SULTAN CITY COUNCIL

AGENDA ITEM COVER SHEET

ITEM NUMBER **A-6**
Greens Estates Planned Unit Development

DATE: December 13, 2007

SUBJECT:
Conduct a Closed Record and Public Appeal Hearing for the Greens Estate Planned Unit Development to consider an Appeal of a Hearing Examiner's Recommendation

CONTACT PERSON: Rick Cisar, Director of Community Development

ISSUE:
The issue before the City Council is to conduct a Closed Record Hearing and Public Appeal Hearing to consider the Hearing Examiner's Recommendation dated September 19, 2007 (Exhibit 1) for the Greens Estate Planned Unit Development and the Appeal from Sultan 144 LLC (Exhibit 3) in accordance with SMC 2.26.150. (C, D , E, and F) (Exhibit 4).

Two issues raised by the Hearing Examiner are:

1. The Greens Estates project did not have "sufficent proximity" to "facilitate transit access" Hearing Examiner's Decision Finding 10(D) page 8 and Conclusions 4-7 pages 18 and 19.

2. The Hearing Examiner questions compliance with one of the PUD development standards as well. Right-of-way width reduction in a PUD is available where separation of vehicular and pedestrian traffic is proposed and where adequate off-street parking is provided [SMC 16.10.120(B)(4)(b)]. Here, the right-of-way width reduction is not coupled with reduced street sections or off-street parking areas, but rather is offset by a sidewalk easement on each side of the street. What is actually happening, is that Sultan 144 is proposing to construct standard width streets and sidewalks within rights-of-way which are too narrow to contain them. The "left over" parts of the sidewalk are then placed within easements encumbering the front five feet of each frontage lot. The end result is an increased lot yield: With the typical lot in Greens Estates being 50-feet wide, the sidewalk easement design saves the Applicant about 250-square feet for every lot which fronts directly on a street. Those savings equal more than two lots (Conclusion 8, page 19).

This concept does not seem to be what SMC 16.10.120(B)(4)(b) is all about. The Hearing Examiner asks the Council to carefully consider this issue and include within its action a ruling on acceptability of the concept and guidance for its future application. If it is approved here, it will likely reappear in many future applications because of its ability to increase lot yield with no other apparent public benefit or private cost.

STAFF RECOMMENDATION:

Conduct the Closed Record Hearing on the Greens Estate Planned Unit Development and Public Appeal Hearing on the Hearing Examiner's Recommendation and Appeal by Sultan LLC, Inc. of the Hearing Examiner's Decision that the Greens Estates project did not have "sufficent proximity" to "facilitate transit access" Hearing Examiner's Decision Finding 10(D) page 8 and Conclusions 4-,7 pages 18 and 19.

At the conclusion of the Closed Record and Public Appeal Hearing consider under Action Items Resolution Number 07-33A, which accepts the Recommendation of the Hearing Examiner, denies the Application and returns the Application to Applicant for modification; or Resolution 07-33B, which rejects the Recommendation of the Hearing Examiner, accepts Hearing Examiner's finding of fact, some conclusions of law, makes other differing conclusions of law, and grants approval of the Application.

In recent Closed Record/Appeal Hearings, the City Council has closed the Closed Record Hearing and Public Appeal Hearing and directed City Staff to prepare for the next Council Meeting two Resolutions; one supporting the Hearing Recommendation on the application, and a second resolution rejecting the Hearing Examiner's Recommedation and approving the application. However, in this case, the next Meeting of the City Council is scheduled for January 10, 2008. This meeting will not include the current Mayor and some City Councilmembers who participated in the Closed Record Hearing and Public Appeal Hearing on this Application. Therefore, in fairness to the Applicant and the new Mayor and City Councilmembers, City Staff has prepared the two Resolutions for consideration by the Council this evening.

SUMMARY:

The two considerations before the City Council are:

1. Conduct a Closed Recorded Hearing, under SMC16.120.050 and consider the September 19, 2007 Recommendation of the Hearing Examiner to DENY the Planned Unit Development; RETURN Preliminary Subdivision for modification (Recommendation includes revised Conditions of Approval in case the Council disagrees with the reason for denial of the Planned Unit Development) Conditions; and

2. Conduct a Public Appeal Hearing to consider the Appeal of the Hearing Examiner's Decision that the Greens Estates project did not have "sufficent proximity" to "facilitate transit access" in that the site was more than a mile from the nearest transit stop on SR 2.

The actions the City Council may take at the Closed Record Hearing are:

1. Deny the Plannned Unit Development affiming the Recommendation of the Hearing Examiner; or

2. Reject the Hearing Examiner's Recommendation, make new findings and conclusions, and Approve the Application with the revised Conditions of Approval recommended by the Hearing Examiner on Page 31 through 36; or

3. The Council may remand the development back to the Hearing Examiner for further proceedings in accordance with the City's Council's findings and conclusions.

Actions taken by the City Council on the development have been formalized in a Resolution, Numbers 07-33 A and 07-33 B prepared by the City Attorney.

The actions the City Council may take at the Public Appeal Hearing are; (1) to grant, or (2) deny the Appeal.

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 Hearing Examiner which support the Council's decision. The Council may affirm the decision of the Hearing Examiner, reverse the decision of the Hearing Examiner either wholly or in part, or may remand the matter to the Hearing Examiner for further proceedings in accordance with the Council's findings and conclusions.

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.

BACKGROUND:
The Hearing Examiner conducted an Open Record Hearing on September 11, 2007 for the Greens Estate Preliminary Planned Unit Development Subdivision located south of 132nd Street S.E. and ¼ mile east of Sultan Basin Road. The Hearing Examiner's Report and Recommendation, dated September 19, 2007, DENIED the Planned Unit Development; RETURN Preliminary Subdivision for Modification (The Hearing Examiner's Recommendation page 29 of 36, included revised conditions of approval in case the Council disagrees with the reason for denial of the Planned Unit Development). These conditions are as follows:

RECOMMENDED CONDITIONS OF APPROVAL
FPPUD05-001
GREENS ESTATES

The following conditions are offered in the event the Council determines that the proposal complies with all applicable criteria for approval.

This Preliminary Subdivision and Planned Unit Development are subject to compliance with all applicable provisions, requirements, and standards of the Sultan Municipal Code and standards adopted pursuant thereto. The permittee is responsible to obtain all necessary State and Federal permits and approvals required for completion of the project. In addition, development shall comply with the following special conditions:

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 (Exhibit 4Y), subject to and as revised by these Conditions of Approval.

2. The application shall generally comply with the House Plans submitted December 6, 2006. (Exhibit 4S) 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. Prior to issuance of a certificate of occupancy and/or occupancy of any residence within the subdivision, a combination of Developer Agreements and public funds, including additional tax adoptions (such as an increased real estate excise tax and a B & O tax), other funding sources (such as potential developer loans to advance the receipt of payment of needed funds), and monies contributed by the proposed development for its impacts on the LOS, shall put in place the required public services for police concurrent with the development impacts, and provide appropriate strategies for the six years from the time of development to achieve the necessary police LOS as now established or as subsequently revised; or, in the alternative, the police services LOS in existence at the time of final building permit inspections shall be met before approval for occupancy is granted.

4. Prior to approval of the Final 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 and 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.

5. The following notes shall appear on the face of the Final Plat:

Pursuant to 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 (10) feet shall provide a 6-foot fence or 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.

Pursuant to 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.

No direct vehicular access shall be taken from any lot directly to either Sultan Basin Road or 132nd Street SE. All lots abutting either or both such streets shall take all vehicular access from an internal plat street.

Garages whose vehicular door(s) face a street with reduced right-of-way and a sidewalk easement must maintain an 18 foot setback between the back edge of the sidewalk and the near face of the garage. ***NOTE: This condition is appropriate only if the Council determines that reduced width rights-of-way serve the public use and interest in this case.***

6. Proposed Lots 54 and 55 shall be sold as one and treated as a single lot for building purposes until such time as the existing garage on Lot 54 is removed or until such time as a building permit is obtained to build a single-family residence on Lot 54.

7. 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.

8. A drainage easement between the *Greens* Property and *Skoglund* Property to the east will be required to be recorded with the Final Plat.

9. The following revisions shall be made to the Final Plat Map:

The required setbacks shall be shown.
Correct square footages for all lots and tracts shall be shown.
Remove Parcel A from the plat (unless it is shown simply as adjacent property)..
Label those tracts that contain wetlands and wetland buffer as "Native Growth Protection Areas".
The Puget Sound Energy aerial high voltage transmission easement shall be delineated with particularity.

10. 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.

11. 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.

12. 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. ***NOTE: This condition is appropriate only if the Council determines that reduced width rights-of-way serve the public use and interest in this case.***

13. 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.

14. Prior to construction, the Developer shall prepare a final Construction Stormwater Pollution Prevention Plan (SWPPP) for approval by the City Engineer and the Department of Ecology. The Developer shall provide a copy of the Department of Ecology, Construction Stormwater General Permit, issued for this project prior to issuance of City permits.

15. Site development shall follow all recommendations of the final stormwater report.

16. 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 (Exhibit 4M); as well as any subsequent addendums as accepted by the City Engineer. A note to this effect shall be placed on the Final Plat.

17. 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.

18. 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.

19. 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 (Exhibit 4J), and any subsequent reports as accepted by the Community Development Director.

20. 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.

21. A 20-foot wide easement shall be established/dedicated through the Final Plat process allowing the City to access from Road D, for mitigation and maintenance purposes, the property dedication accepted under Resolution No. 07-17 (a.k.a. Wetland DT).

22. The conditions recommended by Graham-Bunting Associates, dated March 19, 2007, regarding the wetland and buffer mitigation shall be followed. (Exhibit 9).

23. The final mitigation plan shall be submitted with the following revisions:
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. 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. Show that species compatible with the storm drainage system will be planted within Tracts 986 and 987. All trails shown within wetland buffers shall demonstrate compliance with the requirements of former SMC 16.80.080.

24. A Time-Zero/As-Built mitigation planting plan report shall be submitted to the City with Final Plat submittal.

25. 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:

100% replacement/survival of plants after Year 1
Minimum 80% survival at end of Year 2
Minimum 80% survival at end of Year 3.
Adherence to the proposed Contingency Plan if 80% is not reached.

26. As part of the proposed Covenants, Conditions, and Restrictions of the Homeowner's 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.

27. 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 (Exhibit 4K), and any subsequent reports as accepted by the Community Development Director.

28. The following revisions to the Recreation Plan shall be made prior to permit issuance:

Correct square footages that also match the square footages shown on the plat maps and on the civil plans.

Delineate between the general open space areas and those areas that will be designated recreation areas.

Recalculate the open space areas to include the bus turnaround adjacent to Road 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.

Provide details for the recreation area equipment and amenities.

Specified the construction details for the trail. Pursuant to the pre-application meeting, a five (5) foot wide path made of 5/8 inch minus gravel is required.

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.

29. The Latecomers Fee due under the Bethany Terrace Ordinance shall be due prior to permit issuance.

30. 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 Sultan WCL West Bound Passing Lane project 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.

31. 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; a major revision to the plat may be necessary.

32. The developer, 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.

DISCUSSION:

Sultan Municipal Code (SMC) Section 2.26.150 requires scheduling an Open Public Meeting for the City Council to consider the Appeal no sooner than 21-days nor longer than 35-calendar days from the date the Appeal was filed. The City Council scheduled this Appeal for an Open Public Meeting on November 8, 2007.

On November 8, 2007 the City Council conducted the Public Meeting on the Appeal and therafter by Motion, set December 13, 2007 at 6:00 p.m. to conduct the Closed Record Hearing and Public Hearing on the Appeal for the Greens Estate Planned Unit Development.

This Section 2.26.150 pre-dates regulatory reform (1995) adopted by State Law which allows one Open Record Hearing in front of the Hearing Examiner and one Closed Record Hearing in front of the City Council. Due to regulatory reform, the only legally defensible action was to consolidate the Appeal with the Hearing Examiner's Recommendation.

State Law prohibits more than two hearings. One of which, must be an Open Record Hearing. The second permitted meeting, may be a Closed Record Hearing.

The Closed Record Hearing Schedule for this evening provides the City Council with the one Closed Record Hearing as permitted by State Law.

Hearing Examiner's Recommendation:

The Recommendation of the Hearing Examiner includes two altenatives:

1. DENY the requested preliminary Planned Unit Development;and RETURN the proposed Preliminary Subdivision for modification, or

2. If the Council concludes that the proposal meets all requirements for approval, then the Hearing Examiner would recommend that approval be SUBJECT TO THE ATTACHED CONDITIONS and NOT be granted unless and until the Applicant has submitted to the Council a written statement from Puget Sound Energy accepting the proposed layout as properly recognizing and preserving its aerial high voltage transmission easement across the property.

The Hearing Examiner's Recommendation is inconsistent with City Council's previous action in approving the Skoglund Estates Preliminary Planned Unit Development on June 29, 2006. The Council, in Resolution No. 06-09A found that the proximity requirement was met:

"Community Transit Routes 270, 271, and 275 service the Sultan Park and Ride on US 2 East of 10th Street, approximately 1.0 mile from the site. Service is provided through the City and to and from Everett via Snohomish and Monroe."

Hearing Examiner's Discussion - Transit Proximity:

4. Finding 10, demonstrates compliance with all locational criteria within SMC 16.10.110(2) except subsection (d), the "transit facilitation" criterion.

5. *Greens Estates* is as far distant from the nearest public transit as is *Skoglund Estates*. Its situation is markedly different from that of *Hammer PUD* or even *Vodnick Lane*. The distance from the southwest corner of the site along SBR south to SR 2 is approximately 0.8 miles; the distance from the new SBR/SR 2 intersection to the existing park and ride lot (which is incorrectly located on Exhibit 11: The location arrow points to the west end of the block while the park and ride is clearly visible at the east end of the block) is an additional 0.24 miles. (Scaled from Exhibit 11) While a crosswalk legally exists at the signalized SBR/SR 2 intersection which will allow safe crossing of SR 2, and while the short bridge on SR 2 between that intersection and the park and ride lot does have raised concrete sidewalks which will allow reasonably safe access across the bridge, the fact remains that the site is more than a mile distant from the nearest transit stop.

Criterion (2)(d) requires more than that a PUD applicant shows that he/she/it has facilitated transit use within the design. Were that all the criterion required, *Greens Estates* would most certainly meet the criterion with its bus pull-out on SBR and bus turnaround capability in Road F.

The "facilitate" clause must be read in context: "Transit is available in sufficient proximity to the site to facilitate transit access to the PUD-SF". (Emphasis added) Under the criterion, it is the "sufficient proximity to the site" of an existing transit route, which facilitates transit access. Putting a transit stop in a subdivision located miles from the nearest transit line would not meet the criterion unless the transit provider were on record agreeing to extend transit to the new subdivision by the time the project developed.

The Council has never explained how a more than one mile walk supposedly facilitates transit usage. As the Examiner has said before, few Americans are likely to walk over a mile just to get to a transit stop. Some may be willing to drive a mile to the park and ride, but if that is the test of compliance with the criterion, then the criterion is meaningless as virtually every bit of Sultan is located within one mile of the park and ride. Had the Council intended that PUD's could be located anywhere in the City, it would not have enacted restrictive location criteria. The enacted criteria must be given meaning.[32]

6. *Hammer PUD* is in a different situation: It has direct frontage on an existing CT bus route: SR 2. *Vodnick Lane's* distance from the park and ride is about one-half that of *Greens Estates*. (See Exhibit 11)

7. The Examiner simply cannot in good conscience conclude that a site more than a mile from the nearest transit stop is sufficiently proximate to transit to facilitate transit usage. The Examiner recognizes that the Council may well disagree, given its prior approval of *Skoglund Estates*. Given that possibility, the Examiner will provide recommendations regarding conditions of approval.

Right-of-Way Width Reductions

The Hearing Examiner questioned the right-of-way width reductions as recommended by the City Engineer and Community Development Director.

The Examiner nevertheless has doubts about the wisdom of the flared panhandles and the reduced width rights-of-way.

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[32] Locational criterion (B)(2)(f) offers an instructive contrast. It was expressly written so as to not limit potential PUD sites: So long as a site has access to public services equal to that of a standard development, the criterion is met. The language of Subsection (B)(2)(f) clearly demonstrates a difference of intent on the part of the Council. It wrote that criterion to be non-limiting while all the others in Subsection (B)(2) are intended to limit.

The SMC requires that every lot abut a street by not less than 20-feet. [SMC 16.150.010(3)] Sultan 144 has met that requirement for its panhandle lots by flaring a 15-foot wide panhandle out to 20-feet where it touches the right-of-way. (Exhibit 4Y) In other words, the panhandle is 20-feet wide only at the precise point of intersection with the street; the side lot lines abutting the panhandle have a "jog" or "dog leg" in them. This is a new concept to this Examiner. [33] The concept is another way to increase yield: A typical 20-foot wide panhandle is reduced to 15-feet for most of its length. Given that most of the panhandles are about 75-feet long, the design "saves" about 350-feet for every panhandle. The 30+ panhandles in the plat "save" the equivalent of about two lots.

A further question is whether the "jog" or "dog leg" in the lot lines will serve the public use and interest. Most people, rightly or wrongly, expect their property lines to be straight-line segments. Since the driveways in these panhandles will likely not be flared to match the property lines, abutting owners may well believe that their property lines run straight to the street. Property line disputes could result and/or the panhandles could end up to be effectively only 15 feet wide all the way to the street. The Examiner asks the Council to carefully consider this issue and include within its action a ruling on acceptability of the concept and guidance for its future application: If it is approved here, it will likely reappear in many future applications because of its ability to increase lot yield with no other apparent public benefit or private cost.

Staff Response:

The use of panhandles are generally used where access to properties is restricted do to the configuration and depth of the property which would not support a public or private street, cul-de-sac, eyebrow, or bubble. The Greens Estates Plat proposes flag lots for Lot Numbers 5, 11, 20, 21, 29, 30, 38, 41, 42, 45, and 46. The potential problem identified by the Examiner could occur on Lots 20, 21, 29, 30, 41, 42, 45, and 46 if driveways within the panhandles are not physically separated by landscaping or fencing. The actual width of driveways within the panhandles is typically 10 to 12-feet wide with landscaping on both sides. The reduction in panhandle width is also used to increase the useable or buildable portion of the lot.

Similar situations occur in the City where private streets as well as driveways abut each other with landscaping and or fencing separating the properties. The flag lot concept has been used in the downtown area to create additional lots/housing in the rear of long narrow pieces of property where public and private streets are not an option.

The flag lots as indicated by the Hearing Examiner, create in this situation, additional lots, and density within the project. However, the concept can create disputes between the property owners unless adequately addressed in the Protective Covenants and administered by the Homeowner's Association. All though contrary to the Hearing Examiner concerns, City Staff supports this design concept in that it creates additional

[33] Sultan 144 testified that a few lots in *Skoglund Estates* also have this configuration. The Examiner does not remember that detail being apparent or drawing any attention during application review.

density and housing within a project that is inundated with wetlands and also crossed in a southeast/north west by 100-foot wide PSE Easement.

The roadway modifications and flag lot designs are examples of how City Staff has implemented the goals of the Planned Unit Development Ordinance which are:

Under Section 16.10.120 (B) (4) (a) and (b) (Exhibit 4), City Staff has been consistent in the application of this Section in their review of recent Plannned Unit Development and the site constraints, surrounding neighborhoods, and critical areas.

For example, the roadway section in the Stratford Place PUD was modified and approved as a 24-foot wide section of pervious concrete. The sidewallk and roadway was defined by using a variation in colors to define the two movements. City Staff determined this roadway design was appropiate for this development, in light of the drainage requirements of the site and the neighborhood support and involvement in the project.

The Timber Ridge PUD road section was modified do to the slope of the site. The roadway was modified to a 48-foot right-of-way with two 12-foot travel lanes, and one parking lane with and the planter strips on the back side of the sidewalks.

With the Hammer PUD and Vodnick Lane PUD's, City Staff maintained a standard 60-foot right-of-way because of their connections to the Sky Harbor and Eagle Ridge Subdivisions. The emergency vehicle access from the Hammer PUD will be constructed as a 12-foot wide section from the top of the slope to the bottom which will be increased to a 24-foot wide roadway with a meadering 5-foot wide sidewalk out to SR 2. These modifications are supported by the slope, stream and wetlands, on the lower portion of site.

The Skoglund Estates Preliminary PUD was approved with the same road section proposed for the Greens Estates PUD. The roadway in question connects the two PUD's and is therefore consistant in design with the adjacent neighborhood. In addition, a portion of 328th Avenue S.E. that crosses a wetland in the development was constructed with 2 travel lanes and no parking to reduce the impacts on the critical areas.

16.10.010 Purpose and Goals of PUD's.

A. The Planned Unit Development (PUD) district is an alternative to conventional land use regulations, combining use, density and site plan considerations into a single process. The PUD is intended to be a zoning map designation, applied to a parcel of land only after a site-specific and project-specific review of proposed land uses, densities and site plan considerations to ensure compliance with the provisions of the adopted Sultan Comprehensive Plan, Development Regulations, the Growth Management Act, specifically RCW 36.70A.090 providing for innovative land use

management techniques, and to ensure compatibility of design with existing, adjacent uses.

B. The PUD district is specifically intended to encourage diversification in the use of land insofar as what is allowed in the relevant sections of the Comprehensive Plan and to allow flexibility in site design in all specified zoning districts with respect to spacing, heights and setbacks of buildings, densities, critical areas, open space, parking, accessory uses, landscaping, and circulation elements; innovation in residential development that results in the availability of adequate affordable housing opportunities for varying income levels; more efficient use of land and energy through smaller utility and circulation networks; pedestrian considerations; and development patterns in harmonious relationships with nearby areas and in consideration and support of the goals and objectives of the comprehensive plan for the City.

C. The PUD chapter is further intended to implement the planned retail center provisions of the Comprehensive Plan, providing the site-specific and project-specific review required by the Comprehensive Plan retail policies prior to locating the planned retail centers as identified in the Comprehensive Plan.

D. Because of the size of sites in proportion to their critical and natural features, the provisions of this chapter provide flexibility in the use of land and the placement and size of buildings in order to better utilize the special features of sites and to obtain a higher quality of development. PUD applicants are motivated to incorporate high levels of amenities, which meet public objectives for protection and preservation of our critical areas, site enhancing natural features, and preservation of open space amenities through the use of bonus density incentives. These will provide for urban densities while encouraging developments which provide a desirable and stable environment in harmony with that of the surrounding areas

Concerns in Modifying Roadway Designs:

1. In some instances, modifications can create Private Roads which become the maintenance responsibility of a Homeowner's Association which may or may not be successful in their efforts.
2. Can develop roads with insufficent parking.
3. Lack of sufficient widths can limit access for emergency and service vehicles.
4. Improper designs could create a road section that lacks adequate separation for pedestrian and vehicle movements.

Concerns with Flag Lots:

1. The flag lots as indicated by the Hearing Examiner, create in this situation, additional lots, and density within the project. However, the concept can create disputes between the property owners.
2. No apparent public benefit of private cost.

Police Concurrency:
The Developer/Applicant agreed during the Open Record Hearing that the Police Services LOS in exsistence at the time of final building permit inspection would be met before approval of occupancy could be granted.

Puget Sound Energy Easement:
The Developer/Applicant will provide a written statement from Puget Sound Energy accepting the proposed layout as properly recognizing and preserving its Aerial High Voltage Transmission Easement across the property. The letter will be provide to the City prior to the December 13, 2007 Meeting.

FISCAL IMPACT:

Project Approval:
The fiscal impact of approving the development will result in approximately $1,607,098.50 in associated building permit, impact fees, and water and sewer facility fees. These fees will be charged for the construction of the 63-homes (approximately $25,509.50 per building permit per unit).

Project Denial:
The fiscal impact of not approving the development will result in a loss of approximately $1,607,098.50 in associated permit, impact, and facility fees.

RECOMMENDED ACTION:
Conduct the Closed Record and Public Appeal Hearing on the Greens Estates Planned Unit Development and Appeal of the Hearing Examiner's decision that the Greens Estates project did not have 'sufficent proximity" to 'facilitate transit access" and thereafter consider under Action Item A-6 of the Agenda the following two Resolutions;

1. Resolution Number 07-33A - Denying the Plannned Unit Development and affiming the Recommendation of the Hearing Examiner and returning the preliminary subdivision for modification; or

2. Resolution Number 07-33B - which rejects the Hearing Examiner's Recommendation, makes new findings and conclusions, and Approves the Application with the revised conditions of approval recommended by the Hearing Examiner on Page 31 through 36. Approval of this Resolution would support the right-of-way modifcations as recommended by City Staff.

COUNCIL ACTION:

DATE:

ATTACHMENTS:

1. Hearing Examiner's Recommendation, dated September 19, 2007
2. City Staff Report, dated August 27, 2007
3. Appeal Notice from Sultan 144 LLC, dated October 12, 2007
4. SMC Code Section 2.26.150 (C, D, E, and F)
5. Resolution 07-33A and 07-33B
6. Greens Estates Preliminary Plat PUD Maps

BEFORE the HEARING EXAMINER of the CITY of SULTAN

RECOMMENDATION

FILE NUMBER:	FPPUD05-001
APPLICANT:	Sultan 144, LLC [1]
TYPE OF CASE:	Preliminary Planned Unit Development subdivision (*Greens Estates*)
STAFF RECOMMENDATION:	Approve subject to conditions
SUMMARY OF RECOMMENDATION:	DENY Planned Unit Development; RETURN preliminary subdivision for modification (Recommendation includes revised conditions of approval in case the Council disagrees with the reason for denial of the Planned Unit Development)
DATE OF RECOMMENDATION:	September 19, 2007

INTRODUCTION

Sultan 144, LLC (Sultan 144), 15 Bellevue Drive, Suite 102, Bellevue, Washington 98005, seeks preliminary approval of *Greens Estates*, a 63 lot single-family residential Planned Unit Development (PUD) subdivision of a 18.06 acre site zoned Low-Moderate Density Residential (LMD).

L43-1 Greens, LLC (The Greens), C/o Barclays North, Inc., 10515 20th Street SE, Suite 100, Everett, Washington 98205, initially filed the application on August 4, 2005, and supplemented that filing with additional materials on September 2, 2005. (Exhibits 3 {Finding 2} and 4B [2]) The application at that time sought approval of a 107 lot single family residential PUD development of 23.88 acres. (Exhibit 3, Finding 1) The Greens challenged the Sultan Department of Community Development's (DCD's) determination that its September 2, 2005, application submittals were incomplete. The Greens' appeal was assigned file number

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1 See Introduction section, below, for an explanation of the change in applicant which occurred prior to hearing.

2 Exhibit citations are provided for the reader's benefit and indicate: 1) The source of a quote or specific fact; and/or 2) The major document(s) upon which a stated fact is based. While the Examiner considers all relevant documents in the record, typically only major documents are cited. The Examiner's Recommendation is based upon all documents in the record.

Exhibit 1

AP05-001. Following an October 19, 2005, appeal hearing, the Sultan Hearing Examiner (Examiner) ruled on October 21, 2005, that the application was complete as of September 2, 2005. [3] (Exhibit 3)

Sometime between October 19, 2005, and December 6, 2006, The Greens transferred all its interest in both the application and the subject property to Sultan 144. Sultan 144 filed a revised application (acreage reduced approximately 5.82 acres and number of lots reduced by 44) on December 6, 2006. (Exhibit 4B. Exhibit 11, Sheet EX-01, depicts the old and the current development configuration.) DCD determined that the revisions did not change the application's "completeness date." (Testimony)

The subject property is located in the southeast quadrant of the Sultan Basin Road (SBR)/132nd Street SE intersection.

The Examiner viewed the subject property on September 11, 2007.

The Examiner held an open record hearing on September 11, 2007. DCD gave notice of the hearing as required by the Sultan Municipal Code (SMC). (Exhibit 12)

The following exhibits were entered into the hearing record during the hearing:

Exhibit 1:	Departmental Staff Report [4]
Exhibit 2:	Location Map
Exhibit 3:	Examiner Decision, AP05-001, October 21, 2005
Exhibit 4:	Application binders (2) containing Exhibits 4A – 4Y. [5]
Exhibit 5:	Revised water availability letter, December 13, 2006
Exhibit 6:	Revised sewer availability letter, December 13, 2006
Exhibit 7:	Determination of Nonsignificance
Exhibit 8:	Developer Agreement to Establish Concurrency, Police Services
Exhibit 9:	Wetland peer review letter by Graham-Bunting, March 19, 2007

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3 *Greens Estates* was not subject to Ordinance No. 884-05, enacted on August 10, 2005, by the Sultan City Council (Council), which imposed "a moratorium … from and after the first day after the effective date of this Ordinance" on PUD applications "[e]xcept for those with issued sewer/water commitment letters and except for those with issued sewer/water commitment letters and have a right to sewer/water connections by preliminary injunction …". [*sic*] On or about August 3, 2005, the Superior Court granted a Preliminary Injunction against the City requiring that it "hold in reserve a total of 114 … sewer and water connections for the Greens property development application." (Exhibit 4O, Order ¶ 3) This application was thus exempted from the moratorium by virtue of the Court Injunction.

4 The exhibit list on page 29 of the Staff Report is incorrect and should not be used.

5 Items 4X and 4Z, although listed in the Table of Contents within the binders, were not submitted and are not part of the hearing record. In fact, Item 4X, Design Variance request, was never officially submitted and is not before the City at this time. (Testimony)

Page numbers top left

Exhibit 10:	Council Resolution No. 07-17, accepting property donation from Sultan 144, August 23, 2007
Exhibit 11:	Applicant's hearing presentation boards (4, reduced scale)
Exhibit 12:	Public hearing notice documentation
Exhibit 13:	Alternative language for recommended Condition 17
Exhibit 14:	Stan Heydrick hearing submittal
Exhibit 15:	Gerry Gibson hearing submittal

The action taken herein and the requirements, limitations and/or conditions recommended for imposition by this recommendation are, to the best of the Examiner's knowledge or belief, only such as are lawful and within the authority of the Examiner to take and recommend pursuant to applicable law and policy.

ISSUES

Does the application meet applicable criteria for preliminary subdivision and preliminary PUD approval? Does the application meet concurrency requirements of Chapter 16.108 SMC? Do the "flared" panhandle lot lines serve the public use and interest? Does the proposed sidewalk easement and reduced right-of-way require special front setback consideration? Does the proposal conflict with an old, underlying Puget Sound Energy (PSE) easement? Does the proposal provide sufficient access and parking to dedicated public open space?

FINDINGS OF FACT

1. *Greens Estates* is a PUD for a detached single-family development of 63 homes. The site is comprised of four parcels, totaling 18.06 acres. The site contained four wetlands and one stream. One wetland has been separated from the subject property through the Boundary Line Adjustment process and was dedicated to and accepted by the City as an open space tract on August 23, 2007. Two existing single-family residences, with associated garages, exist on-site at this time. All existing structures that do not meet the City's development standards will be removed, which includes the existing home on Proposed Lots 1 and 2, and (possibly) the detached garage on Proposed Lot 54. Sultan 144 has stated that the single-family residence on Lot 55 will remain. (Exhibits 1, 4, 10, and 11)

2. The site addresses are 32326, 32400, and 32522 132nd Street SE. The irregularly shaped assemblage of properties is located in the southeast quadrant of the SBR/132nd Street SE intersection, approximately one mile north of U.S. Highway 2 (SR 2). (Exhibits 1 and 11) 132nd Street SE forms the northern boundary of the City in this area. (Official notice)

The site's frontage on 132nd Street SE is interrupted by two exceptions: A relatively small parcel near the intersection and a larger parcel to its east. (The larger parcel was originally included in the application.) Both exceptions contain single family residences. (Exhibits 4Y and 11)

The site is bordered on its east by an undeveloped, wooded parcel and by the *Skoglund Estates*, an approved 48 dwelling unit single-family PUD, site. (Exhibit 11) *Skoglund Estates* is presently under development. Water, sewer, and storm water systems have been installed; street construction will soon commence. (Testimony)

The site is bordered on its south by an acreage parcel bordering SBR and the aforementioned open space tract recently dedicated to the City. (Exhibit 11)

The site is bordered on its west across SBR by a small, small-lot subdivision and acreage property. (Exhibit 11)

Other recent single-family residential developments which lie in close proximity to *Greens Estates* include *Denali Ridge, Sky Harbor Estates, Hammer PUD, Timber Ridge, Vodnick Lane,* and *Cascade Breeze.* (Exhibit 11. All but *Cascade Breeze* are delineated on the second sheet of Exhibit 11. *Cascade Breeze* is located just west of the area labeled "Bethany Terrace". (Official notice))

3. The site generally measures 980 feet by 1,300 feet in its widest area. The site is generally flat, sloping from the northwest to southeast, with the steepest slope being approximately 6%. The site contained four wetlands and a stream before dedication of one wetland to the City. The northern portion of the site is primarily pasture; the southern portion is wooded. The site's soils have a high moisture content; special construction requirements are, therefore, necessary. (Exhibits 4J, 4K, 4M, 4Y, and 11)

   The City's wetland consultant has confirmed the wetland and stream delineations. (Exhibit 9)

4. All but nine of the proposed lots take access from an internal public street system which intersects 132nd Street SE. Three proposed lots will access a short, private road (Tract 980) which will, in turn, access onto the internal public street system. The remaining six lots are located in the northwest corner of the site and will access onto a public cul-de-sac which will access SBR. That cul-de-sac has been designed to provide access to the western portion of the smaller exception parcel along 132nd Street SE. The internal street system has been designed to interconnect with the *Skoglund Estates* street system and to provide stubs for future development of the larger northern exception and the acreage to the south. (Exhibits 4Y and 11)

   The proposed lots range in size from 4,648 square feet (SF) to 8,728 SF and average 5,663 SF. Twelve panhandle lots are proposed (Proposed Lots 5, 11, 20, 21, 29, 30, 38, 41, 42, 45, 46, and 61),

in most of which the panhandle is 15 feet wide but flares to 20 feet at the right-of-way line (to meet the minimum lot frontage requirement).

The wetlands, other than the one dedicated to the City, and their proposed buffers, including the buffer around the northern edge of the wetland parcel dedicated to the City, are to be set aside as private, commonly owned open space. Those areas will total 3.9 acres. In addition, Sultan 144 calculates that 2.72 acres of active open space will be provided within the development. [6] (Exhibits 4Y and 11)

Exhibit 4Y does not depict any public access to the recently dedicated wetland tract. The commonly owned buffer around that tract has about 60 feet of frontage on the west side of the Road D right-of-way. (Exhibit 4Y, Sheet 2 of 14) Sultan 144 verbally offered to provide a 20 foot wide easement across that portion of the buffer to create a public access to the publicly owned tract. (Testimony) No public parking has been proposed specifically associated with the dedicated wetland.

5. PUD provisions allow deviation from normal development standards. [SMC 16.10.120(B)] *Greens Estates* includes relaxation of minimum lot area, setbacks, public street right-of-way width, and on-street parking requirements.

The proposed internal public streets will have a 50 foot right-of-way with a five foot sidewalk easement on each side (except that the two short cul-de-sacs, Roads D and F, will not have sidewalk easements). A standard street section is proposed: two 12-foot travel lanes, two 8-foot parking lanes (only one 8-foot parking lane on the two cul-de-sacs), two 3-foot planter strips, and two 5-foot sidewalks. The sidewalks will extend to within 1.5 feet of the back edge of the easements. (Exhibit 4Y, Sheet 7 of 14) The City Engineer and DCD Director have reviewed and approved this street section and right-of-way width. (Testimony)

The front setback request, as set forth in hearing documents, is for a 20 foot setback, relaxed to 15 feet for porches. (Exhibit 1, p. 5) Setbacks are measured from property lines, not easement lines. [SMC 16.150.190(14)] Therefore, the net minimum front setback from the back edge of the sidewalk would be 16.5 feet, relaxed to 11.5 feet for porches. Sultan 144 offered during the hearing to maintain at least an 18 foot setback between the back edge of any sidewalk and any garage. [7] (Testimony)

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6 Sultan 144 calculates usable open space to be 15.01% of site area; DCD calculates it to be 14.8%. (Exhibit 1, p. 7, and testimony) The SMC requires that 15% of the site be usable open space. [SMC 16.10.140] The difference is *de minimis* at the preliminary approval stage of development: A preliminary plat is only an "approximate drawing" of the proposed subdivision. [SMC 16.150.160(16)] The difference can and must be resolved during review of the final plat.

7 Sultan 144's offer arose after the Examiner pointed out that large cars or trucks parked in driveways could well partially block the sidewalk with the setbacks as proposed.

The reduced on-street parking will occur on the two short cul-de-sacs, each of which will serve six lots. (Exhibit 4Y)

6. The subject property is encumbered by an undefined, unlocated PSE aerial transmission easement. (Exhibit 3, Finding 4) Sultan 144, whose principals are also the developers of *Skoglund Estates*, is working with PSE to resolve the easement situation as it also affects that development. PSE has approved the layout of *Skoglund Estates*. The current *Greens Estates* design presumes a straight line extension of the easement through the site and has designed the layout such that the easement would encumber only open space and streets. (Exhibit 4Y) Sultan 144 is confident that it can obtain written approval of the proposed layout within 30 days of the Examiner's hearing date. (Testimony)

7. The proposed treatment of the on-site wetlands depends upon the Innovative Development Design provisions of former SMC 16.80.100. [8] Wetland and stream protections may be waived under the former Innovative Development Design procedure. In its decision approving the *Timber Ridge Estates* PUD subdivision (FP-PUD 04-002), the Council held that

> There is no need to consider the criteria of buffer width averaging or reduction, since the proposal seeks approval of an innovative design, which addresses wetland and stream protection and preservation in a creative manner. As a result, an approved innovative design may deviate from the standards of SMC 16.80.080(C).

(Council Resolution No. 05-17, p. 4, ¶ 22) The Council reiterated that view two paragraphs later: "The innovative design process is an alternative to buffer width reduction or averaging, and so long as its criteria are satisfied, standards described in SMC 16.80.080(C) for buffer width reduction do not need to be satisfied." (Council Resolution No. 05-17, p. 4, ¶ 24 [9])

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8 *Greens Estates* is not subject to the current Critical Areas Regulations due to vested rights considerations.

9 Council decisions made in the context of a quasi-judicial proceeding on a particular application establish the "law of the case" but do not establish legal precedent for any other cases. (The same holds true for Examiner Decisions and Superior Court judgments. Legal precedent for other cases is established only by published appellate court opinions.)

However, when the Council rules in a general, broad fashion regarding the meaning, interpretation, and/or implementation of one of its enactments, where the enactment is amenable of more than one reasonable interpretation, and where the Council's ruling is a rational interpretation of the enactment, it is prudent for the Examiner to consider that ruling as a statement of the Council's intent and to follow it in future cases.

Such is the nature of this portion of the Council's *Timber Ridge Estates* decision regarding the Innovative Development Design process.

Sultan 144 proposes to mitigate reduced wetland buffer widths by extensive buffer enhancement plantings. (Exhibit 4J) The City's wetland consultant has evaluated the proposal and concludes that it meets are criteria for approval as an Innovative Development Design. [10] (Exhibit 9)

8. Sultan 144 has submitted substantial documentation to support approval of its application. (Exhibits 4A – 4W and 4Y)

9. DCD's Staff Report and Recommendation contains a very thorough, detailed, item-by-item evaluation of application compliance with all applicable review criteria. (Exhibit 1, pp. 1 – 15) The record contains no challenge to that analysis with but one exception. Therefore, in the interest of economy, the Examiner incorporates the analysis within the Staff Report by reference as if set forth in full with the following exceptions:

   A. Application compliance with the concurrency requirements of Chapter 16.108 SMC regarding police services has been challenged by two hearing participants. Therefore, the concurrency discussion of that topic on pages 12 and 13 as well as the one paragraph Certificate of Concurrency which follows that discussion are not incorporated by reference.

   B. The file number in the header on page 1 contains a scrivener's error: The second character in the number is "P", not "F".

   C. Page 2, § I.h, and p. 7, § III.b, ¶ 1: The wetland area has already been dedicated to the City.

   D. Page 3, § I.j: *Skoglund Estates* lies east, not west, of *Greens Estates*.

   E. Page 7, § III.b, ¶ 1, l. 3: The word "street" should be "stream."

   F. Page 10, § V.e: The SBR/SR 2 intersection relocation project has been completed. (Testimony)

   G. Page 12, *Potable Water* and *Wastewater* sections: The initial utility commitments date from the Preliminary Injunction dated August 3, 2005. The December 13, 2006, letters (Exhibits 5 and 6) reduced the number of connection commitments based upon the reduced scope of Sultan 144's December 6, 2006, supplemental submittal.

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10 One of the requirements is that the Innovative Development Design be approved by state agencies with jurisdiction. The proposal here seeks relief only from wetland buffer requirements. As the Examiner noted in the recent *Hammer PUD* Recommendation, adopted by the Council through Resolution No. 07-19, no state agency has jurisdiction over wetland impacts, making that requirement moot. (*Hammer PUD* Recommendation, FPPUD05-002, August 2, 2007, Finding 12 and Conclusion 5)

H. Page 13, § VII: Sultan 144 submitted a "Supplemental" SEPA checklist on December 6, 2006. (Testimony)

10. Section 16.10.110 SMC contains criteria for location of residential PUDs: "A preliminary residential PUD shall only be approved if, with reasonable modification and/or conditions, the city finds that the proposed preliminary PUD complies with the following criteria for location, use, and design, for each of the identified types of PUDs." [SMC 16.10.110, emphasis added]

The criteria for single-family residential PUDs (PUD-SFs) are contained in SMC 16.10.110(B). Subsection (2) sets forth "Other Location Criteria." That Subsection in turn contains six subsections which set locational criteria for single-family residential PUDs: Subsection (2)(a) requires PUDs of more than 10 acres or 40 dwelling units to be located on an arterial or collector street; Subsection (2)(b) requires the total site area to be at least two acres; Subsection (2)(c) requires the PUD site to be "located such that it can connect to an existing off-site pedestrian and bicycle circulation system to facilitate non-motor vehicle access to the PUD-SF"; Subsection (2)(d) reads as follows: "Transit is available in sufficient proximity to the site to facilitate transit access to the PUD-SF"; Subsection (2)(e) requires the PUD location to not necessitate any extraordinary expenditure of public funds for infrastructure; Subsection (2)(f) simply requires equity with non-PUD developments in access to schools, parks, etc.

A. SBR is a designated Secondary Arterial street; 132nd Street SE is a designated Neighborhood Collector. (Exhibit 1, p. 9) The proposal meets criterion (2)(a).

B. The *Greens Estates* site contains well more than two acres. (Exhibit 4Y) The proposal meets criterion (2)(b).

C. *Skoglund Estates* will contain a pedestrian and bicycle network. While *Skoglund Estates* is not yet fully developed and recorded, it is far enough along the way to be considered as an "existing" system. As the Examiner noted in his November 17, 2006, Recommendation on *Vodnick Lane*, nothing in the criterion requires that the system to which a new development connects has to go anywhere in particular. [RAFPPUD5-006, Conclusion 8] The proposal meets criterion (2)(c).

D. Criterion (2)(d) has been at issue in a number of prior PUD applications, both located north and south of SR 2. The nearest bus service is along SR 2. The nearest current bus stop is west of the SBR intersection on SR 2. (Exhibits 1, p. 10, and 11) Sultan 144 proposes to provide a bus pull-out at the southwest corner of the site along SBR. Community Transit (CT) has stated that the cul-de-sac in the northwest corner of the site (Road F) has a sufficient radius to allow busses to turn around, provided no parking is allowed around the cul-de-sac bulb. CT

has thus far declined to commit to expand its routes to include the residential developments north of SR 2 along SBR. (Exhibits 1 and 4Y and testimony)

The Examiner concluded in his *Skoglund Estates* Recommendation that it did not meet criterion (2)(d). [FPPUD05-005, Conclusions 21 and 22] The Council disagreed (without elaboration) and approved that application. In the subsequent *Vodnick Lane* Recommendation, the Examiner considered the Council's *Skoglund Estates* action and concluded that

> *Vodnick Lane* is about three-fifths of a mile from the nearest transit stop, rather than over a mile. The walking route to that transit stop will be along the now-under-construction pedestrian pathway along the shoulder of Sultan Basin Road. This pedestrian path is a major changed circumstance since the first hearing. The Examiner is willing to concede that a site located three-fifths of a mile from a transit stop, connected to the transit stop by a pedestrian pathway, minimally meets the "sufficient proximity" to "facilitate transit access" test.

[RAFPPUD05-004 Recommendation, November 17, 2006, Conclusion 7] *Vodnick Lane* was subsequently approved.

Compliance with this criterion arose next in *Twin Rivers Ranch Estates*. During the Examiner's hearing on that application on November 30, 2006, the Examiner was provided a photograph which was said to show that a bridge along SR 2 between that site and the park and ride lot lacked any pedestrian facilities. [RAFPPUD05-006, Finding 17, citing Exhibit 53] No one present refuted that testimony. Based at least in part on that evidence and testimony, the Examiner concluded that

> *Twin Rivers Ranch Estates* is probably about one-half mile from the nearest transit stop. Were distance alone the determining factor, the site would meet the criterion given the Council's interpretation. However, the walking route to that transit stop is along the presently unimproved shoulder of an industrial road of substandard width and condition after which one must cross a bridge on SR 2 which lacks pedestrian facilities. *Twin Rivers Ranch Estates* does not "facilitate transit access" and does not meet the criterion of SMC 16.10.110(B)(2)(d) given current conditions.

[RAFPPUD05-006 Recommendation, December 27, 2006, Conclusion 7] Testimony in the current hearing record contradicts the testimony received in the *Twin Rivers Ranch Estates* hearing: The SR 2 bridge at issue does, in fact, have a raised concrete sidewalk on both sides

of the highway, each approximately two feet wide. (Testimony) Thus, the Examiner's *Twin Rivers Ranch Estates* conclusion was unknowingly based, in part, on false information.

Compliance with this criterion most recently arose in the latest *Hammer PUD* proceedings. *Hammer PUD* has frontage on SR 2 and included a bus stop along that frontage. The Examiner concluded that those facts met the transit facilitation criterion. [FPPUD05-002 Recommendation, August 2, 2007, Conclusion 9] The Council accepted that Conclusion without comment. [Resolution No. 07-19]

The sidewalk/walkway along SBR has some gaps, some of which will be filled by developments now under construction. (Exhibit 11) The relocated SBR/SR 2 intersection is controlled by a traffic light. (Exhibit 4L, November 28, 2006, report, p. 2) By law crosswalks exist on each leg at every intersection of two or more streets, whether marked or not. [RCW 47.04.010(10) and (12)]

E. Any required water and sewer extensions will be the financial responsibility of the *Greens Estates* developer. (Exhibits 5 and 6) The proposal meets criterion (2)(e).

F. *Greens Estates* residents will have the same access to public facilities as will any other residents of the City. The proposal meets criterion (2)(f).

11. Stan Heydrick (Heydrick) and Gerry Gibson (Gibson) challenge the application's compliance with Chapter 16.108 SMC, Concurrency Management System. Specifically, they argue that the adopted Level of Service (LOS) standard for police services is not met. They note that the electorate recently defeated a levy for police services. They provide evidence that the City is in a fiscal crisis which is not expected to be resolved for at least a couple of years and that the Council reduced the number of uniformed police officers to five (four patrol officers plus the chief) on August 23, 2007. They argue that the population increase represented by the future residents of *Greens Estates* would further tax the City's resources. They conclude that the City has no plan in place to raise the police LOS to meet the adopted standard. Heydrick concludes that the application should be denied for failure to meet concurrency. Gibson concludes that developer agreements to fund police officers violate state law. (Exhibits 14 and 15 and testimony)

12. DCD incorporated a Certificate of Concurrency (the Certificate) into its August 27, 2007, Staff Report, for *Greens Estates*. (Exhibit 1, pp. 11 - 13) The Certificate says the following about Police Services LOS:

> 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.

...

Certificate of Concurrency
The proposed Greens Estates Preliminary PUD and 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.

(Exhibit 1, pp. 12 and 13, italics in original)

13. The currently adopted LOS standard is 2.6 uniformed officers per 1,000 population. (2004 Comprehensive Plan, Appendix B, p. 2.74) (The LOS standard in the prior 1994 Comprehensive Plan was two police vehicles per 1,000 population. (2004 Comprehensive Plan, Appendix B, pp. 2.74 and 2.75))

14. The City conducted the inventory which formed the basis of the currently adopted LOS standard in 2003. It used an estimated 2003 population of 3,814 to develop that standard. [11] (2004 Comprehensive Plan, Appendix B, p. 2.75) The City had 10 full-time uniformed officers in 2003. (2004 Comprehensive Plan, Appendix F, pp. 214 – 215) The ratio of uniformed officers to population in 2003 when the LOS inventory was conducted, based on the population number used, was 2.6 officers per 1,000 population. (2004 Comprehensive Plan, Appendix B, p. 2.74)

15. The City's July 1, 2007, estimated population is 4,530. (Exhibit 1, p. 12) The City presently has five (5) full-time uniformed officers (including the chief), not the eight stated by DCD in the Certificate. No uniformed officer positions have been recently added; rather, positions have been eliminated due to financial constraints. (Exhibit 14) The current police services LOS is thus 1.11 uniformed officers per 1,000 population (based on presently authorized staff). The City needs 12 uniformed officers to meet the established LOS for its 2007 estimated population.

16. The latest adopted Capital Facilities Plan (CFP) is Appendix D to the 2004 Comprehensive Plan, dated November 22, 2004. (Official notice) The discussion of the Police Department in the CFP mentions a new station, but does not address staffing (not unexpected since staffing is not a capital facility). (2004 Comprehensive Plan, Appendix D, p. VIII-19)

17. Police services LOS concurrency first was challenged and became an issue in the *Cascade Breeze Estates* and *Steen Park* applications in the Spring of 2006. [FPCUP05-002 and FPCUP05-003, respectively] It remained a sticking point through the *Skoglund Estates*, *Vodnick Lane*, *AJ's Place* [BSP05-001], *Twin Rivers Ranch Estates*, George 6-plex [CUP06-004], and *Hammer PUD* applications. In each of those cases the Examiner held that Chapter 16.108 SMC did not establish a proportionate mitigation payment system. (Official notice)

    Beginning with *Skoglund Estates*, each applicant/developer offered a "Developer Agreement to Establish Concurrency" for Police Services. Those Agreements offered a proportionate payment to offset police costs; none would have raised the LOS anywhere near the established standard. In fact, all the Agreements would do is maintain whatever LOS existed when the payments were made. In each case, the Examiner held that such a system conflicted with the requirements of Chapter 16.108 SMC. Beginning with the July 12, 2006, Recommendation in *AJ's Place*, the Examiner included in

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[11] The basis for that 2003 population estimate is not in the record before the Examiner. The Washington State Office of Financial Management, Forecasting Division, (OFM), estimated Sultan's April 1, 2003, population to be 4,095. The LOS standard, being a legislatively adopted policy decision by the Council, may not be reconsidered, altered, or challenged in the context of this project permit application. [See RCW 36.70B.030, quoted in part in the Principles of Law section, below.]

his Recommendations a proposed condition, based upon language in Council resolutions, which would comply with the requirements of Chapter 16.108 SMC. [12] (Official notice)

In each of the above-listed cases, except for the Council's recent *Hammer PUD* decision, the Council disagreed with the Examiner and included language in its approval resolutions essentially as follows:

4. The City's existing Level of Service for police is below the adopted LOS in the Comprehensive Plan. The LOS failure for police, however, was not caused by this proposed Development, and the further reduction in the LOS caused by this proposed Development is modest by comparison to the existing deficiency.

5. The Council takes notice of the Recommendations in the Prothman Report accepted by the Council and Ordinance 900-06. The City has adopted a utility tax applicable to its municipal utilities and has received Recommendations for additional tax adoptions, including a utility tax on cable television service, an increased real estate excise tax, and a B & O tax. Other funding sources could include potential developer loans to advance the receipt of payment of needed funds, and monies contributed by proposed development for their impacts on the LOS. A combination of developer agreements and public funds will put in place the required public services for police concurrent with the development impacts, and provide appropriate strategies for the six years from the time of development to achieve the necessary police LOS as now established or as subsequently revised.

6. The Council takes notice of the Applicant's offer at the Closed Record Hearing to deliver to the City a Developer Agreement to pay Applicant's incremental share for a police officer for one year.

7. Based upon the foregoing, this proposed Development is deemed concurrent.

(This language is taken from Resolution Nos. 06-06 and 06-07, approving *Steen Park* and *Cascade Breeze*, respectively. It was repeated nearly verbatim in subsequent Council Resolutions.) The Council did not actually require execution of any of the offered Developer Agreements. (Official notice)

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12 The Examiner actually presented the theory behind the LOS condition in his first *Hammer PUD* Recommendation, dated June 15, 2006. However, that Recommendation did not include recommended conditions as it did not recommend approval of the application. (Official notice)

18. On August 2, 2007, the Examiner issued a recommendation to approve *Hammer PUD*. That Recommendation, as had those preceding it, included a detailed exposition of Findings and Conclusions regarding Police Services LOS. That Recommendation, as had all since *AJ's Place*, included a condition to fulfill the concurrency requirement. The Council approved *Hammer PUD* by Resolution No. 07-19 on August 23, 2007. The Council adopted, without comment, reservation, or exception, all Findings and Conclusions within the Examiner's recommendation. (Official notice)

19. The present hearing record includes a Developer Agreement for Concurrency patterned after the *Skoglund Estates* Agreement. [13] (Exhibit 8) However, Sultan 144 testified that it was willing to accept the condition recommended by the Examiner and imposed by the Council on *Hammer PUD* and was not seeking acceptance of Exhibit 8. (Testimony)

20. Sultan's State Environmental Policy Act (SEPA) Responsible Official issued a threshold Determination of Nonsignificance (DNS) for *Greens Estates* on April 16, 2007. (Exhibit 7) No comments or appeals were submitted in response to issuance of the DNS. (Exhibit 1)

21. DCD recommends approval of the requested CUP subject to 32 special conditions: Recommended Conditions 1, 2, 5, 15 (less subsections c and d), 17, 21, 22, 25, 27, 35, 36, 41 – 43, 64, 66 – 69, 71, 75, 77 – 80, 83, 87 (less subsections d, e, and j), 89, 96, 101, 107, and 111. [14] (Exhibit 1 and testimony) DCD suggested changes to several of the Recommended Conditions:

    A. Recommended Condition 2: The "House Plans" are Exhibit 4S.

    B. Recommended Condition 5: The text "PUD &" should be deleted in the first sentence. Final PUD approval may occur before all infrastructure has been completed whereas final plat approval may not (unless bonded for completion).

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13 The offered Agreement contains an apparent calculation error. The Agreement states that the development upon completion will be responsible for 0.44 (44%) of one police officer, but then offers to pay for only 33% of one police officer for one year. (Exhibit 8) If for some reason the Council were to return to its prior position, it should not accept an agreement which does not even fund the proper percentage of one police officer for one year.

14 The written Staff Report and Recommendation contains 112 Recommended Conditions, not 32. (Exhibit 1, pp. 15 – 28) Most of the 112 re-state minimum requirements of adopted code and/or standards. The Staff Report was prepared for DCD by a consultant whose style is to list such items as conditions. (Testimony) Historically, Sultan has not followed that style: Sultan has listed only special, project-unique items as conditions of approval; the preamble to the list of conditions makes clear that all provisions of adopted code and standards apply, whether listed or not. The Examiner offered DCD the opportunity to declare that it wished to adopt the consultant's style for this and all future applications. Staff declined and instead worked with the consultant to eliminate all but the unique conditions from the recommendation.

C. Recommended Condition 15: The phrase "ten (1) feet shall provide a 6-foot fence and landscaping" in the second sentence should read "ten (10) feet shall provide a 6-foot fence or landscaping".

D. Recommended Condition 17: An alternate version was presented. (Exhibit 13)

E. Recommended Condition 96: The phrase "US 2 and 5th Street, US 2/Sultan Basin Road, and" in the second sentence should be eliminated. Those two projects have been completed.

22. Sultan 144 has no objection to any of the recommended conditions, as amended. (Testimony)

23. In addition to his concurrency challenge, Heydrick also argues that the proposal does not comply with the 2004 Comprehensive Plan by allowing growth when the City is in a fiscal crisis, that the proposal does not comply with PUD locational criteria regarding pedestrian/bicycle circulation and transit facilitation, and that the City cannot maintain its existing parks. (Exhibit 14 and testimony) David Gipson (Gipson) challenged the acceptability of a plat design which does not provide parking for visitors to the recently dedicated public open space land. [15]

24. Any Conclusion deemed to be a Finding of Fact is hereby adopted as such.

PRINCIPLES OF LAW

Authority

Preliminary subdivision and preliminary PUD applications require a pre-decision open record hearing before the Examiner who forwards a recommendation to the Sultan City Council (Council) for final action. [SMC 16.10.080, 16.28.320 - .340, and 16.120.050]

Review Criteria

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

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;

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[15] By way of context, Gipson represented applicant Dan Ramirez during the *Twin Rivers Ranch Estates* hearings. One of the issues which arose in that case was whether the public interest would be served by creation of a public park along the property's Skykomish River frontage without sufficient access or parking for the public. (Official notice)

> 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 schoolgrounds;
> 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 SMC provides for both Retail Center PUDs and several types of Residential PUDs. [SMC 16.10.030] The general review criteria for PUDs are set forth at 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), 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.

The Local Project Review Act [Chapter 36.70B RCW] establishes a mandatory "consistency" review for "project permits", a term defined by the Act to include "building permits, subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, site plan review, permits or approvals required by critical area ordinances, site-specific rezones authorized by a comprehensive plan or subarea plan". [RCW 36.70B.020(4)]

> (1) Fundamental land use planning choices made in adopted comprehensive plans and development regulations shall serve as the foundation for project review. The review of a proposed project's consistency with applicable development regulations or, in the absence of applicable regulations the adopted comprehensive plan, under RCW 36.70B.040 shall incorporate the determinations under this section.
>
> (2) During project review, a local government or any subsequent reviewing body shall determine whether the items listed in this subsection are defined in the development regulations applicable to the proposed project or, in the absence of applicable regulations the

adopted comprehensive plan. At a minimum, such applicable regulations or plans shall be determinative of the:

> (a) Type of land use permitted at the site, including uses that may be allowed under certain circumstances, such as planned unit developments and conditional and special uses, if the criteria for their approval have been satisfied;
> (b) Density of residential development in urban growth areas; and
> (c) Availability and adequacy of public facilities identified in the comprehensive plan, if the plan or development regulations provide for funding of these facilities as required by [the Growth Management Act].

[RCW 36.70B.030]

Vested Rights

Subdivision and short subdivision applications are governed by a statutory vesting rule: such applications "shall be considered under the subdivision or short subdivision ordinance, and zoning or other land use control ordinances, in effect on the land at the time a fully completed application ... has been submitted ...." [RCW 58.17.033; see also SMC 16.28.480] *Greens Estates* is vested to the regulations in effect on September 2, 2005; subsequently enacted regulations or amendments may not be used in the review of this application.

Standard of Review

The standard of review is preponderance of the evidence. The applicant has the burden of proof.

Scope of Consideration

The Examiner has considered: all of the evidence and testimony; applicable adopted laws, ordinances, plans, and policies; and the pleadings, positions, and arguments of the parties of record.

CONCLUSIONS

1. This application involves two components, each with different review criteria. In addition, concurrency compliance is a significant issue. The necessary conclusions will be most easily understood if they are grouped by topic. Since a PUD subdivision cannot, almost by definition, be approved unless the PUD "overlay" is approved, the analysis most logically begins with consideration of the PUD element of the application.

2. In summary, the Conclusions which follow demonstrate that *Greens Estates* meets all but one PUD approval criteria, meets preliminary subdivision approval criteria, and could be conditioned to comply with the requirements of Chapter 16.108 SMC, Concurrency. None of the other challenges raised by citizen participants reveal any defects requiring denial of the application. The revised

condition list, with minor changes and additions, is justified and would serve the public use and interest.

3. The Conclusions in this decision are grouped by topic only for the reader's convenience. Such groupings do not indicate any limitation of applicability to the decision as a whole.

PUD Analysis

4. Finding 10, above, demonstrates compliance with all locational criteria within SMC 16.10.110(2) except subsection (d), the "transit facilitation" criterion.

5. *Greens Estates* is as far distant from the nearest public transit as is *Skoglund Estates*. Its situation is markedly different from that of *Hammer PUD* or even *Vodnick Lane*. The distance from the southwest corner of the site along SBR south to SR 2 is approximately 0.8 miles; the distance from the new SBR/SR 2 intersection to the existing park and ride lot (which is incorrectly located on Exhibit 11: The location arrow points to the west end of the block while the park and ride is clearly visible at the east end of the block) is an additional 0.24 miles. (Scaled from Exhibit 11) While a crosswalk legally exists at the signalized SBR/SR 2 intersection which will allow safe crossing of SR 2, and while the short bridge on SR 2 between that intersection and the park and ride lot does have raised concrete sidewalks which will allow reasonably safe access across the bridge, the fact remains that the site is more than a mile distant from the nearest transit stop.

Criterion (2)(d) requires more than that a PUD applicant show that he/she/it has facilitated transit use within the design. Were that all the criterion required, *Greens Estates* would most certainly meet the criterion with its bus pull-out on SBR and bus turnaround capability in Road F.

The "facilitate" clause must be read in context: "Transit is available in sufficient proximity to the site to facilitate transit access to the PUD-SF". (Emphasis added) Under the criterion, it is the "sufficient proximity to the site" of an existing transit route which facilitates transit access. Putting a transit stop in a subdivision located miles from the nearest transit line would not meet the criterion unless the transit provider were on record agreeing to extend transit to the new subdivision by the time the project developed.

The Council has never explained how a more than one mile walk supposedly facilitates transit usage. As the Examiner has said before, few Americans are likely to walk over a mile just to get to a transit stop. Some may be willing to drive a mile to the park and ride, but if that is the test of compliance with the criterion, then the criterion is meaningless as virtually every bit of Sultan is located within one mile of the park and ride. Had the Council intended that PUDs could be located anywhere in the

City, it would not have enacted restrictive location criteria. The enacted criteria must be given meaning.[16]

6. *Hammer PUD* is in a different situation: It has direct frontage on an existing CT bus route: SR 2. *Vodnick Lane's* distance from the park and ride is about one-half that of *Greens Estates*. (See Exhibit 11)

7. The Examiner simply cannot in good conscience conclude that a site more than a mile from the nearest transit stop is sufficiently proximate to transit to facilitate transit usage. The Examiner recognizes that the Council may well disagree, given its prior approval of *Skoglund Estates*. Given that possibility, the Examiner will provide recommendations regarding conditions of approval.

8. The Examiner questions compliance with one of the PUD development standards as well. Right-of-way width reduction in a PUD is available where separation of vehicular and pedestrian traffic is proposed and where adequate off-street parking is provided. [SMC 16.10.120(B)(4)(b)] Here, right-of-way width reduction is not coupled with reduced street sections or off-street parking areas, but rather is offset by a sidewalk easement on each side of the street. What is actually happening is that Sultan 144 is proposing to construct standard width streets and sidewalks within rights-of-way which are too narrow to contain them. The "left over" parts of the sidewalk are then placed within easements encumbering the front five feet of each frontage lot. The end result is an increased lot yield: With the typical lot in *Greens Estates* being 50 feet wide, the sidewalk easement design saves the applicant about 250 SF for every lot which fronts directly on a street. Those savings equal more than two lots.

   This concept does not seem to be what SMC 16. 10.120(B)(4)(b) is all about. The Examiner asks the Council to carefully consider this issue and include within its action a ruling on acceptability of the concept and guidance for its future application: If it is approved here, it will likely reappear in many future applications because of its ability to increase lot yield with no other apparent public benefit or private cost.

Preliminary Subdivision Analysis

9. *Greens Estates* conforms with the principles of the 2004 Comprehensive Plan. The type of land use and proposed density are consistent with the Plan. The two provisions cited by Heydrick in Exhibit 14 are from the "Implementation tasks" section of the Plan. The preamble to that section describes its

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16 Locational criterion (B)(2)(f) offers an instructive contrast. It was expressly written so as to not limit potential PUD sites: So long as a site has access to public services equal to that of a standard development, the criterion is met. The language of Subsection (B)(2)(f) clearly demonstrates a difference of intent on the part of the Council. It wrote that criterion to be non-limiting while all the others in Subsection (B)(2) are intended to limit.

content as "potential implementing measures and projects". Taken literally, the contents of that section are, at best, a list of possible actions the City could take.

More importantly, adopted regulations "trump" adopted plans and/or policies. The state Supreme Court in *Citizens v. Mount Vernon* [133 Wn.2d 861, 947 P.2d 1208 (1997), *reconsideration denied*] has ruled that "[RCW 36.70B.030(1)] suggests ... a comprehensive plan can be used to make a specific land use decision. Our cases hold otherwise." [at 873]

> Since a comprehensive plan is a guide and not a document designed for making specific land use decisions, conflicts surrounding the appropriate use are resolved in favor of the more specific regulations, usually zoning regulations. A specific zoning ordinance will prevail over an inconsistent comprehensive plan. If a comprehensive plan prohibits a particular use but the zoning code permits it, the use would be permitted. These rules require that conflicts between a general comprehensive plan and a specific zoning code be resolved in the zoning code's favor.

[*Mount Vernon* at 873-74, citations omitted] If the City wants to stop residential development for any legitimate reason, it will have to adopt an appropriate moratorium. Unless and until such time, property owners have the right to file applications and have them considered under the regulations in place when the application is filed in a complete fashion.

10. *Greens Estates* complies with adopted regulations with the sole exception of the PUD transit facilitation requirement, discussed above.

11. The evidence shows that appropriate provisions have been made for most all the items listed in SMC 16.28.330(A)(2), including transit stops. The Examiner nevertheless has doubts about the wisdom of the flared panhandles and the reduced width rights-of-way.

The SMC requires that every lot abut a street by not less than 20 feet. [SMC 16.150.010(3)] Sultan 144 has met that requirement for its panhandle lots by flaring a 15 foot wide panhandle out to 20 feet where it touches the right-of-way. (Exhibit 4Y) In other words, the panhandle is 20 feet wide only at the precise point of intersection with the street; the side lot lines abutting the panhandle have a "jog" or "dog leg" in them. This is a new concept to this Examiner. [17] The concept is another way to increase yield: A typical 20 foot wide panhandle is reduced to 15 feet for most of its length. Given that most of the panhandles are about 75 feet long, the design "saves" about 350 feet for every panhandle. The 30+ panhandles in the plat "save" the equivalent of about two lots.

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[17] Sultan 144 testified that a few lots in *Skoglund Estates* also have this configuration. The Examiner does not remember that detail being apparent or drawing any attention during application review.

A further question is whether the "jog" or "dog leg" in the lot lines will serve the public use and interest. Most people, rightly or wrongly, expect their property lines to be straight line segments. Since the driveways in these panhandles will likely not be flared to match the property lines, abutting owners may well believe that their property lines run straight to the street. Property line disputes could result and/or the panhandles could end up to be effectively only 15 feet wide all the way to the street. The Examiner asks the Council to carefully consider this issue and include within its action a ruling on acceptability of the concept and guidance for its future application: If it is approved here, it will likely reappear in many future applications because of its ability to increase lot yield with no other apparent public benefit or private cost.

12. The property is not located within any regulatory flood plain. The on-site wetlands have been avoided through subdivision design. The proposal need not be denied for either of those reasons.

13. *Greens Estates* would meet the public use and interest if the above concerns could be resolved in the affirmative. However, given that the Examiner cannot recommend approval of the PUD, and given that the plat depends upon approval of the PUD, the proposed preliminary subdivision cannot be approved. Outright denial would be inappropriate as a standard plat could be designed for the site. Therefore, the Examiner will recommend that the application be returned for modification as allowed by SMC 16.28.290(A).

Concurrency Analysis

14. Subdivision PUD applications are development permits. [SMC 16.120.050] *Greens Estates* is not categorically exempt from SEPA threshold determination requirements. (Exhibit 7) Therefore, *Greens Estates* is subject to the concurrency requirements of Chapter 16.108 SMC. [SMC 16.108.020]

15. DCD's concurrency determination is to be considered part of its recommendation to the Examiner. [SMC 16.108.040(B)] The Examiner can not recommend and the Council can not approve a development application which does not demonstrate compliance with the concurrency requirements of Chapter 16.108 SMC. [SMC 16.108.060]

16. Section 16.108.060 SMC states that development approval is to be granted "only if the proposed development does not lower the existing level of service (LOS) of public facilities and services below the adopted LOS in the comprehensive plan." But what happens where the existing LOS is already below the established standard? May a development be approved because it is not the one which "broke" the LOS standard?

Common sense must be applied in interpreting the quoted code language. One could argue that the section holds that only the one project which would "break" the standard could not be approved, but that all subsequent proposals could be approved since they were not the project which lowered the LOS below the established standard – they simply made it even lower.

Such an interpretation makes no sense. The only reasonable interpretation of the quoted language is that developments may not be approved either if they would themselves cause the LOS to fall below the established standard or if the LOS is already below that standard.

17. The concurrency process of Chapter 16.108 SMC is wholly separate from and independent of the impact fee process of Chapter 16.112 SMC. The former seeks to assure that established LOSs are maintained; the latter requires developers to pay a share of the costs of facilities required by new development. The latter is a Growth Management Act (GMA) impact fee program adopted by the City pursuant to Chapter 36.70A RCW, GMA, and "RCW 82.02.050 et sequitur". [SMC 16.112.010, ¶ 1] The latter is not subject to the fee limitations associated with RCW 82.02.020; but it is subject to the definitional limitations of RCW 82.02.090: No impact fess may be collected for police services as such services are not defined as "public facilities."

18. Chapter 16.108 SMC does not impose an impermissible cost on developers. In fact, it doesn't necessarily impose any cost on developers. Rather, it establishes a threshold condition which must now exist in the community, be conditioned to exist concurrent with the impacts of the development, or be funded to exist concurrent with the impacts of the development in order for any development approval to be granted. If that threshold condition (LOS at or above the established level) exists when the development approval is granted, then SMC 16.108.060(A) is met and the development is deemed concurrent. [18] If the required LOS is not present, then SMC 16.108.060 provides two alternative mechanisms by which a development may still be found to be concurrent.

Subsection (B) addresses the situation where the LOS standard would not be met but a condition is imposed requiring that the LOS standard be met at the time development impacts occur. Such a condition would not necessarily mean that a developer would have to make any financial contribution towards solving the LOS deficiency. Rather, it would simply not allow development impacts until the standards were met.

For residential subdivisions, significant development impacts really begin to occur when houses are completed and occupied. Therefore, a condition requiring that the LOS standard be met when each residence is approved for occupancy (every residential building permit is subject to a Final Inspection before occupancy may legally occur) would fulfill Subsection (B). This requirement would have to appear on the face of the final plat as a legal notification to prospective purchasers (since one could build a house and be unable to occupy it if the LOS standard were not met at that

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[18] To read this subsection as one prior applicant has suggested (the LOS must meet the standard for only the one day on which the Council will act on the proposal) is simply illogical and makes a mockery of the entire concurrency system chapter. If such was the true intent of the Council when it enacted Chapter 16.108 SMC, the Council will have to so declare on its own initiative: The Examiner declines to even suggest that such an interpretation might have been intended.

time). The LOS standard to be met should be that in existence at the time the development is occurring, not that in existence currently. (This is analogous to impact fees which do not vest.)

Subsection (C) addresses the situation where the LOS standard would not be met but the developer enters into a binding agreement with the City to provide the necessary resources to raise the LOS to meet or exceed the established LOS within six years. This is an option in which the typical developer would likely be committing more than his/her fair share. But "latecomers" agreements are available for just such situations. [19] And, the developer always has the option to wait until the City makes the necessary commitments to raise the LOS.

19. According to SMC 16.108.070, .120, and .130, the LOS standard for police services is the standard as set in the 2004 Comprehensive Plan: 2.6 uniformed officers per 1,000 population. The City does not meet its police services standard. The remainder of this section will address police services LOS only.

The Council in adopting the LOS standards in the 2004 Comprehensive Plan without exception used the 2003 actual LOS ratios/levels as the standards that have to be met in the future. The text in Appendix B of the 2004 Comprehensive Plan does not explain why the 2003 actual levels were chosen as the standards for the future. As adopted, those standards effectively mean that any reduction in police staffing below that in place in 2003 would drop (actually has dropped) the City below its established LOS. As the City has grown, additional officers would have of necessity been needed to maintain the LOS above the standard: Even 1 additional resident would have lowered the LOS below the standard.

Whether that was the Council's intent when it adopted the 2004 Comprehensive Plan is unknown. (Legislative intent is not relevant where the enactment is clear and unambiguous on its face.) Whether the Council even realized the effect of the standards it was adopting is equally unknown. Even if the Council were to change the standards now, new standards could not legally be applied in the review of *Greens Estates* because of the vested rights doctrine: The application must be reviewed against the regulations which existed on September 2, 2005, the date the application was deemed complete. Further, an applicant may not "selectively waive" some old regulations while retaining a vested right to others. [*East County Reclamation Co. v. Bjornsen*, 125 Wn. App. 432, 105 P.3d 94 (2005)]

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19 In fact, developers frequently extend water and sewer lines to serve a development. The cost of getting those lines to the development site often is above and beyond a roughly proportional cost. But the developer usually does not want to await the extension of those lines by the City, so it offers to fund them now and enter into a "latecomers" agreement by which, over time, at least some of its excess investment costs may be returned when others connect to the lines for which it has paid.

20. A concurrency recommendation or certificate must be based upon facts. Those facts must include the (estimated) population of the City at the time of the application for which concurrency is sought, the number of residents expected to be added by the proposed development, and the amount of the affected service then available in the community (For example, the number of uniformed officers in the police department; the total acreage of parks, recreation, and open space using the same methodology as used in the 2003 inventory.) Given those facts, LOS for each required service area may be calculated. Without those facts, LOS cannot be calculated. If the LOS cannot be calculated, then no favorable conclusion is possible regarding concurrency.

21. The present LOS for police services is far below the standard established within the 2004 Comprehensive Plan. Additional residential development within the City will only serve to further lower the LOS.

22. DCD erred in concluding that *Hammer PUD* meets the concurrency standard for police services. The police staffing statements contained within DCD's Certificate are factually incorrect and were incorrect when the Certificate was issued on August 27th.

23. Nothing has been presented to convince one that a Police Services Agreement patterned after those offered in several previous cases would guarantee that the police services LOS will meet the established standard when the development occurs – or even six years later. The concept underlying the offered agreements suffers from several shortcomings. First, even if fully funded all at once, the Police Services Agreement would fund only a miniscule fraction of the cost of one police officer for one year. The City cannot hire a tiny fraction of a person. Even if it could, the LOS would still be woefully below the established standard – and would fall back again after the one year of funding ended.

    Second, the costs in the previously offered Police Services Agreements have been based on the City's cost to support one uniformed police officer. If, as testimony in a prior hearing suggests, the City may replace its substantially reduced uniformed officer count with contracted police services, the costs of such contracted services may be wholly different from the City's present costs. A carbon copy of prior agreements may or may not represent a fair share of actual costs.

    Third, the Police Services Agreement calls for the funds to be paid as each building permit is issued. This provision would result in even a more miniscule revenue stream, making it even more unlikely that a police officer could be hired.

    Fourth, even if all the offered funds were paid at one time, it would take many developments to fund just one police officer, and that one officer would not raise the police services LOS to the established standard. It would take many, many developments, all developed at essentially the same time, to raise the LOS to the established standard. But that simple equation (1 officer funded by the fees based on the previously offered schedule yields 2.54 officers after approximately 381 dwelling units)

fails to account for the fact that those 381 dwelling units would themselves raise the City's population by some 1,029 people (2.7 persons per household, the number stated in the previously offered Police Services Agreements), thus lowering the LOS again. In fact, all such a program does is hold the LOS at its current level as new houses are added to the community – and then only if development occurs fast enough that the payments for fractional officers can be combined to actually hire a police officer.

This concept simply is not what Chapter 16.108 SMC requires. The Council may certainly change the SMC requirement if it wishes. But in the meantime, the code is what controls – and even if the code were changed today, that change would not apply to any subdivision application filed in a complete fashion before the change became effective.

Finally, Gibson is correct: Such incremental funding arguably would run afoul of the RCW 82.02.090 prohibition against collecting impact fees for police services. The Police Services Agreement concept is essentially a *pro rata* share payment system for police services. Such a system is not allowed under State law. If Chapter 16.108 SMC is read as the Examiner believes it has to be, no such conflict would exist as the chapter would not be charging an impact fee.

24. The City has no "strategy in place" to increase police staffing. The electorate defeated its latest proposed strategy. The discussion in prior Council Resolutions regarding possible additional taxes that could or might be adopted to raise revenue is a strategy, but it is not in place. Utility and cable taxes have been adopted. But the record is devoid of any data that would support the notion that those taxes will enable the City to raise the Police Level of Service to meet the adopted standard. However, that Council discussion (that additional tax revenues coupled with developer funds could raise the LOS to meet the standard) could be converted into a condition which could read as follows:

> Prior to approval of the Final plat, a combination of developer agreements and public funds, including additional tax adoptions (such as a utility tax on cable television service, an increased real estate excise tax, and a B & O tax), other funding sources (such as potential developer loans to advance the receipt of payment of needed funds), and monies contributed by the proposed development for its impacts on the LOS, shall put in place the required public services for police concurrent with the development impacts, and provide appropriate strategies for the six years from the time of development to achieve the necessary police LOS as now established or as subsequently revised.

Such a condition would meet the requirement of SMC 16.108.060(C). The language of such a condition would be based almost word for word on Council statements in previous approval resolutions.

25. Approval could also be conditioned such that the police services LOS in existence at the time of final building permit inspections had to be met before approval for occupancy could be granted. Such a condition would meet the requirement of SMC 16.108.060(B).

26. Under the present circumstances, the best Concurrency solution would be to impose an "either - or" condition: Require compliance with a condition as suggested in Conclusion 24, above, or compliance with a condition as suggested in Conclusion 25, above. Unfortunately, the Police Services Agreement approach does neither.

27. The Council's adoption, without any comment or reservation, of the Examiner's Findings of Fact and Conclusions in the recent *Hammer PUD* case must be accorded some importance, especially in view of the long line of preceding cases in which the Council expressly disagreed with essentially identical Findings of Fact and Conclusions.

The Examiner recognizes that

> Council decisions made in the context of a quasi-judicial proceeding on a particular application establish the "law of the case" but do not establish legal precedent for any other cases. (The same holds true for Examiner Decisions and Superior Court judgments. Legal precedent for other cases is established only by published appellate court opinions.)
>
> However, when the Council rules in a general, broad fashion regarding the meaning, interpretation, and/or implementation of one of its enactments, where the enactment is amenable of more than one reasonable interpretation, and where the Council's ruling is a rational interpretation of the enactment, it is prudent for the Examiner to consider that ruling as a statement of the Council's intent and to follow it in future cases.

[*Hammer PUD*, FPPUD05-002 Recommendation, August 2, 2007, Footnote 22] The Examiner Recommendation adopted by the Council contained an extensive analysis and interpretation of the applicable ordinance. The Examiner must conclude that by accepting that Recommendation without comment, reservation, or exception, the Council consciously intended to change its position. [20]

Other Issues Analysis

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[20] Staff suggested that the Council meant no such thing and that it would revert to its prior position if an applicant challenged the concurrency requirement. The Examiner declines to believe that the Council would flip-flop on such an important issue.

28. Heydrick's Comprehensive Plan, police services LOS, and PUD locational criteria issues have previously been addressed. Whether or not the City can maintain its existing public parks is irrelevant to this application. Heydrick is presumably referring to the acreage dedicated to the City – the large wetland south of Proposed Lots 20 – 29. The most important factor to consider is that the dedicated land presumably will never be an active use public park. It is a wetland in which, under applicable City regulation, virtually nothing can be done. Nature will maintain the wetland.

29. The *Twin Rivers Ranch Estates* public park access and parking situation is quite distinguishable from the present circumstances. The property to be dedicated to the City in *Twin Rivers Ranch Estates* was prime frontage along the Skykomish River, usable for many active recreational pursuits. That property could be expected to generate substantial citizen recreational interest, requiring an appropriate level of access and parking if the public interest were to be served.

    As has been noted, the property dedicated to the City here is a wetland in which no active recreation will be allowed. Any trails that may be built throughout the wetland buffer will not be on City property as the buffer was not dedicated to the City (it remains within the proposed subdivision). Under the circumstances here present, the only access that is needed is for City "maintenance" purposes; a way for City personnel to legally access City property.

30. *Greens Estates* passes the consistency test: Single-family residential development is allowed by the applicable zoning, the proposed density is within the allowed range, and adequate infrastructure is present.

Conditions Analysis

31. The 32 remaining recommended conditions of approval as set forth in Exhibit 1 are reasonable, supported by the evidence, and capable of accomplishment with the following exceptions:

    A. Recommended Condition 1: An exhibit number reference should be added to improve clarity. The plans for which approval is sought are Exhibit 4Y.

    B. Recommended Condition 2: An exhibit number reference should be added to improve clarity. The house plans for which approval is sought are Exhibit 4S.

    C. Recommended Condition 5: The "PUD &" text in the first sentence should be eliminated. As written, the condition would require completion of all infrastructure before either final PUD or final plat approval was granted. Preliminary PUD approvals generally expire one year after issuance. [SMC 16.10.150] Preliminary subdivision approvals generally expire five years after issuance. [SMC 16.28.390] The final PUD process involves review of detailed plans based upon the preliminary plans approved with the preliminary approval. [SMC 16.10.160] Construction prior to final PUD approval is not allowed or contemplated. [SMC 16.10.180 and .200] By way of contrast, final plat approval is granted only after all infrastructure has

been installed or bonded for completion. [SMC 16.28.400] The text of the condition applies only to the subdivision process.

D. Recommended Conditions 15, 87, and 96: The changes listed in Finding 21, above, should be made.

E. Recommended Condition 17: Neither the original wording (Exhibit 1, p. 17) nor the substitute wording (Exhibit 13) clearly express the intent of this condition. The intent is to not allow an existing garage to become the sole building on a newly established lot. The reason behind the condition is that the SMC treats garages as accessory uses and that accessory uses, by definition, cannot be the sole use on a lot. (Testimony) That intent can be conveyed with better wording.

F. Recommended Condition 25.c: Parcel A is not part of the land being subdivided. Therefore, it need not be shown on the final plat at all (unless simply as an adjacent parcel). This condition, as written, implies that Parcel A is within the plat. It must be revised to eliminate that implication.

G. Recommended Condition 36: The Council must decide if reducing established right-of-way widths solely to increase developer yield is a policy which the City wishes to follow. If it answers in the affirmative, then this condition is fine as it is; if it answers in the negative, then this condition should be eliminated (and the project redesigned to provide full-width rights-of-way).

H. Recommended Condition 107: This condition should be eliminated for the reasons set forth in Conclusions 14 -27, above.

I. The Council should not under any circumstances grant approval to *Greens Estates* unless it has received written approval from PSE of the easement alignment through the property. The City would be creating an enormous mess were it to approve a plat layout without knowing for sure where an existing high voltage electrical transmission easement lies. Future lot owners could find themselves in the midst of protracted, unpleasant, expensive litigation if PSE had to fight to preserve its easement. Since Sultan 144 believes that it can receive written acceptance of the present design within 30 days of the Examiner's hearing, and since the proposal will most likely not get on the Council's agenda before that period ends, Sultan

144 should be able to submit PSE approval before the Council's consideration. The Examiner will recommend that the Council not grant approval absent such a document. [21]

J. SBR is an arterial, 132nd Street SE is a collector. All lots which front on either of those streets also have frontage on an internal plat street. (Exhibit 4Y) In order to preserve the integrity of the public arterial/collector street system, a condition should be imposed on the final plat barring any direct vehicular access from any lot to either of those two streets. Approval of the proposal without such a restriction would not make appropriate provisions for public streets, would not serve the public interest, and would not protect public safety.

K. A properly worded concurrency condition should be added. The language accepted by the Council in the *Hammer PUD* application will be recommended.

L. If the Council approves the reduced right-of-way width proposal, it should add a condition requiring that garages whose vehicular door(s) face a street with the reduced right-of-way and sidewalk easement must maintain an 18 foot setback between the back edge of the sidewalk and the near face of the garage.

M. A few minor, non-substantive structure, grammar, and/or punctuation revisions to the Recommended Conditions will improve parallel construction, clarity, and flow within the conditions. Such changes will be made.

32. Any Finding of Fact deemed to be a Conclusion is hereby adopted as such.

RECOMMENDATION

Based upon the preceding Findings of Fact and Conclusions, the testimony and evidence submitted at the open record hearing, and the Examiner's site view, the Examiner recommends that the City Council: **DENY** the request preliminary Planned Unit Development; and **RETURN** the proposed preliminary subdivision **FOR MODIFICATION**. If the Council concludes that the proposal meets all requirements for approval, then the Examiner would recommend that approval be **SUBJECT TO THE ATTACHED CONDITIONS** and **NOT** be granted unless and until the applicant has submitted to the Council a written statement from Puget Sound Energy accepting the proposed layout as properly recognizing and preserving its aerial high voltage transmission easement across the property.

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[21] Council consideration of the Examiner's Recommendation is at a closed record hearing. Additional evidence is normally not allowed at a closed record hearing. But where the Recommendation calls for submittal of a certain document prior to approval, submittal of the required document should be a permissible exception to the general rule.

Recommendation issued September 19, 2007.

\s\ John E. Galt (Signed original in official file)
John E. Galt,
Hearing Examiner

NOTICE OF RIGHT OF RECONSIDERATION

This Recommendation, dated September 19, 2007, is subject to the right of reconsideration pursuant to SMC 2.26.120(D). Reconsideration may be requested by the applicant, a party of record, or the City. Reconsideration requests must be filed in writing with the City Clerk/Treasurer not later than 5:00 p.m., local time, on October 1, 2007 (which is the first business day after the tenth calendar day after the date of mailing of this Decision). Any reconsideration request shall specify the error of law or fact, procedural error, or new evidence which could not have been reasonably available at the time of the hearing conducted by the Examiner which forms the basis of the request. Any reconsideration request shall also specify the relief requested. See SMC 2.26.120(D) and 16.120.110 for additional information and requirements regarding reconsideration.

NOTICE OF COUNCIL CONSIDERATION

This Recommendation becomes final as of the eleventh calendar day after the date of mailing of the Recommendation unless reconsideration is timely requested. If reconsideration is timely requested, the Examiner's order granting or denying reconsideration becomes the Examiner's final recommendation. The Examiner's final recommendation will be considered by the Sultan City Council in accordance with the procedures of SMC 2.26.120(D) and Title 16 SMC. Please contact the Department of Community Development for information regarding the scheduling of Council consideration of this Recommendation. Please have the applicant's name and City file number available when you contact the city.

The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation."

RECOMMENDED CONDITIONS OF APPROVAL
FPPUD05-001
GREENS ESTATES

The following conditions are offered in the event the Council determines that the proposal complies with all applicable criteria for approval.

This Preliminary Subdivision and Planned Unit Development are subject to compliance with all applicable provisions, requirements, and standards of the Sultan Municipal Code and standards adopted pursuant thereto. The permittee is responsible to obtain all necessary State and Federal permits and approvals required for completion of the project. In addition, development shall comply with the following special conditions:

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 (Exhibit 4Y), subject to and as revised by these Conditions of Approval.

2. The application shall generally comply with the House Plans submitted December 6, 2006. (Exhibit 4S) 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. Prior to issuance of a certificate of occupancy and/or occupancy of any residence within the subdivision, a combination of developer agreements and public funds, including additional tax adoptions (such as an increased real estate excise tax and a B & O tax), other funding sources (such as potential developer loans to advance the receipt of payment of needed funds), and monies contributed by the proposed development for its impacts on the LOS, shall put in place the required public services for police concurrent with the development impacts, and provide appropriate strategies for the six years from the time of development to achieve the necessary police LOS as now established or as subsequently revised; or, in the alternative, the police services LOS in existence at the time of final building permit inspections shall be met before approval for occupancy is granted.

4. Prior to approval of the Final 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 and 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.

5. The following notes shall appear on the face of the Final Plat:

a. Pursuant to 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 (10) feet shall provide a 6-foot fence or 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. Pursuant to 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. No direct vehicular access shall be taken from any lot directly to either Sultan Basin Road or 132nd Street SE. All lots abutting either or both such streets shall take all vehicular access from an internal plat street.

d. Garages whose vehicular door(s) face a street with reduced right-of-way and a sidewalk easement must maintain an 18 foot setback between the back edge of the sidewalk and the near face of the garage. ***NOTE: This condition is appropriate only if the Council determines that reduced width rights-of-way serve the public use and interest in this case.***

6. Proposed Lots 54 and 55 shall be sold as one and treated as a single lot for building purposes until such time as the existing garage on Lot 54 is removed or until such time as a building permit is obtained to build a single-family residence on Lot 54.

7. 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.

8. A drainage easement between the *Greens* Property and *Skoglund* Property to the east will be required to be recorded with the Final Plat.

9. The following revisions shall be made to the Final Plat Map:
   a. The required setbacks shall be shown.
   b. Correct square footages for all lots and tracts shall be shown.
   c. Remove Parcel A from the plat (unless it is shown simply as adjacent property)..
   d. Label those tracts that contain wetlands and wetland buffer as "Native Growth Protection Areas".
   e. The Puget Sound Energy aerial high voltage transmission easement shall be delineated with particularity.

10. 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.

11. 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.

12. 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. ***NOTE: This condition is appropriate only if the Council determines that reduced width rights-of-way serve the public use and interest in this case.***

13. 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.

14. Prior to construction, the Developer shall prepare a final Construction Stormwater Pollution Prevention Plan (SWPPP) for approval by the City Engineer and the Department of Ecology. The Developer shall provide a copy of the Department of Ecology, Construction Stormwater General Permit, issued for this project prior to issuance of City permits.

15. Site development shall follow all recommendations of the final stormwater report.

16. 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 (Exhibit 4M); as well as any subsequent addendums as accepted by the City Engineer. A note to this effect shall be placed on the Final Plat.

17. 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.

18. 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.

19. 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 (Exhibit 4J), and any subsequent reports as accepted by the Community Development Director.

20. 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.

21. A20 foot wide easement shall be established/dedicated through the Final Plat process allowing the City to access from Road D, for mitigation and maintenance purposes, the property dedication accepted under Resolution No. 07-17 (a.k.a. Wetland DT).

22. The conditions recommended by Graham-Bunting Associates, dated March 19, 2007, regarding the wetland and buffer mitigation shall be followed. (Exhibit 9)

23. 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 storm drainage system will be planted within Tracts 986 and 987.
    d. All trails shown within wetland buffers shall demonstrate compliance with the requirements of former SMC 16.80.080.

24. A Time-Zero/As-Built mitigation planting plan report shall be submitted to the City with Final Plat submittal.

25. 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.

26. 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.

27. 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 (Exhibit 4K), and any subsequent reports as accepted by the Community Development Director.

28. 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. 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.

e. Provide details for the recreation area equipment and amenities.

f. Specified the construction details for the trail. Pursuant to the pre-application meeting, a five (5) foot wide path made of 5/8 inch minus gravel is required.

g. 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.

29. The latecomers fee due under the Bethany Terrace Ordinance shall be due prior to permit issuance.

30. 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 Sultan WCL West Bound Passing Lane project 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.

31. 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; a major revision to the plat may be necessary.

32. The developer, 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.