

**City of Sultan  
Staff Report and Recommendation  
To the Hearing Examiner  
August 27, 2007**

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**Greens Estates Preliminary PUD and Plat Application  
File Number FPUD05-001**

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## **I. Application Information and Process**

a. Request

The Applicant requests Approval to develop 63-single-family residences on approximately 18.06 acres as a Planned Unit Development (PUD) Single-Family (PUD-SF) overlay. The project is zoned Low-Moderate Density Residential (LMD). Development will include grading, access improvements, landscaping, drainage improvements, and street improvements to Sultan Basin Road and on 132<sup>nd</sup> Street SE along the property frontages.

b. Applicant

Sultan 144, LLC  
15 Bellevue Drive, Suite 102  
Bellevue, WA 98005  
Phone: 425-869-2020  
Attn: Craig Sears

c. Property Owners

Charles T. & Delores B. Green  
32326 132<sup>nd</sup> Street SE  
Sultan, WA 98294

*Exhibit 2*

Patrick M. Green & Continental Inc.  
103955-H  
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Seattle, WA 98101

d. Engineer

Land Development Consultants, Inc.  
14201 NE 200<sup>th</sup> Street #100  
Woodinville, WA 98072  
Phone: 425-806-1869  
Attn: Mark Villwock, PE

e. Surveyor

Group Four, Inc.  
16030 Juanita Woodinville Way NE  
Bothell, WA 98011  
Phone: 425-775-4581  
Attn: Steve Anderson

Concept Engineering, Inc.  
455 Rainier Boulevard North  
Issaquah, WA 98027  
Phone: 425-392-8055  
Attn: David Hill

f. Wetland Biologist

The Jay Group, Inc.  
1927 5<sup>th</sup> Street  
Marysville, WA 98270  
Phone: 360-659-8159  
Attn: Carolyn Prentice

g. Parcel Numbers

280833-002-004-00  
280833-002-006-00  
280833-002-006-01  
280833-002-006-02  
280833-002-006-03  
280833-002-007-00

h. Project Description

The proposed project is a Planned Unit Development (PUD) for a detached single-family development of 63-homes. The development is comprised of 4 parcels, totaling 18.06 acres. The site contains 4 wetlands and 1 stream. One wetland has been separated from the subject property through the Boundary Line Adjustment process and will be dedicated to the City. Two existing single-family residence, with associated garages, exist on-site at this time. All

existing structures that do not meet the development standards will be removed, which includes the existing home on proposed Lots 1 and 2, and the detached garage on Lot 54. The Applicant has stated that the single-family residence on Lot 55 will remain.

i. Location

The site addresses are 32326, 32400 and 32522 132<sup>nd</sup> Street SE, which is located on the southeast intersection of 132<sup>nd</sup> Street SE and Sultan Basin Road, approximately 1 mile north of U.S. Highway 2. The site is west of and abutting the future Skoglund Estates Plat. The site is located in the northwest quarter of Section 33, Township 28 N, Range 8 E, W.M., in the City of Sultan, Snohomish County, Washington.

j. Existing Site and Surrounding Land Uses

The site generally measures 980 feet by 1,300 feet in its widest area. The site is generally flat, sloping from the north to south, with the steepest slope of approximately 6%. There are two existing single-family residences with detached garages; the residence on Lots 1 and 2 will be required to be removed during construction. The detached garage on Lot 54 will be required to be removed during construction, or Lots 54 and 55 will be required to be combined. The site contains 4 wetlands and a stream, as discussed in the Critical Area Study prepared by the Applicant's wetland biologist, Allison Warner of The Jay Group, Inc., revised December 4, 2006. Immediately abutting this site to the west is the future detached single-family plat of Skoglund Estates.

The surrounding existing land uses/designations include:

- To the north: Single-family residences and vacant land / Snohomish County Designation Urban Low Density Residential (4-6 units per acre)
- To the south: Single-family residences / Low/Moderate Density Development
- To the west: Single-family residences / Low/Moderate Density Development and Moderate Density Development
- To the east: Single-family residences / Low/Moderate Density Development

k. Utilities, Fire, and School Districts

Water Source: City of Sultan

Sewer Service: City of Sultan

Fire District: Snohomish County Fire Protection District No. 5

School District: Sultan School District No. 311

l. Related Permits and Reviews

Development of the site will require building, grading, fill, stormwater, water, sewer, power, telephone, and demolition permits, in addition to PUD and Plat Approval. Permits by other agencies may also be required.

m. Procedure for PUD Approval

The City's regulations for Planned Unit Developments (PUDs), Chapter 16.10 of the Sultan Municipal Code (SMC), require that PUD Approval be processed pursuant to Chapter 2.26, with review done by the City Planner, with input from the City Engineer, Public Works

Director, and the Building Official. In accordance with SMC 16.10.080, PUDs are reviewed by the Hearing Examiner, who then makes a Recommendation to City Council.

After receipt of the Hearing Examiner's Recommendation, the City Council will hold a Closed Record Hearing and make the final decision, in accordance with SMC 16.10.090.

Following Council Preliminary PUD Approval, the Applicant is required to file an application for Final PUD approval within twelve (12) months, in accordance with SMC 16.10.150 and 160.

n. Procedure for Plat Approval

The City's Subdivision Regulations, Chapter 16.28 SMC, provide the standards and process for Preliminary Plat Review. In accordance with SMC 16.28.330, the Hearing Examiner shall hold a Public Hearing, make written findings and make a recommendation to the City Council. The City Council may either, approve, disapprove, or return the proposed subdivision for modification at a closed record hearing following the Hearing Examiner's Recommendation, in accordance with SMC 16.28.340. Council Approval of a Preliminary Plat is valid for up to five (5) years, in accordance with SMC 16.28.350.

o. Review Criteria

The review criteria for preliminary plats are set forth within SMC 16.28.330(A):

The Hearing Examiner shall consider and review the proposed plat with regard to:

1. Its conformance to the general purposes of the Comprehensive Plan and Planning Standards and Specifications, as adopted by the laws of the State of Washington and the City of Sultan;
2. Whether appropriate provisions are made for: drainage ways, streets, alleys, other public ways, water supplies and sanitary wastes, transit stops, parks and recreation, playgrounds, schools and school grounds;
3. The physical characteristics of the subdivision site; and may disapprove because of flood, inundation or swamp conditions. It may require construction of protective improvements as a Condition of Approval; and
4. All other relevant facts to determine whether the public use and interest will be served by the subdivision.

"The [PUD] district is an alternative to conventional land use regulations, combining use, density and site plan considerations into a single process." [SMC 16.10.010(A)] The PUD is an "overlay zone", applied "only after a site-specific and project-specific review." [SMC 16.10.020 and .010(A), respectively]

The general review criteria for a PUD are set forth in SMC 16.10.090(B):

"The Hearing Examiner Recommendation shall include, at a minimum, findings and conclusions regarding the preliminary PUD's compliance with the criteria for location and approval for the particular type of preliminary PUD listed in SMC 16.10.100 (retail PUDs) or SMC 16.10.110 (residential PUDs). A preliminary PUD shall be recommended for approval

if, together with reasonable modifications or conditions, the project is determined to comply with the requirements of these sections. A preliminary PUD shall be recommended for denial if, even with reasonable modifications or conditions, the project is determined to not comply with the requirements of these sections.”

p. Application History

The Application for Preliminary PUD was originally filed with the City of Sultan on August 4, 2005 by a previous Applicant. The project was deemed complete by the Hearing Examiner on September 2, 2005. Subsequently a significantly revised application with a new Applicant was filed with the City of Sultan on December 6, 2006. The Applicant supplied a new set of plans on June 12, 2007 for approval by the Hearing Examiner.

A Determination of Non-Significance (DNS) was issued on April 16, 2007 with a 14 day appeal period. There were no appeals of the DNS.

A Public Hearing Notice was issued on August 30, 2007 in accordance with SMC 16.28.300, SMC 2.26.110 and SMC 16.124.010.

## II. Land Use and Zoning

a. Zoning

The site is zoned Low-Moderate Density Residential (LMD). Single-family detached homes and PUDs in the LMD zone are subject to the zoning requirements contained in SMC 16.12.010.

b. Density

Gross density is proposed to be approximately 3.5 dwelling units per acre (63 homes over 18.06 acres). The maximum gross density per SMC 16.12.010 for Planned Unit Developments is 5 dwelling units per acre.

c. Lot Size and Coverage

The Applicant proposes lot sizes that range from 4,656 sf to 10,415 sf, with an average lot size of 5,770 sf. The maximum lot coverage under SMC 16.12.010 is 30% for PUD's. At the time of building permit submittal, the Applicant will be required to show compliance with this section of the code. The proposed minimum lot widths range from 40 feet to 78 feet; panhandle lots have a lot width of 20 feet at the lot line. The above lot sizes, widths, and coverages comply with SMC 16.12.010 and SMC 16.10.120.

d. Front Yard Setbacks

Under SMC 16.10.120(B), porches that do not comprise more than 60% of the front façade of the house may extend into the setback. The Applicant proposes 20 foot setbacks for the structures as required by Ordinance 917-06, with a 15 foot setback for porches. Second stories will not be allowed to extend into the 20 foot setback.

e. Side Yard Setbacks

The Applicant proposes typical side yard setbacks of 5 feet as required under Ordinance 917-06, with the side yard setback on corner lots of 15 feet.

f. Rear Yard Setbacks:

Under Ordinance 917-06, the standard rear yard setback is 20 feet. Under SMC 16.10.120(B)(1)(a) and (d), the minimum rear yard requirement is intended to provide privacy for the outdoor area behind the dwelling unit. Where physical elements such as fences, screens, or open spaces are provided, rear yard setbacks may be reduced to 10 feet. Those lots that abut an open space tract are proposed to have a rear yard setback of 10 feet. Other lots may propose smaller setbacks of no less than 10 feet, with submittal for building permit, if a fence and full landscaping screen is proposed. All other lots will have a 20 foot rear yard setback.

The lots eligible for a 10 foot rear yard setback due to the presence of open space adjacent to the rear yard include: Lots 6-18, 20-26, 27-37, and 54-60. Other lots that seek a reduced rear yard setback will be required to demonstrate compliance with SMC 16.10.120 at the time of building permit submittal

g. Comprehensive Plan Designation

The site is designated "Low/Moderate Density Residential" by the City of Sultan Comprehensive Plan. The proposed use of the site as single-family residential, at a density of approximately 3.5 dwelling units per acre, is consistent with the Comprehensive Plan.

h. Off-Street Parking Requirements

The minimum number of required off-street parking spaces shall be determined by the table in SMC 16.60.140. Single-family dwelling units are required to provide two (2) off-street parking spaces per dwelling unit. At 63 units, this project requires a minimum of 126 off-street parking spaces, to be provided individually on each lot. At the time of building permit issuance, the Applicant will be required to demonstrate compliance with this section of the code.

i. Recreation and Open Space

SMC 16.72.040 requires recreation areas in the amount of 75 square feet per person. The Greens Estates PUD is required to provide 18,900 square feet of recreation area, based on 4 people per residence. The PUD, as proposed, provides 41,184 square feet.

Also, in developments with 63 units, 3 recreation areas, a minimum of 2,000 square feet each, are required (SMC 16.72.050). The project, as proposed, with 63 units, proposes 3 recreation facilities, meeting the SMC mandated minimum. The applicant proposes a multi-purpose court area in Tract 999, a picnic area in Tract 995 and a tot lot in Tract 990.

All PUDs are required to provide open space in the amount of 20% of the gross land area of the site, per SMC 16.10.140. A minimum of 15% of the gross area must be "usable open space." The percentage of gross area counted toward the open space requirement is limited for "buffer open space" (2%) "constrained open space" (2%) and "unusable detention open

space” (5%). Any amount of “conservation open space” may also be used to meet the minimum required open space. This project is required to have 3.61 acres of open space. The recreation areas can count towards the open space requirement.

The June 12 submittal shows approximately 35% of the site in open space, but 14.8% usable open space. Final plans shall demonstrate that these requirements are met prior to permit issuance.

### **III. Wetlands, Streams and Steep Slopes**

Within the City of Sultan, wetlands and streams are subject to regulations per SMC 16.80 and steep slopes are subject to SMC 16.68.

#### **a. Wetlands**

The property has 4 existing wetlands, which are categorized as follows under the DOE Rating System, and subject to the buffers under SMC 16.80.040.

Wetland AA: Category 4 with a 25 foot buffer (Proposed buffer: 25 feet)

Wetland DT: Category 2 with a 75 foot buffer (Proposed buffer: 50 feet) (this wetland was separated by a previously recorded BLA. The buffer for this wetland is on the subject property)

Wetland C: Category 2 with a 75 foot buffer (Proposed buffer: 50 feet)

Wetland K: Category 3 with a 50 foot buffer (Proposed buffer: 25 feet)

Under SMC 16.80.100, Innovative Development Design, the applicant has proposed alternative buffers that vary from the requirements of SMC 16.80.040. A Third Party Review of Wetland, Streams and Buffers, dated March 19, 2007 was completed by Patricia Bunting of Graham-Bunting Associates, the City’s on-call wetland consultant. Her review found that the alternative buffers, subject to conditions outlined in her report, meet the criteria under SMC 16.80.100.

#### **b. Streams**

One Type 4 stream is located on the subject property. Per SMC 16.80.040, the standard buffer for this stream is 50 feet. This stream is located within a larger wetland (Wetland DT), and the entire 50 foot street buffer is located within that wetland. The stream and associated wetland have been separated from the subject property through the Boundary Line Adjustment and will be dedicated to the City.

Under SMC 16.28.260(C), an access right-of-way is required to any publicly controlled water body, including streams. With the dedication through the Boundary Line Adjustment process, the stream located on the subject property will be publicly controlled. However, access to the Ordinary High Water Mark in this case would be within a Category 2 wetland. To ensure access, the Applicant has provided a trail system that travels through the wetland buffer near the stream. This trail will be constructed throughout the property. No further public benefit would be gained from requiring additional access directly to the stream.

c. Mitigation

As part of the project, the applicant is proposing to provide buffer enhancement in order to allow smaller buffers for the 4 on-site wetlands. Buffer enhancement shall be completed in accordance with the Mitigation Plan prepared by Allison Warner of the Jay Group, Inc., dated December 4, 2006, and the conditions of Patricia Bunting of Graham-Bunting Associates, dated March 19, 2007. The mitigation plan is also subject to the requirements of SMC 16.80.070.

d. Steep Slopes

There are no steep slopes (in excess of 25%) on-site.

#### **IV. Water, Sewer, and Stormwater Management**

a. Water Availability

According to SMC 16.10.070(C)(8), as stated in RCW 19.27.097, new developments must show evidence of adequate water availability. The City of Sultan Public Works Department issued a letter, dated December 13, 2006, stating water is available to the site.

b. Sanitary Sewer Availability

According to SMC 16.10.070(C)(7) new developments must show evidence of sewer availability. The City of Sultan Public Works Department issued a letter, dated December 13, 2006, stating sanitary sewer is available to the site.

c. Stormwater Management

Per SMC 16.92.010, the City of Sultan adopts the most recent Department of Ecology Stormwater Management Manual for the Puget Sound basin. The applicant proposes a conveyance system and water quality treatment in the form of a Bioswale on-site. Stormwater will be detained on the Skoglund Plat to the east. A Final Stormwater Report and Plan will be submitted to the City for approval prior to permit issuance.

#### **V. Traffic and Circulation**

a. Lot Access

Access to Lots 7 – 63 will be from 132<sup>nd</sup> Street SE via the proposed internal roads, consisting of a public street (Roads A – E) and one private road serving Lots 23-25. Road A will connect to the Skoglund Estates Plat to the east. Access to Lots 1 – 6 will be from Sultan Basin Road via a public road, Road F.

b. Street Standards

*Internal Public Roads*

The Sultan Design Standards and Specifications require, for public local access streets, a 60 foot right-of-way, with two 12 foot travel lanes, parking lanes on each side, curb, gutter, 5 foot sidewalks on each side, and street trees planted every 20 lineal feet.

As submitted, Roads A-F as proposed will provide 50 foot right-of-ways, two 12 foot travel lanes, 5 foot sidewalks on both sides, and two 8 foot parking lanes. The exception to this is Road D and F, which will have parking lanes on only one side of the road. Final plans will show the street trees meeting the 20 lineal feet requirement, or as accepted by the Community Development Director and City Engineer.

Per SMC 16.10.120(B), the City Planner and City Engineer may allow modifications to the street standards through the PUD process. As submitted, this project is consistent with other PUD's within the City.

#### *Internal Private Roads*

Per the Sultan Design Standards and Specifications, private roads are required to serve a maximum of 4 lots, have a 30 foot right-of-way, have two 12 foot travel lanes, and have a one 5 foot sidewalk.

The City requires that when 3 or 4 panhandle lots have adjacent street frontage, a private access road will be constructed to serve such lots. For this proposal Lots 23-25 will be served by a private road. Final street plans will meet the requirements for a private road for Lots 23-25.

#### *Sultan Basin Road*

Sultan Basin Road is a Secondary Arterial with a specific Road Concept Plan, which requires a 66 foot right-of-way, two 12 foot travel lanes, one 12 foot turn lane, two 3 foot bicycle lane, 5 foot sidewalks on either side with 5 foot planter strips and street trees planted every 20 lineal feet. Currently along the property frontage, Sultan Basin Road does not meet this requirement. The Applicant will be required to dedicate 3 feet along the frontage on Sultan Basin Road to obtain the required right-of-way width, and construct half-street improvements that meet these standards.

#### *132<sup>nd</sup> Street SE*

132<sup>nd</sup> Street SE is classified as a Neighborhood Collector, which requires a 60 foot right-of-way, with two 12 foot travel lanes, parking on both sides, a 5 foot sidewalk on both sides with 3 foot planter strips, and street trees every 50 lineal feet. In order to meet these standards, the Applicant will be required to dedicate 10 feet on 132<sup>nd</sup> Street SE, and provide three-quarter street improvements that meet these standards.

#### c. Non-motorized Access

SMC 16.10.110 states that a PUD-SF must be located to connect to existing off-site pedestrian and bicycle circulation system to facilitate non-motorized access. In addition, the 2004 Comprehensive Plan shows a non-motorized path through the Greens property. The Applicant proposes to provide a trail and sidewalk system that will connect to Sultan Basin Road and 132<sup>nd</sup> Street SE, as well as to the property to the south.

#### d. Traffic Impacts

According to SMC 16.112.020, the Owner/Developer is required to pay impact fees and offset impacts to the City's street system. According to the Traffic Analysis Report,

submitted by Gibson Traffic Consultants, dated July 22, 2005 and updated on November 28, 2006, the new development will generate 61 new pm peak hour trips on City streets. The fees will be paid prior to building permit issuance for each lot. Those lots that do not have to pay will be identified on a note on the Final Plat.

Impact fees are also due to WSDOT for one (1) project that this Application will impact: the Sultan WCL West Bound Passing Lane. The impacts fees for these projects are required to be paid prior to permit issuance, and the fee will be calculated at the time of fee payment.

e. Transit

Transit service is currently available at the Park and Ride Lot at the intersection of US 2 and Sultan Basin Road, approximately 1 mile from the site along US 2. The City of Sultan has contacted Community Transit to request development of a route extension north on Sultan Basin Road. At this time, Community Transit has not made any commitment and it is expected that expansion of transit service will be partially dependent on the Sultan Basin Road area having a sufficient population to sustain transit ridership. The relocation and signalization of the intersection of Sultan Basin Road and US 2 is recently completion, and provides a safer and improved access for Community Transit vehicles to neighborhoods located north of US 2. The City Council has previously stated that applications north of US 2, including up to 1 mile away, meet the requirement of "sufficient proximity" to transit.

As part of this project, the Applicant will be required to install a bus turnout adjacent to Road F for future bus service to this area. Community Transit has stated that their development standards require a ten (10) to twelve (12) feet wide pullout, approximately seventy (70) feet in length, with 5:1 tapers at each end, to be constructed. The Public Works Department has indicated that the pullout shall be constructed of re-enforced concrete. This is a recommended condition of project approval.

Under SMC 16.12.110(B)(2), PUD's are required to show sufficient proximity to the site to facilitate transit access. With the addition of a bus turnout as well as improvements to 132<sup>nd</sup> Street SE and Sultan Basin Road, this development has provided all of the necessary infrastructure to facilitate transit access. No further action is warranted of the applicant.

## VI. Other Issues

a. Utilities

All utilities are available at the site to serve the development. The Applicant will install the required services for each lot prior to Final Plat approval.

b. School Impacts

Sultan Elementary, Middle and High schools are located approximately 2-3 miles away from the site by car. Per SMC 16.116.030(A) and (B), the City shall collect School Impact Fees *"from any applicant seeking land use permit approval and/or a building permit from the City for any residential development activity within the City limits."* School Impact Fees shall be paid to the City in accordance with Chapter 16.116 SMC, for 61 new lots. The fees will be

paid prior to building permit issuance for each lot. Those lots that do not have to pay will be identified on a note on the Final Plat.

c. Park and Recreation Impacts

Per SMC 16.112.020, the Owner/Developer is required to pay Park and Recreation Impact Fees to offset the project's impact on the City's recreation facilities. Park and Recreation Impact Fees shall be paid to the City in accordance with Chapter 16.112 SMC for 61 new lots. The fees will be paid prior to building permit issuance for each lot. Those lots that do not have to pay will be identified on a note on the Final Plat.

d. Fire Hydrants

Hydrants and hydrant spacing shall be in conformance with the City of Sultan 2004 Water and Sewer Engineering Standards per the City's Engineer Recommendations.

e. Concurrency Requirements

SMC section 16.108.010 states that property owners must meet the Concurrency provisions of the Comprehensive Plan as required in RCW 36.70A.70. This ensures that adequate public facilities are available and will be able to support the development's impact. Facilities subject to this review are:

- Roadways
- Potable Water
- Wastewater
- Police Protection
- Parks and Recreation

In accordance with SMC 16.108.050 Certificate of Concurrency, and SMC 16.108.060 Standards for Concurrency, the City of Sultan shall review applications for development and issue a Certificate of Concurrency provided that the development does not lower the existing Level of Service (LOS) of public facilities and services below that adopted by the Comprehensive Plan. A project shall be deemed concurrent if:

1. The necessary public facilities and services are in place at the time the Development Approval is issued;
2. The Development Permit is issued subject to conditions that ensure that the necessary public facilities will be in place concurrent with the impacts of the development; or
3. The necessary public facilities are guaranteed in an enforceable Development Agreement.

“Concurrent with development” means that facilities are in place at the time of development or that a financial commitment is in place to complement needed improvements within six years of the time of development.

*Arterial Roadways*

The 2004 Comprehensive Plan LOS is B for identified intersections.

In accordance with SMC 16.112, the Applicant is required to pay Traffic Impact Fees to offset traffic impacts associated with the development. Traffic related improvements scheduled to meet and maintain the City's adopted LOS concurrent with development are planned under the adopted 6-year Capital Facilities Plan.

*Other Roadways*

The 2004 Comprehensive Plan LOS is B for local streets.

In accordance with Chapter 16.112 SMC, the applicant is required to pay Traffic Impact Fees to offset traffic impacts associated with the development. Traffic related improvements scheduled to meet and maintain the City's adopted LOS concurrent with development are planned under the adopted 6-year Capital Facilities Plan.

*Potable Water*

The 2005 Water System Plan LOS is 350 gallons of supply per equivalent residential unit. The City currently has a 20-year projected surplus of 249,560 gallons supply.

On December 13, 2006, the City issued a letter of Water Availability. System improvements may be required of the Applicant to connect to the City water system; these improvements will be installed at no cost to the City prior to Final Plat approval. Water system improvements scheduled to maintain the City's adopted LOS concurrent with development are planned under the adopted 6-year Capital Facilities Plan.

*Wastewater*

The 2006 General Sewer Plan LOS is 67 gallons per day per capita. The City currently has wastewater capacity for this plat.

On December 13, 2006, the City issued a letter of Sewer Availability. System improvements may be required of the applicant to connect to the City sewer system; these improvements will be installed at no cost to the City prior to Final Plat approval. Wastewater system improvements scheduled to maintain the City's adopted LOS concurrent with development are planned under the adopted 6-year Capital Facilities Plan.

*Police*

The 2004 Comprehensive Plan LOS is 2.6 Uniformed Officers per 1,000 residents. The City has eight (8) uniformed officers (one of which is a newly funded position that was recently approved by the City Council). The current deficit is 3.78 Uniformed Officers, which is based on the City of Sultan's Office of Financial Management (OFM) July 1, 2007 population of 4,530. Police Services are funded through the City's General Fund and other sources. Increased tax revenue associated with the development will work towards offsetting incremental increases of police services as needed to accommodate

the City's population. Police service improvements scheduled to maintain the City's adopted LOS concurrent with development are planned under the adopted 6-year Capital Facilities Plan. In order to maintain an acceptable level of service for police the applicant is providing a development agreement to guarantee the LOS for police services.

The City Council, in the Plat of Skoglund Estates, has determined that if the applicant for a subdivision enters into a Developer Agreement to establish Concurrency, the application can be deemed Concurrent as it relates to Police Services. The Applicant has provided such an agreement, committing to pay to the City of Sultan to mitigate their impacts on the Police Level of Service.

The City Council in Resolution No. 06-12 requested the Hearing Examiner to consider their previous actions and interpretations with regards to Police Level of Service (LOS). Previous actions have involved: Steen Park, Cascade Breeze, Skoglund Estates and AJ's Place.

#### *Parks and Recreation*

The 2004 Comprehensive Plan LOS is 42.6 acres per 1,000 residents. The City's 2007 estimated population is 4,530. The current acreage of parks, recreation, and open space land stands at 198.98 acres. This results in a ratio of 73.9 acres of parks, recreation, and open space per 1,000 residents, which exceeds the current LOS. The City has 5.18 acres of excess parks, recreation, and open space lands.

In accordance with Chapter 16.112 SMC, the Applicant is required to pay Recreation Impact Fees to offset recreation related impacts associated with this development. Fees will be paid as noted above. Parks and recreation improvements scheduled to maintain the City's adopted LOS concurrent with development are planned under the adopted 6-year Capital Facilities Plan.

#### *Certificate of Concurrency*

The proposed Greens Estates Preliminary PUD & Plat will not lower the existing Level of Service (LOS) of public facilities and services or the impacts of the development will be mitigated by payment of mitigation fees as noted above. Consequently, Staff has determined that this application is concurrent and further, that this Staff Report shall serve as the Certificate of Concurrency.

## **VII. SEPA**

SEPA, under RCW 43.21C, requires Governmental Agencies to consider the environmental impacts of a proposal before making decisions. An Environmental Checklist was submitted to the City on December 6, 2006. A Determination of Non-Significance (DNS) was issued on April 16, 2007. No appeals were filed prior to that date and the DNS stands as issued.

## VIII. Public Notice

As required by the City's Subdivision and Public Hearing Regulations (SMC 16.28.300 and SMC 16.124.010), Notice of the Preliminary Plat and PUD Application has been posted, published and mailed. Notice of Public Hearing was posted, mailed and published August 30, 2007.

## IX. Conclusion

Staff concludes that the proposed Greens Estates Preliminary PUD & Plat, with the Conditions in Section X below, meets the criteria for Preliminary Plats in accordance with SMC 16.28.330(A) and for Preliminary single-family residential PUDs, in accordance with SMC 16.10.110(B).

- a. The proposed Preliminary PUD and Plat is found to be in conformance with the general purposes of the Comprehensive Plan and planning standards and specifications as adopted by the laws of the State of Washington (RCW 58.17 and 36.70B) and the City of Sultan,
- b. The proposed Preliminary PUD and Plat makes appropriate provisions for public health, safety, and general welfare, and for open spaces, drainage ways, streets, other public ways, water supply and sanitary wastes, transit, parks and recreation, playgrounds, schools and school grounds. Street improvements and utilities should be developed in compliance with the conditions listed below.
- c. The proposed modifications to the development standards, as conditioned herein, are consistent with the provisions of SMC 16.10.120 and 16.12.010.
- d. The location of the preliminary PUD and plat is consistent with the location criteria of SMC 16.10.110(B)(2), including:
  - Being greater than 2 acres.
  - Located on an arterial street such that transportation facilities can provide direct access to the development.
  - Located so that it can connect to the off-site pedestrian and bicycle circulation system.
  - Transit is available in sufficient proximity to the site to facilitate transit access to the PUD.
  - Located in relation to utilities such that the development will not result in higher public costs.
  - Located so that the PUD will have access to schools, parks and open space.
- e. The design of the preliminary PUD and Plat, as conditioned herein, takes into account the relationship of the site to the surrounding areas. The Conditions listed below are essential to ensure that the street frontages and perimeter of the site are designed in a manner compatible with the surrounding neighborhood.

- f. The physical characteristics of the site have been reviewed. Conditions are recommended to ensure that the new structures and improvements are built in compliance with the regulations of the Sultan Municipal Code.
- g. The proposed Preliminary PUD and Plat will serve the public use and interest by developing land consistent with the goals and policies of the Comprehensive Plan and compatible with adjacent land uses, and by providing an extension of public roads and services.

## **X. Staff Recommendation**

Staff recommends that the Hearing Examiner recommend to the City Council APPROVAL WITH CONDITIONS of the Greens Estates Preliminary PUD and Plat with the Conditions listed below:

### **Final Plat**

1. The general configuration, lot shapes and sizes, setbacks, site density, and areas of open space shall be as indicated on the site plan resubmitted June 27, 2007, subject to and as revised by these Conditions of Approval.
2. The application shall generally comply with the House Plans submitted December 6, 2006. Prior to building permit submittal, house plans that deviate from the submitted House Plans shall be subject to the approval from the Community Development Director.
3. Revisions to approved preliminary Planned Unit Developments shall be regulated by SMC 16.10.160(D) and (E); while revisions to approved preliminary subdivisions are regulated by SMC 16.28.360.
4. The final PUD map shall be recorded as an amendment to the underlying zoning following Final PUD approval.
5. Prior to approval of the Final PUD & Plat, all site improvements, including streets, sidewalks, bicycle lanes, frontage improvements, drainage improvements, open space landscaping and improvements, mitigation plantings and other common area improvements shall be installed, inspected and approved by the City of Sultan, with the exception of the final paving of streets. All improvements shall be constructed in accordance with the approved engineering plans, landscaping and recreation plans, mitigation plans, and Preliminary PUD & Plat. Alternatively, the City may approve a financial bond or assurance for items not completed prior to Final Plat, as approved by the City Engineer and/or Community Development Director.
6. All lot corners shall be installed with rod and cap prior to Final Plat approval.
7. The requirements for Survey Monuments under Section 4.05 of the City of Sultan Design Standards and Specifications, and additional survey monumentation as required by the City Engineer, shall be met prior to Final Plat approval.
8. The Applicant shall establish a Homeowners Association to assume responsibility for maintenance of common areas. The Homeowners Association shall be recorded with the plat. The proposed Covenants, Conditions and Restrictions of the Homeowners Association shall be subject to City approval prior to Final Plat approval.

9. The following note shall appear on the face of the Final Plat Map: “The use and development of the property included within this plat shall be governed by the Conditions of Approval imposed through Case Number FPPUD05-001/SEPA07-04 and shall be binding upon the land until that approval is amended, revokes or expires.”
10. The following Free Consent Statement shall be acknowledged by property owners and shall be notarized: “We the undersigned, attest that we are the contract purchaser or owners in fee simple of the land represented on this Plat and have no right, title or interest of any kind in any un-plated land contiguous to any part of the land included in this Plat. This Plat is made with our free consent and in accordance with our desire.”
11. The following shall be shown on the recording block section of the plat map: “Refer to Auditor Recording Number.”
12. The title block on the Final Plat map shall have the names of all the legal owners of the property named on the plat and the name of the surveyor/engineering firm which prepared the Final Plat map.
13. An Auditor’s Certificate shall be shown on the Final Plat map.
14. The following are required to be shown on the face of the Final Plat map prior to final approval:
  - Surveyor Certificate;
  - Owners Statement;
  - All new easement(s) over the property, their legal description(s) and associated dedication block(s);
  - Recording block/Certification blocks for City approval;
  - North arrow;
  - Certification of Payment of Taxes and Assessments;
  - Auditor’s Certificate;
  - The survey control scheme, monumentation, basis of bearing and references.
15. The following notes shall appear on the face of the Final Plat map:
  - a. Per SMC 16.10.120(B)(1)(a) and (d), those lots where the rear lot lines are adjacent to dedicated open space are permitted to have reduced rear yard setbacks of ten (10) feet. Other lots that apply for a reduced yard setback of up to ten (1) feet shall provide a 6-foot fence and landscaping that provides a full screen within 5 years of planting, in order to meet the privacy requirements of this section of the code. All other lots shall have rear yard setbacks of twenty (20) feet.
  - b. Per SMC 16.10.120(B)(1)(f), porches may extend into the setback, up to fifteen (15) feet from the front property line. The houses may not extend into the setback – the minimum setback for the houses, including second stories, shall be twenty (20) feet measured from the front lot line.
  - c. Building setbacks, height limitations, and lot coverage requirements for the lots contained within this short plat are subject to the approval by the City’s Community

Development Department prior to the issuance of a building permit. Applicants should have the dimensional requirements on their site plan verified by the City's Community Development Department prior to submitting plans for a building permit.

- d. In accordance with SMC 16.60.140, the minimum number of required off-street parking spaces for single-family dwelling units is two (2) spaces per unit. Submittal for building permits shall meet this requirement.
16. The existing houses and structures shall be moved, demolished, or otherwise modified so that they are in compliance with the Sultan Municipal Code, prior to City of Sultan acceptance of plat for recording.
17. If the detached garage on proposed Lot 54 will remain, then Lots 54 and 55 shall be combined so that no lot has a garage as the primary use.
18. A notice of planned street extension shall be filed with the Final Plat with Snohomish County with recording of the Final Plat.
19. The following note shall appear on the face of the Final Plat: "The areas designated as street landscaping or open space tracts, although falling within dedicated City right-of-way shall be maintained by the developer and its successor and assigns for plantings: PROVIDED, that such areas or their use for landscaping may be reduced or eliminated by the City of Sultan if deemed necessary for or detrimental to City road purposes".
20. The NGPA shall be placed in a separate tract on which development is prohibited, protected by execution of an easement, dedicated to a conservation organization or land trust or similarly preserved through a permanent protective mechanism acceptable to the City, prior to Final Plat approval. The legal description for each of the NGPA and open space tracts shall be shown on the final plat map with designation of ownership and maintenance responsibilities.
21. Private street and stormwater maintenance agreements shall be prepared for review by the City as part of the Final Plat applications and recorded with the Final Plat.
22. A drainage easement between the Greens Property and Skoglund Property to the east will be required to be recorded with the Final Plat.
23. All existing and proposed easements shall be shown on the Final Plat map.
24. The City must verify that the required street lights are installed and functional prior to Final Plat approval.
25. The following revisions shall be made to the Final Plat Map:
  - a. The required setbacks shall be shown on the Final Plat map.
  - b. Correct square footages for all lots and tracts shall be shown on the Final Plat Map.
  - c. Remove the note on Parcel A showing that the land will be dedicated to the City.
  - d. Show those tracts that contain wetlands and wetland buffer as "Native Growth Protection Areas".

## **Clearing & Grading**

26. A demolition permit for all structures to be removed shall be submitted, reviewed and approved prior to permit issuance. Coordinate with the Snohomish Health District to determine what requirements the District will have for removal of hazardous materials.
27. Prior to any activity on-site, the NGPA buffers and the property corners of the adjacent lots shall be staked out in the field under the supervision of a professional surveyor licensed in the State of Washington. No clearing activities shall occur until the location of the survey stakes are inspected and accepted by the City of Sultan.
28. The significant trees to be retained shall be clearly delineated in the field. Barrier fencing or siltation fencing shall be installed before any site disturbance.
29. The clearing limits of the approved Site Plan shall be clearly delineated in the field. Where such limits are in proximity to property boundaries or associated with site-sensitive areas, barrier fencing or siltation fencing shall be installed before site disturbance in accordance with the approved Temporary Erosion and Soil Control Plan.
30. All clearing and grading activities, including the installation of utilities, storm drainage, ATB, curb, and gutters, shall be installed during the construction season between April 1 and October 1. Construction during the winter season (October 2 – March 31) will require special written permission from the City Engineer. In the case of prolonged bad weather, the City Engineer may amend the start and end date of the construction season as necessary.
31. During construction, in those areas where soil is disturbed, current and best management practices must be used to control erosion. Upon installation of any and all utility lines, the area of construction shall be restored to its natural, pre-existing condition.
32. Soils, which are to be re-used around the site, shall be stored in a manner to minimize the risk of erosion and sedimentation. Protective measures may include, but are not limited to, covering with plastic sheeting, use of low stockpiles in flat areas, or the use of filter fabric fence and/or staked hay bales.

## **Road & Storm Drainage**

33. Final engineering drawings depicting the street improvements and drainage design shall be submitted to the City's City Engineer for final review and approval prior to issuance of any permits. The street and drainage improvements shall be designed in accordance with the City's Development Standards. Minor modifications of the plans submitted may be approved by the City Engineer if the modifications do not change the Findings of Fact or the Conditions of Approval.
34. Final street design shall include paving, sidewalks, frontage improvements, parking, and emergency access.
35. In order to enforce SMC 16.10.110(B)(2), final engineering drawings shall show a bus turnout adjacent to Road F on Sultan Basin Road for future bus service to this area. Final design shall comply with Community Transit's design standards, subject to the City Engineer's approval.

36. Roads D and F as shown on the preliminary plans are permitted to deviate from the design standards. Roads D and F have a reduced right-of-way width (50 feet instead of 60 feet), have eliminated one (1) parking lane, and will place the required sidewalks within easement on private property.
37. A no parking sign shall be added to the road plans for Roads D and F where there will not be a parking area. The no parking sign shall be installed prior to Final Plat approval.
38. Three-quarter improvements to 132<sup>nd</sup> Street SE are required. The final civil engineering drawings shall include these improvements, consistent with the City's Design Standards and Specifications.
39. Half-street improvements to Sultan Basin Road are required. The final civil engineering drawings shall include these improvements, consistent with the City's Design Standards and Specifications.
40. Prior to permit issuance, the following revisions to the civil plans shall be made:
  - a. Call out the required minimum four (4) foot black chain link fence for the bio-swale with a ten (10) foot service access and gate. The fence must meet the requirements under the adopted International Building Code.
  - b. Call out the required signs (street signs, stops signs), preliminary mailbox locations, bus stops and signs, school stops and signs, street lighting and fire hydrants.
  - c. Call out any rockeries or retaining walls. A separate permit is required for any wall over four (4) feet in height or that carries a surcharge. Any wall requiring a permit must also have a soils report per the City's Design Standards, and be designed by a professional engineer licensed in the State of Washington. A black chain link fence is required on top of any wall over four (4) feet in height. Permits for the walls shall be submitted, reviewed and approved prior to permit issuance.
  - d. Provide a detail for the required street stub ends signs for Road E.
  - e. Show the driveway locations on the road and grading plan. A separate driveway permit is required with the building permit per the Design Standards and Specifications.
41. All public rights-of-way shall be dedicated to the City with road improvements constructed to current City standards, with approved deviations. Roads A through F shall be dedicated to the public. Dedications shall be completed prior to Final Plat approval.
42. Prior to construction, the Applicant shall prepare a final Construction Stormwater Pollution Prevention Plan (SWPPP) for approval by the City Engineer and the Department of Ecology. The Applicant shall provide a copy of the Department of Ecology, Construction Stormwater General Permit, issued for this project prior to issuance of City permits.
43. Site development shall follow all recommendations of the final stormwater report.
44. The stormwater detention design and stormwater discharge shall utilize the Best Management Practices of the adopted Department of Ecology Stormwater Management Manual for the Puget Sound Basin and the current Department of Ecology National Pollutant Discharge Elimination System (NPDES).

45. Street lighting shall be required on all streets and roads within the development. Prior to lighting installation, the Applicant shall submit a detailed lighting plan that depicts continuous street illumination throughout the PUD, to the City Engineer, for review and approval, pursuant to SMC 16.10.120(B)(4)(a). All lighting shall be shielded so that it reflects away from critical areas, the single-family residences, and neighboring properties.
46. Street lighting shall be maintained by the Applicant, its successor(s) or assigns. A maintenance agreement shall be prepared and recorded with the Final Plat, subject to the approval of the City Engineer.
47. The applicant shall have a Registered Professional Engineer prepare and/or supervise the preparation of, and place his/her professional seal on the "as-built" civil drawings to be reviewed, approved and signed by the City Engineer upon satisfactory installation of the required public street and utility improvements. One (1) reproducible, one (1) signed blueline drawing, one (1) 11"x17" reduced copy, and one (1) electronic copy in CAD format of the drawings shall be submitted prior to final approval of the proposed project.
48. All construction equipment, building materials and debris shall be stored on the applicant's property, out of the public right-of-way. In no case shall the access to any private or public property be blocked or impinged upon without prior consent from the affected property owners and the City of Sultan.
49. If at anytime during clearing, grading and construction the streets are not kept clean and clear, all work will stop until the streets are cleaned and maintained in a manner acceptable to the City Engineer.
50. A traffic control plan shall be prepared by the applicant and approved by the City's City Engineer prior to issuance of any permits. The plan shall describe temporary traffic controls in accordance with the Design Standards and Specifications and the US Department of Transportation document "Manual on Uniform Control Devices".

#### **Fire**

51. All requirements of the adopted Uniform Fire Code shall be adhered to during construction and completed before occupancy of any structure.
52. One (1) blue, square (Type II) raised grade or permanent marker shall be installed in the roadway to indicate each fire hydrant location. It shall be placed directly across from the hydrant location, off set one (1) foot from the roadway center toward the hydrant.
53. An access route, for fire fighting apparatus, must be provided at the start of construction. Minimum access route requirements include a 20' width, 13'6" vertical height clearance, and the ability to support a load up to 68,000 pounds.
54. Fire hydrants are to be located in accordance with the Uniform Fire Code as adopted by the City and meet the Fire Department standards with regards to distances from structures.
55. Any structure setback from the public way or on private roads shall have their addresses posted as to be visible on the public way, or posted at the intersection of the driveway, or private road, and the public way off of which they are addressed.
56. Fire hydrant locations shall be designated and shown on the plat engineering plans.

57. The Applicant shall demonstrate sufficient water flow from the proposed fire hydrants for review and approval by the City Engineer and Fire District prior to the issuance of permits.

### **Utilities**

58. All water service improvements shall be installed prior to Final Plat approval and required easements shall be provided, in accordance with the City of Sultan standards. Construction and materials shall conform to the City of Sultan 2004 Water and Sewer Engineering Standards. All easements shall be shown on the face of the Final Plat map. Written verification stating that all required improvements have been installed, including water service stubbed to each lot, shall be submitted with application for Final Plat.
59. All waste water improvements shall be installed prior to Final Plat approval and required easements shall be provided, in accordance with City of Sultan standards. Construction and materials shall conform to the City of Sultan 2004 Water and Sewer Engineering Standards. All easements shall be shown on the face of the Final Plat map. Written verification stating that all required improvements have been installed, including waste water service stubbed to each lot, shall be submitted with application for Final Plat.
60. The cost of any work, new or upgrade, to the existing electric system and facilities that is required to connect the project to the Snohomish County PUD electric system shall be in accordance with applicable Snohomish County PUD policies. Written verification stating that all required improvements have been installed, including power service stubbed to each lot, shall be submitted with application for Final Plat.
61. All utilities shall be placed underground unless otherwise approved by the City Engineer.
62. The applicant shall relocate any utilities affected by the construction of the subdivision improvements at no cost to the City of Sultan.
63. Puget Sound Energy is the natural gas provider in this area. To initiate new service orders, contact Puget Sound Energy at 1-888-Call-PSE (225-5773) at least four (4) months prior to the required service date. Any relocation of existing gas facilities for this development will be at the developer's sole expense, and require 90 days minimum notice.

### **Environmental**

64. All phases of plat development, including drainage and earthwork construction shall be in accordance with the geotechnical reports prepared for the project, including the Earth Solutions NW, LLC report dated November 27, 2006 and the Terra Associates, Inc. report dated July 27, 2005; as well as any subsequent addendums as accepted by the City Engineer. A note to this effect shall be placed on the final Plat.
65. Special attention shall be paid to the following geotechnical recommendations recommendations, which shall be noted on the approved Civil Plans:
  - The following recommendations are from the Earth Solutions NW, LLC report dated November 27, 2006.
    - a. All grading activity will take place between April 1 and October 1.
  - The following recommendations are from the Terra Associates, Inc. report dated July 27, 2005.

- a. CBR and soil cement strength tests will be conducted on the subgrade.
  - b. A review of the final grading and stormwater detention system will be conducted and an addendum submitted prior to the approval of permits.
  - c. The erosion control BMP's noted in the geotechnical report shall become apart of the TESC plan submitted for permits.
  - d. The single-family residences will employ Class C construction techniques.
  - e. Removal of twelve (12) to thirty-six (36) inches of surficial fill will be required for house construction.
  - f. A geotechnical engineer shall be on-site during excavation, and shall provide any necessary recommendations to the City prior to any fill or house construction.
  - g. Use of wet soil is prohibited. All wet soil must be aerated under the supervision of a geotechnical engineer in accordance with the recommendations of the geotechnical report.
  - h. Tests of all fill materials will be completed by a geotechnical engineer as required by the report.
  - i. Foundations shall be placed a minimum of eighteen (18) inches below the final finished grade. A written confirmation of the appropriate depth shall be provided prior to foundation approval from a geotechnical engineer.
  - j. The foundation and slab-on-grade recommendations shall be adhered to.
  - k. The recommendations regarding pavement and tests shall be completed under the supervision of a geotechnical engineer.
66. Prior to permit issuance, a final geotechnical report shall be submitted with recommendations on the final design of the plat improvements. The final report shall also state which lots require a separate report to be submitted with building permit application. The required note on the Final Plat under the above condition shall reference the final geotechnical report, and any subsequent addendums as accepted by the City Engineer.
67. A geotechnical addendum shall be submitted with each house design at the time of building permit submittal for those lots that are subject to the requirement. The geotechnical addendum shall address foundations, setbacks, drainage control and any other issues deemed pertinent by the geotechnical engineer or the City Engineer. A note to this effect shall be placed on the face of the Final Plat, stating which lots are subject to this requirement.
68. All phases of plat development shall be in accordance with the critical area study and mitigation plans prepared for the project by the Jay Group, Inc. revised December 4, 2006, and any subsequent reports as accepted by the Community Development Director.
69. The critical areas study states that invasive species removal will be undertaken within the wetland buffer by mechanical means. All removal of invasive species shall be done using only handheld equipment. The Community Development Director and City Engineer may approve mechanical equipment under the supervision of a qualified professional. No equipment may be used within any wetland.

70. All Native Growth Protection Areas (NGPA) shall be shown on the development site plans and Final Plat map, and a note shall be attached as follows: "There shall be no clearing, excavation, or fill within a Native Growth Protection Area shown on the face of this site plan/plat, with the exception of required utility installation, removal of dangerous trees, topping of trees, thinning of woodlands for the benefit of the woodlands as approved by the building official, and removal of obstructions on drainage".
71. An easement shall be established allowing the City to access that portion of Wetland DT remaining on the subject property, as identified in the Critical Area Report and Plat maps, for mitigation and maintenance purposes, prior to Final Plat approval.
72. A temporary sign shall be placed every fifty (50) feet at the boundary of all Native Growth Protection Areas during periods of construction, clearing, grading or excavation on adjacent property. The sign shall describe the limitations on site disturbance and development within the Native Growth Protection Area. A permanent sign shall be placed at the boundary of all Native Growth Protection Areas describing the limitations on development prior to Final Plat approval.
73. The Applicant shall comply with the current National Pollution Discharges Elimination System (NPDES) requirements for site disturbances in excess of one (1) acre as regulated by the Washington State Department of Ecology. A copy of the permit shall be submitted to the City prior to permit issuance.
74. If applicable, the Applicant shall obtain a Forest Practices Application (FPA) permit from the Department of Natural Resources (DNR) for commercial resale and hauling of merchantable timber. A copy of the permit shall be submitted to the City prior to permit issuance.
75. The conditions recommended by Graham-Bunting Associates, dated March 19, 2007, regarding the wetland and buffer mitigation shall be followed.
76. A final mitigation plan shall be submitted to the City's Community Development Department for review and approval prior to issuance of any plat development permits. All plantings shall be installed in accordance with the approved mitigation plan. All plantings shall be installed by the applicant, inspected, and approved by the City of Sultan prior to Final Plat approval. Minor modifications of the mitigation plans submitted may be approved by the Community Development Director if the modifications do not change the findings of fact or the conditions of approval.
77. The final mitigation plan shall be submitted with the following revisions:
  - a. A split rail fence shall be installed on all reduced buffers and adjacent to proposed lots and active open space areas. The fence shall allow for the movement of wildlife in and out of the wetlands and shall protect the critical areas and the newly installed plans from human impacts. The design and location of the fence is subject to the approval of the Community Development Director.
  - b. Increased buffer plantings shall be shown on the north side of Wetland AA to increase the functions and values of that wetland, as it is being used as a mitigation to reduce buffers on the other wetlands and for the wetland fill.

- c. Show that species compatible with the stormdrainage system will be planted within Tracts 986 and 987.
  - d. All trails shown within wetland buffers shall demonstrate compliance with the requirements of SMC 16.80.080.
78. A Time-Zero/As-Built mitigation planting plan report shall be submitted to the City with Final Plat submittal.
79. The mitigation plantings shall be monitored annually for three (3) years. A monitoring report shall be submitted to the City each year on the anniversary of the completion approval of the mitigation plantings. Success of the mitigation plan will depend on adherence to the minimum standards below, the detailed goals in the mitigation report, and the proposed Contingency Plan:
- a. 100% replacement/survival of plants after Year 1
  - b. Minimum 80% survival at end of Year 2
  - c. Minimum 80% survival at end of Year 3.
  - d. Adherence to the proposed Contingency Plan if 80% is not reached.
80. As part of the proposed Covenants, Conditions and Restrictions of the Homeowners Association shall address the potential increase of litter or garbage in the critical areas. Maintenance for these areas shall be the responsibility of the Homeowners Association after the monitoring period.

### **Landscaping and Recreation**

81. Per the City of Sultan Design Standards and Specifications, street trees are required every twenty (20) lineal feet on the interior local access roads and on Sultan Basin Road; and every fifty (50) lineal feet on 132<sup>nd</sup> Street SE. If the twenty (20) lineal foot spacing requirements cannot be met, the location of the street trees will be field located as approved by the Community Development Director and City Engineer.
82. The species for the street trees shall be subject to the approval of the City Engineer and Community Development Director.
83. All phases of plat development shall be in accordance with the Vegetation Inventory and Plant Preservation Management Plan prepared the Jay Group, Inc. revised August 4, 2005, and any subsequent reports as accepted by the Community Development Director.
84. A final landscaping plan for the recreation areas, the trees to be planted on the lots, street trees, and the required buffer enhancement shall be submitted, reviewed and approved prior to issuance of permits. The landscaping shall be installed in accordance with the approved landscaping plan and shall be subject the following.
85. All landscaping shall be maintained in healthy growing condition. A final landscape inspection will be performed at the end of the two (2)-year period and any dead, dying or diseased plant material shall be replaced.
86. The landscaping shall be installed in accordance with the approved landscaping plan. Minor modifications of the landscaping plans submitted may be approved by the

Community Development Director if the modifications do not change the Findings of Fact or the Conditions of Approval.

87. The following revisions to the Recreation Plan shall be made prior to permit issuance:
- a. Correct square footages that also match the square footages shown on the plat maps and on the civil plans.
  - b. Delineate between the general open space areas and those areas that will be designated recreation areas.
  - c. Recalculate the open space areas to include the bus turnaround adjacent to Road F.
  - d. Demonstrate that the open space requirements per SMC 16.10.140 have been met. This includes twenty (20) percent of open space for the property, plus fifteen (15) percent usable open space as defined in the Code.
  - e. Provide ADA access to a minimum of twenty-five (25) percent of the recreation areas (SMC 16.72.040(I)).
  - f. Provide a landscaping plan for each of the recreation areas, per SMC 16.72.040. The landscaping for these areas shall meet the requirements of SMC 16.72.040, Recreation Design Requirements. At a minimum, there shall be a ten (10) foot landscaped perimeter and protective fencing a minimum of four (4) feet in height. All fences require a separate permit under SMC 15.08. This landscaping plan is subject to the approval of the Community Development Director and City Engineer.
  - g. Provide details for the recreation area equipment and amenities.
  - h. Specified the construction details for the trail. Per the pre-application meeting, a five (5) foot wide path made of 5/8 inch minus gravel is required.
  - i. A pedestrian path is required to be installed within the Plat, in conformance with the 2004 Comprehensive Plan. This trail shall be installed as shown on the approved plans, and shall connect through the property dedicated to the City (Parcel C) through the Boundary Line Adjustment process to the south, at no cost to the City.
  - j. Per SMC 16.72.040(J), all recreation areas and facilities and equipment provided and constructed shall meet the minimum requirements of the Consumer Product Safety Guidelines for Public Playgrounds and the American Society for Testing and Materials F1487.
88. The following revisions to the Residential Landscaping Plan shall be made prior to permit issuance:
- a. Seventy-seven (77) trees are required to be planted on the lots, in accordance with SMC 16.104.090. Five different species are required, with a minimum height of seven (7) feet and minimum caliper of 1.5. The trees planted must have a mature crown spread of ten (10) feet minimum. In addition, the trees selected should be native species or species adaptive to the vicinity. A tree planting plan is required, showing the location and types of trees that will be planted on the lots. A preliminary tree planting plan shall be submitted, reviewed and approved prior to permit issuance, and a final tree planting plan shall be submitted, reviewed and approved prior to Final Plat approval.

- b. If the requirement to plant the trees is deferred until building permit submittal or after home construction, a performance bond in the amount of 125% will be required for the required trees.
- c. A reference to the approved tree replanting plan will be added as a note on the face of the Final Plat. All trees planted must be alive one (1) year occupancy is obtained for each single-family residence.

#### **Fees**

89. The latecomers fee due under the Bethany Terrace Ordinance shall be due prior to permit issuance
90. The Applicant shall maintain the landscaping, open space improvements, drainage facilities, private streets and other common areas within the site for a two (2) year period following acceptance of installation by the City of Sultan. Such maintenance shall be secured with a surety filed with the City. Subsequent to the two (2) year period, maintenance responsibility shall be passed to the Homeowners Association. The proposed Covenants, Conditions and Restrictions of the Homeowners Association shall address maintenance of the landscaping, open space improvements, drainage facilities, private streets and other common areas.
91. The applicant shall submit an acceptable warranty surety to warrant all required public improvements, installed, against defects in labor and materials for a period of 24 months after acceptance of those improvements by the City. The warranty amount shall be equal to twenty-five (25) percent of the costs of the improvements, as determined by the City Engineer. The surety shall be submitted to and approved by the City of Sultan and executed prior to Final Plat approval.
92. All work performed within City right-of-way shall require a performance surety in the amount of 125% of estimated construction cost. The surety shall be submitted to and approved by the City of Sultan and executed before issuance of any permits.
93. The applicant shall pay recreation facility impact mitigation fees or other forms of negotiated impact mitigation directly to the City of Sultan in accordance with SMC 16.112.030 or similar requirements associated with the Growth Management Act. Payment of the recreation facility impact mitigation shall be made to the City prior to permit issuance. The total fee or mitigation amount shall be based on the mitigation fee established in SMC 16.112.030 in effect at the time of fee payment. When payment is deferred to building permit issuance, a note to this effect shall be affixed to the face of the Final Plat map.
94. The applicant shall pay school impact mitigation fees or other forms of negotiated impact mitigation directly to the City of Sultan in accordance with SMC 16.116 or similar requirements associated with the Growth Management Act. Payment of the school impact mitigation shall be made to the City of Sultan prior to permit issuance. The amount of the fee due shall be based on the fee schedule in effect at the time of permit application. When deferred to building permit issuance, a note to this effect shall be affixed to the face of the Final Plat map.
95. The applicant shall pay traffic impact mitigation fees or other forms of negotiated impact mitigation directly to the City of Sultan in accordance with SMC 16.112.040 or similar

requirements associated with the Growth Management Act. Payment of the traffic impact mitigation shall be made to the City prior to permit issuance. The total fee or mitigation amount shall be based on the mitigation fee established in SMC 16.112.040 in effect at the time of fee payment. When payment is deferred to building permit issuance, a note to this effect shall be affixed to the face of the Final Plat map.

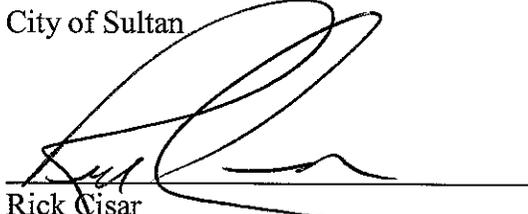
96. The development is subject to traffic mitigation measures as assessed by the Washington State Department of Transportation (WSDOT) for impacts upon the State Highway System. The pro-rata share payment for the US 2 and 5th Street, US-2/Sultan Basin Road, and Sultan WCL, West Bound Passing Lane projects as determined by WSDOT shall be paid directly to WSDOT and verification of that payment shall be provided to the City prior to issuance of City permits.
97. The applicant shall be required to provide a fee to the Community Development Department for the amount established by the City's most recent fee schedule for plan review and inspection costs.
98. A deposit shall be required for the Final Plat processing per Resolution 06-20 for any legal/consultant fees incurred by the City in processing the application. Direct costs for larger projects vary; therefore the City Attorney will provide and estimate for the review of the project. The applicant shall provide an additional deposit as determined by the Community Development Department if the actual cost of the work performed exceeds the initial deposit. The city shall refund any unused monies at the time of recording.
99. The applicant shall submit an acceptable warranty surety to warrant all mitigation plantings for a period that matches the three (3) year monitoring period. The warranty amount shall be equal to twenty-five (25) percent of the costs of the improvements, as determined by the Community Development Director. The surety shall be submitted to and approved by the City of Sultan and executed prior to Final Plat approval.
100. A deposit shall be submitted prior to Final Plat approval with submittal for sureties to cover the estimated City's costs to review the yearly monitoring reports and conduct a site inspection to ensure the performance standards are being met. The applicant shall pay the actual costs to review the reports and conduct inspections. The amount of the deposit shall be based on the hourly fee of the Community Development Director, and shall be calculated at the time the deposit is put into place.

#### **Other**

101. Prior to permit issuance for plat development, the easement recorded under AFN 9711070477 shall be vacated, and new plans and a new title report shall be submitted to the City showing this easement removed. If this easement cannot be vacated, new plat and civil drawings shall show no buildable area within this easement.
102. Preliminary Plat approval shall be effective for a maximum time period of five (5) years from the date of City Council approval, upon which a Final Plat that meets all conditions of the Preliminary Plat approval must be submitted, in accordance with SMC 16.10.150.
103. The applicant shall apply to the Snohomish County Auditor at 3000 Rockefeller Avenue, Everett, WA 98201-4060 for a plat name reservation certificate and furnish the City with a copy of the approved reservation certificate at the time of Final Plat submittal.

104. If applicable, at the time of Final Plat submittal the applicant shall submit a group mailbox plan, approved by the U.S. Post Office, to the Community Development Department for final addressing. Contact: Manager, Delivery and Construction, U.S. Post Office, (206) 422-2420.
105. All contractors and subcontractors working on the project described herein shall obtain a business license from the City prior to initiation of any site work.
106. In accordance with SMC 16.28.340, the Applicant shall prepare a Developer Agreement subject to approval of the City. The agreement shall specify the requirements for construction of all infrastructure improvements, including plan submittals, inspections, bonding, private improvements, right-of-way improvements and facilities associated with the PUD, including improvements to all common areas. Site construction drawings shall be designed consistent with the conditions of approval. Site work shall not begin until City approval of the Developer Agreement has been obtained.
107. In order to maintain an acceptable Level of Service (LOS) for Police Services, the Applicant shall provide a Development Agreement to guarantee the LOS for Police Services.
108. If a model home is proposed to be constructed prior to Final Plat approval, all requirements of SMC 16.28.395 shall be met.
109. All fences shall require a separate permit subject to the requirements of SMC 15.08.
110. Construction noise is not allowed between the hours of ten (10) p.m. to seven (7) a.m. on weekdays, and ten (10) p.m. to nine (9) a.m. on weekends.
111. The applicant, contractor, and any geotechnical or wetland specialist required to be on-site during construction, shall attend a pre-construction meeting with City staff to discuss expectations and limitations of the project permit before starting the project.
112. The location of any signs on approved plans is for illustrative purposes only. Pursuant to SMC Title 22, a sign permit must be obtained for the placement of any non-exempt signage. Application for that sign permit shall include an approved site plan specifying the location of all signs.

City of Sultan

  
Rick Cisar  
Director of Community Development

8-27-07  
Date

- A.** Location Map
- B.** Preliminary Plat Map, submitted June 12, 2007
- C.** Application & Project Narrative (Original Binder Section B)
- D.** Water and Sewer Availability Letters, dated December 13, 2006
- E.** DNS and SEPA Checklist
- F.** Critical Area Reports & Conceptual Mitigation Plan revised December 4, 2006 (Original Binder Section J)
- G.** Vegetation Inventory and Plant Preservation Management Plan dated August 4, 2005 (Original Binder Section K)
- H.** Preliminary Drainage Report dated December 6, 2006 (Original Binder Section I)
- I.** Preliminary Geotechnical Report dated July 27, 2005 and reviewed November 27, 2006 (Original Binder Section M)
- J.** Traffic Report, dated July 22, 2005 and revised November 28, 2006 (Original Binder Section L)
- K.** Level of Service Agreement for Police, dated July 17, 2007
- L.** Design Variance Request

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HEARING EXAMINER FOR THE CITY OF SULTAN

In Re: GREENS ESTATES PUD AND  
PRELIMINARY PLAT APPLICATION

FPPUD05-001

SULTAN 144 LLC'S APPEAL OF THE  
HEARING EXAMINER'S DENIAL OF  
MOTION FOR RECONSIDERATION

**I. RELIEF REQUESTED**

Applicant, Sultan 144 LLC ("Sultan 144"), respectfully requests that Council reverse the Examiner's recommendation of denial of the Greens Estates PUD based on proximity to transit, as set forth in the Examiner's September 19, 2007 Decision ("HE Decision") and October 4, 2007 Order Denying Request for Reconsideration ("Order").

Specifically, Sultan 144 requests:

1. That the Council find that the requirements of SMC 16.10.110(B)(2)(d) are met based on the Green Estates' proximity to transit, which is virtually identical to the proximity to transit for the Skoglund Estates project that was previously approved by the Council on June 29, 2006, in Resolution No. 06-09A.

APPEAL OF HEARING EXAMINER'S  
PUD DECISION - 1

FOSTER PEPPER PLLC  
1111 THIRD AVENUE, SUITE 3400  
SEATTLE, WASHINGTON 98101-3299  
206-447-4400

Exhibit 3

1 **II. EVIDENCE RELIED UPON**

2 This Motion relies upon the Declaration of Mark Villwock, P.E. and the exhibits  
3 attached thereto that were provided to the Examiner with Sultan 144's Motion for  
4 Reconsideration.

5 **III. ANALYSIS**

6 Appeals of the Examiner's decision are authorized pursuant to SMC 2.26.140.

7 **A. The Greens Estates Project Complies With The Sultan City Council's Prior**  
8 **Interpretation of SMC 16.10.110(B)(2)(d).**

9 The Examiner's decision that the Greens Estates project did not have "sufficient  
10 proximity" to "facilitate transit access" was based on a finding that the site was more than a  
11 mile from the nearest transit stop on SR 2. HE Decision Finding 10(D); Conclusions 4-7.

12 Based on GIS measurement, the Greens Estates is located 0.992 miles from the SR2  
13 Park-n-Ride. This distance is virtually identical to the distance between the Skoglund Estates  
14 project and the SR-2 Park-n-Ride, which is 0.994 miles as determined by a GIS measurement.  
15 Villwock Declaration ¶¶4-5 and Exhibits 1 and 2 attached thereto.

16 The Examiner had no rationale basis for denying the Greens Estates Project for  
17 noncompliance with SMC 16.10.110(B)(2)(d), given that the distance is actually slightly less  
18 than that for the Skoglund Estates project, which was approved by the Council as being  
19 sufficiently proximate to transit. In short, the Examiner should have followed the Council's  
20 previous interpretation of SMC 16.10.110(B)(2)(d) and treat like-situated projects similarly.  
21 *Castle Homes and Development, Inc. v. City of Brier*, 76 Wn.App. 95, 882 P.2d 1172 (1994)  
22 (Hearing Examiner erred in disregarding Council's mandate).

23 In approving Skoglund Estates, the Council found that the proximity requirement was  
24 met:

25 18. Community Transit Routes 270, 271, and 271 [sic] service the Sultan Park &  
26 Ride on Use 2 east of 10<sup>th</sup> Street approximately 1.0 mile from the site. Service is  
provided through the City and to and from Everett via Snohomish and Monroe.





1 SMC 16.10.110(B)(2)(f) provides:

2 The PUD-SF is located with respect to schools, parks, playgrounds, and other  
3 public facilities *such that the PUD will have access to these facilities in the*  
4 *same degree as would development in a form generally permitted by the*  
*underlying zoning in the area.* (Emphasis added).

5 When read together, the requirements of SMC 16.10.110(B)(2)(d), 16.10.110(B)(2)(f),  
6 and 16.10.120(B)(4)(c) evidence an intent for PUD-SFs to 1) make access to transit easier than  
7 it otherwise might be under the requirements of the underlying zone; 2) install bus stops unless  
8 inconsistent with transit plans; and 3) have access to public facilities in a manner that would be  
9 similar to that of a development in the underlying zone. The requirement to facilitate transit  
10 access must be read reasonably and take into consideration the realities of transit availability in  
11 Sultan. That reality is that 1) there is no bus route currently serving Sultan Basin Road; 2) no  
12 bus route will be implemented until there is sufficient population on Sultan Basin Road to  
13 support it; and 3) currently the closest transit stop to the Greens Estates project is a parking lot  
14 for a Park-n-Ride, which means people will likely be driving there, not walking.

15 **C. The Examiner's Interpretation of SMC 16.10.110(B)(2)(d) Violates**  
16 **Constitutional Rights of Substantive Due Process and Equal Protection And**  
**Renders The Ordinance Unconstitutionally Vague.**

17 **1. The Examiner's Interpretation of SMC 16.10.110(B)(2)(d) Renders The**  
18 **Regulation Unconstitutionally Vague.**

19 *Anderson v. Issaquah*, 70 Wn. App. 64, 851 P.2d 744 (1993), establishes when a land  
20 use ordinance should be declared void for vagueness.<sup>3</sup>

21 [A] statute which either forbids or requires the doing of an act in terms so vague  
22 that men of common intelligence must necessarily guess at its meaning and differ  
as to its application, violates the first essential of due process of law. ...

23 In the area of land use, a court looks not only at the face of the ordinance but also  
24 at its application to the person who has sought to comply with the ordinance  
25 and/or who is alleged to have failed to comply. ... The purpose of the void for  
vagueness doctrine is to limit arbitrary and discretionary enforcements of the  
law. ...

26 <sup>3</sup> See also, *Burien Bark Supply v. King County*, 106 Wn.2d 868, 725 P.2d 994 (1986).

1 *Anderson v. Issaquah*, at 75 (internal citations omitted).

2 Here, it is clear that no one can determine what distance away from transit constitutes  
3 “sufficient proximity.” City staff and the City Council apparently agree that one mile is  
4 sufficiently proximate, whereas the Examiner believes that three-fifths of a mile is a better  
5 number. This type of guesswork is precisely what is prohibited by *Anderson v. Issaquah*.  
6 Additionally, it is arbitrary to deny a project that is actually 0.002 miles closer to the transit stop  
7 than a project that has been approved.

8 In his Order, the Examiner candidly acknowledges that he is shooting in the dark with  
9 his interpretation—noting that he “did his best” but that “the SMC needs measurable standards  
10 to determine compliance with the criteria.” Order p. 3. The Examiner concluded that he  
11 “sincerely hopes that the Council will establish a quantifiable measure by which compliance  
12 with SMC 16.10.110(B)(2)(d) may be determined. . . .”

13 Council has established 1.0 mile as a quantifiable measure for compliance. This  
14 measure requires approval of the Greens Estates PUD.

15 **2. The Examiner’s Interpretation of SMC 16.10.110(B)(2)(d) Violates**  
16 **Substantive Due Process.**

17 “Due process requires governments to treat citizens in a fundamentally fair manner.”  
18 *Valley View Industrial Park v. City of Redmond*, 107 Wn.2d 621, 636, 733 P.2d 182 (1987).  
19 In *Presbytery of Seattle v. King County*, the Washington Supreme Court explained the  
20 substantive due process doctrine as follows:

21 To determine whether the regulation violates [substantive] due process, the court  
22 should engage in the classic 3-prong due process test and ask: (1) whether the  
23 regulation is aimed at achieving a legitimate public purpose; (2) whether it uses  
24 means that are reasonably necessary to achieve that purpose; and (3) whether it is  
25 unduly oppressive on the land owner. “In other words, 1) there must be a public  
26 problem or ‘evil,’ 2) the regulation must tend to solve this problem, and 3) the  
regulation must not be ‘unduly oppressive’ upon the person regulated.” The  
third inquiry will usually be the difficult and determinative one.

The “unduly oppressive” inquiry lodges wide discretion in the court and implies  
a balancing of the public’s interest against those of the regulated landowner. We  
have suggested several factors for the court to consider to assist it in determining

1 whether a regulation is overly oppressive, namely: the nature of the harm sought  
2 to be avoided; the availability and effectiveness of less drastic protective  
measures; and the economic loss suffered by the property owner. ...

3 If the regulation is not aimed at a legitimate public purpose, or uses a means  
4 which does not tend to achieve it, or if it unduly oppresses the landowner, then  
5 the ordinance will be struck down as violative of due process and the remedy is  
invalidation of the regulation. No compensation (which properly belongs with a  
"taking" analysis) is warranted in the face of a due process violation.

6 *Presbytery of Seattle v. King County*, 114 Wn.2d 320, 330-332, 787 P.2d 907 (1990) (internal  
7 citations omitted).

8 The Examiner's interpretation of SMC 16.10.110(B)(2)(d) does not foster a legitimate  
9 public purpose. While it may be a laudable public goal to provide access to public  
10 transportation, it is unfair to thwart a development merely because the property is located on a  
11 road that is currently not served by public transportation, when there is no Code provision that  
12 requires this result. It is also unfair to draw an arbitrary line for where PUDs will be allowed in  
13 Sultan when no such line is provided for in the Code.

14 The Examiner's interpretation is unduly oppressive. A regulation is unduly oppressive,  
15 in violation of the third prong of substantive due process, when it is more burdensome than  
16 necessary to serve its purpose.

17 Here, a property-owner cannot move the land to another location. There is no indication  
18 in the Code that the Council ever intended to exclude all land within the City from PUD  
19 consideration if it was more than three-fifths of a mile from the SR-2 bus stop.

20 Sultan 144 was entitled to rely upon a reasonable interpretation of the City's PUD  
21 regulations, including the staff interpretations for both the Skoglund and Greens projects and the  
22 Council's action approving the Skoglund PUD. As a result, Sultan 144 has millions of dollars  
23 at risk with its Greens Estates development. By prohibiting otherwise permitted development,  
24 the Examiner's interpretation, if adopted by Council, would greatly devalue Sultan 144's  
25 property and other similarly situated properties.



1 In short, it was fundamentally unfair, and a violation of equal protection, for the  
2 Examiner to recommend denial of the Greens Estates project when it presents the same factual  
3 circumstances as the Skoglund Estates project. See also, *Sabin v. Skagit County*, 136 Wn. App.  
4 869, 152 P.3d 1034 (2006) (County could not repeatedly reverse the reasonable interpretation of  
5 its own ordinance).

6 **III. CONCLUSION**

7 For the foregoing reasons, Sultan 144 respectfully requests that the Council reject the  
8 Examiner's recommendation, find that the Greens Estates project is compliant with  
9 SMC 16.10.110(B)(2)(d), and approve the PUD.

10  
11 Respectfully submitted this 12<sup>th</sup> day of October 2007

12  
13 FOSTER PEPPER PLLC

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15 Patrick J. Mullaney, WSBA No. 21982  
16 Attorney for Applicant Sultan 144 LLC

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HEARING EXAMINER FOR THE CITY OF SULTAN

In Re: GREENS ESTATE PUD AND  
PRELIMINARY PLAT APPLICATION

FPPUD05-001

DECLARATION OF MARK  
VILLWOCK, P.E. IN SUPPORT OF  
SULTAN 144 LLC'S MOTION FOR  
RECONSIDERATION

I, MARK VILLWOCK, declare under penalty of perjury and the laws of the State of Washington that the following is true and correct and based upon my own personal knowledge.

1. I am over eighteen years of age and competent to testify in this matter.

2. I am employed as a Project Manager with LDC, Inc. and am a registered professional engineer in the State of Washington. In that capacity, I have been employed on the Greens Estates PUD and Preliminary Plat applications and testified at the recent public hearing on the PUD.

3. Following receipt of the Examiner's decision denying the PUD based upon the proximity to transit criteria (SMC 16.10.110(B)(2)(d)), I calculated the distance from the Greens PUD to the Park-n-Ride bus stop on SR 2 using Graphical Information System ("GIS") software. This program enables very accurate measurements of distance.

DECLARATION OF MARK VILLWOCK - 1

FOSTER PEPPER PLLC  
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SEATTLE, WASHINGTON 98101-3299  
206-447-4400

1           4.     I calculated the distance from the proposed bus stop on the Greens property to  
2 the SR 2 park-n-ride along the alignment of the existing and proposed walkway along Sultan  
3 Basin Road and SR 2. A copy of the walkway exhibit, which was presented at the hearing is  
4 attached as Exhibit 1.

5           5.     This distance is 0.992 miles. Previously, I performed a similar analysis for the  
6 Skoglund PUD. The proximity to transit distance for the Skoglund PUD was 0.994 miles,  
7 which the Sultan City Council, in approving that PUD, concluded was adequate for purposes of  
8 (SMC 16.10.110(B)(2)(d).

9           6.     Attached as Exhibit 2 is a aerial photograph showing the proximity to transit for  
10 both the Skoglund and Greens projects. As can be seen from Exhibit 2, the difference in  
11 distance to the SR 2 park-n-ride is negligible (under 100 feet).

12  
13 EXECUTED at Woodville, Washington this 28 day of September 2007.

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16 \_\_\_\_\_  
17 Mark Villwock, P.E.

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DECLARATION OF MARK VILLWOCK - 2

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1111 THIRD AVENUE, SUITE 3400  
SEATTLE, WASHINGTON 98101-3299  
206-447-4400

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D. Where the examiner's decision is final and conclusive, with right of appeal to court, the procedures for appeal are as set out in the underlying ordinance or statute governing the land use permit or other quasi-judicial hearing. (Ord. 550, 1990)

**2.26.150 Council consideration.**

A. An examiner's decision which has been timely appealed pursuant to SMC 2.26.140 shall come on for council consideration in open public meeting no sooner than 21 nor longer than 35 calendar days from the date the appeal was filed. The council shall consider the matter based upon the record before the examiner, the examiner's decision, the written appeal statement and any written comments received by the council before closure of the city clerk/treasurer's office seven days prior to the public meeting date set for council consideration.

B. At the public meeting, the council may concur with the findings and conclusions of the examiner and affirm the examiner's decision; remand the matter to the examiner for further proceedings in accordance with the council's findings and conclusions; or the council may determine to hear the appeal at public hearing. In those instances in which the council affirms the examiner's decision or remands the matter to the examiner, the council's decision shall be reduced to writing and entered into the record of the proceeding within 15 days of the public meeting. Copies of the decision shall be mailed to all parties of record.

C. In those instances in which the council determines to conduct a public hearing, notice of the hearing shall be given by publication in the city newspaper no less than 10 days prior to the date set for the hearing and written notice shall also be given by the council by mail to all parties of record before the hearing examiner.

D. All council hearings conducted pursuant to this section shall be de novo and shall be limited to those matters raised in the appeal. The council shall consider the appeal based upon the record before the examiner and all written and oral testimony presented at the council hearing. All testimony at any public hearing shall be taken under oath.

E. At the conclusion of the public hearing, the council shall enter its decision which shall set forth the findings and conclusions of the council in support of its decision. The council may adopt any or all of the findings or conclusions of the examiner which support the council's decision. The council may affirm the decision of the examiner, reverse the decision of the examiner either wholly or in

part, or may remand the matter to the examiner for further proceedings in accordance with the council's findings and conclusions.

F. The council's decision shall be reduced to writing and entered into the record of the proceedings within 15 days of the conclusion of the hearing. Copies of the decision shall be mailed to all parties of record. (Ord. 550, 1990)

**2.26.160 Effect of council action.**

The council's decision to affirm an examiner's decision or remand a matter to the examiner pursuant to SMC 2.26.150(B), or the council's decision after public hearing on an appeal, shall be final and conclusive with right of appeal to the Superior Court of Snohomish County by writ of certiorari, writ of prohibition or writ of mandamus within 15 calendar days of the council's decision. The cost of transcription of all records ordered certified by the court for such review shall be borne by the applicant for the writ. (Ord. 550, 1990)

**2.26.180 Local improvement district assessment roll hearings.**

A. As authorized by RCW 35.44.070, the city council hereby provides for delegating, whenever directed by majority vote of the city council, the duty of conducting public hearings for the purpose of considering and making recommendations on final assessment rolls and the individual assessments upon property within local improvement districts to a hearing examiner appointed under this section, and the hearing examiner is directed to conduct such hearings and make those recommendations when thus authorized by the city council.

B. All objections to the confirmation of the assessment roll shall be in writing and identify the property, be signed by the owners and clearly state the grounds of the objection. Objections not made within the time and in the manner prescribed and as required by law shall be conclusively presumed to have been waived.

C. The hearing examiner shall conduct the hearing to be commenced at the time and place designated by the city council, cause an adequate record to be made of the proceedings, and make written findings, conclusions and recommendations to the city council following the completion of such hearings, which may be continued and recontinued as provided by law whenever deemed proper by the hearing examiner, and the city council shall either adopt or reject the recommendations of the hearing examiner.

Exhibit 4

*Note: Accepts recommendation of Hearing Examiner, denies Application, and returns Application to Applicant for modification.*

**CITY OF SULTAN  
Sultan, Washington**

**RESOLUTION NO. 07-33A**

**A RESOLUTION OF THE CITY OF SULTAN ACCEPTING THE HEARING EXAMINER'S RECOMMENDATION AND DENYING THE SULTAN 144, LLC PLANNED UNIT DEVELOPMENT AND SUBDIVISION APPLICATION FOR A 63 LOT PLANNED UNIT DEVELOPMENT (GREENS ESTATES) AND RETURNING THE APPLICATION TO THE APPLICANT FOR MODIFICATION**

**WHEREAS** L43-1 Greens filed an initial application for approval of Greens Estates, a 107-lot Planned Unit Development (PUD) subdivision for single family development;

**WHEREAS** Sultan 144, LLC acquired portions of the property and the pending application and revised the application to seek approval of a 63-lot single-family residential Planned Unit Development (PUD) subdivision;

**WHEREAS** an open record hearing occurred before the City's Hearing Examiner on September 11, 2007 on the revised application, the City Hearing Examiner issued a Recommendation dated September 19, 2007, and the applicant by October 12, 2007 appealed the Recommendation and requested a closed record hearing;

**WHEREAS** the application came before the City Council for a closed record hearing and appeal by the applicant on the "Recommendation" on December 13, 2007;

**WHEREAS** the City Council has determined based upon a review of the open record hearing to accept the Hearing Examiner's Findings of Fact and Conclusions of Law.

**NOW, THEREFORE:**

- A. The City Council accepts the Recommendation of the Hearing Examiner dated September 19, 2007, including the Findings of Fact and Conclusions of Law therein.
- B. The Greens Estates Planned Unit Development is hereby denied and the application is hereby returned to the applicant for modification to meet approval criteria.

**PASSED BY THE** Sultan City Council and **APPROVED** by the Mayor this \_\_\_\_ day  
of \_\_\_\_\_ 2007.

**CITY OF SULTAN**

By \_\_\_\_\_  
Ben Tolson, Mayor

Attest:

By \_\_\_\_\_  
Laura Koenig, City Clerk

By \_\_\_\_\_  
Council Member Flower

By \_\_\_\_\_  
Council Member Champeaux

By \_\_\_\_\_  
Council Member Blair

By \_\_\_\_\_  
Council Member Slawson

By \_\_\_\_\_  
Council Member Boyd

By \_\_\_\_\_  
Council Member Seehuus

By \_\_\_\_\_  
Council Member Wiediger

*Note: Rejects recommendation of Hearing Examiner, accepts Hearing Examiner findings of fact and some conclusions of law, makes other differing conclusions of law, grants application for PUD plat approval.*

**CITY OF SULTAN  
Sultan, Washington**

**RESOLUTION NO. 07-33B**

**A RESOLUTION OF THE CITY OF SULTAN REJECTING THE HEARING EXAMINER'S RECOMMENDATION, MAKING DIFFERING CONCLUSIONS OF LAW AND ACCEPTING THE SULTAN 144, LLC PLANNED UNIT DEVELOPMENT AND SUBDIVISION APPLICATION FOR A 63-LOT PLANNED UNIT DEVELOPMENT (GREENS ESTATES)**

**WHEREAS** L43-1 Greens filed an initial application for approval of Greens Estates, a 107-lot Planned Unit Development (PUD) subdivision for single family development;

**WHEREAS** Sultan 144, LLC acquired portions of the property and the pending application and revised the application to seek approval of a 63 lot single-family residential Planned Unit Development (PUD) subdivision;

**WHEREAS** an open record hearing occurred before the City's Hearing Examiner on September 11 2007 the revised application, the City Hearing Examiner issued a Recommendation dated September 19, 2007, and the applicant by October 12, 2007 appealed the Recommendation and requested a closed record hearing;

**WHEREAS** the application came before the City Council for a closed record hearing and appeal by the applicant on the "Recommendation" on December 13, 2007;

**WHEREAS** the City Council has determined based upon a review of the open record hearing to accept the Hearing Examiner's Findings of Fact and to accept some of the Hearing Examiner's Conclusions of Law and to make certain of its own Conclusions of Law;

**NOW, THEREFORE:**

- A. The City Council rejects the Recommendation of the Hearing Examiner dated September 19, 2007.
- B. The City Council hereby accepts the Hearing Examiner's Findings of Fact.

C. The City Council hereby adopts the Hearing Examiner's Conclusions of Law 1, 3, 9-18, 24-31 and makes its own Conclusions of Law as follows:

Substitute Conclusion of Law 2: As subsequent conclusions will establish, Greens satisfies the location criteria for a PUD, and satisfies right of way width requirements of SMC 16.10.120 (B)(4)(b).

Substitute Conclusions of Law 4 -7: Greens Estates is about one mile from the nearest transit stop, a park and ride, and is generally situated similarly to Skoglund Estates, a PUD which this council has approved. The site fronts and has direct access on Sultan Basin Road. As recorded in the Findings of Fact, the applicant proposes to provide a bus pullout at the southwest corner of the site along Sultan Basin Road. SMC 16.10.110 B (2)(d) requires a PUD to be located such that "Transit is available in sufficient proximity to the site to facilitate transit access to the PUD-SF." This criteria does not require that the PUD be in sufficient proximity to facilitate "residents" in the PUD pedestrian access to a transit site. This criteria requires that "transit" is available in sufficient proximity "to facilitate transit access to the PUD-SF." This site, fronting on Sultan Basin Road achieves this facilitation of transit. Only sites not on a realistic potential transit route must be examined for pedestrian access to determine compliance with this location requirement.

Substitute Conclusion of Law 8: SMC 16.10.120 B allows variance of development standards in a PUD. Here the applicant proposes a conventional street, including sidewalks but proposes that the dedicated right of way be narrower, and that parts of the sidewalks be on private easements, presumably held by a Homeowner's Association. SMC 16.10.120 (B)(4)(b) would allow for a street and sidewalk width narrower than city design standards. Here the applicant proposes full improvements, but with mixed ownership, public ownership via dedication to the street, private ownership of the sidewalk. So long as a proper Homeowner's Association is created, appropriate mechanisms are created for it to levy assessments, it carries appropriate insurance, and the sidewalks are properly signed and posted as private and not municipally owned or maintained, the applicant's proposal achieves the goal of SMC 16.10.120. The Conditions of Approval are hereby modified to include the requirements of this substitute conclusion of law.

D. The Greens Estates Planned Unit Development is hereby approved for a 63-lot planned unit development and subdivision on the conditions as reviewed and revised by the hearing examiner and as further revised by Substitute Conclusion of Law 8 above.

**PASSED BY THE** Sultan City Council and **APPROVED** by the Mayor this \_\_\_\_ day of \_\_\_\_\_ 2007.

**CITY OF SULTAN**

By \_\_\_\_\_  
Ben Tolson, Mayor

Attest:

By \_\_\_\_\_  
Laura Koenig, City Clerk

By \_\_\_\_\_  
Council Member Flower

By \_\_\_\_\_  
Council Member Champeaux

By \_\_\_\_\_  
Council Member Blair

By \_\_\_\_\_  
Council Member Slawson

By \_\_\_\_\_  
Council Member Boyd

By \_\_\_\_\_  
Council Member Seehuus

By \_\_\_\_\_  
Council Member Wiediger