



NOTICE OF DECISION

PURSUANT TO RICHLAND MUNICIPAL CODE SECTION 19.60.080 NOTICE IS HEREBY GIVEN THAT THE CITY OF RICHLAND HEARINGS EXAMINER, ON JANUARY 23, 2023 APPROVED THE PRELIMINARY PLAT OF VENETO VILLAGIO (CITY FILE NO. S2022-101) SUBJECT TO CONDITIONS CONTAINED IN THE HEARING EXAMINER REPORT (ATTACHED):

**DESCRIPTION
OF ACTION:**

Preliminary plat of "Veneto Villagio" subdividing 20.80-acres into 13 lots and 3 tracts for future commercial use.

SEPA REVIEW:

The probable significant adverse environmental impacts of the proposed project have been adequately addressed in the Planned Action Ordinance [RMC 19.50.030 (B)] and as described in the Badger Mountain South Planned Action Consistency Determination for Villa Vista preliminary plat dated May 28, 2021. The City issued a PACD for the application on July 20, 2022.

APPROVED:

The subdivision approval is subject to conditions contained in the Hearing Examiner Decision.

PROJECT LOCATION:

East of Dallas Road, South of Ava Way and north of Trowbridge Blvd. in the Badger Mountain South master planned community (APN 1-32982BP4732022).

APPEALS:

Appeals to the above-described action may be made to the Benton County Superior Court by any Party of Record. Appeals must be filed within 21 days of issuance of this notice, which is January 26, 2023.

Mike Stevens
Planning Manager

January 26, 2023
Date

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF RICHLAND**

Regarding an Application for)
Preliminary Plat Approval, to subdivide)
20.8 acres into 13 lots and 3 tracts for)
future commercial use on a site mostly)
designated as “Special District –)
Commercial Mixed-Use” in the Badger)
Mountain South master planned)
community, submitted by)
NOR AM INVESTMENT, LLC)
Applicant,)

File No. S-2022-101

**DECISION APPROVING
“VENETO VILLAGIO”
PRELIMINARY PLAT APPLICATION**

*(The site is generally located east of Dallas Road, south of
Ave Way, and north of Trowbridge Boulevard in the Badger
Mountain South master planned community, on Parcel No. 1-
32982BP4732022, in the City of Richland)*

I. SUMMARY OF DECISION.

With appropriate conditions, the application can satisfy relevant approval criteria, including without limitation the specific “intent” language for the Special District – Commercial Mixed-Use area where it is located.

II. CONTENTS OF RECORD.

Copies of all materials in the record and a digital audio recording of the open-record hearing conducted for this application are maintained by the City and may be requested by using the City’s Public Records online portal or other methods for requesting records as described in the City’s Public Records Disclosure Policy No. 0260.

**DECISION RE: VENETO VILLAGIO
APPLICATION FOR PRELIMINARY PLAT
APPROVAL IN THE BMS MASTER PLANNED
COMMUNITY – FILE NO. S2022-101**

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HEARING EXAMINER FOR THE CITY OF RICHLAND**

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Exhibits: *Staff Report.* City of Richland Development Services Division Staff Report to the Hearing Examiner regarding the “Veneto Villagio” Preliminary Plat, File No. S2022-101, dated October 10, 2022, with nine attached exhibits, as identified and numbered on page 27 of such report. *(148 pages in .pdf file of materials, with report on pages 1-27).* Attached exhibits listed as follows:

1. Application
2. Preliminary Plat Map
3. Master Agreement Consistency Recommendation (MACR)
4. Master Agreement Consistency Determination (MACD)
5. Planned Action Consistency Determination (PACD)
6. Planned Action Ordinance
7. Public Notices & Affidavits
8. Public Comments
9. Agency Comments

Post-hearing Exhibits authorized by the Examiner during the hearing on October 10, 2022:

10. .pdf copy of Applicant’s slides presented at the public hearing.

11. Written Public Comments from Heather Nicholson, BMS resident, detailing concerns that Intent of Special District – Commercial Mixed-Use should be satisfied; Copy of written comments largely read by Ms. Hansen during hearing.

12. Public Works Department memo dated November 9, 2021, detailing specific transportation improvement projects funded by Traffic Impact Fees collected in Traffic Impact Zone 3, where the proposed plat and other parts of the BMS community are located. Previously included as an exhibit in other BMS projects (Goose Ridge, File No. S2021-107; and South Orchard, File No. S2021-104).¹ **Added by the Examiner to complete the record, as the application materials failed to include detailed confirmation summarizing traffic mitigation measures and how they can be funded as required in Sec. 7.2 of the Master Agreement.*

¹ This document was not included in the application materials or the Staff Report but has been added into the record by the Examiner to complete the record on the issue of transportation improvements, and their funding sources, as required by Sec. 7.2 of the Master Agreement. The record is now closed, and this Decision is in order. *(See H.Ex. Rule 1.14(d) re: official notice of records; and Rule 1.17, reopening to supplement record, which apply to exhibits numbered 12 and 13).*

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13. Master Declaration of Covenants, Conditions, and Restrictions (CCRs) for Badger Mountain South. *(Benton County Auditor's Office, Recording No. 2012-027520 COV, recorded on 09/07/2012 (30 pages)).*

Testimony/Comments: The following persons were sworn and provided testimony under oath during the continued open-record hearing on October 10, 2022:

1. Mike Stevens, Planning Manager, for the City of Richland;
2. Reuben Schutz, applicant's attorney;
3. Cheryl Ebsworth, consultant for the applicant, presented slides summarizing proposed preliminary plat, asked that proposed condition No. 25 be removed;
4. Darrin Sweeney, applicant's primary representative, has worked with Nor Am for about 2 years, previously employed by the City of Richland. Responded to comments and questions;
4. Heather Nicholson, BMS resident, explained concerns to assure the application will fulfill the Intent for the Special District – Commercial Mixed-Use, where this project is located;
5. Kelly Monteblando, West Vineyard resident, noted how all BMS property owners are bound by the LUDR, including the applicant, questions about traffic circle;
6. Daniel Sanner, BMS resident, parents reside nearby in BMS as well, active in his community, not opposed necessarily, noted it's hard to tell what might go on lots created in this application, comments about roundabouts, lots close to businesses, walkability in the area;
7. Holly Hansen, BMS resident, comments and questions about road requirements, entrances serving development, timing of projects;

* For this application, the Examiner takes official notice of sworn testimony provided by Pete Rogalski, P.E., Public Works Director, and Carlo D'Alessandro, P.E., Transportation and Development Manager for the City of Richland Public Works Department, during the public hearing held on November 8, 2021 before the Hearing Examiner for the Goose Ridge II preliminary plat application (File No. S2021-107) by a different applicant, which is also located in the BMS community, which testimony was also included as part of the record for the South Orchard Preliminary Plat Decision (File No. S2021-104), submitted by the same applicant as in this matter, NorAm. During their testimony, Mr. Rogalski and Mr. D'Alessandro offered credible and un rebutted evidence that trip counts used to determine if transportation improvements are "triggered" so construction should move forward are based upon building permits issued, not lots approved in final subdivisions, so the 1,000-unit threshold and others referenced in some comments have not been or will not be met until such time as 1,000 building permits are issued for new homes in the BMS community. Mr. Rogalski also confirmed that the City's transportation impact fees collected for each building permit in the proposed plat will be sufficient to proportionally fund transportation system improvements needed to mitigate impacts of the BMS project, and that the pending TIA will be used to refresh the list of transportation improvements needed for the BMS community, which is all located in a specific impact fee area, known as "zone 3".

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III. APPLICABLE LAW.

Under applicable provisions of the Richland Municipal Code (RMC), a preliminary plat application is first subject to review and approval by city staff with respect to the engineering elements of said plat, then the Hearing Examiner is responsible for conducting an open record public hearing followed by a final written Decision. A preliminary plat application is a Type III procedure. RMC 19.20.010(C)(1).

As explained in RMC 24.12.050(A), the hearing examiner shall consider any preliminary plat application and shall conduct an open record public hearing in accordance with Chapter 19.60 RMC. After the public hearing and review of materials in the record, the hearing examiner shall determine whether the preliminary plat is in accordance with the comprehensive plan and other applicable code requirements and shall either make a decision of approval or disapproval. The same provision of the city's code (RMC 24.12.050(A)) provides that any approval of the preliminary plat shall not be given by the hearing examiner without the prior review and approval of the city manager or their designee with respect to the engineering elements of said plat including the following:

1. Adequacy of proposed street, alley, right-of-way, easement, lighting, fire protection, drainage, and utility provisions;
2. Adequacy and accuracy of land survey data;
3. The submittal by the applicant of a plan for the construction of a system of street lights within the area proposed for platting, including a timetable for installation; provided, that in no event shall such a plan be approved that provides for the dedication of such a system of lighting to the city later than the occupancy of any of the dwellings within the subdivision.

The City's decision criteria for preliminary plat approval are substantially similar to state subdivision mandates found in RCW 58.17.110(2)² and reads as follows:

Richland Municipal Code 24.12.053 Preliminary plat – Required findings.

The hearing examiner shall not approve any preliminary plat application, unless the approval is accompanied by written findings that:

A. The preliminary plat conforms to the requirements of this title;

² "A proposed subdivision and dedication shall not be approved unless the city, town, or county legislative body makes written findings that: (a) Appropriate provisions are made for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and (b) the public use and interest will be served by the platting of such subdivision and dedication. (emphasis added). If it finds that the proposed subdivision and dedication make such appropriate provisions and that the public use and interest will be served, then the legislative body shall approve the proposed subdivision and dedication. []" RCW 58.17.110(2).

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1 *B. Appropriate provisions are made for the public health, safety and general welfare and for such open spaces,*
2 *drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes,*
3 *parks and recreation, playgrounds, schools and school grounds and all other relevant facts, including sidewalks*
4 *and other planning features that assure safe walking conditions for students who only walk to and from school;*

5 *C. The public use and interest will be served by the platting of such subdivision and dedication (emphasis added);*
6 *and*

7 *D. The application is consistent with the requirements of RMC 19.60.095.*

8 And, RMC 19.60.095 mandates the following additional findings:

9 ***19.60.095 Required findings.***

10 *No development application for a Type II or Type III permit shall be approved by the city of Richland unless the*
11 *decision to approve the permit application is supported by the following findings and conclusions:*

12 *A. The development application is consistent with the adopted comprehensive plan and meets the requirements*
13 *and intent of the Richland Municipal Code.*

14 *B. Impacts of the development have been appropriately identified and mitigated under Chapter 22.09 RMC.*

15 *C. The development application is beneficial to the public health, safety and welfare and is in the public interest.*
16 *(emphasis added).*

17 *D. The development does not lower the level of service of transportation facilities below the level of service D, as*
18 *identified in the comprehensive plan; provided, that if a development application is projected to decrease the level*
19 *of service lower than level of service D, the development may still be approved if improvements or strategies to*
20 *raise the level of service above the minimum level of service are made concurrent with development. For the*
21 *purposes of this section, “concurrent with development” means that required improvements or strategies are in*
22 *place at the time of occupancy of the project, or a financial commitment is in place to complete the required*
23 *improvements within six years of approval of the development. (emphasis added).*

24 *E. Any conditions attached to a project approval are as a direct result of the impacts of the development proposal*
25 *and are reasonably needed to mitigate the impacts of the development proposal.*

26 The burden of proof rests with the applicant, and any decision to approve or deny a
preliminary plat must be supported by a preponderance of evidence. RMC 19.60.060 and
Hearing Examiner Rules of Procedure, Sec. 3.08. The application must be supported by
proof that it conforms to the applicable elements of the city’s development regulations,
comprehensive plan and that any significant adverse environmental impacts have been
adequately addressed. RMC 19.60.060.

The hearing examiner’s decision regarding this preliminary plat application shall be
final, subject to judicial appeal in the time and manner as provided in RMC 19.70.060 and
Ch. 36.70C RCW (*The city’s final decision on land use application may be appealed by a
party of record with standing to file a land use petition in Benton County Superior Court.
Such petition must be filed within 21 days of issuance of the decision).* See RMC
24.12.050(B).

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1 **IV. ISSUE PRESENTED.**

2 Whether a preponderance of evidence demonstrates that the applicant has satisfied
3 their burden of proof to satisfy the criteria for preliminary plat approval?

4 Short Answer: Yes, subject to appropriate conditions of approval.

5 **V. FINDINGS OF FACT.**

6 Upon consideration of the Staff Report, exhibits, public hearing testimony, follow-up
7 research and review of applicable codes, plans, policies, controlling legal instruments,
8 including without limitation the Badger Mountain South LUDR provisions, this Decision is
9 now in order. Based on all the evidence, testimony, codes, policies, regulations, and other
information contained in the Record, the Examiner issues the following findings, conclusions
and Decision denying the pending preliminary plat application as set forth below.

10 1. Any statements in previous or following sections of this document that are deemed
11 findings are hereby adopted as such. Captions should not be construed to modify the
12 language of any finding, as they are only provided to identify some of the key topics at issue
in this application.

13 2. Nor Am Investment, LLC, is the applicant and owner of the parcel(s) of property
14 addressed in this preliminary plat application. (*Staff Report, page 1*).

15 3. The project site is part of the larger Badger Mountain South master planned community
16 and is subject to review and compliance with applicable provisions of city development
17 regulations as well as the Land Use and Development Regulations (LUDR) for the Badger
Mountain South master planned community.

18 4. The Badger Mountain South master planned community is intended to be a “walkable
19 and sustainable community” with a range of housing types, mixed-use neighborhoods, up to
20 5,000 dwelling units, businesses and other commercial activities, all subject to specially
adopted Land Use and Development Regulations (LUDR) for the area. (*LUDR, 1.A, Intent,
and 1.B, Purpose*).

21 5. Of special relevance to this project, there is no dispute that the property addressed in
22 this application is mostly located in the “Special District – Commercial Mixed Use” (BMS-
SD-CMU) District, with all of proposed lot 13 and the east part of proposed lot 12 in the
23 “Special District – Specialty Retail” (BMS-SD-SR) District of the BMS community. (*See*
24 *LUDR, Sec. 1.F, subsections 1.f and 1.g; BMS map, showing Districts and boundaries, with*
Legend, on page 2-2 of the LUDR, Sections 2.A and 2.B; Staff Report, page 3, Figure 2,

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1 *showing proposed lot lines imposed on BMS land use districts for the project area; Ex. 2,*
2 *proposed plat site plans with lot numbers assigned).*

3 6. In the middle of 2022, the city received the pending application for a Preliminary Plat
4 known as the Veneto Villagio project, assigned File No. S2022-101.

5 7. Following review of the application materials, city staff deemed the materials complete
6 for purposes of review and acceptance on or about the same date it mailed, posted, and
7 published Notices of the Application and Public Hearing for the matter in late July of 2022,
8 with an agreed continuance granted to an October hearing date due to an illness experienced
9 by a necessary participant. (*Staff Report, page 9; Ex. 7, copies of notices and confirmation*
10 *materials*).

11 8. All applicant submittals, written comments from current homeowners in the Badger
12 Mountain South community, and testimony received following notices issued for the public
13 hearing, are included in the record and have been thoroughly reviewed and considered in
14 issuing this Decision.

15 ***Proposal.***

16 9. The application form completed by the applicant explains that: “The project proposes
17 to develop 20.80 acres into 13 commercial lots...” (emphasis added). (*Ex. 1, Application,*
18 *“Project Description”*). The Staff Report explains that the applicant filed this preliminary
19 plat application to divide approximately 20.8-acres into 13 commercial lots and three (3)
20 tracts, to be known as the plat of Veneto Villagio (File No. S2022- 101). The project will
21 also develop Gateway Avenue between Ava Way and Trowbridge Blvd. and extend Sotto
22 Street to meet the future development of Villa Vista. (*Staff Report, page 2*).

23 10. The site is generally located east of Dallas Road, south of Ave Way, and north of
24 Trowbridge Boulevard in the Badger Mountain South master planned community, on Parcel
25 No. 1-32982BP4732022, in the City of Richland, Washington.

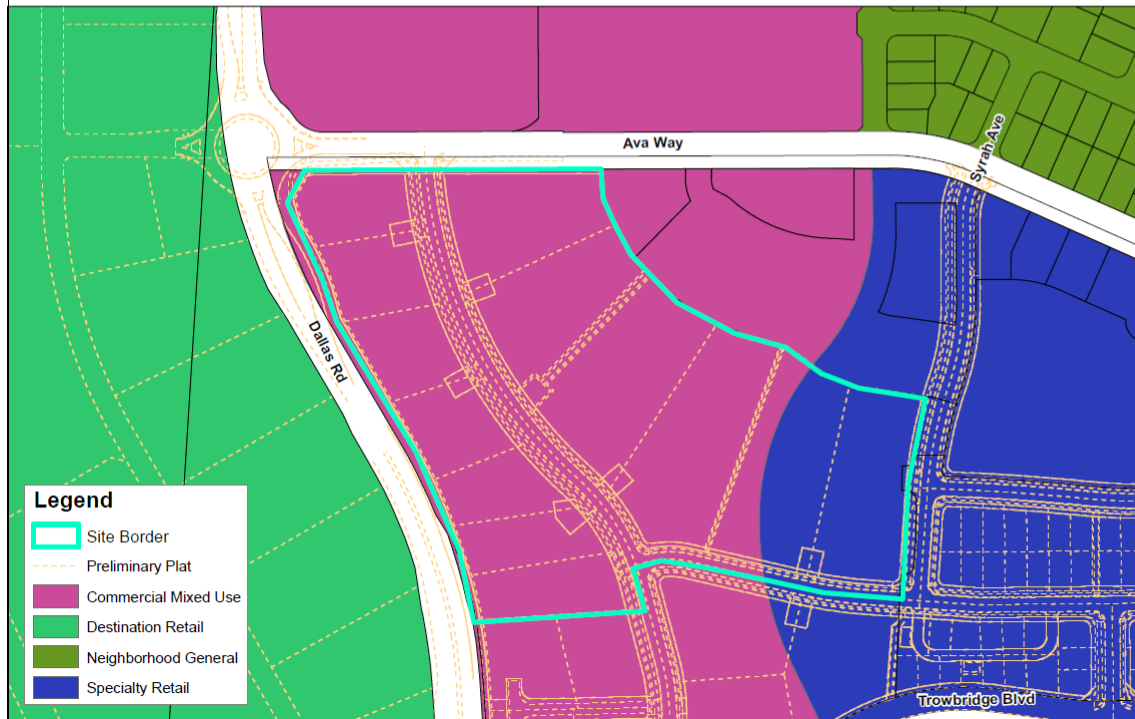
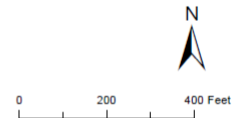
26 11. The Staff Report includes a colored map, showing the proposed plat layout over the
BMS land use districts applied for the vicinity, a copy of which is republished below. For
the reader’s convenience, proposed lots 12 and 13 are the two lots on the far right of the
project boundaries, with all of lot 13 and the east portion of lot 12 in the Specialty Retail
District, and the remainder of the proposed lots all in the Commercial Mixed-Use District.

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Land Use Map

Item: Veneto Villagio
Applicant: Geoff Clark
File #: S2022-101



Legend

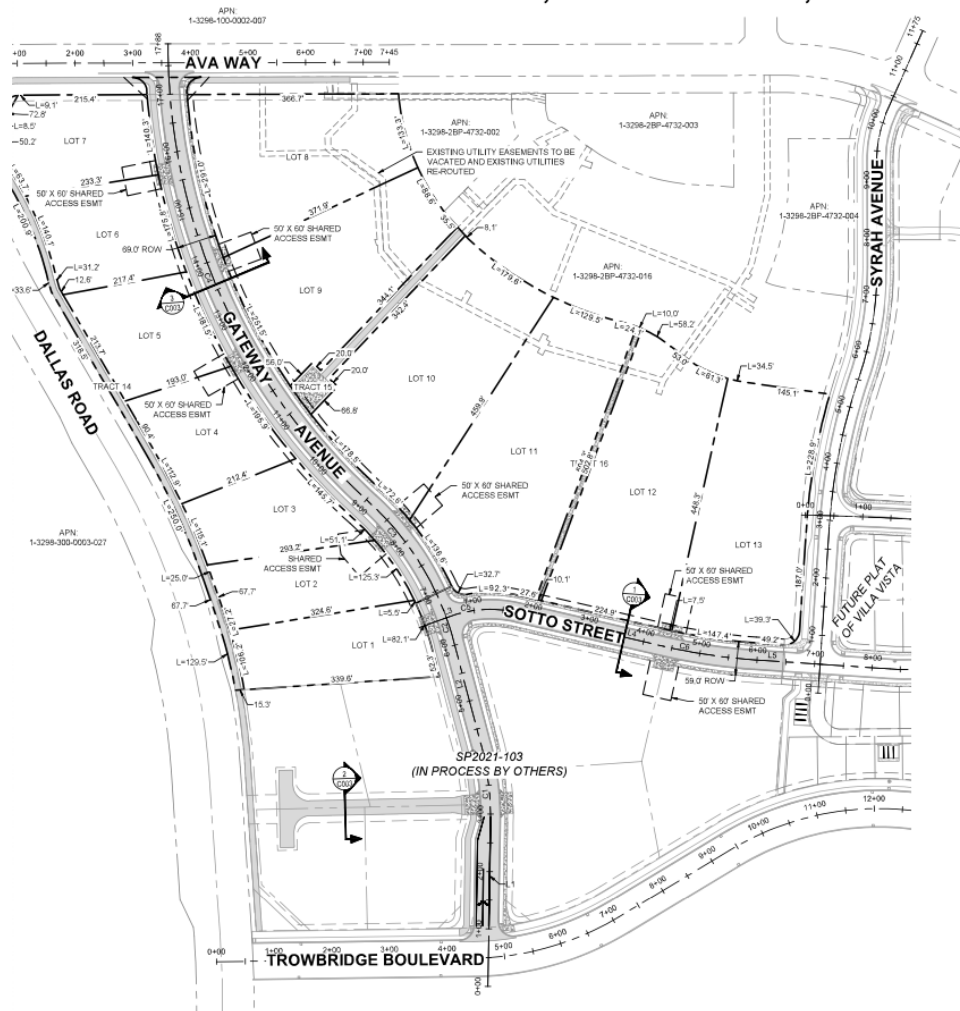
- Site Border
- Preliminary Plat
- Commercial Mixed Use
- Destination Retail
- Neighborhood General
- Specialty Retail

12. The proposed plat site plan is included as part of Exhibit 2, with a screenshot of the general layout, showing lot numbers, provided below:

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BMS VENETO VILLAGIO
LOCATED IN SE 1/4 OF THE NW 1/4 SEC. 32, TWN. 09 W., RGE. 2
CITY OF RICHLAND, BENTON COUNTY, WASHINGTON



13. The application does not identify any type of development planned for a particular lot, by general category as “residential” or “commercial”, or by less general but still non-specific land use types discussed in the LUDR, and certainly not with the level of detail that is commonly included in a preliminary plat application, showing internal driveways/streets serving a development project, setbacks from one neighboring building to another based the type of structure. In fact, the applicant concedes that they have no specific use designated for any lot to be created in this plat, making it very difficult for the public and reviewing staff to offer meaningful input during the review process, and for any comments to focus on a specific development project proposal. Given this fact, the importance of complying with

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1 the intent of the two Special Districts assigned to the land included in this application is in
2 the public's interest. The application materials include a statement from the applicant
3 addressing how the proposal has been deemed to satisfy the specific intent of one District,
4 but makes no mention of the other Special District that applies to two of the 13 lots proposed
5 in this subdivision. *(Ex. 3, which makes no mention of how the portions of the proposed
6 development in the Specialty Retail District fulfills the LUDR's expressed intent for such sites
7 to develop with an integrated site and amenity design in order to become a community
8 gathering place with its own distinct style, among other things. See intent for Specialty Retail
9 District explained in LUDR Sec. 1.F, subsection 1.f, and LUDR Sec. 4.B.1).*

6 ***Master Agreement Consistency Addresses Intent for Commercial Mixed-Use District.***

7
8 14. In contrast with the Villa Vista preliminary plat application from the same applicant
9 on a neighboring site, the consistency recommendation letter for this proposal appropriately
10 and directly addresses the specific intent language for the Commercial Mixed-Use District, a
11 Special District in the BMS planning area, found in Sec. 4.C.1 of the LUDR, which applies
12 to 11 of the lots addressed in this subdivision. For this matter, the master plan administrator's
13 letter reads in relevant part as follows:

11 *Does the proposed project meet the intent of the Special District development
12 standards? Explain.*

13 Yes; The BMS-CMU development can accommodate a wide variety of uses
14 as it is intended to be a major employment center for the City of Richland and
15 a destination for shopping, higher-level education, dining, office uses and
16 other employment centers, Multi-family/Mixed-Use housing, entertainment
and recreation. Public facilities, including transit centers, may also be
accommodated in this District.

17 *Does the proposed layout meet the intent of LUDR 4.C.1 (emphasis added)?*
18 *Explain*

18 Yes; the proposed project incorporates a walkable design to accommodate
19 pedestrians. A large walkway with tree planters and benches is included
20 between lot 9 and 10 and includes a 50' x 50' plaza with a covered gathering
21 area, benches/tables, trash receptacles, lighting, and bike racks. This walkway
22 will connect Veneto Villagio with the lots near the Country Mercantile.
23 Additionally, the developer has proposed a tract (16) between lot 11 and 12 to
24 be used as an additional pedestrian connection to the lots near the Country
Mercantile. Additionally, the developer has included a primary trail system on
Gateway Ave connecting Ava and Trowbridge. The primary trail system will
include benches and trash receptacles. The developer will also complete the
remainder of the Urban Trail down Ava way and along Dallas Road to

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1 Trowbridge as part of this project to create a circular pedestrian connection
2 around the entire Veneto Villagio project and will connect the project to
3 primary trail system of Badger Mountain South. (Ex. 3, on .pdf page 39).

4 15. Again, while the Master Plan Administrator's recommendation appropriately confirms
5 the need to consider the "intent" for a Special District where most of the project is located (in
6 the Special District – Commercial Mixed-Use (BMS-CMU) District), it is incomplete
7 because it fails to mention or analyze how the project meets the intent for the Special District
8 – Specialty Retail District, where all of Lot 13 and a large part of Lot 12 are situated.

9 16. Under the CCRs for the BMS master planned community, the Master Plan
10 Administrator is expressly tasked with ensuring that development proposals, like
11 subdivisions, meet the INTENT of the Master Agreement and the LUDR. Thus, "intent"
12 language cannot be ignored, and serves as part of the approval criteria for any plat proposal
13 in the BMS community. The Examiner takes official notice of the CCRs that apply to all
14 properties and projects in the BMS community, a copy of which has been added and included
15 in the record as Ex. 13. Article 7 of the BMS CCRs reads as follows:

11 **ARTICLE 7**
12 **Master Plan Administrator**

13 7.2 Authority of MPA. The Master Plan Administrator shall have the authority and
14 obligation to review and approve all applications for plats, subdivisions, site plans, development
15 permits, and CCRs in Badger Mountain South. The MPA is responsible for ensuring the intent of the
16 Master Agreement, LUDR, and Master Declaration are met in all applications and will provide to the
17 City and to the applicant a Consistency Determination (BMS-MACR) to be included in the materials
18 reviewed by the City of Richland Development Services Department.

19 17. The applicant's consistency recommendation appears to be based on an assumption that
20 all 13 lots will be developed with exclusively Commercial units, by answering "No" in
21 response to a question asked if the number of proposed residential lots/units exceeds need for
22 green infrastructure. The response continues by listing the type of trails and green space
23 addressed in this application, without any indication of how the figures would be adjusted in
24 some of the lots might be developed with residential units exceeding triggers for Green
25 Infrastructure Improvements:

26 Does the number of residential lots trigger additional MA Exhibit D, Green Infrastructure
Improvements?

Yes ___ No X

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Please explain:

Green Infrastructure Improvements are required and as found in the Master Agreement Exhibit D, are linked to the numbers of residential units (RU) developed.

In the case of the Veneto Villagio Preliminary Plat, 13 commercial units are anticipated for a total of 13U. [...] (Ex. 3).

Badger Mountain Subarea Plan.

18. As explained above, the project site is part of the larger Badger Mountain South community, which is addressed in a portion of the City's Comprehensive Plan known as the Badger Mountain Subarea Plan (BMSP).³ The BMSP, adopted and not revised since 2010, includes a section describing the City's intent and vision for each of the two land use designations that cover all properties in this proposed plat, one for the Commercial Mixed-Use land use designation, and the other for the Specialty Retail commercial land use designation for certain areas in the Badger Mountain community, which read as follows:

Badger Mountain Commercial Mixed Use:

The Badger Mountain Commercial Mixed Use (BMCMU) designation applies only to properties in Badger Mountain South. It is concentrated within two neighborhood centers as well as being applied to some of the land area adjacent to Dallas Road. The purpose of the BMCMU designation is to concentrate a greater variety of activities within key areas of the community that include public transit, retail, medical and office uses along with residential uses. In many instances, residential will be located within many of the same commercial structures; some residential units may be live-work units where the living quarters is above one's shop or office. Residents will benefit by having a short walk for groceries, or to other stores and service providers, and businesses benefit by having customers living above or around them. Other areas identified for BMCMU may be appropriate for general and corporate office or limited medical facilities and other professional activities. In all cases, in areas identified as BMCMU an important component will be the inclusion of gathering places, public areas that help to provide a sense of identity and an opportunity for community-building.

The type, configuration, and density of development here will also appeal to neighborhood shoppers and will encourage pedestrian traffic between businesses, facilitate efficient mass transit, and consequently require less reliance on motor vehicles. Low intensity uses are not desirable within this area. However, places of worship and public uses including a fire station,

³ "The Badger Mountain Subarea Plan is an appendix to the City of Richland Comprehensive Plan and is designed to identify the City of Richland's future growth opportunities presented in the 1,998-acre area located south and east of the Badger Mountain Centennial Preserve and north of I-82." (*BMSP, Introduction, on page 4*).

1 satellite police facility, or public library branch can be important additions to the mixed use
2 districts.

3 **Badger Mountain Specialty Retail:**

4 The Badger Mountain Specialty Retail (BMSR) commercial designation is identified for areas that
5 will be developed to have a particular draw for tourists or other visitors, while also providing goods
6 and services to the local population. This land use designation is only found within the Badger
7 Mountain South area. It is intended that areas identified as BMSR be developed according to
8 distinct design standards found in the related Badger Mountain South Development Agreement to
9 ensure that a sense of cohesiveness is achieved through coordinated use of building materials,
10 landscaping, signage and lighting. Its location near the freeway interchange will allow the creation
11 of an attractive and inviting entry to South Richland and will concentrate the impact from more
12 auto-oriented uses away from the primary residential neighborhoods.

13 The area identified as BMSR is being planned to develop as the Badger Mountain South Wine
14 Village and would include a variety of uses and employers such as a wine business incubator, other
15 wineries, demonstration vineyards, boutique hotel, other retail, and goods and services associated
16 with wineries and hospitality in general. The concept plan also includes a public gathering plaza,
17 outdoor amphitheater and sustainable design demonstration features. The build out of the Badger
18 Mountain South Wine Village would occur in stages dependent upon market conditions.

19 *(Badger Mountain Subarea Plan, part of the City's Comprehensive Plan, on pages 27 and
20 29).*

21 19. The nonresidential land use classifications in the Badger Mountain Subarea – like the
22 Mixed-Use and Specialty Retail commercial designations – are intended to accommodate the
23 needs of the new residents, the need for additional services within Richland and other nearby
24 cities, as well as accommodating tourists and other visitors over the 20-year planning
25 timeline. *(BMSP, Sec. 5.4, on page 26)*. The Examiner finds and concludes that the Subarea
26 Plan, the Master Agreement, and the LUDR all establish the intent that Commercial districts
should provide commercial uses and buildings, and that residential uses are not planned or
intended to full all of the available development area included in any Commercial district.

20 20. In fact, the BMS Subarea Plan includes estimates of potential developable Commercial
21 square feet in the BMS Commercial Mixed-Use land use designation, which “assumes mixed-
22 use buildings will contain about 25% commercial to 75% residential” noting that actual build
23 out percentages will respond to market conditions. *(BMSP, Table 5, note 21, on page 27)*.

24 21. There is no dispute that there are about 1,000 acres of vacant land remain available for
25 residential development in the greater BMS community. There is no evidence in this record

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1 establishing any market conditions that would support allowing projects in the Commercial
2 Mixed-Use designation to contain less than 25% of commercial space in connection with
mixed-use residential projects in such district.

3 ***Master Agreement Between the City of Richland and Nor Am Investment, LLC Regarding***
4 ***the Community Known as Badger Mountain South.***

5 22. There is no dispute that the pending application is subject to terms of a contract between
6 the City of Richland and Nor Am Investment, LLC, the applicant in this matter. That
7 document is identified as Contract No. 143-15, currently captioned “*Amended and Restated*
8 *Master Agreement Between the City of Richland and Nor Am Investment, LLC Regarding the*
Community Known as Badger Mountain South”, a complete copy of which is maintained and
available for public review on the City’s website page for the Badger Mountain South
Community. In this Decision, the contract is referenced as the ‘Master Agreement’.

9 23. Since 2015, the only substantive amendment to the Master Agreement took place in
10 2017, when Nor Am requested that the isolated Sunshine Ridge plat should be removed from
11 the master planned area, which request was approved by the City in Resolution No. 179,
adopted on September 19, 2017.

12 24. The term of the Master Agreement contract between the parties runs through February
13 8, 2035. (*Master Agreement, Sec. 5.1*).

14 25. The Master Agreement includes language where Nor Am acknowledges that it has done
15 a thorough feasibility analysis, and that the City makes no guarantees or warranties regarding
16 the suitability or financial viability of development addressed in the Master Agreement. That
term of the contract reads as follows:

17 30.2 Nor Am acknowledges that it has done a thorough feasibility analysis of the
18 development model that it has proposed and acknowledges that the City does not make any
19 guarantees or warranties, express or implied with regards to the suitability for development of the
20 Badger Mountain South property or the financial viability of the development that would occur
pursuant to the Master Agreement. NorAm is relying on their own analysis of the market
conditions and availability of infrastructure at an affordable cost and agrees that it will not bring a
claim against the City if its economic expectations are not realized.

21 (*Master Agreement, Sec. 30.2, on page 21*).

22 26. The Master Agreement includes detailed exhibits, that are incorporated as part of such
23 agreement, including without limitation Exhibit C, the Land Use Development Regulations
24

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(LUDR) for the BMS community [addressed in other portions of this Decision], and Exhibit E, a ‘Wine Village Conceptual Drawing.’

27. The LUDR portion of the Master Agreement includes maps and illustrations, with legends, showing eight land use districts in the Badger Mountain South community, including the BMS-SD-SR: Specialty Retail District, where lots 12 and 13 in the pending project site are located. *(See LUDR, on page 2-2, map of land use districts in BMS and legend provided in Sections 2.A and 2.B).*

28. “The LUDR is graphic-intense and includes standards for site design and sustainability as well as graphic direction for height, siting, and building elements.” *(LUDR, Sec. 1.A, captioned “Intent”, last sentence in Sec. 3).*

29. As noted by multiple Badger Mountain homeowners who appeared during the public hearing or submitted public comments regarding this project, the LUDR includes graphic-intense pages showing commercial venues, open spaces, mixed uses [i.e. commercial buildings mixed with residential housing], and themed development, including one labeled as an “illustrative sketch” showing a view of a “Specialty Retail Village”, which closely resembles the “wine village” illustration included as Exhibit E to the Master Agreement. In fact, it appears to be derived from the same sketch used as Ex. E. The image appears immediately above Sec. 4.B.1 of the LUDR, captioned “Special District – Specialty Retail Intent”. *(See LUDR, on page 4.2, image appearing immediately above Sec. 4.B.1).*

30. In this application, and in another plat application from the same applicant heard in the same evening, the applicant is essentially arguing that because some level of financial participation by the City or other entities has not happened, then its obligation to fulfill the Intent of the Specialty Retail District as provided in the LUDR, particularly Sec. 4.B.1, should be excused. As noted in the other Decision for the Villa Vista project, the Examiner is without authority to revise contracts approved by the Richland City Council.

31. Even if the applicant’s arguments were accepted as valid, that it may be economically difficult at this time to develop the site with the wine village concept described in the Master Agreement contract, or as a less-specific “Specialty Retail Village” shown and described in the LUDR, under Washington law, economic hardship is not an excuse to fulfill terms of a mutually negotiated contract.

32. In return for the Master Agreement, the applicant received numerous modifications to otherwise applicable City codes and standards, in return for pledges that the master planned community would achieve the vision expressed in such Agreement. The same portions of the specific intent for the Specialty Retail District is repeated in at least two places in the LUDR, at Sec. 1.F.1.f, “It is intended to develop with an integrated site and amenity design in order to become a community gathering place with its own distinct style.” *LUDR, Sec.*

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1 *1.F, subsection 1.f; and Sec. 4.B.1, “[the Specialty Retail District] is intended to: a. Provide*
2 *a gathering place for group events, festivals and other community-wide activities.”*

3 33. In its written materials and witness testimony, the applicant is essentially arguing that
4 it can build anything on the list of allowed uses in Sec. 2.C of the LUDR throughout the entire
5 plat, free of any consideration of the Intent for the two Special Districts where it is located.
6 The Intent, and allowed uses, should not be read as mutually exclusive of one another. The
7 Intent of both the Commercial Mixed-Use District and the Specialty Retail District applies
8 independently, and parallel with, the permitted use list exclusively relied-upon by the
9 applicant.

10 ***Contract terms should be fulfilled.***

11 34. By not identifying any details about development projects that might occur on the 13
12 lots included in this proposed plat, Nor Am’s approach seems to be: this land division project
13 is a Commercial project – so “trust us”. Under similar circumstances where contractual
14 obligations applied to a development project in addition to regular zoning regulations, and an
15 applicant wanted to ignore certain contract conditions, essentially saying “trust us”, courts
16 have ruled that the local jurisdiction would be well within its rights to deny such application.
17 (*See Donwood, Inc. v. Spokane Cty., 90 Wn.App. 389, 957 P.2d 775 (1998)*).

18 35. A preponderance of un rebutted evidence in the record established that this project site
19 is the among the last undeveloped land in both the Commercial Mixed-Use District and the
20 Specialty Retail District where the specific Intent of such districts can be fulfilled. While the
21 applicant’s representative explained in the other hearing on the same night for a project on
22 an adjacent property, this development site has been chosen for development at this time
23 because it is cheaper and more economically viable to do so at this time (Nor Am already
24 installed utilities and other infrastructure around this site, but have not done so in many, many
25 other large portions of vacant land that are specifically designated for residential/housing
26 uses, making this site less expensive to develop at this moment), such arguments are
analogous to a situation where one party claims that a contractual obligation cannot or will
not be fulfilled because it is too expensive, but largely because the situation results from their
own actions. (*See Pac. Cty. v. Sherwood Pac., 17 Wn. App. 790, 567 P.2d 642 (1977),*
citing Wolk v. Bonthius, 13 Wn.2d 217, 124 P.2d 553 (1942), (A party to a contract cannot
avail himself of nonperformance where the nonperformance is caused by his acts).

36. There is no dispute that the applicant has had wide discretion to determine where and
when to develop lands within the master planned community. By choosing to concentrate
utilities, like significant sewer infrastructure, in some areas and not others at this point, they
do not justify building only residential structures on this site without fulfilling the expressed
intent detailed in the LUDR for the Commercial Mixed-Use or Specialty Retail Districts
where this is located. In fact, this project can be conditioned and approved to ensure that any

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residential elements of this plat incorporate mixed-use buildings and features to provide Commercial space and uses intended for the area.

37. Impossibility of performance, which excuses a party's performance of a contract, is not the legal equivalent of subjective inability to perform. *Liner v. Armstrong Homes of Bremerton*, 19 Wn. App. 921, 579 P.2d 367 (1978). The doctrine encompasses both strict impossibility and impracticality due to extreme and unreasonable difficulty, expense, injury or loss. *Id.*, citing *Oneal v. Colton Consol. School Dist.* 306, 16 Wn. App. 488, 557 P.2d 11 (1976); *Scott Paper Co. v. Burlington Northern, Inc.*, 13 Wn. App. 341, 534 P.2d 1031 (1975); Restatement of Contracts § 454 (1932). See also *Cannon v. Huhndorf*, 67 Wn.2d 778, 409 P.2d 865 (1966). The mere fact that a contract's performance becomes more difficult or expensive than originally anticipated, does not justify setting it aside. *Id.*, citing *Westland Constr. Co., Inc. v. Chris Berg, Inc.*, 35 Wn.2d 824, 215 P.2d 683 (1950); *J.D. Harms, Inc. v. Meade*, 186 Wash. 287, 57 P.2d 1052 (1936); *McBride v. Callahan*, 173 Wash. 609, 24 P.2d 105 (1933); *White v. Mitchell*, 123 Wash. 630, 213 P. 10 (1923); Restatement of Contracts § 467 (1932).

38. It has long been recognized in Washington that when a party by their contract assumes an unqualified duty, they are bound to perform if possible, notwithstanding the occurrence of an unexpected, yet foreseeable event, against which they might have guarded in their contract. *Liner*, citing *J.D. Harms, Inc. v. Meade*, *supra*; *McBride v. Callahan*, *supra*; *White v. Mitchell*, *supra*; *Brown v. Ehlinger*, 90 Wash. 585, 156 P. 544 (1916).

39. Here, the applicant (Nor Am) committed itself to develop the site in accord with the intent and vision expressed in the Master Agreement. They did not condition their performance on financial participation by others. Quite the opposite – because here, the Master Agreement includes specific language where Nor Am acknowledges that it has done a thorough feasibility analysis, and that the City makes no guarantees or warranties regarding the suitability or financial viability of development addressed in the Master Agreement. (*Master Agreement, Sec. 30.2*).

40. The vision and intent of the Special District – Commercial Mixed-Use, as well as the Special District – Specialty Retail District, are recognized as unique areas of special significance to the entire BMS community, and such significance is a matter of contractual detail. See *LUDR, Sec. 4.A, Introduction to section 4 addressing “Special Districts”*; and *J.D. Harms, Inc. v. Meade*, *supra*.

41. Many BMS homeowners expressed their desire to see the Master Agreement vision and intent fulfilled, as that was a large reason why they chose to purchase homes in the community.

Intent of the two Special Districts where this proposal is located, as specified in the LUDR.

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1 42. In order to be approved, this application needs to demonstrate that the proposed plat
2 will fulfill the “intent” of both BMS Special Districts where it is located, specifically the
3 Commercial Mixed-Use District (BMS-SD-CMU) for all of lots 1-11, and the Specialty
4 Retail District (BMS-SD-SR), for all of lot 13 and most of lot 12.

5 43. As noted above, a portion of the applicant’s incomplete master agreement consistency
6 letter (Ex.3) expressly asked whether “the proposed layout meet[s] the intent of LUDR
7 4.C.1?” This section is captioned “Special District – Commercial Mixed-Use Intent”. The
8 intent of the Specialty Retail District, found in the LUDR at Sec. 4.B.1, should have also been
9 addressed in the letter. Given this omission, the application could be denied. But, the record
10 includes a preponderance of evidence for the Examiner to craft appropriate Conditions of
11 Approval that would allow for approval of this plat, which must be satisfied before Final Plat
12 approval.

13 44. Specific Intent language is found in the LUDR for both Specialty Districts at issue in
14 this application. The intent of the Specialty Retail District is explained in several sections,
15 including without limitation LUDR Sec. 1.F, Subsection 1.f and Sec. 4.B.1. The intent of the
16 Commercial Mixed-Use District is provided in LUDR Sec. 4.C.1.

17 45. The BMS LUDR provisions and their full effect should not be forfeited by the action
18 or inaction of any staff member or government official that may have been in disregard or
19 oversight of a City code section or LUDR provision. The public has an interest in zoning
20 that cannot thus be set at naught. (*See* analysis provided in *Dykstra v. Skagit County*, 97 Wn.
21 App. 670, 985 P.2d 424 (Div. 1, 1999), petition for rvw. denied, 140 Wn.2d 1016, 5 P.3d 8
22 (2000); citing *City of Mercer Island v. Steinmann*, 9 Wn. App. 479, 483, 513 P.2d 80 (1973),
and *Buechel v. Department of Ecology*, 125 Wn.2d 196, 211, 884 P.2d 910 (1994). The
Washington Supreme Court even applied this rationale in the context of water rights, where
the Department of Ecology originally acted ultra vires in measuring a water right, it did not
act arbitrarily and capriciously in abandoning an unlawful practice and switching to new
practice. *See Department of Ecology v. Theodoratus*, 135 Wn.2d 582, 957 P.2d 1241 (1998).

23 46. Again, the LUDR is part of a Contract. While it may include provisions addressing
24 intent as well as lists of allowed uses, building types, and the like, all of the provisions are
25 part of the same contract. The intent and allowed uses should apply in parallel with one
26 another. In this instance, the proposal can be conditioned to address legitimate concerns
expressed by BMS homeowners to prevent residential-only projects from swallowing the
unique Commercial development opportunities intended for the Commercial Mixed-Use and
Specialty Retail Districts.

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APPROVAL IN THE BMS MASTER PLANNED
COMMUNITY – FILE NO. S2022-101

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HEARING EXAMINER FOR THE CITY OF RICHLAND
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1
2 *Intent of the Special Districts has not Changed.*

3 47. There is no dispute that the applicant, Nor Am, has requested and received approval
4 of numerous amendments to the LUDR since it was first adopted in 2010. However, an
5 exhaustive review of all resolutions and public records addressing amendments to the LUDR
6 establish that the City Council has never adopted any changes to the language addressing the
7 very specific Intent for the Commercial Mixed-Use District or the Specialty Retail District.

8 48. A legislative body, including a City Council, is presumed to be familiar with its prior
9 enactments and interpretations of same.⁴ And, where a legislative body leaves an enactment
10 unchanged in the face of an official decision or action interpreting or applying such
11 enactment, courts can conclude that if the legislative body wanted to change terms of its
12 enactment it would have expressly amended relevant language to do so rather than leave it
13 unchanged.⁵

14 49. Every time the LUDR provisions addressing the Badger Mountain community have
15 been amended – in 2012, 2014, 2015, and 2016 – the language re: “intent” in the Specialty
16 Retail District has never changed. (*See City of Richland Resolution Nos. 48-12; 25-14; 29-
17 15; and 111-16, in which none of the amendments to the LUDR amended any of the Intent
18 language used for the two Special Districts at issue in this application*).

19 50. The same is true for the Master Agreement itself, which was amended and restated in
20 2015, and amended in 2017, always leaving the exact same language addressing the City’s
21 intent and vision for the two Special Districts at issue in the Badger Mountain South
22 community. If the City Council meant to abandon or change its intent, it could have done so.
23 It never has.

24 51. Based on the Richland City Council’s actions since at least 2012, essentially ratifying,
25 confirming, and moving forward with language in the LUDR expressing a very specific intent
26 for development in the two Special Districts where this proposal is located, the Examiner
finds and concludes that the City Council intends for proposals in the Commercial Mixed-
Use District and the Specialty Retail District to fulfill the specific intent language included
in the LUDR for such districts, and not simply include residential housing to the exclusion of
genuinely commercial development opportunities.

23 ⁴ *Leonard v. City of Bothell*, 87 Wash. 2d 847, 853 (1976); *State v. George*, 161 Wash. 2d 203, 211, 164 P.3d
24 506, 510 (2007); *State v. Ose*, 156 Wash. 2d 140, 148 (2005).

25 ⁵ *Friends of Snoqualmie Valley v. King Cnty. Boundary Review Bd.*, 118 Wash. 2d 488, 496-97 (1992).

52. It is in the public interest to accept the words of intent used in the LUDR for what they say and mean, instead of ignoring them, which would be to the detriment of Badger Mountain residents who provided many written comments and public testimony, hoping to someday see the vision and intent of their master planned community fulfilled, instead of abandoned via a preliminary plat decision.

53. The overwhelming number of written comments and sworn testimony from homeowners in the BMS community seek to see the intent and vision of the Master Agreement and LUDR fulfilled instead of abandoned.

Master Agreement Consistency Recommendation is not a rubber stamp.

54. The Examiner cannot close his eyes to the obvious interrelation of this project upon the entire BMS community. Development in the BMS area is described as having a very specific vision. The question, therefore, is whether development in the BMS community should be authorized to occur in a manner that could prevent fulfillment of the intent for the Special Districts where this proposal is located.

55. The frustrating effect of piecemeal residential-only development allowed to occupy the last available Commercial Mixed-Use and Specialty Retail land compels the Examiner to find and conclude that, without appropriate conditions to prevent such result, this application is not in the public interest. With appropriate conditions that must be satisfied before Final Plat approval, this project can be approved and the intent of the Special Districts can be protected and adequately fulfilled.

56. This project will have a significant effect upon the entire BMS Master Planned Community. "Special Districts are unique areas that by intent, function, deposition or configuration plat an important role in establishing the vision of the Badger Mountain South community." *LUDR, Sec. 4.A.*

57. Based on the record as a whole, and contract language found in the Master Agreement and well as the LUDR, the Examiner finds and concludes that it is in the public interest to consider the City's specific intent for the BMS Commercial Mixed-Use and Specialty Retail Districts in deciding whether this application should be approved, and if so, what conditions should apply.

58. While deference is due to the recommendations and determinations made by Staff and the Master Plan Administrator, substantial weight, like judicial deference to agency decisions, is neither unlimited nor does it approximate a rubber stamp. See *Swinomish Indian Tribal Cmty. v. W. Wash. Growth Mgmt. Hearings Bd.*, 161 Wn.2d 415, 435 n.8, 166 P.3d 1198 (2007); and *Concerned Friends of Ferry County v. Ferry County*, 191 Wn. App. 803, 365 P.3d 207 (Div. II, 2015).

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1 59. In this application, the Examiner finds and concludes that the Master Agreement and
2 the LUDR, and the record taken as a whole, mandate that the Intent of the two Specialty
3 Districts must be considered and that failing to apply the Intent of such Districts for this
4 application would be a mistake. It would be clearly erroneous to find that the Intent language
5 should not apply to this application.

6 60. An administrative determination will not be accorded deference if the agency's
7 interpretation conflicts with the relevant statute.” *See Cowiche Canyon Conservancy v.*
8 *Bosely*, 118 Wn.2d 801, 815, 828 P.2d 549 (1992). By analogy, in this matter, the Master
9 Agreement includes very specific language expressing the parties’ intent as to what type of
10 development should occur in both the Commercial Mixed-Use District and the Specialty
11 Retail District; and the LUDR is even more specific as to the type of development
12 opportunities should be included in such Districts.

13 61. Based on the entire record taken as a whole, the Examiner finds and concludes that
14 the consistency recommendations and determinations issued for the application were in error
15 – to the extent they failed to address how the proposal is consistent with intent language
16 applicable to projects in the Specialty Retail District; and to the extent that the project is
17 absent details sufficient to determine that mixed-use commercial projects will be developed
18 on the lots created by this subdivision. Additional conditions of approval are needed to assure
19 that the proposed plat can be developed in a manner that is consistent with the LUDR,
20 including specific intent language for the two Special Districts at issue.

21 ***Additional Conditions of Approval are warranted.***

22 62. Substantial written public comments, drawings, maps, and illustrations, all included as
23 part of Exs. 8 and 11, not rebutted by the applicant, established how much of the land in the
24 BMS community designated for Commercial uses has already been developed for residential-
25 only uses, leaving this proposed plat area as one on the last areas available for the non-
26 residential Commercial Mixed-Uses and Specialty Retail Uses intended for the two districts
where this project is located.

63. Accordingly, there is sufficient evidence in this record to support a Condition of
approval requiring the applicant to identify land uses for each lot at the time of final plat
approval, and to also demonstrate that the total amount of any Residential mixed-uses to be
included in the plat would provide at least 25% of developable commercial square footage of
space to 75% of any residential square footage in the subdivision. Again, there is insufficient
evidence in this record to support a finding that such condition is not economically viable or
capable of accomplishment. This condition is supported by the BMSP, the Master
Agreement, and terms of the LUDR.

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64. There is also sufficient evidence in this record to prohibit any lot from being developed for single-family residential-only development, as the effect of such project would be to prevent or frustrate fulfillment of the LUDR intent provisions for both the Commercial Specialty Retail District and the Commercial Mixed-Use District, where this project is situated. *(See written comments in Ex. 8, and testimony of BMS homeowners, establishing and showing how most of the BMS Specialty Retail District and the Commercial Mixed-Use District has already been developed for residential-only uses, and how the portions of such districts that are in this project are among that last vacant Commercial-designated sited in the BMS community).*

65. There is no dispute that multiple BMS homeowners submitted comments generally expressing concerns that they are not seeing fulfillment of the BMS Master Agreement vision, and that some feel they were somehow misled by BMS promotional materials from realtors, developers, or others. The Conditions of Approval added by the Examiner are based on a preponderance of evidence in the record, will help ensure compliance with terms of the LUDR, are in the public interest, and are capable of accomplishment.

66. Except for portions of the Staff Report that are in conflict with findings and analysis in this Decision, the Staff Report includes a credible explanation as to how applicable notice requirements, SEPA requirements, utility availability, and transportation issues are satisfactorily addressed in this limited plat application.

67. With additional conditions of approval addressed in this Decision, the Examiner finds that the proposed plat can satisfy applicable approval criteria and would be in the public interest.

VI. CONCLUSIONS OF LAW.

1. Based on the Findings as summarized above, the undersigned examiner concludes that the proposed plat can be conditioned to satisfy applicable approval criteria, including City comprehensive plan policies (the Badger Mountain Subarea Plan), the BMS Master Agreement, and LUDR provisions.
2. Consistent with RMC 19.60.095, and subject to all Conditions of Approval set forth below, the Examiner finds and concludes that: The development application is consistent with the adopted comprehensive plan and meets the requirements and intent of the Richland Municipal Code; and The development application is beneficial to the public health, safety and welfare and is in the public interest.
3. Any finding or other statements in previous or following sections of this document that are deemed Conclusions of Law are hereby adopted as such.

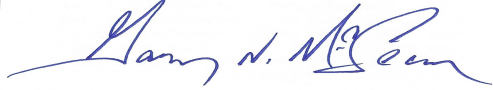
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VII. DECISION.

Based upon the preceding Findings of Fact and Conclusions of Law, evidence presented through the course of the open record hearing, all materials contained in the contents of the record, and the Examiner's site visits to the area, the undersigned Examiner approves the "*Veneto Villagio*" Preliminary Plat application, subject to the attached Conditions of Approval, that are incorporated herein as part of this Decision.

ISSUED this 23rd Day of January, 2023



Gary N. McLean
Hearing Examiner

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**CONDITIONS OF APPROVAL
FOR THE
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In accord with authority granted in the Richland Municipal Code, the hearing examiner grants the above-referenced preliminary plat application subject to conditions, modifications and restrictions set forth below, all found necessary to make the application compatible with the environment, and carry out applicable state laws and regulations, and the regulations, policies, objectives and goals of the city's comprehensive plan, zoning code, subdivision code, and other ordinances, policies and objectives of the city.

General Conditions:

- A. Development of the plat shall be substantially consistent with drawings provided in the Preliminary Plat maps included as part of the application materials (*Ex. 2*), subject to modifications necessary to comply with these conditions of approval.
- B. Based on the comment letter from the Washington Department of Archaeology and Historic Preservation (DAHP) included as part of Exhibit 9 (Agency comments), a professional archaeological survey of the site shall be conducted prior to any ground-disturbing activities. The report shall meet DAHP's Standards for Cultural Resource Reporting. The report shall be submitted to the City, DAHP, and tribal entities with jurisdiction, referencing the designated DAHP project tracking number. The Planning Manager shall mandate compliance with any recommended conditions included in such report or as may be imposed by DAHP following review of such report.
- C. No construction or site development activities related to the plat may be undertaken until required city approvals become effective, and the City and other regulatory authorities with jurisdiction issue applicable permits.
- D. The applicant shall comply with all professional report conclusions and recommendations submitted in connection with the preliminary plat and engineering reviews, as approved and/or amended by the City.
- E. Applicant shall be responsible for consulting with state and federal agencies, and tribal entities with jurisdiction (if any) for applicable permit or other regulatory requirements. Approval of a preliminary plat does not limit the applicant's responsibility to obtain any required permit, license or approval from a state, federal, or other regulatory body. Any conditions of regulatory agency permits, licenses, or approvals shall be considered conditions for this project.
- F. The final engineering plans and submittals necessary to obtain final approval for the plat, shall conform to all applicable provisions of the Richland Municipal Code and the Conditions of Approval herein.
- G. The preliminary plat shall comply with all applicable provisions of the Richland Municipal Code, and LUDR provisions (including the Intent for the Special Districts that apply to the project) for

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the Badger Mountain South community where this plat is located, whether or not such provisions are enumerated or referenced in the approved preliminary plat plans, in the staff report or in this Decision; provided adjustments to road widths, sidewalk and trail dimensions shall be in accord with final reviews and determinations by the City's Public Works Director, who is authorized to exercise sound engineering judgment in such matters. The burden is on the applicant to show compliance with these conditions and applicable provisions of the City's code and LUDR provisions at every stage of development.

- H. On the face of the plat, the applicant must identify land uses for each lot at the time of final plat approval, with calculations for the plat confirming that the total amount of any Residential uses to be included on lots within the plat will provide at least 25% of developable Commercial square footage of space to 75% of any residential square footage in the subdivision. Allowed uses shall be those listed for the two Special Districts that apply to lots within the subdivision, as found in Sec. 2.C of the LUDR, provided that no single-family residential uses shall be permitted on any lots within this plat.
- I. Preliminary Plat approval shall be null and void if any condition enumerated herein is not satisfied.

Conditions derived from the Staff Report.

1. The preliminary plat is not showing any phase lines. As a result, this preliminary plat shall be constructed in one (1) phase.
2. Make the border of the preliminary plat more prominent on Sheet C0001.
3. All final approved plans for public improvements shall be submitted prior to pre-con on a 24" x 36" hardcopy format and also electronically in .dwg format compatible with the City's standard CAD software. Addendums are not allowed. All information shall be supplied in full size (and electronic) format. Electronic copies of the construction plans are required prior to the pre-con meeting along with the multiple sets of paper drawings. When construction of the public infrastructure has been substantially completed, the applicant shall provide paper and electronic record drawings in accordance with the City's published "Record Drawing Requirements". The electronic record drawings shall be submitted in an AutoCAD format compatible with the City's standard CAD software. The final record drawings shall be submitted and approved by the City before the final punchlist inspection will be performed. All final punchlist items shall be completed or financially guaranteed prior to recording of the final plat.
4. A copy of the construction drawings shall be submitted for review to the appropriate jurisdictions by the developer and their engineer. All required comments/conditions from all appropriate reviewing jurisdictions (e.g.: Benton County, any appropriate irrigation districts, other utilities, etc.) shall be incorporated into one comprehensive set of drawings and resubmitted (if necessary) for final permit review and issuance. Any and all necessary permits that may be required by jurisdictional entities outside of the City of Richland shall be the responsibility of the developer to obtain.
5. Any work within the public right-of-way or easements or involving public infrastructure will require the applicant to obtain a right-of-way construction permit prior to beginning work, per RMC Chapter 12.08. The applicant shall pay a plan review fee based on a cost-per-sheet of engineering infrastructure plans. This public infrastructure plan review fee shall apply each time a project is submitted for review. This fee will be different for commercial projects versus subdivision projects. Please visit the Public Works Private Development page on the City's

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- webpage to find the current per-sheet fee. A permit fee in the amount equal to 3% of the construction costs of the work within the right-of-way or easement will be collected at the time the construction permit is issued. A stamped, itemized Engineers estimate (Opinion of probable cost) and a copy of the material submittals shall be submitted along with the approved plan submittal.
6. Public utility infrastructure located on private property will require recording of a City standard form easement prior to acceptance of the infrastructure and release of the final plat. The City requires preparation of the easement legal description by the developer two weeks prior to the scheduled date of plat acceptance. Once received, the City will prepare the easement document and provide it to the developer. The developer shall record the easement at the Benton County Assessor and return a recorded original document to the City prior to application for final plat acceptance.
 7. A pre-construction conference will be required prior to the start of any work within the public right-of-way or easement. Contact the Public Works Engineering Division at 942-7500 to schedule a pre-construction conference.
 8. All plan sheets involving construction of public infrastructure shall have the stamp of a current Washington State licensed professional engineer.
 9. A copy of the preliminary plat shall be supplied to the Post Office and all locations of future mailbox clusters approved prior to final platting.
 10. Addressing brackets [] shall be provided on all lots and tracts.
 11. Public improvement design shall follow the following general format:
 - a. All materials and workmanship shall be in conformance with the latest revision of the City of Richland Standard Specifications and Details, Public Infrastructure Design Guidelines and the current edition of the State of Washington Standard Specifications for Road, Bridge, and Municipal Construction. Please confirm that you have the latest set of standard specs and details by visiting the City's web page.
 - b. Fire hydrant location shall be reviewed and approved by the City Fire Marshal.
 - c. All utilities shall be extended to the adjacent property (properties) at the time of construction.
 - d. The minimum centerline finish grade shall be no less than 0.30% and the maximum centerline finish grade shall be no more than 10.0% for local streets. 12% can be allowed for local streets for short distances.
 - e. The minimum centerline radius for local streets shall be 100-feet.
 - f. Final design of the public improvements shall be approved at the time of the City's issuance of a Right-of-way Construction Permit for the proposed construction.
 - g. All public improvements shall comply with the State of Washington and City of Richland requirements, standards and codes.
 - h. The contractor shall be responsible for any and all public infrastructure construction deficiencies for a period of one year from the date of the letter of acceptance by the City of Richland.
 12. If the City Fire Marshal requires a secondary emergency vehicle access (SEVA), it shall be included in the construction plan set and be designed to the following standards:
 - a. 2-inches compacted gravel, minimum (temp. SEVAs only).
 - b. 2% cross-slope, maximum.
 - c. 5% slope, maximum. Any access road steeper than 5% shall be paved or be approved by the Fire Marshal.
 - d. Be 20-feet in width.
 - e. Have radii that are accommodating with those needed for City Fire apparatus.

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13. Secondary emergency vehicles accesses (SEVA's) shall be 20-feet wide, as noted. Longer secondary accesses can be built to 12-feet wide with the approval of the City of Richland Fire Marshal, however turn-outs are required at a spacing acceptable to the Fire Dept. Temporary SEVA's shall be constructed with 2-inches of compacted gravel, at a minimum. Permanent SEVA's shall be paved with 2-inches of asphalt over 4-inches of gravel, at a minimum.
14. The Badger Mountain South Traffic Impact Analysis (TIA) was completed in draft form on February 16, 2022. The TIA recommends mitigation measures that meet the level of service standard "D" on Dallas Road at the I-82 EB ramps, I-82 WB ramps, Trowbridge Boulevard and Ava Way by year 2025. The analysis performed set the timeline for the "Veneto Villagio" development at 5-10 years. The trips generated from this development will impact Dallas Road on a shorter timeline than that anticipated in the TIA. Therefore, the following mitigation measures shall be completed as described below:
- a. Dallas Road / Trowbridge Boulevard: Roundabout. Completed before 25% of the lots are built and occupied.
 - b. Dallas Road / Ava Way: left and right turn lanes for northbound and southbound Dallas Road. Completed before 25% of the lots are built and occupied.
 - c. Dallas Road / I-82 EB Ramps: Roundabout. Completed before 75% of the lots are built and occupied.
 - d. Dallas Road / I-82 WB Ramps: Roundabout. Completed before 75% of the lots are built and occupied.
 - e. Widening of Dallas Road to 5-lane principal arterial road section from Trowbridge Roundabout to I-82 EB Ramps Roundabout. Completed before 75% of the lots are built and occupied.
15. The design of such improvements is subject to the approval of the City Engineer. Completion of the finalized TIA is not anticipated to generate recommendations for mitigations to other offsite intersections. The Master Agreement transportation trigger for full completion of Trowbridge Boulevard (aka Badger Mountain Parkway in the Master Agreement) is also activated by this development. However, since there are no developments to be served by the completion of this street to the east at the time of plat, and there exists no additional network connectivity to gain benefit of redistributing traffic volumes, it is not recommended that this improvement be completed with this plat. It is anticipated that the finalized TIA will also result in an amendment of transportation triggers in the Master Agreement to align with mitigations proposed in the TIA.
16. Improvements shall be completed, as a condition of the Veneto Villagio final plat, to the existing 2-lane Dallas Road meeting the City's 5-lane principal arterial cross-section along the frontage of this plat. This includes curb, gutter, and path as indicated in the LUDR edge treatments, an additional 22 feet width of paved road from existing east painted edge line of the road to the face of curb, and stormwater drainage as required.
17. The "Veneto Villagio" preliminary plat is subject to the City's traffic impact fee program (RMC 12.03).
18. Notes will be needed on the face of the final plat stating that Dallas Road and Trowbridge Boulevard are classified as "Minor Arterials", and Ava Way is classified as a "Major Collector Street". Subsequently, no driveways will be allowed directly onto them.
19. Sidewalks shall be installed along all public right-of-way frontages that building lots do not front on during construction (e.g., storm drainage ponds, parks, HOA tracts, etc.).
20. The developer and his engineer shall demonstrate on the construction plans that all future driveway entrances, sidewalks and pedestrian ramps will meet City and ADA requirements.
21. Shared access easements shall be perpendicular to the roadway.

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22. Pedestrian ramps shall be designed to current City standard details and A.D.A. standards. Adequate right-of-way shall be provided at corners to allow for at least 1-foot of ROW behind the pedestrian ramp landing. Crosswalks between pedestrian ramps shall be designed to City standards. Crosswalks at stop-controlled intersections shall have cross-slopes less than 2%. Crosswalks crossing thru-streets shall have cross-slopes less than 5%. The road profile shall be designed to accommodate this.
23. The vision-clearance triangle needs to be shown on all corner lots on both the construction plans and the final plat document, in accordance with RMC Chapter 12.11.020. If the intersection is in a curve, it will have to be evaluated per AASHTO guidelines. This information may need to be designed by the engineer of record and supplied to the surveyor of record for inclusion into the final plat document.
24. The existing access points onto Gateway Ave. and Sotto Street are acceptable for this project, but any proposed changes to said driveways will be subject to approval by the City Engineer.
25. Any roads narrower than 32-feet shall have parking restricted on one side, and any roads narrower than 27-feet shall have parking restricted on both sides. Street signs indicating restricted parking shall be installed prior to final platting at the developer's expense. The restricted parking areas shall be indicated on the construction plans and the final plat. All signage will be installed by the developer prior to final platting.
26. All roads shall be constructed to provide for adequate fire truck & solid waste collection truck access & turnaround movements.
27. The proposed preliminary plat is located within the Tapteal III water pressure zone. The closest watermain is located in Ava Way to the north, and Trowbridge Blvd. to the south. It shall be the responsibility of the developer to extend a watermain to and through this property to serve domestic water at the time of plat construction. This water main shall be sized to adequately supply domestic water and fire flows to the entire proposed development.
28. Looping of the water system provides redundancy and helps to eliminate stagnant water. The water main may need to be extended from outside the project boundaries in order to accomplish this.
29. In accordance with municipal code, domestic water mains shall be extended to the adjoining properties adjacent to the preliminary plat, provided they are in the correct pressure zone.
30. The developer will be required to demonstrate that all phases are capable of delivering adequate fire flows prior to construction plans being accepted for review. This may require looping of the watermain from off-site locations or oversizing of the main where needed.
31. Fire hydrant layout shall be approved by the City Fire Marshal.
32. The closest sanitary sewer available for this development is located in Trowbridge Blvd. and Ava Way. It shall be the responsibility of the developer to extend a sewer main to and through this property to serve sanitary sewer at the time of plat construction.
33. A 10-foot wide exclusive sanitary sewer easement shall be provided for any sewer main that is outside of the public Right-of-Way. Wider easements are required for mains that are buried deeper than 10-feet. If any manholes are located outside of the public Right-of-Way, maintenance truck access to said structure may be required.
34. Sanitary sewer may need to be extended to the adjoining properties adjacent to this preliminary plat.
35. All construction projects that don't meet the exemption requirements outlined in Richland Municipal Code, Section 16.06 shall comply with the requirements of the Washington State Department of Ecology issued Eastern Washington NPDES Phase II Municipal Stormwater Permit. The Developer shall be responsible for compliance with the permit conditions. All construction activities subject to this title shall be required to comply with the standards and

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- requirements set forth in the Stormwater Management Manual for Eastern Washington (SWMMEW) and prepare a Stormwater Site Plan. In addition, a Stormwater Pollution Prevention Plan (SWPPP) or submission of a completed erosivity waiver certification is required at the time of plan submittal. The City has adopted revised standards affecting the construction of new stormwater facilities in order to comply with conditions of its NPDES General Stormwater Permit program. This project, and each phase thereof, shall comply with the requirements of the City's stormwater program in place at the time each phase is engineered. The project will require detailed erosion control plans.
36. The proposed storm drainage and grading of all parcels within the proposed development shall be shown on the plans (most grading and drainage plans must be prepared by a licensed civil engineer). If site contains at least 1,000 sq.ft. of new asphalt, and/or contains 30% or more impervious surfaces, storm drainage calculations from a licensed civil engineer are required. Stormwater shall be kept on-site (on the developing property that generated it). Stormwater shall not be flowed onto adjacent properties, or to the public Right-of-Way, without first obtaining written permission.
37. The "private", on-site storm drainage systems constructed within each parcel shall be designed following the core elements defined in the latest editions of the Stormwater Management Manual for Eastern Washington, the current Richland municipal codes, the Phase II Municipal Stormwater Permit, and the City's "Public Infrastructure Construction Plan Requirements and Design Guidelines". Calculations shall be stamped by a registered professional Civil Engineer. Prior to discharging any storm drainage waters from paved surfaces into drainage ditches, groundwater or a public system, an oil/water separator must be installed. The applicant's design shall provide runoff protection to downstream property owners.
38. All public storm drainage systems shall have their flow rate and storage capacity designed by a professional engineer following the core elements defined in the latest editions of the Stormwater Management Manual for Eastern Washington, the current Richland municipal codes, the Phase II Municipal Stormwater Permit, and the City's "Public Infrastructure Construction Plan Requirements and Design Guidelines". The storm water calculations shall be stamped by a professional engineer and shall include a profile of the storm system showing the hydraulic grade line. The calculations should include an accurate delineation of the contributing drainage area to accurately size the stormwater facilities. Passing the storm water downhill to an existing storm system will require an analysis of the downstream storm system to determine its capability of accepting the storm water without being overwhelmed. The applicant's design shall provide runoff protection to downstream property owners.
39. If any existing storm drainage or ground water seepage drains onto the proposed site, said storm drainage shall be considered an existing condition, and it shall be the responsibility of the property developer to design a system to contain or treat and release the off-site storm drainage.
40. Any proposed storm drainage retention facilities within the boundary of the proposed preliminary plat shall not adversely affect neighboring properties.
41. Prior to or concurrent with the submittal of the first phase the developer shall provide a Geotechnical report including the percolation rate of the soils in the area of any public storm retention ponds. If the project constructs a storm retention pond then the engineer will need to demonstrate that the pond will drain itself within 72 hours after the end of a storm event, and not have standing water in it longer than that. Engineering solutions are available for retention ponds that do not percolate within 72 hours.
42. As per RMC chapter 24.20.070 and the City of Richland's Comprehensive Stormwater Management Plan, the storm drainage system installed as part of this plat may need to be oversized in order to handle the additional flow from future developments in the vicinity. The

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- storm drainage system for this development, both its conveyance and retention / infiltration components, shall be designed to effectively manage runoff from upstream properties that can be anticipated to convey stormwater onto this property because of a pre-development runoff condition, or as a result of flows discharged that are in excess of the design storm from the upstream property. Additionally, as this property is upslope of developed properties the stormwater system shall include provisions for possible discharge of runoff onto downslope properties from storms in excess of the design storm as described above. Those provisions may be required to include off-site downslope conveyance facilities and/or flowage easements allowing for the conveyance of stormwater to and across downslope properties.
43. The amount of post-development storm runoff from the proposed site shall be in compliance with RMC Chapter 16.06.
44. Stormwater collection pipes may need to be extended to the adjoining properties adjacent to the plat.
45. The parcel occupied by the public stormwater basin shall be identified as a separate parcel or tract on the final plat and shall be dedicated to the City stormwater utility. The design of the basin shall include access features meeting the city's needs for maintenance.
46. The developer shall consider the long-term appearance of the public storm water basin, particularly if it will occupy a prominent location in the development. The City's typical storm pond maintenance practices consist of semi-annual vegetation trimming and silt and debris removal. If the pond location is deemed by City staff as being in a prominent location the developer shall design and install fencing and/or landscaping to mitigate the pond's visible character for the surrounding properties. If the City requires this type of treatment to the pond site the developer may propose landscaping treatments consistent with the development and establish maintenance responsibilities to remain with the development. These maintenance responsibilities shall be noted on the final plat. Basins designed as detention and evaporative basins need to include plantings that will tolerate or thrive in standing water. Planting designs for areas not routinely exposed to water shall include plants that will thrive without irrigation unless the developer intends to maintain an irrigated pond site. At a minimum the landscaping plan should be consistent with the City's intended maintenance standard as described above.
47. The developer shall be responsible for landscaping the storm pond and for its maintenance and the plantings through the one-year infrastructure warranty period. At 11 months after the final acceptance date the developer shall clean the storm system and basin of all accumulated oil, sediment, and debris. After this maintenance is completed and inspected the City will begin routine maintenance of the system and basin. The developer shall replace any plantings that have failed to survive the warranty period. The developer shall also perform trimmings required to control weeds in excess of 18-inches in height for the 12-months following the date of final plat acceptance.
48. When the construction is substantially complete a paper set of "record drawings" shall be prepared by a licensed surveyor and include all changes and deviations. Please reference the Public Works document "RECORD DRAWING REQUIREMENTS & PROCEDURES" for a complete description of the record drawing process. All final punchlist items shall be completed or financially guaranteed prior to recording of the final plat.
49. Public utility infrastructure located on private property will require recording of a City standard form easement prior to acceptance of the infrastructure and release of a certificate of occupancy. The City requires preparation of the easement legal description by the developer two weeks prior to the scheduled date of final acceptance. Off-site ("third party") easements or right-of-ways for City infrastructure are the responsibility of the developer to obtain. Once received, the City will prepare the easement document and provide it to the developer. The developer shall

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- record the easement at the Benton County Assessor and return a recorded original document to the City prior to application for final occupancy.
50. Any off-site easements or permits necessary for this project shall be obtained and secured by the applicant and supplied to the City at the time of plat construction and prior to final plat acceptance by the City.
 51. Ten-foot wide public utility easements will be required on the final plat along both sides of all right-of-ways within the proposed plat. They will also be required where the plat is adjacent to an existing right-of-way.
 52. The vision-clearance triangle needs to be shown on all corner lots on the final plat document, in accordance with RMC Chapter 12.11.020. If the intersection is in a curve, it will have to be evaluated per AASHTO guidelines. This information may need to be designed by the engineer of record and supplied to the surveyor of record for inclusion into the final plat document.
 53. The final plat shall include notes identifying all common areas including the private streets and tracts and acknowledging the ownership and maintenance responsibility by the homeowner's association. A note shall be added to the face of the final plat that states: "The private roads are for the use and benefit of the homeowners that abut said roads and are to be maintained by said owners. The City of Richland accepts no maintenance responsibility for said roads".
 54. A note shall be added to the face of the plat that states: "The private drives within this plat are fire lanes and parking is restricted. All required no-parking signs shall be installed by the developer where applicable."
 55. Any roads narrower than 34-feet shall have parking restricted on one side, and any roads narrower than 27-feet shall have parking restricted on both sides. Street signs indicating restricted parking shall be installed prior to final platting at the developer's expense. The restricted parking areas shall be indicated on the final plats.
 56. All landscaped areas within the plat that are in the public Right of Way shall be the responsibility of the property owners to maintain.
 57. A one-foot "No access easement" is required along the Dallas Road Right of Way.
 58. The intended use and ownership of all tracts within the plat shall be noted on the final plat.
 59. Property with an unpaid L.I.D. assessment towards it must be paid in full or segregated per Richland Municipal Code 3.12.095.
 60. Any restricted parking areas shall be indicated on the final plats.

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1
2 **Notice of Rights to Request Reconsideration or**
3 **Appeal This Decision**

4 ***Reconsideration –***

5 Sec. 2.22(a) of the Richland Hearing Examiner Rules of Procedure reads as follows:

6 (a) The Hearing Examiner may reconsider a decision or recommendation on an application,
7 if it is filed in writing within 7 calendar days of the date of issuance. Only parties of record
8 have standing to seek reconsideration. Any request for reconsideration shall be served on all
9 parties of record and to any party's designated representative or legal counsel on the same
10 day as the request is delivered to the Hearing Examiner. The Examiner will seek to accept or
11 reject any request for reconsideration within 3 business days of receipt. If the Examiner
12 decides to reconsider a decision, the appeal period will be tolled (placed on hold) until the
13 reconsideration process is complete and a new decision is issued. If the Examiner decides to
14 reconsider a recommendation made to the City Council, the transmittal to the City Council
15 shall be withheld until the reconsideration process is complete and a new recommendation is
16 issued. If the Examiner decides to reconsider a decision or recommendation, all parties of
17 record shall be notified. The Examiner shall set a schedule for other parties to respond in
18 writing to the reconsideration request and shall issue a decision no later than 10 business days
19 following the submittal of written responses. A new appeal period shall run from the date of
20 the Hearing Examiner's Order on Reconsideration.

21 ***Appeal –***

22 The hearing examiner's decision regarding this preliminary plat application shall be final, subject to
23 judicial appeal in the time and manner as provided in RMC 19.70.060 and Ch. 36.70C RCW (*The*
24 *city's final decision on land use application may be appealed by a party of record with standing to*
25 *file a land use petition in Benton County Superior Court. Such petition must be filed within 21 days*
26 *of issuance of the decision). See RMC 24.12.050(B).*

27 **NOTE:** The Notice provided on this page is only a short summary,
28 and is not a complete explanation of fees, deadlines, and other filing
29 requirements applicable reconsideration or appeals. Individuals
30 should confer with advisors of their choosing and review all relevant
31 codes, including without limitation the city code provisions
32 referenced above and the Land Use Petition Act (Chapter 36.70C
33 RCW) for additional information and details that may apply.

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