8207 NE 181st Ct		Vancouver	WA	98682	bener50@comcast.net
		James Kessi	6400 NE Hwy 99	G169	Vancouver	WA	98665	james.kessi@gmail.com
		Doug Faulkner	18004 NE 81st Cir		Vancouver	WA	98682	dougfaulkner1950@comcast.net
		Bill Strom	19714 NE 91st Street		Vancouver	WA	98682	stromwl@aol.com
		David Alt	22811 NE 83rd St		Vancouver	WA	98682	



EXHIBIT LIST

Project Name: 5TH PLAIN CREEK SUBDIVISION PHASE 3

**Case Number: PLD2016-00010; SEP2016-00024; SHL2016-00020;
HAB2016-00037; FLP2016-0008; EVR2016-00023**

EXHIBIT NO.	DATE	SUBMITTED BY	DESCRIPTION
1	5/13/16	Applicant	Application Package
2	7/6/16	CC Land Use	Notice of Type III App w/SEPA
3	7/6/16	CC Land Use	Affidavit of Mailing – Exhibit 2
4	7/13/16	CC Land Use	Early issues email
5	7/13/16	CC Concurrency	May 24 th Concurrency FC determination
6	7/13/16	WSDOT	2015 Letter regarding impacts to SR500/NE 182 nd Avenue intersection
7	7/18/16	Evergreen Public Schools	SEPA comment letter
8	7/20/16	Applicant	Additional narrative regarding sewer plan
9	7/26/16	H. Lee & Associates	Response to WSDOT comments on SR500/NE 182 nd intersection
10	7/26/16	Landerholm	Legal opinion on WSDOT jurisdiction
11	7/31/16	Applicant	Applicant's affidavit of posting
12	8/3/16	CC Land Use	Relevant pages of Ordinance 2013-12-20 regarding urban holding
13	8/4/16	CC Development Engineering	Road Modification recommendation
14	8/5/16	Department of Ecology	SEPA comments
15	8/4/16	Applicant/Cascadia Ecological	August 3, 2016 Revised mitigation plan
16	8/4/16	Applicant/Cascadia Ecological	April 14, 2016 Revised mitigation plan
17	8/10/16	CC Land Use	Staff report and recommendation
18	8/10/16	CC Land Use	Affidavit of Mailing Exhibit 17
19	8/15/16	CC Land Use	Affidavit of Publication – The Reflector
20	8/22/16	Applicant	Request for change in conditions D-5.b and c

21	8/22/16	WSDOT	Recommendation to require mitigation at SR500/NE 182 nd intersection
22	8/24/16	CC Concurrency/WSDOT	Email string regarding SR500/NE 182 nd intersection
23	8/23/16	Applicant	Revisions to lot width diagram
24	8/25/16	Richard Bender	Copy of WSDOT letter (same as Exhibit 21)
25	8/25/16	Richard Bender	List of citizens opposing hearing time for lifting of UH in 2013
26	8/25/16	Applicant	Copy of decision for PLD2015-00026
27	8/25/16	Applicant	Photos of posted sign taken 8/25/16
28	9/1/16	CC Land Use	Traffic study for PLD2015-00026
29	9/1/16	CC Land Use	Revised Traffic study for PLD2015-00026 (Exhibit 24 to PLD2015-00026)
30	9/6/16	CC Land Use	Order Re-Opening the Record
31	9/6/16	CC Land Use	Affidavit of Mailing – Exhibit 30
32	9/9/16	CC Land Use	Affidavit of 8/10/16 Publication – The Columbian
33	9/6/16	Applicant	Bridge plan and accompanying email
34	9/19/16	Applicant/Hann Lee	Response to HE request to explain varying conclusions from earlier traffic study
35	9/27/16	CC Concurrency	Staff response to Hann Lee response (Ex. 34)
36	10/4/16	Mark Georgioff	Public Comment regarding traffic
37	10/6/16	Applicant/Landerholm	Final rebuttal regarding traffic
38	10/6/16	Applicant	Request to close record
39	10/20/16	CC Land Use	Hearing Examiner Final Order
40	10/20/16	CC Land Use	Affidavit of Mailing – Exhibit 39

Copies of these exhibits can be viewed at:
Department of Community Development
Development Services Division
1300 Franklin Street
Vancouver, WA 98666-9810