SULTAN CITY COUNCIL

AGENDA ITEM COVER SHEET

ITEM NUMBER A-3
Twin Rivers Ranch Estates Preliminary Subdivision, Plat Modifications, Conditional Use Permit, and Shoreline Substantial Development Permit

DATE: January 24, 2008

SUBJECT: Conduct a Closed Record Hearing for the Twin Rivers Ranch Estates Preliminary Subdivision to consider the Hearing Examiner's Recommendation

CONTACT PERSON: Erin Martindale, Perteet Inc.

ISSUE:

The issue before the City Council is to conduct a Closed Record Hearing to consider the Hearing Examiner's Recommendation dated December 20, 2007 (Exhibit 1) for the Twin Rivers Ranch Estates Preliminary Subdivision in accordance with SMC 2.26.150(C), (D), (E), and (F) (Exhibit 4).

The Hearing Examiner recommended approval of the Preliminary Subdivision subject to Conditions. The approval also includes Plat Modifications to waive access to public shoreline requirements and to allow a longer-than-standard cul-de-sac; a Conditional Use Permit to allow clustered houses, and a Shoreline Substantial Development Permit for the subdivision, within the shoreline zone for the Skykomish River.

There were other issues raised by the public at the public hearing and discussed in the Hearing Examiner's Recommendation that the Council should be aware of, but are not reasons to deny the application. These issues are fully discussed in the Discussion section of this staff report.

ACTIONS FOR COUNCIL TO TAKE:

1. Conduct the Closed Record Hearing on the Twin Rivers Ranch Estates Preliminary Subdivision.

2. Discuss the issues detailed in the Discussion section of this staff report.

3. At the conclusion of the Closed Record Hearing, consider under Action Item A-3 the Resolutions prepared by staff to guide discussion:

a. Resolution Number 08-06, which accepts the Recommendation of the Hearing Examiner approving the Preliminary Subdivision subject to conditions of approval, with some revised conditions of approval; or

SUMMARY OF COUNCIL ACTIONS:

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

1. Concur with the Hearing Examiner's Recommendation, and approve the Twin Rivers Ranch Estates Preliminary Subdivision

2. Reject the Hearing Examiner's Recommendation, make new findings and conclusions, and Deny the Preliminary Subdivision; or

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

At the conclusion of the Public Hearing, the Council shall enter its decision in the record, which shall set forth the findings and conclusions of the Council in support of its decision.

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:

This project has undergone several revisions since its initial inception. The first application was for a 22-lot Planned Unit Development of single-family residences. This application was remanded by the City Council to the Hearing Examiner to allow the Applicant to modify the application and respond to the issues raised by the Hearing Examiner.

A revised PUD was submitted subsequent to this remand, which was denied by the Hearing Examiner and the City Council.

The current project under consideration was submitted subsequent to that denial. It proposes a 16-lot cluster subdivision. This requires approval of a Preliminary Subdivision, Conditional Use Permit to cluster lots, and a Shoreline Substantial Development permit for development on the shoreline of the Skykomish River.

The Applicant also requests two Plat Modifications, one to forgo the public access requirements to water bodies, and another to extend the cul-de-sac beyond that maximum length allowed in the City's Design Standards and Specifications.

The Hearing Examiner conducted an Open Record Hearing on December 11, 2007 for the Twin River Ranch Estates Preliminary Subdivision located at 210 Foundry Drive, between the BNSF track and the Skykomish River. The Hearing Examiner's Report and Recommendation dated December 20, 2007, recommends that Council APPROVE subject to conditions. The conditions of approval are shown on pages 30 – 33 (Exhibit 1).

On January 10, 2008, the City Council conducted the Public Meeting on the Hearing Examiner's Recommendation and thereafter by Motion, set January 24, 2008 at 6:30 PM to conduct the Closed Record Hearing for the Twin Rivers Ranch Estates Preliminary Subdivision.

SMC 2.26.150, Council Consideration, pre-dates regulatory reform adopted by State Law in 1995 which allows one Open Record Hearing in front of the Hearing Examiner and one Closed Record Hearing in front of the City Council. The Closed Record Hearing Schedule for Thursday, January 24, 2008 provides the City Council with the one Closed Record Hearing as permitted by State Law.

DISCUSSION:

The Recommendation of the Hearing Examiner asks the City Council to APPROVE the Twin Rivers Ranch Estates subject to conditions.

There were several issues raised at the public hearing that are included as discussion in the Hearing Examiner's Recommendation that this staff report will review to give Council background. They are organized as they appear in the Hearing Examiner's Report.

1. *There is a neighboring property to the west of Twin Rivers Ranch Estates that has a preliminary approved short plat with on-site septic. (Page 5 of Hearing Examiner Report)*

   This neighboring project is conditioned to remove the septic and install sewers when they become available. The Twin Rivers Ranch Estates project will bring sewers to the property line neighboring project. The City Engineer and Public Works Director will determine as part of the permitting process for Twin Rivers Ranch Estates whether the neighboring project will be required to install sewers with that short plat.

   There is another on-site septic shown on the plans for the Twin Rivers Ranch Estates property. This septic system is shown on the plans to be removed as part of this project. No further action is required of the Applicant, subject to inspection of the removed septic system during site development.

2. *A Riparian Management Zone is shown on the plans. (Page 6 of Report)*

   Snohomish County adopted the Snohomish County Shoreline Master Program (SMP) in 1974. The Twin Rivers Ranch Estates project is subject to the 1993 Amendments to the SMP. All development is subject to the Shoreline Master Plan. The Snohomish County Code includes requirements for Riparian Management Zones. However, the City of Sultan has not adopted these RMZ's, and this project is not subject to those County requirements.

   No further action is required of the Applicant on this issue.

3. *The City's Transportation Improvement Plan (TIP) was found to be noncompliant with the Growth Management Act (GMA) by the Central Puget Sound Growth Hearings Board on June 29, 2006. (Page 8 and 19 of Report)*

   The TIP was found to be noncompliant with GMA because the TIP was not consistent with the adopted Transportation Element. Several other appeals to the Hearings Board also found the TIP and Comprehensive Plan noncompliant with GMA.

   This project cannot be denied due to noncompliance of the TIP because the TIP has no impact on the concurrency requirements of SMC 16.108. Concurrency is not based on the provisions of the TIP. No further action is required of the Applicant on this issue.

4. *The sewer pipe is required to extend underneath BNSF railroad tracks. (Page 10 and 19 of Report)*

   The City will be the lead agency in permitting the sewer extension under BNSF tracks in accordance with the Utility Agreement the City has with BNSF.

   There was some doubt at the public hearing that the project could obtain approval from BNSF to extend the sewer under the railroad. However, this is not a reason to deny preliminary approval. The City and the Applicant will be required to obtain this approval before any permits are issued by the City for Twin Rivers Ranch Estates.

5. *The recreation area (Tract 997) will be relocated from where it is shown on the plans. (Page 11 and 20 of Report)*

   At the public hearing, staff asked the Applicant to move the recreation area to protect a neighboring property owner. The Applicant wanted flexibility in moving it to another location during the permitting phase of this project. The Hearing Examiner stated there is a need to have a more defined location in order to evaluate the project against the Conditional Use Permit (CUP) criteria, under SMC 21.04.052. The CUP is required in order to cluster the subdivision under SMC 16.80.230, Density/floor area calculations and transfer of density/floor area.

The Applicant, staff and Hearing Examiner agreed that the recreation area would be located between proposed lots 9 and 10 or between proposed lots 10 and 11. The Applicant will be required to show the recreation tract located to one of these locations with submittal for permit approval.

6. *The internal road and Foundry Drive will not align. (Page 11 and 25 of the Report)*

   The proposed rights-of-way of the internal cul-de-sac road and Foundry Drive will align. However, the pavement on Foundry Drive hugs the west edge of the right-of-way, while the internal road will be centered within the right-of-way in conformance with the City's Design Standards.

   The lanes of traffic will be off-set from one another. The City's consultant Traffic Engineer recommends that the offset be as small as practicable, and that stop signs be installed for the east and west traffic.

   The City is planning on improving the railroad crossing on Foundry Drive, with grant funds that have been made available. The Applicant is also funding improvements to the Foundry Drive/Skywall Drive/325th Street SE intersection south of the tracks and improving the approaches to the crossing.

   The Hearing Examiner has included a recommended condition of approval, Condition #17, which requires improvements to the crossing to make it safe. Staff is recommending that this condition be slightly revised, without changing the intent. The proposed revision would remove the word "widened" and add the phrase "as determined by the City Engineer" to the second sentence.

   With these proposed improvements and conditions, the alignment will be as closely aligned and as safe as practicable, as recommended by the City's consultant Traffic Engineer. The Applicant will be required to show the necessary improvements and meet the required conditions at the time of permit submittal.

7. *Traffic impact fee credits are proposed for improvements to the Foundry Drive/Skywall Drive/325th Street SE intersection. (Page 12 and 19 of the Report)*

   The Applicant has stated his intention to apply for traffic impact fee credits for the improvements at the intersection of Foundry Drive, Skywall Drive and 325th Street SE.

   SMC 16.112.080 allows for credits to the traffic impact fees for improvements to facilities that are identified in the Capital Facilities Plan. As the Hearing Examiner states, the traffic impact fee amount is determined at the time of building permit issuance. The credit will also be determined at the time of the first building permit issuance and applied to all the building permits for this project.

At that time, in order to receive the credit, the improvements to this intersection will be required to be within the Capital Facilities Plan in order for the Applicant to receive the credit.

No further action is required of the Applicant. The traffic impact fee and associated credits will be determined for this project at the time of the first building permit issuance.

8. *The cul-de-sac is longer than the maximum allowed. (Page 13 and 20 of the Report)*

   The Applicant proposes a cul-de-sac that is 386 feet long. The City's Design Standards and Specifications do not allow a cul-de-sac longer than 300 feet. The Design Standards also give the City Council authority to allow modifications when they are in the public interest, when they are based upon sound engineering judgment, and when they meet requirements for safety, function, appearance and maintainability.

   In this case, the length modification meets those requirements, as explained by the Hearing Examiner. There is no reason to stub the street to the east or west property lines, and reducing the length of the roadway by eighty-six (86) feet would produce multiple panhandles or shared private roads, or further reduce the lot yield below what is reasonable.

   Staff and the Hearing Examiner support the length modification for this project, due to the circumstances on the site.

   No further action is required of the Applicant on this issue.

9. *Public access to water bodies is not proposed. (Page 13 and 20 of the Report)*

   SMC 16.28.260(C) requires that all subdivisions provide public access to publically owned or controlled bodies of water. The Applicant has proposed that this public access to the Ordinary High Water mark not be provided.

   This modification is supported by Staff and the Hearing Examiner due to lack of adequate parking for public access and lack of connectivity to other publicly accessible areas on the shoreline. This area will be available for the subdivision residents, but not for public access.

   No further action is required of the Applicant on this issue.

10. Police LOS is not met. (Page 14 and 22 of Report)

The Hearing Examiner recommends a condition (Condition #32) be placed on the project that requires that the Police LOS be met prior to occupancy of the units of this development.

The Applicant agreed during the Open Record Hearing that the Police Services LOS in existence at the time of final building permit inspection would be met before approval of occupancy could be granted. The Applicant accepted this condition, and is not appealing it, because they anticipate that the Police LOS requirements will be revised in the time it would take to develop the plat, obtain final approval, and start building residences.

No further action is requested of or by the Applicant.

The Council should be aware that accepting this condition of approval on two applications (Hammer and Twin Rivers Ranch Estates), as well as Greens Estates, also being considered tonight, will further set the policy that this condition will be applied to all future applications that are subject to this Code provision.

11. Revisions to Water and Sewer Conditions. (Page 25 of Report)

The Applicant and staff recommend changes to Conditions 10 and 11 of the Hearing Examiner Recommendation. This includes the following changes:

Condition #10 is revised to state:

> The Applicant/Developer is responsible for any improvements to the City's water system which are necessary to provide adequate flow to the site. The Developer/Owner shall be required to relocate and extend on-site water lines as shown on Exhibit 1H, Sheet P3, Preliminary Sewer, Water and Storm Drainage Plan, <u>as deemed necessary by the City Engineer.</u>

Condition #11 is revised to state:

> "The Applicant/Developer is responsible for any necessary extension and improvements to the City's sewer system in order to provide sewer service to the site<u>. The Developer/Owner shall be required to relocate and extend on-site sewer lines as shown on Exhibit 1H, Sheet P3, Preliminary Sewer, Water and Storm Drainage Plan, as deemed necessary by the City Engineer.</u> The City will be the lead in the permitting process with the BNSF Railroad."

These revised conditions will meet the intent of the Hearing Examiner's Recommendation, as well as provide more certainty to the Applicant and the public on what will be provided by this project.

The Applicant will be required to show compliance with these conditions at the time of permit submittal.

RECOMMENDED ACTION:

1. Conduct the Closed Record Hearing on the Hearing Examiner's Recommendation of the Twin Rivers Ranch Estates Preliminary Subdivision that recommended approval of the project subject to conditions.

2. Discuss the issues raised in the public hearing and discussed in the staff report

3. Adopt the Hearing Examiners Recommendation, Approve the Twin Rivers Ranch Estates Preliminary Subdivision, subject to revised conditions.

ATTACHMENTS:

1. Hearing Examiner's Recommendation, dated December 20, 2007
2. City Staff Report, dated November 27, 2007
3. SMC Code Section 2.26.150, Council Consideration
4. Resolution 08-06
5. Twin Rivers Ranch Estates Preliminary Plat Maps
6. SMC Code Section 16.108, Concurrency Requirements
7. SMC Code Section 21.04.052, Additional criteria for single-family detached dwelling (clustered)
8. SMC Code Section 16.80.230, Density/floor area calculations and transfer of density/floor area
9. SMC Code Section 16.112.080, Impact fee credits
10. SMC Code Section 16.28.260, Applicability

BEFORE the HEARING EXAMINER of the CITY of SULTAN

RECOMMENDATION

FILE NUMBERS:	FPCUP07-001 and SMP07-001
APPLICANT:	Dan Ramirez
TYPE OF CASE:	Concurrent: 1) Preliminary subdivision (*Twin Rivers Ranch Estates*); 2) Plat Modifications to waive the public shoreline access requirement and to allow a longer-than-standard cul-de-sac; 3) Conditional Use Permit to cluster the lots; and 4) Shoreline Management Act Substantial Development Permit for the subdivision
STAFF RECOMMENDATION:	Approve subject to conditions
SUMMARY OF RECOMMENDATION:	APPROVE subject to revised conditions
DATE OF RECOMMENDATION:	December 20, 2007

INTRODUCTION

Dan Ramirez (Ramirez), P.O. Box 623, Sultan, Washington 98294, seeks preliminary approval for *Twin Rivers Ranch Estates*, a 16 lot single-family residential cluster subdivision of an 8.56 acre site zoned Low/Moderate density (LMD) located on the bank of the Skykomish River. Cluster subdivisions require issuance of a Conditional Use Permit (CUP). [Sultan Municipal Code (SMC) 16.12.010(D)(2)] Ramirez filed the preliminary cluster subdivision application, together with requests for plat modifications and for a Shoreline Management Act (SMA) Substantial Development Permit (SDP) for the subdivision, on September 17, 2007. (Exhibit 1A [1]) The Sultan Department of Community Development (DCD) deemed the applications complete on September 18, 2007. (Exhibit 2) [2]

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[1] 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

(Footnote continued on next page.)

Attachment 1

The subject property is located at 210 Foundry Drive, between the Burlington Northern Santa Fe (BNSF) track and the Skykomish River.

The Sultan Hearing Examiner (Examiner) viewed the subject property on May 18, 2006.

The Examiner held an open record hearing on December 11, 2007. DCD and Ramirez gave notice of the hearing as required by the SMC. (Exhibits 17 – 19 and 23)

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record, typically only major documents are cited. The Examiner's Recommendation is based upon all documents in the record.

[2] The current set of applications is distinct from earlier applications to develop the subject property which used the same name.

Ramirez filed an application for a 22 lot single-family residential Planned Unit Development (PUD) subdivision to be known as *Twin Rivers Ranch Estates* on October 7, 2005, under file number FPPUD05-006. The Examiner held an open record hearing on that application on May 18, 2006. On June 19, 2006, the Examiner issued a Recommendation that the PUD portion of the application be denied and that the preliminary subdivision portion of the application be returned to Ramirez for correction, citing seven reasons: 1) An SDP was required but had not been sought; 2) The PUD portion failed to meet the PUD transit facilitation requirement; 3) The PUD portion failed to meet the PUD pedestrian and bicycle circulation requirement; 4) The subdivision lacked current water and sewer service commitments; 5) The subdivision design would have created an unacceptable intersection with Skywall Drive and Foundry Drive; 6) The subdivision did not comply with concurrency requirements for police services; and 7) The proposed area to be dedicated for public park would have created an attractive nuisance.

On August 30, 2006, Ramirez submitted a letter to the City asking the Council to remand the application. On September 14, 2006, the Council passed Resolution No. 06-14 remanding *Twin Rivers Ranch Estates* to the Examiner "so that the Applicant can modify the Application and respond to the issues raised by the Hearing Examiner."

Ramirez submitted an SDP application on September 14, 2006, (deemed complete by DCD on September 15, 2006) and formally resubmitted a revised preliminary PUD application on September 29, 2006. The SDP application was assigned file number SMP06-001; the revised PUD subdivision application was assigned file number RAFPPUD05-006 and became vested on October 30, 2006. The Examiner held an open record hearing on those applications on November 30, 2006. On December 27, 2006, the Examiner issued a Recommendation that the PUD portion of the application be denied, that the preliminary subdivision portion of the application be returned to Ramirez for correction, and that the SDP be denied without prejudice citing three reasons: 1) Failure to meet two PUD locational criteria; 2) Failure to meet the PUD usable open space requirement; and 3) Failure to meet several SMA requirements. On February 22, 2007, the Council passed Resolution No. 07-02A adopting the Examiner's recommendation (except as to certain of the Examiner's Findings and Conclusions regarding police services concurrency).

The current set of applications was filed some seven months later.

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

Exhibits 1 - 19:	As enumerated on page 22 of Exhibit 20
Exhibit 20:	Departmental Staff Report dated November 27, 2007
Exhibit 21:	Applicant's hearing testimony
Exhibit 22:	Preliminary plat (containing minor revisions responding to Exhibit 20)
Exhibit 23:	Hearing notice documentation
Exhibit 24:	SMC 21.04.052
Exhibit 25:	RCW 36.70A.070(6)(b)
Exhibit 26:	BNSF railroad crossing photographs (6)
Exhibit 27:	Railroad crossing detail plan
Exhibit 28:	BNSF Utility Accommodation Policy
Exhibit 29:	Memorandum, Olson (BNSF) to Gibson, December 11, 2007

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 cluster subdivision, plat modification, and SDP approval? Does the application meet concurrency requirements of Chapter 16.108 SMC? Should the application be denied because the adopted City Comprehensive Plan depicts infrastructure interconnections which certain area residents oppose? Should the application be denied because no approval from BNSF has been granted to install utilities beneath the railroad track? Do recent actions by the Central Puget Sound Growth Management Hearings Board require denial of the applications?

FINDINGS OF FACT [3]

Area and Project Description

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[3] The Findings of Fact and Conclusions in this Recommendation are grouped by topic only for the reader's convenience. Such groupings do not indicate any limitation of applicability to the recommendation as a whole.

1. The *Twin Rivers Ranch Estates* site is a nearly rectangular property composed of four acreage lots created through the short subdivision process in 1994 encompassing 8.56 acres. At the time of the short subdivision, the northerly 60 feet of the site was dedicated to the City for right-of-way as part of Skywall Drive. The BNSF mainline track abuts and parallels Skywall Drive to the north. (Exhibits 1I, 1O, 22, [4] and 26 and testimony)

   The site extends between 600 to 800 feet south from Skywall Drive to the north shore of the Skykomish River. The northerly 460± feet of the site is essentially flat; the remainder of the property drops off to the river. The southerly 60 – 120 feet of the property lies below the Ordinary High Water Mark (OHWM) of the Skykomish River. A drainage swale parallels the east property line. The Skykomish River's flood plain for the "base flood" (the so-called 100 year flood) covers essentially that portion of the site south of the 120 foot contour. (Exhibits 1H, 1U, and 22)

   The site currently contains one single-family home and associated accessory buildings (a detached garage and detached outbuildings) on the eastern portion of the property. (Exhibits 1H and 22) "The site is vegetated with grass and brush with several scattered trees." (Exhibit 1D, p. 2)

2. The *Twin Rivers Ranch Estates* site is bordered on the north, as noted, by Skywall Drive. Immediately north of Skywall Drive is the BNSF main line. About 20 trains a day pass through this area. Immediately north of the BNSF main line is Romac Industries, a heavy industrial operation. (Exhibits 20, 22, and 29 and testimony)

   The *Twin Rivers* subdivision, containing 35 single-family residences on 48 lots, lies to the east. Skywall Drive via Foundry Drive [5] is the sole access to *Twin Rivers* and *Twin Rivers Ranch Estates*. (Exhibit 22 and official notice from prior *Twin Rivers Ranch Estates* hearings)

   An acreage tract borders the west side of the site, to the west of which is Dyer Road and a small-lot residential area containing approximately 80 lots served by Dyer Road and 10th Street. The acreage

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4 Exhibit 22, a revision of plan set Sheet P2 submitted during the hearing, is identical to Exhibit 1H with but two exceptions: Proposed Lot 6 has been widened to 64 feet minimum and all setbacks have been revised to comply with SMC requirements. Ramirez made both of those changes in direct response to deficiencies noted in the DCD Staff Report, Exhibit 20. Plan revisions made in direct response to the Staff Report are admissible at hearing. [Hearing Examiner Rule of Procedure 216] Exhibit 22, together with all sheets in Exhibit 1H except Sheet P2, comprises the plan set reviewed in this Recommendation.

5 Ramirez's submittals use the name "Foundry Road." (See Exhibits 1, 21, and 22, for example.) The Staff Report and the City's Consulting Engineer use the name "Foundry Drive." (See Exhibits 15 and 20.) The Examiner elects to use the "Foundry Drive" name herein regardless of what the street's official name may be.

tract is served by Dyer Road on the west and Skywall Drive on the east. (Exhibit 22 and testimony) The acreage parcel has received preliminary short subdivision approval. The terms of that approval allow the development to go forward using on-site sewage disposal (septic tanks and drainfields), but require connection to public sewers should such become available. (Official notice from prior *Twin Rivers Ranch Estates* hearings)

3. Access to the industrial area north of the BNSF track and to the subject property and the *Twin Rivers* subdivision south of the BNSF track is via Cascade View Drive-Cemetery Road and Foundry Drive. Cascade View Drive-Cemetery Road is a two lane road which runs roughly parallel with and south of SR 2 from the old Sultan Basin Road/SR 2 intersection easterly for about one-half mile. Foundry Drive is a relatively short (less than ¼ mile) and narrow (approximately 17 feet wide), two lane road constructed within a 60 foot right-of-way which extends south from Cascade View Drive-Cemetery Road to serve the industrial area north of the BNSF tracks, crosses the BNSF at a substandard grade crossing, and intersects Skywall Drive immediately south of the BNSF right-of-way. The pavement runs along the west edge of the right-of-way at the BNSF crossing. (Exhibits 1F, 1H, 20, 22, and 27 and testimony)

   Neither SR 2, Cascade View Drive-Cemetery Road, nor Foundry Drive have sidewalks or improved pedestrian facilities. The BNSF crossing is in relatively poor condition, although BNSF replaced the planking at the crossing and slightly flattened the crossing approaches in the Summer of 2007. (Exhibits 1F, 22, and 26 and testimony)

   The Cascade View Drive/SR 2 intersection has been affected by the recently completed Sultan Basin Road/SR 2 realignment and signalization project. Cascade View Drive formerly formed the fourth leg of the unsignalized Sultan Basin Road/SR 2 intersection. The project shifted the Sultan Basin Road intersection several hundred feet to the east. The Cascade View Drive/SR 2 intersection has become right-turn-in/right-turn-out only. Motorists wishing to travel west on SR 2 either have to turn east at the Cascade View Drive intersection and then find somewhere to make a U-turn, or travel east on Cemetery Road and make a left turn at its unsignalized intersection with SR 2. The ultimate plan (sometimes referred to as Phase III of the realignment project) is to extend the realigned Sultan Basin Road south to intersect Cemetery Road, thus providing a signalized intersection with SR 2 for this area south of SR 2. Funding, design, and timing of that extension are not firm according to testimony by City staff in prior hearings. (Exhibit 1F)

4. Ramirez proposes to subdivide the 8.56 acre site into 16 lots for single-family residences (retaining the existing residence on one of those lots). The subdivision includes 2.5 acres (29.6% of the total site) of open space: Tract 997, a 5,632 square foot (SF) active recreation area located above the base flood elevation containing BBQs and picnic tables; Tract 998, a 54,455 SF open space and storm drainage area encompassing the eastern drainage swale; and Tract 999, a 50,331 SF area encompassing all that portion of the site riverward of the OHWM. All that portion of Proposed Lots 9 – 13 located within 150 feet of the OHWM will be preserved as a Native Growth Protection Area (NGPA). (Exhibit 22)

The proposed lots will range in size from 8,724 SF to 21,954 SF. The proposed density is 1.87 dwelling units per acre. Ramirez proposes to utilize the 20% lot area, width, and setback reductions allowed by SMC 21.04.052(B). (Exhibits 21, 22, and 24)

Regulatory Framework

5. The adopted 2004 Comprehensive Plan (Plan) designates the site and the properties to the east and west between the BNSF tracks and the Skykomish for residential development; property north of the tracks is designated for Economic Development. (Plan, p. 23) The Comprehensive Plan calls for an interconnection between Skywall Drive and Dyer Road to the west. (Plan, p.35) In addition, the Plan calls for sewering the area south of the track, with a pump station located on Dyer Road at 10th Street. (Plan, p. 51)

6. The site is currently zoned LMD, whereas the abutting areas to both the east and west are zoned Moderate Density (MD), a higher density zone. The area to the north is zoned Economic Development (ED). (Exhibits 1T and 20)

7. The Skykomish River is classified as a Type 1 Stream. The required buffer for a Type 1 Stream is 150 feet wide, measured from the OHWM. (Exhibit 20)

8. The SMA became part of the Laws of Washington in 1971. The Skykomish River is classified as a "Shoreline of Statewide Significance" under the SMA. [WAC 173-18-040(2)(a) and -350(29)] SMA jurisdiction extends 200-feet landward from the OHWM of the Skykomish River. All of open space Tract 999, portions of Tracts 997 and 998, and portions of five lots (Proposed Lots 9 - 13) lie within the jurisdictional area of the SMA. (Exhibit 22)

The SMA requires each political jurisdiction which has water bodies subject to the SMA to adopt a Master Program containing regulations to implement the SMA locally. Snohomish County prepared its Master Program (the SCSMP) for unincorporated lands within the county as well as on behalf of 10 incorporated cities, one of which was Sultan. (Official notice) Snohomish County adopted the SCSMP in September, 1974. The SCSMP was approved by the Washington State Department of Ecology (DOE) in December, 1974. [SCSMP, inside Title Page] Subsequent to approval of the SCSMP by DOE, all substantial developments proposed within areas subject to the SMA and within the area covered by the SCSMP have been required to comply with the provisions of the SCSMP. [6]

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[6] The project plans depict a 300 foot wide Riparian Management Zone (RMZ). (Exhibits 1H and 22) The SMC has no requirement for an RMZ. Snohomish County Code includes an RMZ requirement. According to the DCD Director's

(Footnote continued on next page.)

The only reference to the SMA within the SMC is SMC 16.96.010: "The city of Sultan shall adopt Snohomish County's Shoreline Management Master Program." [7] That one sentence section was adopted as part of Ordinance No. 630 in 1995. Ordinance No. 630 converted various provisions within the City's then-existing code into a "Unified Development Code." Ordinance No. 630 itself contains no specific reference to the SCSMP. (Official notice) In fact, many if not most of the Unified Development Code's provisions existed within the SMC in a different organizational format. DCD has not been able to find documentation of the original adoption of the SCSMP by the City. (Official notice) DCD does not know when the City first adopted the SCSMP nor whether the City adopted the SCSMP as it existed on the date of City adoption (whenever that was), or whether the City adopted the SCSMP as it then existed and as it may thereafter have been amended. The copy of the SCSMP which DCD stated is on file with the City and is routinely used contains Snohomish County amendments through 1993. [8]

Although not of record in this proceeding, it is highly probable that Sultan adopted the SCSMP for use within the City in 1974 – 75, shortly after DOE approval. It is completely unrealistic to believe that Sultan never adopted the SCSMP until mid-1995 (20 years after its approval by DOE), especially in view of the fact that the version routinely used by DCD contains amendments through 1993, but not those enacted after 1993. The Staff's use of an SCSMP containing 1993 amendments suggests that Staff believed(es) that it should use that version of the SCSMP.

The Examiner will review this application against the version of the SCSMP containing amendments through June, 1993, the version routinely used by DCD. All SCSMP page references are to the 1993 printed version.

9. The SCSMP does not place the subject property within one of the five Shoreline Planning Environments. The *Twin Rivers* subdivision to the east is designated as a Rural Environment [9]; the

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testimony and to the best of the Examiner's knowledge, Sultan has not adopted any Snohomish County land use regulations relating to an RMZ. Therefore, the RMZ is not applicable.

7 The word "shall" is an auxiliary verb which denotes future time. This provision, read literally, means that at some future time the City would adopt the SCSMP. Such a reading makes absolutely no sense for reasons explained within the text of the recommendation. At best it represents a classic case of inartful code drafting.

8 The City adopted its own Shoreline Management Master Program this Fall. That document is not applicable to this application for either or both of two reasons: It has yet to be adopted by the State Department of Ecology (Master Programs are not legally in force until adopted by DOE); and, even if it had been adopted by DOE, vested rights considerations would prevent its use in this application.

9 The SCSMP contains no explanation for that seemingly incongruous designation.

Dyer Road area to the west, like the subject property, is not designated. [SCSMP, Designation Map 43] The reason for the omission is unknown. [10] DCD has applied the Environment Designation Criteria within Section E of the SCSMP and concluded that the property best fits the Suburban Environment designation. (Exhibit 20, p. 8)

Residential subdivisions are permitted within the Suburban Environment subject to compliance with 11 General regulations and two Environment-specific regulations, one of which requires a 25 foot setback from the OHWM. [SCSMP, pp. F-59 – F-62]

10. On June 29, 2006, the Central Puget Sound Growth Management Hearings Board (CPSGMHB or simply the Board) issued a Final Decision and Order in CPSGMHB No. 06-3-0003 (*Fallgatter V*) in which the Board found that the City's 2005-2011 Transportation Improvement Plan (TIP) failed to comply with the Growth Management Act (GMA): The TIP and the Plan were inconsistent, the Plan's Transportation Element was legally deficient, and the Plan lacked a twenty-year Capital Facilities Element (CFE).

On August 10, 2006, in an attempt to comply with the Board's Order in *Fallgatter V*, the City adopted the 2006-2011 TIP by Resolution No. 06-10. On February 13, 2007, the Board invalidated the 2006 – 2011 TIP, found the TIP to be noncompliant with the GMA and declared it to be invalid. [CPSGMHB No. 06-3-0034, *Fallgatter VIII*]

On August 9, 2007, in an attempt to comply with the Board's Order in *Fallgatter VIII*, the City adopted a new six-year TIP for 2008 – 2013 by Resolution No. 07-14. On October 3, 2007, the Board issued an Order of Continuing Noncompliance and Invalidity in *Fallgatter VIII*.

In the meantime, on September 5, 2007, the Board issued a Final Decision and Order in CPSGMHB No. 07-3-0017, *Fallgatter IX*, ruling that the Capital Facilities Plan adopted by City Ordinance No. 942-06 in December, 2006, was noncompliant with the GMA and holding its provisions regarding water, sewer, and parks facilities invalid. (Official notice)

A determination of invalidity by the Board "is prospective in effect and does not extinguish rights vested under state or local law before receipt of the board's order by the city ...." [RCW

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[10] The Examiner was employed by Snohomish County during the time the SCSMP was under development in the 1970s and actively participated in its preparation. The Examiner has no recollection as to why no Planning Environment designation was applied to this short segment of Skykomish River shoreline. Frankly, it would appear to have been an oversight or scrivener's error.

36.70A.302(2)] Invalidity pertains only to those portions of an enactment specifically named by the Board. [RCW 36.70A.302(1)(c)] When a city enacts an interim or replacement measure designed to cure the invalidity, such enactment is not valid until the Board holds a compliance hearing and makes a compliance determination. [RCW 36.70A.302(5) and (7)]

Substantive Findings

11. The record contains evidence that appropriate provisions have been made for:

A. Open space. As noted above, Ramirez proposes to set aside nearly 30% of the site as common open space. The NGPA is in addition to that area. (Exhibits 1H and 22)

B. Drainage ways. Stormwater runoff will be collected, passed through a biofiltration swale located in Tract 998, and discharged via the swale in Tract 998 directly to the Skykomish River. Direct discharge is authorized in this area. [11] (Exhibits 1D and 1H)

The City has adopted the most recent Department of Ecology Stormwater Management Manual for the Puget Sound Basin (Manual). [SMC 16.92.010] The preliminary design of the stormwater management system complies with the Manual. (Exhibits 1D and 20)

C. Streets and roads. See Findings 12 - 16, below.

D. Alleys. The subdivision design does not require alleys. (Exhibit 22)

E. Other public ways. The City Engineer recommends that Ramirez be required to dedicate a drainage easement over and across Tract 998 to allow the City to install, maintain, and improve storm drainage piping in the area and also north of the BNSF tracks. (Exhibits 20 {p. 13} and 21 {unnumbered p. 4}) No need for other public ways within the subdivision exists. (Exhibit 22; see also Finding 22, below.)

F. Transit stops. The record contains no request for transit stops. [12]

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11 Some documents in the record indicate that stormwater runoff will be infiltrated. Infiltration was part of the earlier proposals to develop the subject property, but is not proposed in the current plan. (Testimony)

12 "Transit facilitation" was a major issue in the prior version of *Twin Rivers Ranch Estates* because of a special requirement associated exclusively with PUD proposals. [SMC 16.10.110(B)(2)(d)] That requirement does not apply to standard or clustered subdivisions and, therefore, is not relevant to the present application.

G. Potable water supply. Ramirez has a valid City-issued commitment for up to 22 water system connections. (Exhibit 1B) An existing water main which crosses the property will be rerouted to follow the alignment of the cul-de-sac. (Exhibit 1H, Sheet P3 and testimony)

H. Sanitary wastes. Ramirez has a valid City-issued commitment for up to 23 sewer system connections. (Exhibit 1B) Sewage will gravity flow from *Twin Rivers Ranch Estates* to an existing manhole about 300 feet north of the BNSF right-of-way. The sewer extension will be bored and sleeved through the railroad embankment about 10 feet beneath the railroad track. (Exhibit 1H, Sheets P3 and P3.1) Ramirez will have to pay for the extension of the sewer main under the BNSF tracks. (Exhibits 1B and 20)

Extension of the sewer main beneath the railroad embankment is subject to BNSF's Utility Accommodation Policy (UAP). (Exhibit 28) The May 5, 2007, edition of the UAP provides in relevant part that: Its provisions apply to utilities which are "privately, publicly or cooperatively owned and which serve directly or indirectly the public or any part thereof" (Exhibit 28, §1.A.3); the sewer line is subject to the UAP (Exhibit 28, § 1.A.2.a); the owner of the utility, in this case the City, must enter into a Utility License Agreement with BNSF before any work commences (Exhibit 28, §§ 1.A and 1.B.2); a pipe crossing beneath a rail line must be at least 5.5 feet below the top of tie (Exhibit 28, § 3.C.1.b); all pipes beneath a rail line must be encased/sleeved (Exhibit 28, § 3.C.4); if the sleeved pipe is greater than 26" in diameter and less than 10 feet below top of tie, a geotechnical study is required (Exhibit 28, §3.C.1.c); boring is one of the preferred methods to install a pipe beneath a rail line (Exhibit 28, § 3.C.5); BNSF retains authority to inspect and direct the construction work (Exhibit 28, § 4.C.1). [13]

I. Parks and recreation. Chapter 16.72 SMC requires residential subdivisions to provide recreation and open space. Table 1 in SMC 16.72.050 requires subdivisions with 10-20 dwelling units to provide one recreation facility. Section 16.72.060 SMC requires at least 15% of the total land area of any residential subdivision to be dedicated as open space.

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[13] Project opponent Gerry Gibson submitted a December 11, 2007, memorandum to him from a BNSF Project Engineer which Gibson suggested casts doubt on Ramirez's ability to extend the sewer line beneath the BNSF track. (Exhibit 29 and testimony) Nothing in Exhibit 29 contradicts the provisions in BNSF's UAP. Nothing in Exhibit 29 suggests in any way that it will not be possible to install the sewer line beneath the railroad. City staff and Ramirez's agents met about two years ago at the site with a different BNSF representative who did not suggest that placing the line beneath the railroad would be impossible. (Testimony)

Ramirez proposes to develop a trail and picnic area in Tract 997 (5,632-square feet) and dedicate 110,418-square feet of open space to the Homeowners Association. (Exhibits 1H and 22) The proposed picnic area and open space dedication (29.6% of gross area) meet the requirements of Chapter 16.72 SMC.

Proposed recreation Tract 997 is located at the southwest corner of the property, adjacent to an existing single-family residence on the neighboring property. (Exhibits 1H and 22) In order to respect and protect the enjoyment of property rights in the shoreline area, DCD recommends that Tract 997 be relocated away from adjoining properties. (Exhibit 20) Ramirez is willing to relocate Tract 997, but would like as much flexibility in doing so as possible. (Exhibit 21 and testimony) The Examiner advised Ramirez during the hearing that it would be difficult, if not impossible, to reach a favorable conclusion on required CUP criterion SMC 21.04.050(A) without knowing where Tract 997 was to be located. Ramirez indicated that he would prefer to place Tract 997 between Proposed Lots 9 and 10 or 10 and 11 because those are the three largest lots. (Testimony)

J. Playgrounds. See Finding 11.I, above.

K. Schools and schoolgrounds. The City imposes school impact fees pursuant to Chapter 16.116 SMC. (Exhibit 20, pp. 15 and 16)

L. Safe walking conditions for students who only walk to and from school. Sultan Elementary, Middle, and High Schools are located approximately 1.9 miles away from the site. (Exhibit 20, p. 15) All students from this area are bussed; the school busses cross the BNSF tracks to pick children up at or near their homes. (Testimony) Students will not have to walk beyond their subdivision to picked up for school. Walking conditions on Foundry Drive are irrelevant to this requirement.

12. Skywall Drive will be improved within its existing right-of-way across the frontage of the site to a two-lane, curb and gutter section with a parking lane, a planter strip, and a sidewalk along its south side. (Exhibit 1H, Sheet P4)

Ten to 12 of the proposed lots will be served by a 386 foot long cul-de-sac, labeled on the plat as 325th Street SE. (Exhibit 22) The cul-de-sac will be a two-lane public street, including parking lanes, sidewalks, and street trees on both sides, constructed to full City standards within a dedicated 60 foot wide right-of-way. (Exhibits 1H {Sheet P4} and 22)

13. The rights-of-way of Foundry Drive and the proposed internal cul-de-sac will align. However, since the narrow Foundry Drive pavement hugs the west edge of its right-of-way and the cul-de-sac pavement will be centered within its right-of-way, the driving lanes will not align: The cul-de-sac lanes will be offset to the east. The nature of the offset is such that on-coming vehicles will not face one another. (Exhibit 27)

14. The City has reapplied for a $20,000 grant from the Grade Crossing Protection Grant Program through the Utilities and Transportation Commission to assist in improving the Foundry Drive crossing of the BNSF main line. BNSF estimates that a 24 foot wide crossing using concrete "planks" would cost on the order of $24,000. (Testimony) The City could not accept a previous grant award of $20,000 for crossing improvements in that the previous PUD project for the subject property did not receive approval. However, the grant is now being reconsidered as a result of this revised cluster subdivision application. (Exhibit 20, p. 2)

Ramirez believes that BNSF's Summer 2007 crossing improvements have made the actual crossing safe by eliminating the "bottoming out" problem which used to plague the crossing. Ramirez is prepared to fund improvements to the Foundry Drive/Skywall Drive/325th Street SE intersection south of the railroad tracks as shown on Exhibit 27. (Exhibit 21) Ramirez intends to seek traffic impact mitigation fee credit, to the extent allowed under SMC 16.112.080, for those improvements. (Exhibit 1J)

Section 16.112.080 SMC (emphasis added) provides that a

> developer shall be entitled to a credit against the applicable impact fee component for the present value of any … improvement to or new construction of any system improvements provided by the developer … to facilities that are/were identified in the capital facilities plan and are required by the city as a condition of approval ….

15. The City's Consulting Engineer (Reinart) recommends that the Foundry Drive – 325th Street SE offset be as small as practically possible. She also recommends that priority be assigned to the north-south movements with the east-west movements controlled by stop signs. Reinart believes that traffic control pattern is better than a four-way stop as it would not require southbound traffic to stop immediately after crossing the BNSF track. (Exhibit 15)

16. The maximum cul-de-sac length allowed under the adopted Design Standards is 300 feet. [Design Standards, § 1.09] The proposed cul-de-sac will be approximately 386 feet long, measured from centerline intersection with Skywall Drive to the cul-de-sac bulb radius point. (Exhibit 22) Design Standards § 1.06 allows the Council to grant modifications to the adopted standards. Streets within

subdivisions must conform to the adopted Design Standards. [SMC 16.28.230(B)(4)] Section 16.28.240 also allows the Council to approve modification of subdivision standards. [14]

Ramirez seeks a modification for cul-de-sac length. (Exhibit 1S) The proposed cul-de-sac length is supported by the Community Development Director, Public Works Director, and City Engineer. (Exhibits 15 and 20)

17. Section 16.28.260(C) SMC, Applicability - Public Access to Water Bodies, requires all plats bordering publicly owned or controlled bodies of water, streams, or rivers to provide one or more dedicated public access rights-of-way to the ordinary high water mark; the right-of way is to have a minimum width of 60 feet and be capable of having a road constructed thereon to City standards.

The current proposal has no access to the Skykomish River for use by the general public, but does have extensive access for the use of all subdivision residents. (Exhibit 22) Ramirez seeks a modification from the public access requirement. (Exhibit 1R)

Previous applications for the subject property included a recommendation by City Staff to dedicate tracts along the Skykomish River for Public Open Space Purposes. The Examiner recommended against such access in the prior proceedings due to lack of adequate parking for public access. In its review of the prior applications, and after consideration of comments from residents of the area, the City Council did not support the dedication of tracts for public open space and park purposes. Therefore, City Staff supports the modification requested by Ramirez in consideration of City Council's direction. (Exhibit 20)

18. Sultan's State Environmental Policy Act (SEPA) Responsible Official issued a threshold Determination of Nonsignificance (DNS) for *Twin Rivers Ranch Estates* on September 27, 2007. (Exhibit 10) No appeals were filed in response to issuance of the DNS. (Exhibit 20)

19. DCD issued a Certificate of Concurrency for *Twin Rivers Ranch Estates* on November 7, 2007. (Exhibit 16) Two hearing participants (Gibson and Fallgatter) challenged police services concurrency. (Testimony)

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[14] Sections 16.28.230 and .240 are located within Article I of Chapter 16.28 SMC. Article I establishes requirements and standards for short subdivisions. Article II establishes requirements and standards for subdivisions. However, Article II contains no street standards whatsoever. The wording within the Article I standards makes it clear that the intent is that they apply to both short subdivisions and subdivisions. Their location within the short subdivision section is the result of inartful code drafting.

20. The currently adopted LOS standard for police services 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)]

    The City currently has six uniformed officers. The current uniformed officer deficit is 5.8 officers based on the Office of Financial Management's July 1, 2007, City population estimate of 4,530. (Exhibit 16)

21. The Certificate of Concurrency states that "In order to maintain an acceptable level of service for police the applicant agrees that the development will meet the Level of Service for Police in existence at the time of final building inspection/Certificate of Occupancy."[15] (Exhibit 16, p. 2; See Exhibit 1L.)

22. DCD recommends approval of all requested permits and approvals subject to 34 conditions. (Exhibit 20, pp. 18 – 21) DCD orally asked that the second sentence in Recommended Condition 16 (requiring dedication of Tract 998) be deleted as it conflicts with Recommended Condition 18 (which requires a drainage easement over Tract 998) and that Recommended Condition 18 be revised by the addition of "to the City" after the word "dedicate" and ", under," after the word "over". (Testimony) The recommended Conditions contain no concurrency conditions. (Exhibit 20)

23. Ramirez takes issue with the clarity of five topics in the DCD Staff Report and with certain aspects of nine of the Recommended Conditions. (Exhibit 21) Ramirez's topical concerns have been considered and, to the extent, appropriate, factored into the above Findings; Ramirez's objections to the Recommended Conditions will be addressed in the Conclusions.

24. Traffic and park impact fees "shall be determined and paid to the designated city of Sultan official at the time of issuance of a building permit for the development." [SMC 16.112.020(B)] School impact fees "shall be paid to the city prior to building permit issuance, based on the fee schedule in place at the time of building permit application." [SMC 16.116.030(B)] Therefore, all three fees are based on fee schedules in effect when building permit applications are filed, not the fee schedules now in effect.

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[15] DCD does not recommend or mention a Developer Agreement for Police Services. This is a change from prior DCD concurrency recommendations/positions.

25. The Georges, neighbors to the east, and Andy Coe, a resident on 165th Avenue SE, support Ramirez's proposal as a beneficial addition to the City. (Testimony)

Gerry Gibson and Corey Ourada, Dyer Road residents, oppose the proposal, mostly out of a fear that it will facilitate the Skywall – Dyer street interconnection and will lead to their neighborhood being sewered. (Testimony)

Ourada and Josie Fallgatter question what effect the CPSGMHB's invalidation actions have on the application. [16] (Testimony)

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

PRINCIPLES OF LAW

Authority
Preliminary cluster subdivision 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 16.28.320 - .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;
>
> 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

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16 Fallgatter stated that she was neither in support of nor in opposition to Ramirez's proposal. Rather she "supports legally compliant and fiscally sound planning." (Testimony) To the extent that her concerns relate to legislative decision making, and municipal management, they are beyond the scope of this project permit application hearing.

4. all other relevant facts to determine whether the public use and interest will be served by the … subdivision.

The review criteria for a CUP for a clustered subdivision are set forth at SMC 21.04.050 and .052:

21.04.050 Criteria.

The following criteria shall apply in granting a conditional use permit:

A. The proposed conditional use will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity of the proposed conditional use or in the district in which the subject property is situated;

B. The proposed conditional use shall meet or exceed the performance standards that are required in the district it will occupy;

C. The proposed conditional use shall be compatible generally with the surrounding land uses in terms of traffic and pedestrian circulation, building and site design as approved by the Design Review Committee; [17]

D. The proposed conditional use shall be consistent with the goals and policies of the Comprehensive Land Use Policy Plan;

E. All measures have been taken to minimize possible adverse impacts, which the proposed use may have on the area in which it is located.

21.04.052 Additional criteria for single-family detached dwelling (clustered).

The following additional criteria shall apply to allow single-family detached dwelling(s) (clustered):

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[17] As the Examiner has noted in a prior Recommendation, the SMC contains an apparent conflict between Chapters 21.04 and 2.20 SMC. Chapter 21.04 SMC, "Conditional Use Permits," was adopted by Ordinance No. 690-98, effective August 10, 1998. Section 21.04.050(C) requires "building and site design as approved by the design review committee" for all CUP applications. Chapter 2.20 SMC, "Design Review Board and Process," was adopted by Ordinance No. 727-00, effective March 22, 2000, as a replacement for former Ordinance No. 686-98. Section 2.20.060 SMC establishes the DRB's scope of authority: "The design review board shall review all development in urban center (UC), highway-oriented development (HOD), economic development (ED) zoning districts, multifamily developments and neighborhood commercial developments in residential zones." Ordinance No. 727-00 contains a "Repealer" section: "Any and all other ordinances or parts of ordinances of the City of Sultan inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency." Since Ordinance No. 727-00 is more recent than Ordinance No. 690-98, any provisions in the latter which are inconsistent with the provisions of the former have been repealed.

Section 21.04.050(C) SMC is partly inconsistent with SMC 2.20.060: It purports to require DRB review of any CUP anywhere in the City. Section 2.20.060 SMC does not authorize DRB review of developments in residential zones with but two exceptions: multifamily and neighborhood commercial developments.

A. The density on the property may not be greater than but should match the density for single-family detached dwellings;

B. Where urban density goals are to be achieved, but critical areas can be adequately protected, dimensional requirements for lot size, lot width, front and rear yard setbacks may be decreased by no more than 20 percent;

C. As a result of the design of the subdivision, a minimum of 20 percent of the net land area of continuous, publicly accessible open space such as stream or wetland and associated buffers, a ravine, bluff or other unique topographic feature, or conservation area is preserved;

D. As a result of the dwellings and any subdivision, the availability of housing to all economic segments of the population is increased, and housing density variety is preserved throughout the community.

The SMC does not in and of itself establish review criteria for SDPs. [SMC 16.96.010] The SCSMP, however, does contain a specific "Development Evaluation Process" which sets forth the factual and substantive decisions required during the SDP review process. [SCSMP, Section C]

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]

The vested rights doctrine applies to various types applications:

> Washington does adhere to the minority rule that a landowner obtains a vested right to develop land when he or she makes a timely and complete building permit application that complies with the applicable zoning and building ordinances in effect on the date of the application. Our vested rights rule also has been applied to building permits, conditional use permits, a grading permit, and a [shoreline management] substantial development permit.

[*Norco Construction v. King County*, 97 Wn.2d 680, 684, 649 P.2d 103 (1982), citations omitted, emphasis added]

Therefore, this consolidated preliminary subdivision, CUP, and SDP application is vested to the regulations as they existed on September 18, 2007.

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. *Twin Rivers Ranch Estates* presents multiple issues requiring resolution: merits of the proposal, including compliance with preliminary subdivision, plat modification, CUP, and SMA criteria; compliance with the codified concurrency management system; adequacy of the recommended conditions; and, to the extent not addressed elsewhere, the citizen objections. Each major topic will be addressed separately in the following Conclusions.

2. In summary, *Twin Rivers Ranch Estates* as now proposed complies with all applicable criteria for approval, a number of changes should be made to the DCD-Recommended Conditions, the proposal

can be conditioned to comply with Chapter 16.108 SMC, and none of the citizen objections necessitate or justify denial.

3. The CPSGMHB's actions invalidating the TIP and the CFP are not a bar to action on this application. One must first realize what the CPSGMHB has not invalidated: It has not invalidated either the 2004 Comprehensive Plan or Title 16 SMC, the Unified Development Code. Concurrency standards for traffic and for all other topics subject to the Chapter 16.108 SMC concurrency process is based upon levels of service established within the Plan. [SMC 16.108.080(A), .100(A), .110(A), .120(A), and .130(A)] Concurrency is not based upon the provisions of the TIP or the CFP. Mitigation fees under Chapter 16.112 SMC would be based upon project lists within the TIP and CFP, but mitigation fees are not determined during the quasi-judicial review process: Those fees are set and collected when a building permit is issued. Therefore, neither of the invalidated documents has a direct bearing upon the quasi-judicial actions which must be taken at this time in this case.

4. Participants need to remember that Ramirez seeks quasi-judicial land use approvals, not administrative construction permits. The level of detail appropriate and required at the construction permit level is simply not required at the land use approval level. Detailed matters such as pipe sizes, street pavement thickness, traffic control device locations, orifice diameters, fire hydrant placement, etc. require a level of detailed engineering which is simply not reasonable before one has obtained approval for the basic concept. The Council should resist any request by neighbors to impose construction level requirements on this (or any other) land use process.

   The concerns about the sewer under crossing of the BNSF right-of-way fit squarely into this category. Absolutely nothing in the hearing record suggests in any way that BNSF will not allow the sewer line to cross under the railroad. The owner of the sewer line (the City) will have to be the applicant for the required Utility License Agreement, but any contractor acceptable to BNSF can do the actual work – and BNSF's UAP does not regulate who pays for the work. Extension of the sewer line will have to be developer funded, just as would any extension necessitated solely to serve a proposed development. The railroad under crossing is a non-issue.

5. Whether Ramirez is entitled to a credit against traffic impact mitigation fees is a question which is not ripe for resolution. The SMC clearly indicates that a developer is entitled to credit for only certain improvements: Those contained within the adopted CFP which are required to be constructed by the developer as a condition of permit approval. The credit is not determined until building permit issuance. [SMC 16.112.080 ¶ 2] Therefore, it will be the CFP in existence at that time which will determine whether any credits are due.

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

Plat Modifications

7. The Examiner has supported the cul-de-sac length modification in each of the prior versions of *Twin Rivers Ranch Estates* (while rejecting other aspects of those prior proposals for failure to comply

with applicable code requirements) and continues to support it in this version. No need exists to extend the right-of-way to the east property line (because of the swale and lotting pattern on that side of the site) nor to the west (any needed access to the west is already provided by the existing dedicated Skywall Drive right-of-way). If Ramirez had to shrink the right-of-way length by 86 feet he would be faced with two undesirable choices: Either propose a lot of long lot panhandles or shared private drives (which would not provide the level of access and safety as will the proposed cul-de-sac) or further reduce the proposed lot yield (which would drop the yield way below anything that is reasonable given the existing LMD zoning). Therefore, the Examiner will recommend approval of the plat modification to extend cul-de-sac length.

8. The Examiner also supports the public access modification request. The problems of creating a public access to the Skykomish River in this location have been described in great detail in prior proceedings and do not bear repetition here. A public access would attract people who would then have no where to park nor go. The Examiner will recommend approval of the plat modification to eliminate public access.

Conditional Use Permit

9. Before addressing applicable CUP criteria, the location of Tract 997 must first be resolved. DCD makes a good point: The currently proposed location along the west property line will place the activity associated with that recreation area directly adjacent to residential property which has no right to use the area. Residents of a development buy into it knowing what recreation facilities are to be provided and where they will be located. If they choose to buy next to a recreation area, they understand the consequences. But the adjoining property owners have no such choice. The City must look out for them. Either of the offered alternative locations (between Lots 9 and 10 or 10 and 11) would adequately internalize impacts of the recreation area.

10. DCD has provided a detailed analysis of CUP criteria compliance. (Exhibit 20, pp. 4 – 7) That analysis was not challenged. The Examiner has incorporated that analysis, with a few relatively minor changes, in Appendix I hereto, which is incorporated herein by reference as if set forth in full.

    Clustering of the lots allows Ramirez to obtain a yield appropriate for the site and its zoning while avoiding the most environmentally sensitive portions of the site: The Skykomish River floodplain and buffer.

11. The CUP for clustering the lots meets all applicable criteria and should be approved subject to reasonable conditions.

Preliminary Subdivision

12. The proposed subdivision is fully consistent with the 2004 Comprehensive Plan. The proposed density is well below the maximum allowed for this site. (It will be remembered that the areas both to the east and west are designated and zoned for even higher densities. The Ramirez property is the only LMD property along this reach of the Skykomish River.)

Comprehensive Plan provisions cannot be collaterally challenged in the context of a project permit application hearing. The 2004 Comprehensive Plan supports interconnection of Skywall Drive and Dyer Road and provision of sewer service to the Dyer Road area. The 2004 Comprehensive Plan provisions cannot be changed through this hearing process.

Having said that, the concerned citizens need to face the reality that the proposal would neither encourage nor thwart the interconnection of Skywall Drive with Dyer Road. The Skywall Drive right-of-way was dedicated to the west property line at the time of the 1994 short subdivision. *Twin Rivers Ranch Estates* is not altering that dedicated right-of-way, it is only using and improving it to serve some of its proposed lots. Any interconnection would occur through the adjoining property to the west and could be made with or without *Twin Rivers Ranch Estates*. The proposal is neutral with respect to this issue.

The same holds true for the Dyer Road sewer concern: *Twin Rivers Ranch Estates* will not force nor prevent sewers from coming to the Dyer Road area.

13. The evidence in the record, summarized in the above Findings of Fact (especially Findings 11 – 16), demonstrate that the current proposal makes appropriate provisions for all those items listed in SMC 16.28.330(A)(2).

14. None of the proposed lots will be located within the designated flood plain. Therefore, no need exists to deny the proposal because of flood or inundation.

15. Allowing subdivision of the site in conformance with applicable regulations will serve the public use and interest. The preliminary subdivision should be approved subject to reasonable conditions.

Substantial Development Permit

16. DCD's decision to treat the *Twin Rivers Ranch Estates* site as a Suburban Environment for SCSMP compliance purposes is justified. The Suburban Environment is intended "to protect, maintain and enhance low and medium-density shoreline residential areas." [SCSMP, p. E-5] This area, with all the subdivision housing to the east and west, certainly fits that description. [18] Further, the site meets Designation Criteria 1 (*Twin Rivers* and the Dyer Road lots represent extensive amounts of low to

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[18] The objective of the Rural Environment, on the other hand, is to protect farm land, restrict intense development along undeveloped shorelines, function as a buffer between urban areas, and maintain open spaces compatible with agricultural activities. [SCSMP, p. E-7] Those objectives simply do not fit within this incorporated area.

medium-density residential development), 4 (the entire site could be developed for recreational uses), 5 (Sultan's Comprehensive Plan and zoning envision low to medium-density residential development of this area), and 6 (public water and sewer service can be made available to the area).

17. DCD has provided a detailed analysis of SDP criteria compliance. (Exhibit 20, pp. 10 - 12) That analysis was not challenged. The Examiner has incorporated that analysis, with a few relatively minor changes, in Appendix II hereto, which is incorporated herein by reference as if set forth in full.

18. The proposal meets all applicable provisions and requirements of the SCSMP and should be approved with reasonable conditions.

Concurrency

19. Subdivision applications are development permits. [SMC 16.120.050] *Twin Rivers Ranch Estates* is not categorically exempt from SEPA threshold determination requirements. (Exhibit 10) Therefore, *Twin Rivers Ranch Estates* is subject to the concurrency requirements of Chapter 16.108 SMC. [SMC 16.108.020]

20. 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."

21. 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. [19] 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.

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[19] 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

(Footnote continued on next page.)

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 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. [20] And, the developer always has the option to wait until the City makes the necessary commitments to raise the LOS.

22. 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.

23. The City has no "strategy in place" to increase police staffing. The electorate defeated its latest proposed strategy. The discussion in Conclusion 5 of Resolution Nos. 06-06 and 06-07 and

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[20] 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. 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.

Conclusion 4 of resolution No. 06-09A regarding possible additional taxes that could or might be adopted to raise revenue is a strategy, but it is not in place. 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).

24. 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).

25. Under the present circumstances, the best Concurrency solution is to impose an "either - or" condition: Require compliance with a condition as suggested in Conclusion 23, above, or compliance with a condition as suggested in Conclusion 24, above.

Consistency

26. *Twin Rivers Ranch Estates* passes the consistency test: Single-family residences are a permitted use under the present zoning of the site; the proposed density is within the range allowed by the zoning; and sufficient utilities are available to support the 15 additional proposed residences.

Conditions

27. The Examiner will first review Ramirez's nine requested changes (Exhibit 21, unnumbered pages 4 and 5) to DCD's Recommended Conditions (Exhibit 20, pp. 18 – 21).

A. Recommended Condition 4 can be deleted. Not only is Ramirez correct that the rear yard setback in a cluster subdivision may be reduced to 16 feet, but also the condition is moot as Ramirez has made the necessary changes on Exhibit 22.

B. Recommended Condition 5 can be deleted: Ramirez has made the necessary change on Exhibit 22.

C. Recommended Condition 6 needs to be more specific. The Examiner has already discussed the justification for requiring Tract 997 to be moved to a different location. However, the open-ended nature of Recommended Condition 6 is unacceptable. It should specify that Tract 997 is to be relocated to between Lots 9 and 10 or Lots 10 and 11. The affected lots are large enough that the necessary adjustments may be deferred until construction plan submittal.

D. Ramirez objects to the first sentence of Recommended Condition 12 as overly broad; Ramirez's suggested correction is unacceptably restrictive. Ramirez wants to limit his responsibility to only those water system improvements depicted on Exhibit 1H, Sheet P3. That suggestion would be fine if the existing pipes serving the site are adequate for the increased flow required to serve the 15 new lots. But if a part of the supply system were undersized and could not provide the necessary flow, then what? Sheet P3 shows only work within the immediate confines of the site. The Examiner will recommend a slight revision which will hopefully satisfy both Staff and Ramirez.

E. Ramirez has a parallel objection to Recommended Condition 13. The Examiner will recommend a slight revision which will hopefully satisfy both Staff and Ramirez.

F. The second sentence in Recommended Condition 16 will be deleted as it conflicts with recommended Condition 18.

G. Recommended Condition 19 is vexing. Like any other developer, Ramirez may only be required to make those infrastructure improvements directly necessary to offset an impact caused by his development. Ramirez may not be required to cure all past ills throughout the City or within the neighborhood.

The condition of the Foundry Drive BNSF crossing is one such past ill. It is not as wide nor constructed with the same materials as would be a new crossing. The difficult question is to determine how much, if any, it needs to be improved to make it safe for the additional traffic which *Twin Rivers Ranch Estates* will impose upon it. The City may not use Ramirez's development as an excuse to get the crossing brought up to full modern standards unless it can be shown that it will be unsafe for the traffic generated by 15 additional lots unless it is brought up to full modern standards.

The evidence in the record is insufficient to prove that full modern standards are necessary to handle the impact of the additional 15 lots. Ramirez's traffic consultant does not state that the crossing is unsafe for additional traffic. (Exhibit 1F) The City's Consulting Engineer does not state that the crossing is unsafe for additional traffic. (Exhibit 15) DCD does not state that the crossing is unsafe for additional traffic. [21] (Exhibit 20) The Examiner must base his recommendation on the evidence in the record, especially that from experts in traffic matters. Finally, the Examiner takes official notice that the 10th Street railroad crossing which serves the Dyer Road lots is not constructed to full, modern standards either – and it handles traffic from far more lots than will use the Foundry Drive crossing.

The need to improve the Foundry Drive/Skywall Drive intersection (as opposed to the railroad crossing *per se*) is solely attributable to Ramirez's proposal to add a fourth leg to the intersection. If, in order to create a safe fourth leg to the intersection, Foundry Drive and its railroad crossing must be widened to the east (For example, if necessary from an engineering perspective to reduce an unacceptably large lane offset.), then Ramirez would be responsible for that correction. Therefore, the condition will be revised generally as suggested by Ramirez.

H. Recommended Condition 20 conflicts with BNSF policy regarding construction within the railroad right-of-way. The condition suggests that Ramirez will take the lead and the City will back him up. It must be the other way around: The owner of the utility to be constructed/improved must be the licensee with BNSF. The condition will be revised.

I. Recommended Condition 26 is not excessive as stated, but the Examiner does see where Ramirez might see it as too imprecise. [22]

The only noise regulations within the SMC relate to "public disturbance noise." [Chapter 8.10 SMC] Therefore, the state's basic decibel-based noise regulations, authorized by Chapter 70.107 RCW and contained in Chapter 173-60 WAC, would apply. Those regulations establish noise limits based on the nature (residential, industrial, etc.) of the source property and receiving property. [WAC 173-60-030 and -040] Noise levels are to be measured at the boundary of the receiving property. [WAC 173-60-040(1)] Generally

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21 DCD testified that replacing the new wooden crossing planks with concrete "planks" was a safety issue. It did not explain why concrete planks would be safer than the new wooden planks. It did not suggest that the crossing's width was unsafe.

22 DCD testified that this condition is based on a request from Romac. A condition cannot be based solely on the request of a private landowner. It must be based upon the facts in the record and applicable law and regulation.

speaking, the permissible noise level is higher where the source property is industrial and the receiving property is residential than where both the source and receiving properties are residential.[WAC 173-60-040(2)]

A clarifying, limiting clause will be added.

28. In addition to the above changes to the recommended Conditions, the Examiner will recommend the following changes:

A. Wherever a record document is referenced in the conditions, its exhibit number should be stated for clarity. Changes to recommended Conditions 1, 10, 12, 14, and 19 will be made for that purpose.

B. Recommended Condition 13 needs to be augmented in a fashion similar to recommended Condition 20 to make clear that the City must take the lead with BNSF in the licensing process for the sewer under crossing.

C. DCD's suggested changes to recommended Condition 18 will be incorporated.

D. A condition needs to be added, as discussed in previous Conclusions, regarding concurrency. The language used by the Examiner in previous recommendations will be used here.

E. Section 173-27-190 WAC contains certain content and format requirements for any SDP which is issued:

> (1) Each permit for a substantial development, conditional use or variance, issued by local government shall contain a provision that construction pursuant to the permit shall not begin and is not authorized until twenty-one days from the date of filing as defined in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within twenty-one days from the date of such filing have been terminated; except as provided in RCW 90.58.140(5)(a) and (b).
>
> (2) Permits for substantial development, conditional use, or variance may be in any form prescribed and used by local government including a combined permit application form. Such forms will be supplied by local government.
>
> (3) A permit data sheet shall be submitted to the department with each shoreline permit. The permit data sheet form shall be as provided in Appendix A of this regulation.

Subsection (2) allows the Council's consolidated action to serve as the SDP. Subsection (1) requires that an additional condition be added. The data sheet required by Subsection (3) will

be prepared by DCD when it transmits the SDP and supporting exhibits to the state as required by Chapter 90.58 RCW.

F. 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.

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 APPROVAL** of:

A. The requested plat modifications for cul-de-sac length and for elimination of public access to the Skykomish River;

B. The proposed preliminary subdivision of *Twin Rivers Ranch Estates*;

C. The requested Conditional Use Permit to allow clustering within *Twin Rivers Ranch Estates*; and

D. The requested Substantial Development Permit for *Twin Rivers Ranch Estates*,

ALL SUBJECT TO THE ATTACHED CONDITIONS.

Recommendation issued December 20, 2007.

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

NOTICE OF RIGHT OF RECONSIDERATION

This Recommendation, dated December 20, 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 December 31, 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
FPCUP07-001 and SMP07-001
Twin Rivers Ranch Estates

This Preliminary Subdivision with Plat Modifications, Conditional Use Permit, and Substantial Development Permit is 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 Exhibits 1H (except Sheet P2) and 22 subject to these Conditions of Approval. Revisions to approved preliminary subdivisions are regulated by SMC 16.28.360.

2. In accordance with SMC 16.28.340, the *Applicant/Developer* shall prepare a Developer Agreement subject to Approval of the City. The Agreement shall specify the requirements for construction of all infrastructure improvements, including plan submittals, inspections, bonding, private improvements, right-of-way improvements and facilities associated with the Cluster Plat, including improvements to all common areas. Site construction drawings shall be designed consistent with the Conditions of Approval. Site work shall not begin until City Approval of the site Development Agreement.

3. The side yard setback notation shall be corrected to 10 feet on all lots.

4. Recreation Tract 997 shall be relocated to between Proposed Lots 9 and 10 or between Proposed Lots 10 and 11 to avoid the impacts of the facility on adjacent property owners. The Applicant/Developer shall make the decision on where to relocate Tract 997 prior to preparation and submittal to the City of any construction plans. The layout of Tract 997 is subject to Department of Community Development approval for compliance with code recreation requirements.

5. The Applicant/Developer shall establish a Homeowners' Association to assume responsibility for maintenance of common areas and street lighting system. The Homeowners' Association shall be recorded with the plat. The wording and conditions of the Homeowners' Association shall be subject to City approval prior to Final Plat.

6. The Applicant/Developer shall maintain the landscaping, open space improvements, drainage facilities, and other common areas within the site for a two-year period following installation. Such maintenance shall be secured with a Maintenance Bond filed with the City. Subsequent to the two-year period, maintenance responsibility shall be passed to the Homeowners Association.

Open Space –

7. The Applicant/Developer shall develop Tract 997 as shown on Exhibits 1H {Sheet L1} and 22, subject to relocation as required by Condition 4, above.

8. Stream impacts shall be mitigated in accordance with the Critical Area Study, Habitat Management Plan, and Mitigation Plan dated September 13, 2007. (Exhibit 1E) The Mitigation Plan shall be amended as Recommended by the City's Consultant (letter from Graham-Bunting Associates dated October 9, 2007) and be revised to include the City's Consultant seven Recommended Conditions. (Exhibit 12) The Applicant/Developer shall maintain and monitor stream buffer mitigation for a 5 five-year period following installation. Such mitigation shall be secured with a Performance Bond filed with the City.

9. The Applicant/Developer shall install a spilt rail fence along the 150-foot buffer traversing Lots 9 through 13.

Water –

10. The Applicant/Developer is responsible for any improvements to the City's water system which are necessary to provide adequate flow to the site. The Developer/Owner shall be required to relocate and extend on-site water lines as shown on Exhibit 1H, Sheet P3, Preliminary Sewer, Water and Storm Drainage Plan.

Sewer –

11. The Applicant/Developer is responsible for any necessary extension and improvements to the City's sewer system in order to provide sewer service to the site. The City will be the lead in the permitting process with the BNSF Railroad.

Surface Water Management –

12. During grading and construction activities, the Applicant/Developer shall retain and manage on-site surface and storm water within the site per the recommendations of the *Preliminary Storm Drainage Analysis* dated September 11, 2007, prepared by Harmsen & Associates, Inc. (Exhibit 1D), and the Construction Stormwater Pollution Prevention Plan prepared in accordance with the Department of Ecology Stormwater Management Manual 2005.

13. The Applicant/Developer shall inspect weekly, maintain, and repair all temporary and permanent erosion and sediment control BMP's to assure continued performance throughout the subdivision construction period. During the wet weather construction period, the access road and on-site utilities shall be phased to minimize open soil exposure.

14. The temporary storm water management facilities shall be constructed before any significant amount of site grading commences.

15. The Applicant/Developer shall construct a four (4)-foot high black chain link fence across the east property line of Lots 6, 7, 8, and 9 (north of the point where the NGPA split-rail fence terminates) and across the south side of the Skywall Drive right-of-way adjacent to Tract 998.

16. The Applicant/Developer shall dedicate to the City a utility and storm drainage easement over, under, and across Tract 998.

Transportation -

17. The Skywall and Foundry Drive intersection south of the BNSF track shall be constructed to incorporate the recommendations of the City's Traffic Consultant (Exhibit 15) and be regulated as a controlled intersection. The Foundry Drive BNSF crossing shall be widened and improved by the Applicant/Developer only to the extent necessary to provide a safe crossing and street alignment. The City will be the lead in any required permitting process with the BNSF Railroad.

18. The Applicant/Developer and the City shall coordinate plans and improvements to the BNSF Railroad crossing. The City will be the lead in the permitting process with the BNSF Railroad.

19. The City will administer any future Grant funds received to assist in the improvements to the BNSF Railroad crossing.

20. Street trees shall generally be provided along the entire site frontage of Skywall Drive and the internal roadway in accordance with the recommendations of the Director of Community Development.

21. Final Street design, including paving, sidewalks, frontage improvements, trail, and the City Engineer prior to construction must approve emergency access.

22. A Street Lighting Plan shall be required on Skywall Drive and all on-site streets. Prior to site development, the Applicant/Developer shall submit a detailed lighting plan that depicts continuous street illumination throughout the subdivision to the City Engineer for review and approval. The Homeowner's Association shall be responsible for the operation and maintenance of the lighting system.

Other –

23. The Applicant/Developer shall provide a statement on the Final Plat acknowledging that the *Twin Rivers Ranch Estates* Cluster Subdivision is located south of an approved industrial area and consequently the residents may be subjected to noise and vibrations from the activities carried on within the industrial area up to the limit allowed by applicable law.

24. All utilities shall be placed underground.

25. The Applicant/Developer shall demonstrate sufficient water flow from the proposed fire hydrants for review and approval by the City Engineer and Fire District prior to the issuance of Occupancy Permits.

26. Prior to construction, the Applicant/Developer shall prepare an erosion control plan subject to review and approval by the City Engineer.

27. During construction, the Applicant/Developer shall ensure that trucks are cleaned before leaving the site. The Applicant/Developer shall provide street cleaning of Skywall Drive during site clearing, grading and filling and shall promptly clean up any dirt, mud or other material deposited on public streets and shall be responsible for cleaning storm drains in public streets that are impacted by the construction.

28. All site improvements, including streets, sidewalks, bicycle lanes, trails, frontage improvements, drainage improvements, open space landscaping and improvements, and other common area improvements shall be completed prior to Final Plat, with the exception of the final lift of paving of streets. Alternatively, the City may approve a financial bond or assurance for items not completed prior to Final Plat. All site improvements, not including individual homes, must be installed prior to final inspection of the first home.

29. The existing accessory structures shall be moved, demolished, or otherwise modified so that they are in compliance with the Sultan Municipal Code prior to the issuance of plat Engineering Permits.

30. The Applicant/Developer shall pay Traffic, Recreation, and School Impact Fees and their administrative processing costs in accordance with Chapters 16.112 and 16.116 SMC.

31. The Applicant/Developer shall obtain all necessary permits and approvals from Local, State, and Federal Agencies necessary to complete the development and associated improvements.

32. 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.

33. Construction pursuant to this Shoreline Management Act permit shall not begin and is not authorized until twenty-one days from the date of filing as defined in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within twenty-one days from the date of such filing have been terminated; except as provided in RCW 90.58.140(5)(a) and (b).

APPENDIX I:
CUP ANALYSIS
(Based on Exhibit 20)

SMC 21.04.050 Criteria	Analysis	Meets Criteria?
1. Not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity.	a. The project application and submittals have been routed to other agencies and departments for their review and comments. No responses were received that stated that the CUP would have an adverse impact to the public, including street, drainage, and other public systems. b. This project is providing a direct discharge storm water drainage system. c. All utilities will be provided to this site by the developer as part of this project. d. This project will be required to pay impact fees for traffic, recreation, and schools in order to offset any impacts to these public services. e. Improvements will be made as part of this project to the public roads, including widening the south side of Skywall Drive including sidewalks and landscaping, and the development of 325th Street SE including two travel lanes, parking, and sidewalks and landscaping. f. Landscaping will be installed in order to provide aesthetic value and habitat enhancements. g. All required setbacks and other dimension requirements would be met by this project. h. There is no impact to critical areas as part of this project.	**YES**
2. Meet or exceed the performance standards of the	i. The subject property is located within the Low/ Moderate Density (LMD) zone, which is regulated under SMC 16.12.010.	**YES**

district.	j. As shown in Section III of Exhibit 20 all of the performance standards for the LMD zone have been met.	
3. Compatible generally with the surrounding land uses in terms of traffic and pedestrian circulation, building and site design as approved by the design review committee.	k. A single-family residential development is not required to go through the formal design review process. l. Ramirez has demonstrated that the setbacks, landscaping and building height meet the requirements of the code. m. Ramirez is proposing to construct a new public street and widen an existing street to provide travel lanes, parking, and sidewalks and landscaping. n. Ramirez has demonstrated that there is adequate ingress and egress by proposing to construct a new public street. o. The Applicant/Developer has demonstrated adequate maneuvering room by providing a cul-de-sac turnaround on the site for emergency and service vehicles. p. Ramirez will be required to pay traffic impact fees for 15 new dwelling units to mitigate any traffic impacts from the project.	**YES**
4. Consistent with the goals and policies of the comprehensive land use policy plan.	q. This project is subject to the 2004 Comprehensive Plan. r. The Comprehensive Plan designates this site for Low/Moderate Density Development. s. Goals and policies within the 2004 Comprehensive Plan that support this project include: LU 2 - Suitable areas, LU 3 – Serviceable areas, LU 9 - Environmental zoning designations, and LU 10 - Clustering and planned unit development provisions.	**YES**
5. Minimize the possible adverse impacts.	t. As shown under the above criteria, all possible adverse impacts have been minimized or mitigated by providing improvements to the street, drainage, utility, network, and landscaping and plantings in the 150-foot buffer.	**YES**

In addition to these criteria, there are additional criteria for single-family detached dwelling (clustered) under SMC 21.04.052.

SMC 21.04.052 Criteria	Analysis	Meets Criteria?
1. The density on the property may not be greater than but should match the density for single-family detached dwellings	u. The proposed density of 1.87 units per acres, the maximum reasonably achievable density given the site's location and physical features, is lower than the Low/Moderate Density zoning district maximum density of 4 units per acre.	**YES**
2. Where Urban density goals are to be achieved, but critical areas can be adequately protected, dimensional requirements for lot size, lot width, front and rear yard setbacks may be decreased by no more than 20 percent	v. The application and plans show compliance with this section of the code. Setbacks, except side yards, maybe reduced by 20%, the building height is no higher than the maximum allowed by the code, the landscaping plan is consistent with code requirements, and the mitigation planting plan enhances the buffer and increases protection of habit and critical areas.	**YES**
3. A minimum of 20% of the net land area is retained for open space	w. 29.6% (110,418 SF) of the total gross land area is provided as open space.	**YES**
4. The availability of housing to all economic segments of the population	The subdivision will increase the number of single lots currently available in the community and therefore could provide for a greater variety of housing products.	**YES**

APPENDIX II:
SUBSTANTIAL DEVELOPMENT PERMIT ANALYSIS
(Based on Exhibit 20)

1. The application complies with the Shorelines of Statewide Significance Management Polices Section H, p. 3, c) The proposed development actively promotes aesthetic consideration within the development for the general enhancement of the shoreline area as described in the Mitigation plan. Significant review of this application by state and federal agencies and others has occurred and no comments have been received.

2. Complies with Shorelines of Statewide Significance Management Policies (Section H) Management and Development Guidelines, 1b, c, 2a, b, 3a, c, 4a, b, 5a, b, and 6a. This development proposes to preserves over 150 feet upland from the OHWM. The design preserves the natural character and resources of the shoreline, preserve long-term use options, and provides the opportunity for recreational use of the shoreline by residents of the development.

3. Complies with Use Regulations for the Suburban Environment to protect, maintain, and enhance low and medium-density shoreline residential areas. Preservation of the natural shoreline is proposed by the development, which is of prime importance within this environment. The Development meets the following Designation Criteria, 1, 3, 4, 5, and 6 and Management Polices 1, 2, 5.

   No over water nor fill construction is involved in this proposal, no flood control nor shoreline protection measures are proposed or required. The proposed residential lots are not within the floodplain. Utility lines with the subdivision are proposed to be underground and both public sewer and water will serve the development. The 25-foot OHWM setback required in the Suburban Environment is met with the nearest part of any building envelope approximately 160 feet from the OHWM.

4. Complies with Environmental Use Management Policies (Section E). The proposed development is consistent in protecting, maintaining low and medium density shoreline residential areas, consistent with Designation Criteria 1,3,4,5, and 6 and Management Policies 1, 2, and 5 of Section E. A public park dedication is not proposed with this development therefore Policy 3 (acquisition of shoreline property) cannot be met. However, the City Council has determined (during their review of a previous PUD application for this property) that the City has no interest or plans in acquiring public park property from this development proposal. Therefore, the proposal would not meet Policy 4 (linking the public park with a bicycle and pedestrian pathways), but compliance is not mandatory.

5. Consistent with the Shoreline Use Element Goal and Policies (Section D). The development proposal provides an opportunity for use of the Shorelines by residents of the development and does not diminish the quality of the environment. Further, the development respects and protects the enjoyment of private rights in the shoreline property by eliminating public access/park to the

shoreline. Consistent with applicable Policies A1, A2, A3, A5, A6, A7, A8, 10a, 10f, and 12 and C 1 of Section D.

6. Consistent with Use Activity Policies (Section F) Residential Development, Utilities, Recreation and Roads are a permitted uses in the Compatibility Matrix for the Suburban environment, The proposal complies and is found to be consistent with 5 of the seven policies. Policies 1, 2, 4, 5, and applicable General Regulations 2, 5, 6, 7, 8, and Suburban Environment Regulations 1 and 2 in Section F Public Access is not being provided as part of the proposal and the City Council's Recommendation. Two of the Utility Polices apply: P 1, restore areas after installation of utilities, and P3, locate utilities underground so as not to obstruct or destroy scenic views. The Recreation Policies for the most part are not applicable since no public parkland dedication, or public access easement is proposed. The Road Polices for the most part are not applicable but would be fulfilled by compliance with the General Regulations during development of the site.

7. Consistent with Natural Systems Considerations for Rivers, Streams, and Creeks (Section G), p. G.5. The proposed subdivision is providing transportation and utility systems outside the shoreline area and protecting and enhancing the shoreline through extensive planting to improve functions. Nothing in the proposed development would adversely affect the natural hydraulic functioning of the Skykomish River.

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

Twin Rivers Ranch Estates
Preliminary Plat and Conditional Use Permit for Cluster Subdivision and Plat Modifications/Variances
File Number FPCUP07-001 and Shoreline Management Substantial Development Permit
File Number SMP-07-001

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I. Application Information and Process

a. Request: The Applicant/Developer requests Approval to create a 16-lot single-family detached development on approximately an 8.57-acre site as a Cluster Subdivision. The project is located in the City of Sultan's Low/Moderate Density Residential (LMD) Zone. The site is located south of the Burlington Northern Santa Fe (BNSF) Railroad and Skywall Drive right-of-ways and north of the Skykomish River in the City of Sultan in Snohomish County Washington. The proposed average lot size of this development is 12,504 square feet with the smallest lot at 8, 724 square feet.

b. Applicant/Developer

Dan Ramirez
P.O. Box 623
Sultan, WA 98294

c. Planner /Engineer

David Gipson
Harmsen & Associates
16778 146th Street S.E. Suite 104
P.O. Box 516
Monroe, WA 98272

Attachment 2

d. Director of Community Development

Rick Cisar
Director of Community Development
City of Sultan
319 Main Street
Sultan, WA 98294

e. Parcel Numbers

270804-002-036-00
270804-002-034-00
270804-002-035-00
270804-002-012-00

f. Project Description: This project is being proposed as a Preliminary Plat Cluster Subdivision for a detached single-family development called Twin Rivers Ranch Estates. This development will include one existing single-family residence and associated structures zoned as Low/Moderate Density Residential. The existing residence will remain and the associated structures will be demolished/removed.

The proposed development contains four separate parcels. The main access for the site will be from Foundry Drive to Skywall Drive onto a new roadway within the Plat (325th Street S.E.). The Applicant/Developer plans to improve the railroad crossing for Foundry Road to reduce the abrupt grades on either side of the railroad tracks. The City has reapplied for a $20,000.00 grant from the Grade Crossing Protection Grant Program through the Utilities and Transportation Commission to assist in improving the crossing. The City could not accept a previous grant award of $20,000.00 for crossing improvements in that the previous PUD project for the subject property did not receive approval. However, the grant is now being reconsidered as a result of this revised cluster subdivision application. Skywall Drive will be upgraded with new paving, curb, gutter, and sidewalk along the south side. Skywall Drive will not be extended westerly to connect to Dyer Road as part of this proposal. There will be approximately 386-feet of new public road and a cul-de-sac constructed within the development. The Applicant/Developer is requesting that the length of the cul-de-sac within the Plat be modified and increased from 300-feet to 386-feet because it will not be extended beyond the Plat. The increase in the length of the cul-de-sac length modification is supported and recommended by the Community Development Director, City Engineer and Public works Director.

This project is projected to begin construction in the summer to fall of 2008 and be completed by fall to winter of 2008. Construction will proceed as a single-phase development. Home construction on the single-family lots is expected to commence in winter 2008 to summer 2009. The project is described further in the Application materials and site plan.

g. Location : The site is located at 210 Foundry Road, along the south side of Skywall Drive, south of Foundry Road within the Northwest ¼ of Section 4, Township 27 North, Range 8 East, W.M. in the City of Sultan, Snohomish County, Washington. The Skykomish River borders the site on the south.

h. Existing Site and Surrounding Land Uses: The site currently contains one-single family home and associated accessory buildings (a detached garage and detached outbuildings) on the eastern portion of the property. All of the existing accessory structures will be removed as part of this proposal. The site is relatively flat with a slope into the swale on the east side of the property.

The river frontage along the south property line and the swale along the east property line are considered environmentally sensitive, which are outlined in the *Critical Areas Study, Habitat Management Plan, and Mitigation Plan* prepared by Wetland Resources, Inc, dated September 13, 2007. In order to protect these areas, they are being placed within either a "Native Growth Protection Area (NGPA) on Lots 9 through 13) or "Usable Open Space" (Tracts 998 and 999) and protected from development. Access to the private recreation tract 997 and Skykomish River is provided by a ten-foot wide easement from the internal street between Lots 13 and 14.

The site is currently zoned as Low/Moderate Density Residential (LMD). The surrounding area to the east is an older residential plat, on the west is a residential subdivision, and to the north is industrial development (Romac Industries on the north side of the railroad property). The area to the north is zoned Economic Development (ED) and the properties to the east and west, are zoned Moderate Density (MD).

i. Utilities, Fire, and School Districts
Water Source: City of Sultan
Sewer Service: City of Sultan
Fire District: Snohomish County Fire Protection District No. 5
School District: Sultan School District No. 311

j. Related Permits and Reviews: Development of the site will require building, grading, fill, storm water, water, sewer, power telephone, and demolition permits, in addition to Shorelines, Conditional Use for a Cluster Subdivision and Plat Approval. Permits by other Agencies may also be required including the BNSF Railroad.

k. Procedure for Cluster Subdivision Approval: The City's Regulations for Cluster Subdivisions Chapter 21.04.of the Sultan Municipal Code (SMC), requires that Cluster Subdivision Approval be processed pursuant to Chapter 16.120.050 SMC. In accordance with SMC 16.120.050, the Hearing Examiner with a Recommendation to City Council reviews Conditional Use Permits. After receipt of the Hearing Examiner's Recommendation, the City Council will hold a Closed Record Hearing and make the Final Decision, in accordance with SMC 16.120.050.

l. Procedure for Plat Approval: The City's Subdivision Regulations, Chapter 16.20 SMC, provide the standards and process for Preliminary Plat Review. In accordance with SMC 16.28.330, the Hearing Examiner shall hold a Public Hearing, make written findings, and make a Recommendation to the City Council. The City Council may approve, disapprove, or return the proposed subdivision for modification at a Closed Record Hearing following the

Hearing Examiner's Recommendation, in accordance with SMC 16.28.340. Council Approval of a Preliminary Plat is valid for up to five (5) years in accordance with SMC 16.28.340.

m. Procedure for Shoreline Management Master Program Approval: The City adopted Snohomish County's Shoreline Master Program (SMP) in 1975. The SMP on file with the City includes all revisions from March of 1982 through June of 1993. Section C, page C-3 illustrates the "Substantial Development Permit Evaluation Process." SMC Chapter 16.120 provides the standards and process for Shoreline Substantial Development Permit Approval. In accordance with SMC Chapter 2.26 the Hearing Examiner shall hold a Public Hearing, make written findings and make a Recommendation to the City Council. The City Council may either approve, disapprove or return the proposed permit for modification at a Closed Record Hearing following the Hearing Examiner's Recommendation.

n. Review Criteria: The review criteria for preliminary plats 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;

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.

II. Conditional Use Permit

In order to approve a Conditional Use Permit, the application must comply with the following criteria, per SMC 21.04.050.

Criteria	Analysis	Meets Criteria?
1. Not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity.	a. The project application and submittals has been routed to other agencies and departments for their review and comments. No responses were received that stated that the CUP would have an adverse impact to the public, including street, drainage and other public systems. b. This project is providing an on-site infiltration storm water drainage system.	**YES**

		c. All utilities will be provided to this site as part of this project. d. This project will be required to pay impact fees for traffic, recreation, and schools, in order to offset any impacts to these public services. e. Improvements will be made as part of this project to the public roads, including widening the south side of Skywall Drive including sidewalks and landscaping, and the development of 325th Street S.E. including two travel lanes, parking, and sidewalks and landscaping. f. Landscaping will be installed in order to provide aesthetic value and habitat enhancements. g. All required setbacks and other dimension requirements would be met by this project. h. There is no impact to critical areas as part of this project.	
2.	Meet or exceed the performance standards of the district.	i. The subject property is located within the Low/ Moderate Density (LMD) zone, which is regulated under SMC 16.12.010. j. As shown in Section III of this Staff Report, all of the performance standards for the LMD zone have been met.	**YES**
3.	Compatible generally with the surrounding land uses in terms of traffic and pedestrian circulation, building and site design as approved by the design review committee.	k. Per SMC 2.20.060, multifamily projects are required to go through the design review board. Multi-family dwelling units are defined as three (3) or more units. A single-family development is therefore not required to go through the formal design review process. l. Under SMC 21.04.052 provide additional criteria for single-family detached dwelling (clustered) that this project is required to comply with. The Applicant/Developer has demonstrated that the setbacks, landscaping and building height meet the requirements of the code. m. The Applicant/Developer is proposing to construct a new public street and widen an existing street to provide travel lanes, parking, and sidewalks and landscaping. n. The Applicant/Developer has demonstrated that there is adequate ingress and egress by proposing	**YES**

	to construct a new public street. o. The Applicant/Developer has demonstrated adequate maneuvering room by providing a cul-de-sac turnaround on the site for emergency and service vehicles. p. The Applicant/Developer will be required to pay Traffic Impact Fees for 15 new dwelling units, in order to mitigate any traffic impacts from the project.	
4. Consistent with the goals and policies of the comprehensive land use policy plan.	q. This project is subject to the 2004 Comprehensive Plan. r. The Comprehensive Plan designates this area as a Low/Moderate Density Development. s. The goals and policies within the 2004 Comprehensive Plan that apply to this project support LU 2 Suitable areas, LU 3 – Serviceable areas LU9 Environmental zoning designations, and LU10 Clustering and planned unit development provisions SM 2 Habitats, SM 4 Natural setting SM 9 Balance and scale, SM 10 Access and visibility SM 11, and SM 12 Supporting improvements.	**YES**
5. Minimize the possible adverse impacts.	t. As shown under the above criteria, all possible adverse impacts have been minimized or mitigated, by providing improvements to the street, drainage, utility, network, and landscaping and plantings in the 150-foot buffer.	**YES**

In addition to these criteria, there are additional criteria for single-family detached dwelling (clustered) under SMC 21.04.054.

Criteria	**Analysis**	**Meets Criteria?**
1. The density shall not be greater than but should match the density for a single family detached dwellings	u. The proposed density of 1.87 units per acres is consistent with the Low/Moderate Density zoning district LMD density of 4 units per acre.	**YES**
2. When Urban densities goals are to be achieved Critical	v. The application and plans, will recommend changes, shows compliance with this section of the code. Setbacks, except side yards maybe reduced	**YES**

areas an be adequately protected when dimensional requirements are reduced by 20%	by 20%, the building height is no higher than the maximum allowed by the code, the landscaping plan is consistent with code requirements and the mitigation planting plan enhanced the buffer and increases protection of habit and critical areas.	
3. A minimum of 20% of the net land area is retain for open space	w. 29.6% (110,418 SF) of the total gross land area is provided as open space.	**YES**
4. The availability of housing to all economic segments of the population will be increase	The subdivision will increase the number of single lots currently available in the community and therefore could provide for a greater variety of housing products.	**YES**

o. Application History: the City received The Application for Cluster Subdivision on September 17, 2007. The Application was deemed complete on September 18, 2007.

The Application for a Shoreline Substantial Development permit was filed with the City on September 17, 2007. The Notice of Application for the Shoreline Management Substantial Development permit was published on September 27, 2007 and October 4, 2007 with a final comment date of October 25, 2007. The application and supporting text and map were sent to the Department of Ecology, Tulalip Tribes, State Department of Fish and Wildlife, Army Corps of Engineers, and Snohomish County on September 26, 2007.

II. Land Use and Zoning

a. Zoning

The site is zoned as Low/Moderate Density Residential (LMD). Single-family detached homes in the LMD zone are subject to the following zoning requirements per SMC 16.12.010:

Use	Max. Units per Acre	Min. Area	Min. Width	Min. Depth	Min. Front Setback	Min. Side Setback	Min. Rear Setback	Max. Bldg. Hgt.	Max. Lot Coverage
Single-Family Detached Dwellings	4.0	10,890 sq. ft.	80 ft	80 ft	20 ft	10 ft	20 ft	30 ft	35%

Density

Density is proposed to be approximately 1.87 dwelling units per acre (16 homes over 8.56 acres). The allowable density is 4-dwelling units per acre or 32-units.

Lot Size and Coverage
The Applicant/Developer proposes lot sizes that range from 8,724-square feet to 21,945-square feet with an average lot size of about 12,504-square feet and a maximum lot coverage of 35%. Based on the site plan all of the proposed lots with the exception of lot 6 meet the minimum 64-foot (20% reduction lot width requirement). All lots meet the minimum lot depth requirement.

Front Yard Setbacks
The Applicant/Developer proposes twenty (20) foot front yard setbacks. SMC 16.12.010 Table of Dimensional and Density Requirements, require front yards to be a minimum of 20 feet.

Side Yard Setbacks
The Applicant/Developer proposes side yard setbacks of five (5) feet. However, Per SMC 16.12.010 Table of Dimensional and Density Requirements, require side yards to be a minimum of 10 feet. The side yard setbacks on the lots shall be changed to meet the 10-foot requirement.

Rear Yard Setbacks:
According the site plan, the Applicant/Developer proposes ten (10) foot rear yard setbacks. However, Per SMC 16.12.010), Table of Dimensional and Density Requirements, require rear yards to be a minimum of 20 feet. The rear yards shall be changed to meet the 20-foot requirement.

Easements:
An existing water line easement is shown on the plan that crossed through Lots 10 thru 13. This existing waterline and easement will be abandoned and relocated to connect to a new water line in the new street serving the subdivision as shown on the preliminary sewer, water and utility plans.

b. Comprehensive Plan Designation
The site is designated "Residential Low/Moderate Density" by the City of Sultan Comprehensive Plan. The proposed use of the site as single-family residential cluster subdivision with at a density of approximately 1.87 units per acre is consistent with the Comprehensive Plan.

c. Shorelines Designation
The site is not designated in the SCSMP. The City staff has applied the Environmental Designation Criteria within Section E of the SCSMP and concludes the property best fits in the Suburban Environmental in that it meets the intent of that Designation. To protect, maintain and enhance low and medium-density shoreline residential areas." (SCSMP, p. E-5) Further the site meets Designation Criteria 1 (Twin Rivers and the Dyer Road lots represents extensive amounts of low to medium-density residential development), Criteria 4 the entire site could be developed for recreational uses, Criteria 5, the Comprehensive Plan and zoning

envision low to medium-density residential development in the area, Criteria 6, public water and sewer service can be made available to the area and meets the elements of that category:

d. Off-Street Parking Requirements
The Table in SMC 16.60.130 shall determine the minimum number of required off-street parking spaces. Single-family dwelling units in the LMD zone are required to provide 2 parking spaces per dwelling unit. At 16-units, this project requires 32-parking spaces.

e. Recreation and Open Space

SMC 16.72 requires residential subdivisions to provide recreation and open space. Table 1 of SMC 16.72.050 requires subdivision with 10-20 dwelling units to provide 1 -recreation facility. SMC 16.72.060 requires at least 15% of the total land area of any residential subdivision to be dedicated as open space. The Applicant/Developer proposed to develop a trail and picnic area on Tract 997 (5,632-square feet) and dedicate 110,418-square feet of open space to the Homeowners Association. The proposed picnic area and open space dedication (29.6% of gross area) meet the requirements of SMC 16.72.

The proposed recreation Tract 997 is located at the southwest corner of the property and adjacent to an existing single-family residence on the neighboring property. In order to respect and protect the enjoyment of property rights in the shoreline area, the recreation Tract 997 should be relocated away from adjoining properties.

IV Wetlands, Streams, Steep Slopes, and Shorelines

Within the City of Sultan, wetlands are subject to regulations per SMC 16.80.030 revised in February of 2007 by Ordinance 918-06. The Preliminary Site Plan submitted to the City shows that there are no wetlands on-site. This is confirmed in the *Critical Area Study, Habitat Management Plan and Mitigation Plan*, prepared by Wetland Resources, Inc. dated September 13, 2007.

a. Streams
Sultan's standard stream buffer widths are listed in chapter SMC 16.80.040. The Skykomish River is classified as a Type 1 Stream and is considered a "Shoreline of Statewide Significance". The required buffer for a Type 1 Stream is 150-foot wide, as measured from the Ordinary High Water Mark (OHWM). Pursuant to Snohomish County Code (SCC) requirements (as adopted by the City of Sultan) the area 200-feet landward from the OHWM of the Skykomish River is designated as "shoreline." A portion of the Development will occur within the 200-foot shoreline designation area and the 300-foot Riparian Management Zone (RMZ). Within this 200-foot area, portions of 5-new single-family residences are proposed (Lots 9-13 are shown with the building footprint for each structure encroaching into the 200 foot Shoreline Designation Area). The Applicant/Developer has determined that a Shoreline Substantial Development Permit is necessary for this development because the proposed improvements will exceed $2,500 (pursuant to SCC Chapter 30.44).

b. Stream Mitigation
As presented in the *Mitigation Plan*, the Applicant/Developer is proposing to offset the identified impacts by implementing the Recommendations outlined in the Plan. In summary,

the Applicant's proposal includes the following critical area impacts and mitigation pursuant to SMC 16.80.140 2 and SCC 30.44:

- No significant trees within shall be removed.
- The Applicant/Developer will enhance the inner half of the stream buffer with native species at a greater than 7:1 enhancement to impact ratio. A total of 62,800 square feet of buffer area (enhancement areas A and B) is being planted.
- The Applicant/Developer proposes to mitigate the 4,020 square feet of buffer impacts by the pedestrian trail and picnic area by enhancing 29,800 square feet of buffer within the inner half of the on-site stream buffer.
- Maintenance, a 3 three-year monitoring period, and a Performance Bond recommendation of $24,223.20.

The Applicant/Developer proposes clustering the residential lots and preserves significant physical features. The Wetland Ecologist concludes that although the Applicant/Developer is proposing to construct several single-family homes and associated infrastructure in proximity to a salmonid bearing stream and a pedestrian trail within the 150-foot buffer, the Development is not likely to adversely affect threatened salmonids or their habitats. This is because no significant trees will be removed, minor vegetation impacts within the buffer will be mitigated, and no new impervious surfaces are proposed within the buffer.

The City's Wetlands Ecologist, Patricia Bunting, concurs with the Mitigation Plan prepared by Wetland Resources, Inc provided the 7-recommendations of her October 9, 2007 review are included in a revised report. Ms Bunting notes in her report she had contacted Jamie Bails, WDFW's area habitat biologist, and Ms Bails indicated she had reviewed the SEPA Checklist for the project and would not be commenting.

The Applicant/Developer's Geotechnical Engineer concludes that from a geotechnical standpoint, the site is compatible with the proposed development.

c. Shorelines

Within the City, shorelines permits are subject to SMC 16.96.010. The Applicant/Developer submitted the Application for a Shoreline Management Substantial Development permit on September 14, 2006. The application and plans were submitted to the Department of Ecology, Tulalip Tribes, State Department of Fish and Wildlife, Army Corps of Engineers, and Snohomish County. No comments were received from the reviewing agencies or public by the end of the comment period ending on October 26,2007.

City's Staff review of the Permit Application followed the sequence of steps in the Master Shoreline Program Substantial Development Permit Evaluation Process contained in User's Guide, Section C, and found:

1. The application complies with the Shorelines of Statewide Significance Management Polices Section H, P. 3, c) The proposed development actively promotes aesthetic consideration within the development for the general enhancement of the shoreline area as described in the Mitigation plan. Significant review of this application by state and federal agencies and other has occurred and no comments have been received.

2. Complies with Shorelines of Statewide Significance Management Policies (Section H) Management and Development Guidelines, 1b, c, 2a, b, 3a, c, 4a, b, 5a, b, and 6a. This development proposes to preserves over 150 feet upland from the OHWM. The design preserves the natural character and resources of the shoreline, preserve long-term use options, and provides the opportunity for recreational use of the shoreline by residents of the development.

3. Complies with Use Regulations for the Suburban Environment to protect, maintain, and enhance low and medium-density shoreline residential areas. Preservation of the natural shoreline is proposed by the development, which is of prime importance within this environment. The Development meets the following Designation Criteria, 1, 3, 4, 5, and 6 and Management Polices 1, 2, 5.

No over water nor fill construction is involved in this proposal, no flood control nor shoreline protection measures are proposed or required. The proposed residential lots are not within the floodplain. Utility lines with the subdivision are proposed to be underground and both public sewer and water will serve the development The 25-foot OHWM setback required in the Suburban Environment is met with the nearest part of any building envelope approximately 160-feet from the OHWM.

4. Complies with Environmental Use Management Policies (Section E). The proposed development is consistent in protecting, maintaining low and medium density shoreline residential areas, consistent with Designation Criteria 1,3,4,5, and 6 and Management Policies 1, 2, and 5 of Section E. A public park dedication is not proposed with this development therefore Policy 3 (acquisition of shoreline property) cannot be met. However, the City Council has determined (during their review of a previous PUD application for this property) the City has no interest or plans in acquiring public park property from this development proposal. Therefore, the proposal would not meet Policy 4 (linking the public park with a bicycle and pedestrian pathways) but compliance is not mandatory.

5. Consistent with the Shoreline Use Element Goal and Policies (Section D). The development proposal provides an opportunity for use of the Shorelines by residents of the development and does not diminish the quality of the environment. Further, the development respects and protects the enjoyment of private rights in the shoreline property by eliminating public access/park to the shoreline. Consistent with applicable Policies A1, A2, A3, A5, A6, A7, A8, 10a, 10f, and12 and C 1 of Section D.

6. Consistent with Use Activity Policies (Section F) Residential Development, Utilities, Recreation and Roads are a permitted uses in the Compatibility Matrix for the Suburban environment, The proposal complies and is found to be consistent with 5 of the seven

policies. Policies 1, 2, 4, 5, and applicable General Regulations 2, 5, 6, 7, 8, and Suburban Environment Regulations 1 and 2 in Section F Public Access is not being provided as part of the proposal and the City Council's Recommendation. Two of the Utility Polices apply P 1, restore areas after installation of utilities and P3 locate utilities underground so as not to obstruct or destroy scenic views. The Recreation Policies for the most part are not applicable since no public parkland dedication, or public access easement is proposed. The Road Polices for the most part are not applicable but would be fulfilled by compliance with the General Regulations during development of the site.

7.Consistent with Natural Systems Considerations for Rivers, Streams, and Creeks (Section G) p G.5 the proposed subdivision is providing transportation, and utility systems out side the shoreline and protecting and enhancing the shoreline through extensive planting to improve functions. Nothing in the proposed development would adversely affect the natural hydraulic functioning of the Skykomish River.

In consideration of the evaluation of this project against the polices of the Master Program for a Substantial Permit Application, City Staff concludes the project is found consistent and compliant with the Snohomish Shoreline Management Master Program (SCSMP) elements and recommends approval of the Substantial Development Permit.

IV. Water, Sewer, and Stormwater Management

a. Water and Sanitary Sewer Availability

According to SMC 16.10.070(8) new developments must show evidence of adequate water availability as stated in RCW 19.27.097. The City of Sultan Public Works Department has issued a letter stating water and sewer availability to the site on August 27,2007. The letter was updated on October 4, 2007. This letter states that the Applicant/Developer may need to build improvements to the City's water system in order to provide water to the site.

b. Storm Water Management

Per SMC 16.92.010, the City of Sultan adopts the most recent Department of Ecology Stormwater Management Manual for the Puget Sound Basin. According to the *Preliminary Storm Drainage Analysis* prepared for this project by Harmsen & Associates, Inc dated September 11, 2007, the Applicant/Developer proposes to construct a biofiltration swale located adjacent to the existing drainage swale on the easterly portion of the Plat. All storm water from the development will be collected and conveyed to the biofiltration swale. The *Report* states that the proposed design of the stormwater management facility was prepared using the requirements of the Washington State Department of Ecology *Storm Water Management Manual for Western Washington*, August 2001.

The Environmental Checklist prepared for this project states that filter fabric will be placed, prior to construction, down slope of all graded areas to intercept runoff during construction. During construction, a temporary infiltration pond will be used to collect and infiltrate surface runoff. A stabilized construction entrance will minimize the tracking of sediment on

to the public roadways, and ground cover may be placed on all exposed surfaces. The Applicant/Developer will adhere to all Environmental Codes relating to construction of this project.

The City Engineer is requiring the dedication of a drainage easement over and across Drainage Tract 998 to maintain and install improve storm drainage piping in the area and also north of the BNSF Railroad tracks.

V. Traffic and Circulation

A. Lot Access

Access to the 16-single-family detached residential units will be primarily from an internal plat road off of Skywall Drive and Foundry Drive, a collector street. The site plan shows proposed Lots 1 thru 6 having direct access off of Skywall Drive. The location of the internal roadway has been designed to reduce the offset of 325th Street and Foundry Drive at their intersection with Skywall Drive. A letter dated October 15, 2007, from the Geri Reinhart the City's Transportation Consultant regarding the offset request recommends the Applicant/Developer strive for just a half-lane off-set through the intersection and recommends additional widening on the east side of Foundry Road south of the railroad would be necessary to meet this recommendation.

B. Street Standards

Skywall Drive

For local access streets, the Sultan Design Standards require a 60-foot right of way, two 12-foot travel lanes; parking on both sides, 5-foot sidewalks on both sides with 3-foot planter strips and street trees planted one tree per 20-lineal feet.

The site plan shows that frontage roadway improvements on Skywall Drive include utility extensions, road widening, vertical curb and gutter, sidewalk and street trees. The cross section provided in the map set (P4) shows two 12-foot travel lanes, 6-foot parking on one side, and a 3-foot landscape strip and 5-foot sidewalk on the south side. This proposed road section is consistent with the City's Design Standards.

On-site Streets

Sultan Design Standards require a 60-foot right-of-way, two travel lanes, parking on both sides; 5-foot sidewalks on both sides and street trees planted one tree per 20-lineal feet for Local Access streets For the one on-site street 325th Street S.E., the Applicant/Developer proposes a 60-foot right-of-way, two 12-foot travel lanes, two 6-foot parking lanes, vertical curb and 5-foot sidewalk on each side and a 6.5 foot wide planning strip on each side behind the sidewalk. The proposed road section is consistent with the City Design Standards.

The Landscaping Plan (refer to page L1.0 of the Preliminary Site Plan) shows a number of street trees to be planted along both Skywall Drive and the internal Plat Street 325 Street S.E. Per Sultan Design Standards, residential street trees are required to be planted on the street edge of Local Access streets. The plan as proposed is consistent with City Design standards.

It should also be noted that in addition to the landscape plan, the Applicant/Developer is required to plant additional trees and shrubs in Buffer Enhancement Ares A and B as shown on the mitigation plan for the project.

a. Access Analysis:

The City's Traffic Consultant, Geri Reinart, P.E. reviewed the Design Proposal for this and noted in her letter of October 15, 2007:

1. No street construction drawings have been submitted at this time, so I can't determine how slight the offset is, however, I would recommend that the Foundry Road widening/ improvement plans strive for just a half-lane off-set through the intersection, if at all possible, subject to Staff engineering plan review. This may require some additional widening on the east side of Foundry Road at the intersection that would then taper back into the existing alignment in order to meet this recommendation.

2. Gibson Traffic Consultants (GTC) had recommended that the intersection be revised to an all-way stop controlled intersection in order to alleviate the sight distance deficiency and unconventional control. As noted in my original comments I would not recommend all-way stop control for an intersection with limited traffic volumes, except under unusual conditions. The revisions that have been proposed to the railroad crossing will change the grade of the crossing approaches, which should provide improved sight distance. The highest volume leg of the intersection will continue to be the north leg, followed by the east, (future) south, and west legs, with the north and south legs having the highest combined volumes. As such, my inclination is to assign the right-of-way to the north/south movements at this time, with the east and west legs required to stop. I would also like to avoid having to stop southbound traffic due to the closeness to the railroad crossing/limited queuing space, and the fact that it essentially functions as a collector/arterial. Pending future grades and final street construction, we may need to re-assess the actual field conditions to review the operation of the street offset and to determine whether adequate sight distance is available for the stop controlled movements, and consider at that time whether to modify the intersection to an all-way stop.

3. Overall the project would have a minor impact. Based on the information provided and my prior knowledge of this area, the analysis has reasonably assessed the off-site impacts that could be expected from this project.

b. Traffic Impacts

According to SMC 16.112.020, the Applicant/Developer is required to pay impact fees and offset impacts to the City's street system. According the SEPA Checklist submitted on October 7, 2007, the new development will generate approximately 153-trips of which 144 are new. Other miscellaneous traffic impact fees concerning the realignment improvement for SR-2/Sultan Basin Road and the US-2 westbound passing lane as requested by Sandra Kortum, WSDOT NW Region and Development Services.

VI. Plat Modifications

The Applicant/Developer has submitted two requests for Plat Modifications or variances for this cluster subdivision:

1. SMC 16.28.260 Applicability C. Public Access to Water Bodies requires all plats bordering publicly owned or controlled bodies of water, streams, or rivers to provide one or more dedicated public access rights-of-way to the ordinary high water mark. The right-of way shall have a minimum width of 60 feet and be capable of having a road constructed thereon to city standards. Previous applications for the subject property have included a recommendation by City Staff to dedicate tracts along the Skykomish River for Public Open Space Purposes. In their review of that application, and consideration of comments from residents of the area, the City Council did not support the dedication of the tracts for public open space and park purposes. Therefore, City Staff supports the variance requested by the Applicant/Developer in consideration of City Council's direction to City Staff.

2. Section 1.09 Street Classifications and Minimum Design Standards; of the City of Sultan Design Standards and Specifications, amended February 24, 2005, CUL-DE-SAC restricts cul-de-sacs to a maximum length of 300-feet. The Applicant/Developer proposes a cul-de-sac 386-feet in length from Skywall Drive to the center of 325th Street S.E.

   The Public Works Director, City Engineer, and Director of Community Development support the requested variation as they did for previous applications for the subject property. The Applicant/Developer is meeting the minimum turning radius for the cul-de-sac, which will provide access/egress for fire trucks, emergency vehicles, and sanitation equipment. In addition, a fire hydrant will be located at to entrance to the cul-de-sac.

   It should be noted that Fire District 5 supported a modification/variance request by the Applicant/Developer for cul-de-sac in a previous PUD application for the subject property. That cul-de-sac was 389-feet in length.

VI. Other Issues

a. Floodplain
   FIRM Map Number 53061C1406E, dated November 8, 1999 shows that portion of the property proposed to be developed for single-family detached residential units in Zone X and outside the floodplain of the Skykomish River.

b. Utilities
   All utilities are available at the site to serve the Development. The Applicant/Developer proposes on-site utilities to be placed underground.

c. School Impacts
   Sultan Elementary, Middle, and High schools are located approximately 1.9 miles away from the site. Per SMC 16.116.030(A) and (B), the City shall collect School Impact Fees *"from*

any Applicant/Developer seeking land use permit approval and/or a building permit from the City for any residential development activity within the City limits." School Impact Fees shall be paid to the City in accordance with Chapter 16.116 SMC.

d. Park and Recreation Impacts
Per SMC 16.112, the Applicant/Developer is required to pay Impact Fees to offset the project's impact on the City's Recreation Facilities. Park and Recreation Impact Fees shall be paid to the City prior in accordance with Chapter 16.112 SMC.

e. Concurrency Requirements
SMC Section 16.12.010 states that property owners must meet the concurrency provisions of the Comprehensive Plan as required in RCW 36.70A.70. This ensures that adequate public facilities are available and will be able to support the development's impact. Facilities subject to this review are:

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

The Applicant/Developer has submitted an Application to the City of Sultan for a Certificate of Concurrency for the subdivision. This Certificate states that this proposed development will not impact the Level of Service below that of the adopted Comprehensive Plan for the City of Sultan. The City has reviewed the Application and noted the developer agrees that the Level of Service for Police will be concurrent at the time of final building inspections/issuance of a Certificate of Occupancy for the new residential units within the subdivision.

f. Transportation Improvement Program (TIP)
The City Council on August 9, 2007 approved Resolution Number 07-14 adopting the 6-year TIP for calendar years (2008-2013). The City received the Twin Rivers Estates application on September 17, 2007. The Application was determined complete on September 18, 2007. The Central Puget Sound Growth Management Hearings Board on October 3, 2007, invalidated the TIP because it was based on a non-compliant Comprehensive Plan Transportation Element.

g. Fire Hydrants
A number of fire hydrants are proposed throughout the plat. The locations of the fire hydrants are shown on page P-3 of the Preliminary Site Plan.

f. Notice of Application
No comments were received on the Notice of Application

g. Notice of Application For Shoreline Management Substantial Development Permit Shoreline
No comments were received on the Notice of Application for the Shoreline Management Substantial Development Permit.

h. Landscaping
The Applicant/Developer has submitted a Landscape Plan Drawing L1 which illustrates the development of the Recreation, Tract 997, and a street tree planting plan, and a typical Landscaping Plan for the individual units.

VII. SEPA

SEPA, under RCW 43.21C requires Governmental Agencies to consider the environmental impacts of a proposal before making decisions. A DNS was issued for the proposal on September 27, 2007. One comment letter (e-mail) was received from Gerry and Bonnie Gibson on October 10, 2007. The City received no appeals.

VIII. Public Notices

As required by the City's Subdivision and Public Hearing Regulations (SMC 16.28.070 and SMC 16.124.010) Notice of the Preliminary Plat Application was posted, published, and mailed on September 27, 2007. Notice of Public Hearing was posted, mailed, and published on November 27, 2007. Notice of the Application for Shoreline Management Substantial Development Permit was posted on and published on September 27, 2007 and October 4, 2007 with the comment period ending on October 26, 2007. Notice of the combined Shoreline Public Hearing was posted, mailed, and published on November 27, 2007.

IX. Conclusion

City Staff concludes that the proposed Twin River Ranch Estates Cluster Subdivision, Conditional Use Permit, Plat Modifications/Variances, and Shoreline Management Substantial Development Permit Application with the Conditions in Section X below, meets the criteria for Preliminary Plats in accordance with SMC 16.28.330(A), for single-family detached dwelling (cluster) in accordance with SMC 21.04.052 and the Shoreline Management Program SMC 16.96.010.

a. The Proposed Preliminary Cluster Plat is found to be in conformance with the general purposes of the Comprehensive Plan and Planning Standards and Specifications as adopted by the Laws of the State of Washington and the City of Sultan.

b. The proposed Preliminary Cluster Plat makes appropriate provisions for public health, safety, and general welfare, and for open spaces, drainage ways, streets, other public ways, water supply and sanitary wastes, transit, parks and recreation, playgrounds, schools and school grounds. Street improvements, trails, open space, drainage, and school access should be developed in compliance with the Conditions listed below.

c. The Shoreline Substantial Development Permit Application is found to be consistent with the Master Shoreline Program and substantially compiles with Shorelines of Statewide

significance (Section H, P.3), Shorelines of State Significance Management Policies (Section H), Use Regulations for Suburban Environment, Environment Management Polices (Section E), and is consistent with Shoreline Use Element Policies (Section D), the Use Activity Policies Section F),and Consistent with Natural Systems Considerations Section G).

d. The Shoreline Substantial Development Permit is consistent the City's 2004 Comprehensive Plans Goals of the Section 2.3 Shoreline Management in particular Goals 2, 3, 4, 8,10 and 11.

e. The design of the Preliminary Cluster Plat, as conditioned herein, takes into account the relationship of the site to the surrounding areas. Conditions listed below are essential to ensure that the street frontages and perimeter of the site are designed in a manner compatible with the surrounding neighborhood.

f. The physical characteristics of the site have been reviewed. Conditions are recommended to ensure that the new structures and improvements are built in compliance with the regulations of the Sultan Municipal Code.

g. The proposed Preliminary Cluster Subdivision and Plat Modification/Variances and Shorelines Application will serve the public use and interest by developing land consistent with the goals and policies of the Comprehensive Plan and Shorelines Management Master Program, be compatible with adjacent land uses, and by providing an extension of public roads, utilities, and services.

X. Staff Recommendation

City Staff recommends that the Hearing Examiner recommend to the City Council APPROVAL WITH CONDITIONS of the Twin Rivers Ranch Estates Preliminary Cluster Plat, and Shoreline Management Substantial Development Permit with the Conditions listed below:

Preliminary Cluster and Shoreline Management Substantial Development Permit.

1. The general configuration, lot shapes and sizes, setbacks, site density, and areas of open space shall be as indicated on Plans are subject to these Conditions of Approval. Revisions to approved preliminary subdivisions are regulated by SMC 16.28.360.

2. In accordance with SMC 16.28.340, the *Applicant/Developer* shall prepare a Developer Agreement subject to Approval of the City. The Agreement shall specify the requirements for construction of all infrastructure improvements, including plan submittals, inspections, bonding, private improvements, right-of-way improvements and facilities associated with the Cluster Plat, including improvements to all common areas. Site construction drawings shall be designed consistent with the Conditions of Approval. Site work shall not begin until City Approval of the site Development Agreement.

3. The side yard setbacks shall be corrected to 10-foot on all lots.

4. The rear yard setbacks shall be corrected to 20-feet on all lots.

5. The width of Lot 6 shall be increased to a minimum of 64-feet.

6. Recreation Tract 997 shall be relocated to avoid the impacts of the facility on adjacent property owners.

7. The Applicant/Developer shall establish a Homeowners' Association to assume responsibility for maintenance of common areas and street lighting system. The Homeowners' Association shall be recorded with the plat. The wording and conditions of the Homeowners' Association shall be subject to City approval prior to Final Plat.

8. The Applicant/Developer shall maintain the landscaping, open space improvements, drainage facilities, and other common areas within the site for a two-year period following installation. Such maintenance shall be secured with a Maintenance Bond filed with the City. Subsequent to the two-year period, maintenance responsibility shall be passed to the Homeowners Association.

Open Space –

9. The Applicant/Developer shall develop Tract 997 as shown on Drawings P2 and L1.

10. Stream impacts shall be mitigated in accordance with the Critical Area Study, Habitat Management Plan, and Mitigation Plan dated September 13, 2007. The Mitigation Plan shall be amended as Recommended by the City's Consultant (letter from Graham-Bunting Associates dated October 9, 2007) and be revised to include the City's Consultant (7) Recommended Conditions. The *Applicant/Developer* shall maintain and monitor stream buffer mitigation for a 5 five-year period following installation. Such mitigation shall be secured with a Performance Bond filed with the City.

11. The Applicant/Developer shall install a spilt rail fence along the 150-foot buffer adjacent to the rear of Lots 9 trough 13.

Water –

12. The Applicant/Developer is responsible for any necessary improvements to the City's water system in order to provide adequate water to the site. The Developer/Owner shall be required to relocate and extend on-site water lines to as shown on drawing P-3, preliminary sewer, water and storm drainage plan.

Sewer –

13. The Applicant/Developer is responsible for any necessary extension and improvements to the City's sewer system in order to provide sewer service to the site.

Surface Water Management –

14. During grading and construction activities, the Applicant/Developer shall retain and manage on-site surface and storm water within the site per the recommendations of the *Preliminary Storm Drainage Analysis* dated September 11, 2007 prepared by Harmsen & Associates, Inc., and the Construction Stormwater Pollution Prevention Plan prepared in accordance with the Department of Ecology Stormwater Management Manual 2005.

15. The Applicant/Developer shall inspect weekly, maintain, and repair all temporary and permanent erosion and sediment control BMP's to assure continued performance throughout the subdivision construction period. During the wet weather construction period, the access road and on-site utilities shall be phased to minimize open soil exposure.

16. The temporary storm water management facilities shall be constructed before any significant amount of site grading commences. Tract 998 shall be dedicated to the City as a storm drainage easement

17. The Applicant/Developer shall construct a four (4)-foot high black chain link fence across the back of Lots 6, 7, 8, and 9 and across the south side of Skywall Drive adjacent to Tract 998.

18. The Applicant/Developer shall dedicate a utility and storm drainage easement over and across Tract 998.

Transportation -

19. The Skywall and Foundry Drive intersection shall be constructed to incorporate the recommendations of the City's Traffic Consultant (letter dated October 15, 2007) and be regulated as a controlled intersection.

20. The Applicant/Developer shall be responsible for the plans and improvements to the BNSF Railroad crossing. The City will assist the Applicant/Developer in the permitting process with the BNSF Railroad.

21. The City will administer any future Grant funds received to assist in the improvements to the BNSF Railroad crossing.

22. Street trees shall generally be provided along the entire site frontage of Skywall Drive and the internal roadway in accordance with the recommendations of the Director of Community Development.

23. Final Street design, including paving, sidewalks, frontage improvements, trail, and the City Engineer prior to construction must approve emergency access.

24. A Street Lighting Plan shall be required on Skywall Drive and all on-site streets. Prior to site development, the Applicant/Developer shall submit a detailed lighting plan that depicts continuous street illumination throughout the subdivision to the City Engineer for review and approval. The Homeowner's Association shall be responsible for the operation and maintenance of the lighting system.

Other –

26. The Applicant/Developer shall provide a statement on the Final Plat acknowledging that the Twin Rivers Ranch Estates Cluster Subdivision is located south of an approved Industrial Area and consequently the residents may be subjected to noise and vibrations from the activities carried on within the Park.

27. All utilities shall be placed underground.

28 The Applicant/Developer shall demonstrate sufficient water flow from the proposed fire hydrants for review and approval by the City Engineer and Fire District prior to the issuance of Occupancy Permits.

29. Prior to construction, the Applicant/Developer shall prepare an erosion control plan subject to review and approval by the City Engineer.

30. During construction, the Applicant/Developer shall ensure that trucks are cleaned before leaving the site. The Applicant/Developer shall provide street cleaning of Skywall Drive during site clearing, grading and filling and shall promptly clean up any dirt, mud or other material deposited on public streets and shall be responsible for cleaning storm drains in public streets that are impacted by the construction.

31. All site improvements, including streets, sidewalks, bicycle lanes, trails, frontage improvements, drainage improvements, open space landscaping and improvements, and other common area improvements shall be completed prior to Final Plat, with the exception of the final lift of paving of streets. Alternatively, the City may approve a financial bond or assurance for items not completed prior to Final Plat. All site improvements, not including individual homes, must be installed prior to final inspection of the first home.

32. The existing accessory structures shall be moved, demolished, or otherwise modified so that they are in compliance with the Sultan Municipal Code prior to the issuance of plat Engineering Permits.

33. The Applicant/Developer shall pay Traffic, Recreation, and School Impact Fees and their administrative processing costs in accordance with Chapters 16.112 and 16.116 SMC.

34. The Applicant/Developer shall obtain all necessary permits and approvals from Local, State, and Federal Agencies necessary to complete the development and associated improvements.

Rick Cisar, Director of Community Development Dated

EXHIBIT LIST

Exhibit 1 Twin Rivers Ranch Estates Binder with Items A-W dated September 17, 2007
Exhibit 2 Completeness Letter to Mr. Dan Ramirez dated September 18, 2007
Exhibit 3 Affidavit of Posting, Notice of Application dated September 24, 2007
Exhibit 4 Notice of Application dated September 27, 2007
Exhibit 5 Affidavit of Posting, Shorelines Permit, dated September 24, 2007
Exhibit 6 Shoreline Management Permit No. SMP 07-001, dated Sept 27 & Oct 4, 2007
Exhibit 7 Affidavit of Mailing, Notice of Application dated September 24, 2007
Exhibit 8 Affidavit of Mailing, Shorelines Permit dated September 24, 2007
Exhibit 9 Affidavit of Posting, DNS & Map dated September 27, 2007
Exhibit 10 Notice of DNS & Map dated September 27, 2007
Exhibit 11 Affidavit of Mailing dated September 27, 2007
Exhibit 12 Graham-Bunting Letter dated October 9, 2007
Exhibit 13 E-mail from Sandra Kortum with WSDOT dated October 9, 2007
Exhibit 14 E-Mail from Gerry & Bonnie Gibson, dated October 10, 2007
Exhibit 15 Geralyn Reinart letter dated October 15, 2007
Exhibit 16 Certificate of Concurrency dated November 7, 2007
Exhibit 17 Notice of Combined Public Hearings dated November 27, 2007
Exhibit 18 Affidavit of Mailing, Public Hearing dated November 21, 2007
Exhibit 19 Affidavit of Publication, Public Hearing dated November 27, 2007

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

2.26.150 Council consideration.

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

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

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

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

E. At the conclusion of the public hearing, the council shall enter its decision which shall set forth the findings and conclusions of the council in support of its decision. The council may adopt any or all of the findings or conclusions of the examiner which support the council's decision. The council may affirm the decision of the examiner, reverse the decision of the examiner either wholly or in part, or may remand the matter to the examiner for further proceedings in accordance with the council's findings and conclusions.

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

2.26.160 Effect of council action.

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

2.26.180 Local improvement district assessment roll hearings.

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

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

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

Attachment 3

Note: Accepts recommendation of hearing examiner, accepts hearing examiner findings of fact and conclusions of law, with minor modifications, grants application for preliminary subdivision, grants plat modifications to waive shoreline access and allows longer than standard cul-de-sac, grants conditional use permit to cluster lots, and grants Shoreline Management Act Substantial Development Permit for subdivision.

CITY OF SULTAN
Sultan, Washington

RESOLUTION NO. 08-06

A RESOLUTION OF THE CITY OF SULTAN ACCEEPTING THE HEARING EXAMINER'S RECOMMENDATION, INCLUDING HIS FINDINGS OF FACT AND CONCLUSIONS OF LAW, WITH MINOR MODIFICATIONS, GRANTING DAN RAMIREZ PRELIMINARY SUBDIVISION APPROVAL FOR TWIN RIVER RANCH ESTATE, A SIXTEEN LOT SINGLE FAMILY SUBDIVION, GRANTING A PLAT MODIFICATION TO WAIVE PUBLIC SHORELINE ACCESS REQUIREMENTS AND ALLOWING A LONGER-THAN-STANDARD CUL-DE-SAC, GRANTING A CONDITIONAL USE PERMIT TO CLUSTER THE LOTS AND GRANTING A SHORELINE MANAGEMENT ACT SUBSTANTIAL DEVELOPMENT PERMIT FOR THE SUBDIVISION

WHEREAS Dan Ramirez filed an application for approval of Twin River Ranch Estates, a 16-lot residential cluster subdivision for single family development requiring modification or waiver of plat requirements and a Shoreline Management Act Substantial Development Permit;

WHEREAS an open record hearing occurred before the City's Hearing Examiner on December 11, on the application, the City Hearing Examiner issued a Recommendation dated December 20, 2007;

WHEREAS the application came before the City Council for a closed record hearing on the "Recommendation" on January 24, 2008;

WHEREAS the City Council has determined based upon a review of the open record hearing to accept the Hearing Examiner's Recommendation, Findings of Fact and Conclusions of Law, but to make certain modifications as set out in this Resolution;

Attachment 4

NOW, THEREFORE it is resolved by the City Council of the City of Sultan as follows

A. Except for modifications as set out in paragraph B below, The City Council accepts the Hearing Examiner's Recommendation, Findings of Fact, Conclusions of Law and grants approval of (a) the preliminary plat of Twin Rivers Ranch Estates, a 16 lot single family cluster subdivision, (b) modifies by waiver public access to the shoreline, (c) modifies and approves a longer-than standard cul-de-sac, (d) grants a conditional use permit to allow clustering of the lots, and (e) grants a Substantial Development Permit for the subdivision under the Shoreline Management Act of the State of Washington.

B. The Hearing Examiner Recommendation is modified only in the following respects:

   a. Condition #10 is revised to state: The Applicant/Developer is responsible for any improvements to the City's water system which are necessary to provide adequate flow to the site. The Developer/Owner shall be required to relocate and extend on-site water lines as shown on Exhibit 1H, Sheet P3, Preliminary Sewer, Water and Storm Drainage Plan, as deemed necessary by the City Engineer.

   b. Condition #11 is revised to state: The Applicant/Developer is responsible for any necessary extension and improvements to the City's sewer system in order to provide sewer service to the site. The Developer/Owner shall be required to relocate and extend on-site sewer lines as shown on Exhibit 1H, Sheet P3, Preliminary Sewer, Water and Storm Drainage Plan, as deemed necessary by the City Engineer. The City will be the lead in the permitting process with the BNSF Railroad.

   c. Condition #17 is revised to state: The Skywall and Foundry Drive intersection south of the BNSF track shall be constructed to incorporate the recommendations of the City's Traffic Consultant (Exhibit 15) and be regulated as a controlled intersection. The Foundry Drive BNSF crossing shall be ~~widened and~~ improved by the Applicant/Developer only to the extent necessary to provide a safe crossing and street alignment, as determined by the City Engineer. The City will be the lead in any required permitting process with the BNSF Railroad.

PASSED BY THE Sultan City Council and **APPROVED** by the Mayor this _____ day of _____ 2008.

CITY OF SULTAN

By_____
Carolyn Eslick, Mayor

Division V. Concurrency Management System

Chapter 16.108

CONCURRENCY MANAGEMENT SYSTEM

Sections:

16.108.010 Purpose.
16.108.020 Exemptions.
16.108.030 Applications.
16.108.040 Nonbinding determinations.
16.108.050 Certificate of concurrency.
16.108.060 Standards for concurrency.
16.108.070 Facilities and services subject to concurrency.
16.108.080 Concurrency determination – Arterial roadways.
16.108.090 Concurrency determination – All other roadways.
16.108.100 Concurrency determination – Potable water.
16.108.110 Concurrency determination – Wastewater.
16.108.120 Concurrency determination – Police protection.
16.108.130 Concurrency determination – Parks and recreation.
16.108.140 Fees.

16.108.010 Purpose.

The purpose and intent of this chapter of the unified development code is to provide a regulatory mechanism to ensure that a property owner meets the concurrency provisions of the comprehensive plan for development purposes as required in RCW 36.70A.070. This regulatory mechanism will ensure that adequate public facilities at acceptable levels of service are available to support the development's impact. (Ord. 630 § 2[16.12.010], 1995)

16.108.020 Exemptions.

Any development categorically exempt from threshold determination and EIS requirements as stated in the State Environmental Policy Act (SEPA), Chapter 197-11 WAC. (Ord. 630 § 2 [16.12.020], 1995)

16.108.030 Applications.

A. Each applicant for a development approval, except those exempted from concurrency, shall apply for a certificate of concurrency.

B. An applicant requesting development approval by the city shall provide all information required by the city in order for a binding concurrency evaluation to be made on the proposed project. Such required information shall include any information required by the building and zoning official in order to evaluate issuance of certificate of concurrency.

C. No development approvals will be granted unless the applicant is eligible for a certificate of concurrency. (Ord. 630 § 2[16.12.030], 1995)

16.108.040 Nonbinding determinations.

A. A nonbinding concurrency determination shall be made at the time of a request for a land use amendment or rezone. Any nonbinding concurrency determination, whether requested as part of an application for development, is a determination of what public facilities and services are available at the date of inquiry, but does not reserve capacity for that development.

B. An applicant requesting a development action by the city shall provide all information required by the city in order for a nonbinding concurrency determination to be made on the proposed project. Such required information shall include any additional information required by the building and zoning official in order to make a concurrency determination. The concurrency determination shall become a part of the staff recommendation regarding the requested development action.

C. A nonbinding concurrency determination may be received prior to a request for development action or approval by submitting a request and any applicable fee to the building and zoning official. Information required to make this determination is the same as that cited in SMC 16.108.030(B). (Ord. 630 § 2[16.12.040], 1995)

16.108.050 Certificate of concurrency.

A. A certificate of concurrency shall be issued for a development approval, and remain in effect for the same period of time as the development approval with which it is issued. If the development approval does not have an expiration date, the certificate of concurrency shall be valid for 12 months.

B. A certificate of concurrency may be accorded the same terms and conditions as the underlying development approval. If a development approval shall be extended, the certificate of concurrency shall also be extended.

C. A certificate of concurrency may be extended to remain in effect for the life of each subsequent development approval for the same parcel, as long as the applicant obtains a subsequent devel-

Attachment 6

opment approval prior to the expiration of the earlier development approval.

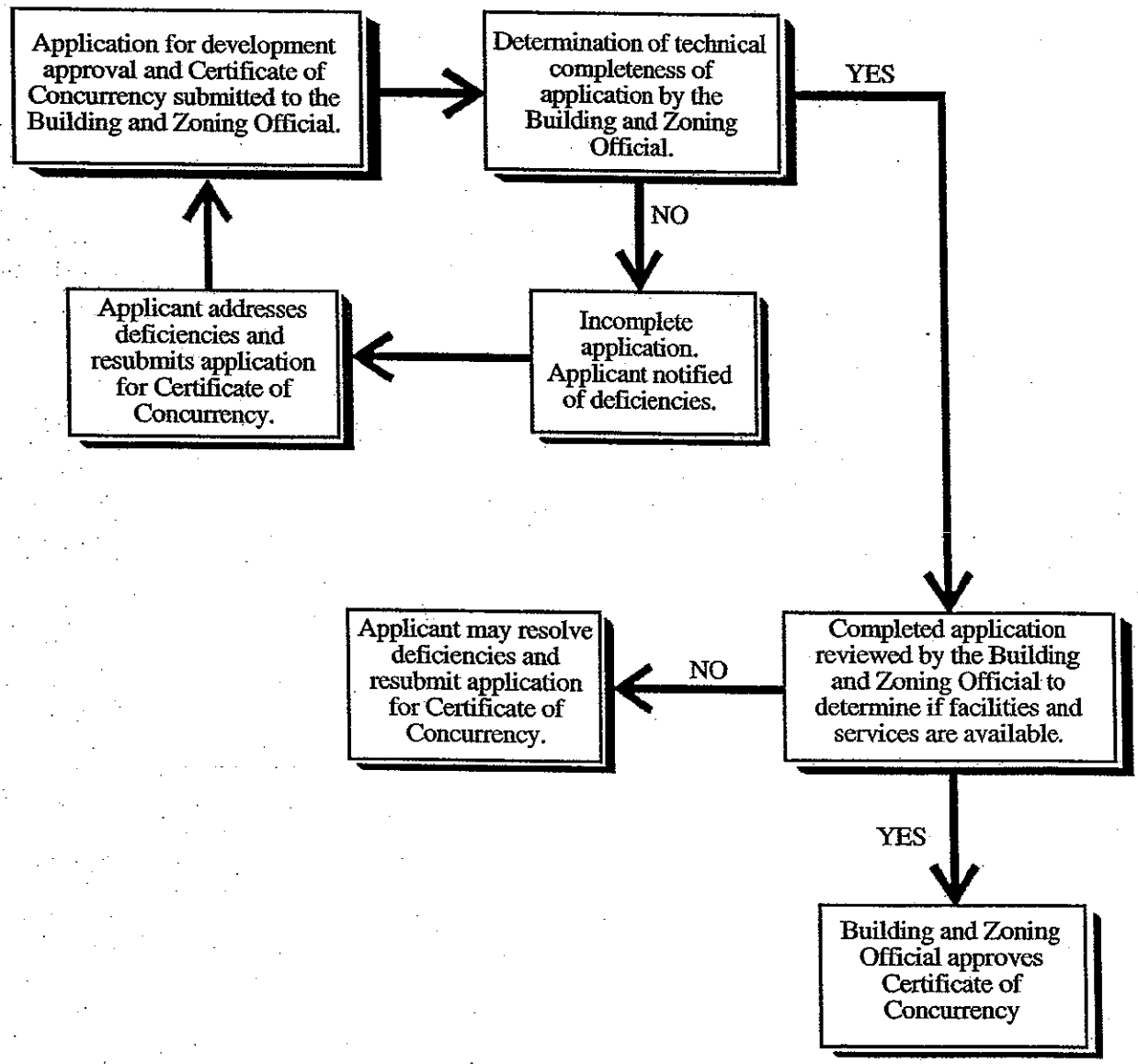
D. A certificate of concurrency runs with the land, is valid only for the subsequent development approvals for the same parcel, and is transferable to new owners of the original parcel for which it was issued.

E. A certificate of concurrency shall expire if the underlying development approval expires or is revoked by the city.

City of Sultan

Concurrency Review Process

Request for Development Approval Certificate of Concurrency (Binding)



(Ord. 630 § 2[16.12.050], 1995)

6.1

16.108.060 Standards for concurrency.

The city of Sultan shall review applications for development, and a development approval will be issued 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. A project shall be deemed concurrent if one of the following standards is met:

A. The necessary public facilities and services are in place at the time the development approval is issued; or

B. The development permit is issued subject to the condition that the necessary public facilities and services will be in place concurrent with the impacts of development; or

C. The necessary public facilities and services are guaranteed in an enforceable development agreement to be in place concurrent with the development. "Concurrent with the development" shall mean that improvements or strategy are in place at the time of the development or that a financial commitment is in place to complete the improvements or strategies within six years of the time of the development. (Ord. 630 § 2[16.12.060], 1995)

16.108.070 Facilities and services subject to concurrency.

A concurrency test shall be made of the following public facilities and services for which level of service standards have been established in the comprehensive plan:

A. Roadways;

B. Potable water;

C. Wastewater;

D. Police protection;

E. Parks and recreation. (Ord. 630 § 2 [16.12.070], 1995)

16.108.080 Concurrency determination – Arterial roadways.

A. The city of Sultan will provide existing and adopted level of service (LOS) information as set forth in the city of Sultan comprehensive plan. The proposed development will be analyzed to determine additional trips generated using standards from the Institute of Transportation Engineers.

If this preliminary LOS analysis indicates a LOS failure, the developer may:

1. Accept the level of service information as set forth in the comprehensive plan; or

2. Prepare a more detailed Highway Capacity Analysis, as outlined in the Highway Capacity Manual, Special Report 20 (1985) or other traffic analysis following procedures outlined by the Washington State Department of Transportation (WSDOT).

This more detailed study may include demand management strategies to accommodate the impacts of the proposed development such as increased public transportation service and ride-sharing programs.

B. If the developer chooses to do a more detailed analysis as described in subsection (A)(2) of this section, the building and zoning official will:

1. Meet with the developer to review and accept or deny the more detailed highway capacity analysis methodology;

2. Review the completed alternative analysis for accuracy and appropriate application of methodology;

3. If the alternative methodology, after review and acceptance by the building and zoning official, indicates an acceptable LOS where the comprehensive plan indicates a LOS failure, the alternative methodology will be used, based on a binding or enforceable development agreement. (Ord. 630 § 2[16.12.080], 1995)

16.108.090 Concurrency determination – All other roadways.

The developer shall prepare a traffic study. The level of detail and scope of a traffic study may vary with the size, complexity and location of the proposed development. A traffic study shall be a thorough review of the immediate and long-range effects of the proposed development on the city's transportation system.

A. The traffic study shall include the following basic data:

1. Provide a site plan drawn to appropriate scale of the proposal showing the road system, rights-of-way, type of roads, access points and other features of significance in the road system;

2. Vicinity map showing transportation routes to be impacted by the development;

3. Type of dwelling units proposed (single-family, multiple-family, attached, detached, etc.) and trip generation rates for the development. In cases of activity other than residential, the same type of information will be required (commercial, industrial, etc.);

4. Volume of traffic expressed in terms of average daily traffic on the roadway network that can reasonably be expected to be used by existing traffic and traffic from the development expressed in terms of current average daily traffic along with directional distribution (D factor), peak hour

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demand (K ratio) and percentage of trucks (T factor), in the traffic stream;

5. Physical features of the road network involved, with regard to functional classification, capacity, safety and operations;

6. A level of service analysis of the road system that can reasonably be expected to bear traffic generated by the development:

a. The level of service may generally assume conditions for two-lane highways without access control and at-grade intersections as defined in the highway capacity manual;

b. Level of service and volume to capacity ratio (v/c) is to be determined and indicated within the report, showing factors used and methodology;

c. Volume figures used shall consist of:

i. Current average daily traffic (ADT),

ii. Projected ADT at completion of proposal,

iii. Growth projection if completion is more than two years away;

7. The staged increase in traffic volumes on all transportation routes to be caused by the development as different phases are completed;

8. Traffic volumes shall be projected for 10 years into the future and, if a future phase of the development will extend beyond 10 years, to the time of completion of future phases of the development;

9. Other similar data that may be required to provide a complete and thorough analysis.

B. The city may also require that the traffic study include other information necessary for a thorough review of the immediate and long-range effects of the proposed development on the transportation system. (Ord. 630 § 2[16.12.090], 1995)

16.108.100 Concurrency determination – Potable water.

A. The city of Sultan will provide level of service (LOS) information as set forth in the city of Sultan comprehensive plan.

B. If the LOS information indicates that the proposed project would not result in a LOS failure, the concurrency determination would be that adequate facility capacity at acceptable LOSs was available at the date of application or inquiry.

C. If the LOS information indicates that the proposed project would result in a LOS failure, the concurrency determination would be that adequate facility capacity at acceptable levels of service was not available at the date of application or inquiry. (Ord. 630 § 2[16.12.100], 1995)

16.108.110 Concurrency determination – Wastewater.

A. The city of Sultan will provide level of service (LOS) information as set forth in the city of Sultan comprehensive plan.

B. If the LOS information indicates that the proposed project would not result in a LOS failure, the concurrency determination would be that adequate facility capacity at acceptable LOSs was available at the date of application or inquiry.

C. If the LOS information indicates that the proposed project would result in a LOS failure, the concurrency determination would be that adequate facility capacity at acceptable levels of service was not available at the date of application or inquiry. (Ord. 630 § 2[16.12.110], 1995)

16.108.120 Concurrency determination – Police protection.

A. The city of Sultan will provide level of service (LOS) information as set forth in the city of Sultan comprehensive plan.

B. If the LOS information indicates that the proposed project would not result in a LOS failure, the concurrency determination would be that adequate facility capacity at acceptable LOSs was available at the date of application or inquiry.

C. If the LOS information indicates that the proposed project would result in a LOS failure, the concurrency determination would be that adequate facility capacity at acceptable levels of service was not available at the date of application or inquiry. (Ord. 630 § 2[16.12.120], 1995)

16.108.130 Concurrency determination – Parks and recreation.

A. The city of Sultan will provide level of service (LOS) information as set forth in the city of Sultan comprehensive plan.

B. If the LOS information indicates that the proposed project would not result in a LOS failure, the concurrency determination would be that adequate facility capacity at acceptable LOSs was available at the date of application or inquiry.

C. If the LOS information indicates that the proposed project would result in a LOS failure, the concurrency determination would be that adequate facility capacity at acceptable levels of service was not available at the date of application or inquiry. (Ord. 630 § 2[16.12.130], 1995)

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16.108.140 Fees.

A. The city shall charge a processing fee to any individual that requests a nonbinding concurrency determination not associated with an application for development approval or development action. The processing fee shall be nonrefundable and nonassignable to any other fees. Such fee shall be determined by resolution of the city council at a date subsequent to the effective date of this unified development code.

B. The following types of development shall be exempt from paying the concurrency determination fee:

1. Nonprofit agencies whose primary chartered purpose is to provide affordable housing; and

2. Other governmental agencies. (Ord. 630 § 2[16.12.140], 1995)

Chapter 16.112

DEVELOPMENT IMPACT FEES

Sections:

16.112.010 Purpose.
16.112.020 Imposition of impact fees.
16.112.030 Recreation facility impact fee formula.
16.112.040 Traffic impact fee formula.
16.112.050 Calculation of impact fee.
16.112.060 Collection of impact fees.
16.112.070 Impact fee exemptions.
16.112.080 Impact fee credits.
16.112.090 Appeals.
16.112.100 Impact fee fund.
16.112.110 Expenditures.
16.112.120 Refunds.
16.112.130 Impact fee as additional and supplemental requirement.

16.112.010 Purpose.

This chapter of the unified development code is enacted pursuant to the Washington State Growth Management Act [Chapter 17 Law of 1990, 1st Executive Session, Chapter 36.70A of the Revised Code of Washington (RCW) et sequitur and Chapter 32 Laws of 1991, 1st Special Session, RCW 82.02.050 et sequitur, as not in existence of hereafter.]

It is the purpose of this chapter to:

A. Ensure that adequate facilities are available to serve new growth and development;

B. Promote orderly growth and development by requiring that new development pay a proportionate share of the cost of new facilities needed to serve growth; and

C. Ensure that impact fees are imposed through established procedures and criteria so that specific developments do not pay arbitrary fees or duplicate fees for the same impact. (Ord. 630 § 2[16.13.010], 1995)

16.112.020 Imposition of impact fees.

A. After the effective date of this code, any person who seeks to develop land within the city of Sultan by applying for a building permit for a residential building or manufactured home installation, shall be obligated to pay an impact fee in the manner and amount set forth in this chapter.

B. The fee shall be determined and paid to the designated city of Sultan official at the time of issuance of a building permit for the development. For

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notification requirements. Denial of conditional use permit applications is not appealable. All conditional use permits are subject to design review procedures. (Ord. 690-98)

21.04.050 Criteria.

The following criteria shall apply in granting a conditional use permit:

A. The proposed conditional use will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity of the proposed conditional use or in the district in which the subject property is situated;

B. The proposed conditional use shall meet or exceed the performance standards that are required in the district it will occupy;

C. The proposed conditional use shall be compatible generally with the surrounding land uses in terms of traffic and pedestrian circulation, building and site design as approved by the design review committee;

D. The proposed conditional use shall be consistent with the goals and policies of the comprehensive land use policy plan;

E. All measures have been taken to minimize the possible adverse impacts, which the proposed use may have on the area in which it is located. (Ord. 690-98)

21.04.052 Additional criteria for single-family detached dwelling (clustered).

The following additional criteria apply to allow single-family detached dwelling(s) (clustered):

A. The density on the property may not be greater than but should match the density for single-family detached dwellings;

B. Where urban density goals are to be achieved, but critical areas can be adequately protected, dimensional requirements for lot size, lot width, front and rear yard setbacks may be decreased by no more than 20 percent;

C. As a result of the design of the subdivision, a minimum of 20 percent of the net land area of continuous, publicly accessible open space such as stream or wetland and associated buffers, a ravine, bluff or other unique topographic feature, or conservation area is preserved;

D. As a result of the dwellings and any subdivision, the availability of housing to all economic segments of the population is increased, and housing density variety is preserved throughout the community. (Ord. 780-02 § 16)

21.04.054 Additional criteria for duplexes or two-family dwellings.

The following additional criteria apply to allow duplexes or two-family dwellings:

A. Only one other duplex or multifamily use may exist within 300 feet of the proposed use and there must be at least a 100-foot separation (building to building) between the uses.

B. The proposed dwelling has been designed to be harmonious with the neighborhood and is constructed to provide the appearance of a single-family unit by, for example, altering the location of the front doors and windows; garages and access to garages; parking; landscaping and fencing; utilities and mailbox locations; building heights consistent with surrounding properties; exterior colors and materials; and differing setbacks, all of which are confirmed by a site plan. (Ord. 780-02 § 17)

21.04.060 Expiration and renewal.

A conditional use permit shall automatically expire one year after a notice of decision approving the permit is issued unless a building permit conforming to plans for which the CUP was granted is obtained within that period of time. A conditional use permit shall automatically expire unless substantial construction of the proposed development is completed within two years from the date a notice of decision approving the permit is issued. The planning commission or city council, on appeal, may authorize longer periods for a conditional use permit if appropriate for the project. The planning commission or city council, on appeal, may grant a single renewal of the conditional use permit if the party seeking the renewal can demonstrate extraordinary circumstances or conditions not known or foreseeable at the time the original application for a conditional use permit was granted, which would not warrant such a renewal. No public hearing is required for a renewal of a conditional use permit. (Ord. 690-98)

21.04.070 Revocation of permit.

A. The planning commission may revoke or modify a conditional use permit. Such revocation or modification shall be made on any one or more of the following grounds:

1. That the approval was obtained by deception, fraud, or other intentional and misleading representations;

2. That the use for which such approval was granted has been abandoned;

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a. Prior subdivision or segregation of the subject property, or changes to the boundaries of the subject property through a boundary line adjustment or otherwise;

b. Prior actions taken in violation of this chapter or any local, state, or federal law, or regulation; and

c. Natural constraints on the subject property that would otherwise preclude the proposed development activities.

C. The city may assist applicants in providing the information required in subsection (B) of this section.

D. Critical area impacts allowed under this section shall be mitigated to the extent reasonably feasible.

E. Appeals. The applicant may appeal a decision of the director of community development on a reasonable use allowance application to the hearings examiner pursuant to the provisions of SMC 16.120.100.

F. The development activities authorized by a reasonable use allowance shall not constitute a significant adverse environmental impact under Chapter 17.04 SMC to the critical area(s) for which the allowance is granted. (Ord. 918-06 § 1; Ord. 630 § 2[16.10.080 (11)], 1995. Formerly 16.80.110.)

16.80.230 Density/floor area calculations and transfer of density/floor area.

A. An owner of a site or property in the low/moderate (LMD), moderate (MD) and high density (HD) zoning districts containing critical areas shall be entitled to transfer the residential density attributable to the critical area(s), including buffers, on the property to the unconstrained portion of the same property zoning districts subject to compliance subject to the requirements of this code for residential planned unit developments, and cluster subdivisions.

B. An owner of a site or property in the urban center (UC), highway-oriented development (HO), and economic development (ED) zoning districts containing critical areas shall be entitled to transfer the floor area attributable to the critical area(s) including buffers to the unconstrained portion of the same property subject to the requirements of the Table of Dimensional and Density Requirements footnoted as "Buildable Area Calculation – Transfer of Floor Area" in SMC 16.12.040, 16.12.050 and 16.12.060. (Ord. 918-06 § 1; Ord. 795-02 § 1. Formerly 16.80.120.)

Chapter 16.84

FISH AND WILDLIFE HABITAT

(Repealed by Ord. 918-06)

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1. Due to unusual circumstances, the system improvements would not reasonably benefit the proposed development;

2. The public facility improvements identified are not reasonably related to the proposed development; and

3. The formula set forth for calculating the impact fee does not accurately reflect impacts. (Ord. 630 § 2[16.13.050], 1995)

16.112.060 Collection of impact fees.

The impact and administrative fees imposed under this code and identified in the city of Sultan's current fee schedule shall be due and payable at the time of issuance of a building permit for the development or issuance of an installation permit for a manufactured home or building. (Ord. 820-03 § 1; Ord. 630 § 2[16.13.060], 1995)

16.112.070 Impact fee exemptions.

A. The replacement of a residential structure on a site within 12 months of the demolition or removal of the prior residence.

B. The impact fee for an exempt development shall be calculated as provided for herein and paid with public funds by including such amount(s) in the public share of recreational facility improvements undertaken within the city of Sultan. (Ord. 820-03 § 2; Ord. 630 § 2[16.13.070], 1995)

16.112.080 Impact fee credits.

The developer shall be entitled to a credit against the applicable impact fee component for the present value of any dedication of land for improvement to or new construction of any system improvements provided by the developer (or the developer's predecessor in interest), to facilities that are/were identified in the capital facilities plan and are required by the city as a condition of approval for the immediate development proposal.

The amount of credit shall be determined at the time of building permit issuance (or site plan approval where no building permit is required). In the event the amount of the credit is calculated to be greater than the amount of the impact fee due, the developer may apply such excess credit toward impact fees imposed on other developments within the city. (Ord. 630 § 2[16.13.080], 1995)

16.112.090 Appeals.

Any person aggrieved by the amount of the impact fee calculated and imposed upon a particular development activity may appeal such determination to the city council with 20 days of the issuance of the determination of the impact fee. (Ord. 630 § 2[16.13.090], 1995)

16.112.100 Impact fee fund.

There is hereby created and established a special purpose, nonlapse impact fee fund. The city clerk shall establish separate accounts within such fund and maintain records for each such account whereby impact fees collected can be segregated by type of facility.

A. All interest shall be retained in the account and extended for the purposes for which the impact fees were imposed.

B. Each year, the city clerk shall provide a report for the previous calendar year on each impact fee account showing the source and amount of monies collected, earned, or received and system improvements that were financed by impact fees. (Ord. 630 § 2[16.13.100], 1995)

16.112.110 Expenditures.

Impact fees for system improvements shall be expended only in conformance with the capital facilities plan. Impact fees shall be expended or encumbered for a permissible use within six years of receipt, unless there exists an extraordinary and compelling reason for fees to be held longer than six years. Such extraordinary and compelling reasons shall be identified in written findings by the city planning commission. (Ord. 630 § 2 [16.13.110], 1995)

16.112.120 Refunds.

A. The current owner of property on which an impact fee has been paid may receive a refund of such fee if the city fails to expend or encumber the impact fees within six years of collection, or such greater time as may be established in written findings by the city planning commission documenting extraordinary or compelling reasons for extension beyond six years. In determining whether there has been an encumbrance, impact fees shall be considered encumbered on a first-in, first-out basis. The current owner likewise may receive a proportionate refund when the public funding of applicable service area projects by the end of such six-year period has been insufficient to satisfy the ratio of public to private funding. The city shall notify potential claimants by certified mail (return receipt requested) deposited with the United States Postal Service at the last known address of each claimant.

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developing parts of the city; to promote coordination of land development; to conserve the natural beauty; and to require uniform monumenting of land subdivisions and conveyance by accurate legal description.

B. These regulations are established pursuant to the provisions of Article 11, Section 11 of the Constitution of the state of Washington and additionally to effectuate the policy of the prescribed state law referring to the platting and dedication of lands, including RCW Title 58 and Chapters 36.70, 58.17 and 65.05 RCW and shall not preclude full compliance thereto. (Ord. 840-04 § 1; Ord. 630 § 2[16.10.010(1)(b)(i)], 1995)

16.28.260 Applicability.

A. Scope of Coverage.

1. Subdivisions as defined in this code; and

2. Every redivision of a short subdivision occurring within five years of the date of recording of the original short subdivision.

B. Exceptions. The provisions of this section shall not apply to:

1. Cemeteries and other burial plots while used for this purpose;

2. Divisions made by testamentary provisions or the laws of descent;

3. Manufactured/mobile home developments when established pursuant to the provisions of Chapter 16.52 SMC, establishing manufactured/mobile home park standards;

4. Boundary line adjustments;

5. Division of land into lots, tracts or parcels, each of which is one-thirty-second of a section of land or larger, or 20 acres of land or larger, if not definable as a fraction of a section of land; and

6. Divisions of land into lots or tracts classified for industrial or commercial use when the council has approved a binding site plan for the use of the land in accordance with this code.

C. Public Access to Water Bodies.

1. In all plats bordering publicly owned or controlled bodies of water, streams or rivers, there shall be provided one or more dedicated public access rights-of-way to the ordinary high-water mark, such rights-of-way having a minimum width of 60 feet and being capable of having a road constructed thereon to city standards. Said public accesses shall be provided at intervals of no greater than one-half mile as measured along the ordinary high-water mark of such water body.

2. If there is no city road or other public access rights-of-way within one-half mile of the plat boundary, then one such dedicated access right-of-way shall be provided within 300 feet from the boundary of the plat and thereafter at one-half mile intervals. (Ord. 840-04 § 1; Ord. 630 § 2 [16.10.010(1)(b)(ii)], 1995)

16.28.270 Expenses.

In addition to any other fees, the applicant shall be required to bear any engineering and legal fees incurred by the city in connection with the processing of the application and preliminary plat and which are not covered by other fees. (Ord. 840-04 § 1; Ord. 630 § 2 [16.10.010(1)(b)(iii)], 1995)

16.28.280 Preliminary plat – Application submittal.

A. Prior to filing an application, an applicant shall be required to arrange a preapplication conference with the city planner, city engineer, public works and parks representatives for the purpose of preliminary review and discussion of the proposal.

B. An application shall be submitted with appropriate fees to the planning department and upon filing shall receive a file number and date of receipt. Requirements for a vested application pursuant to Chapter 104, Section 2, Laws of 1987, Regular Session shall have been provided in a complete and accurate manner as determined by the city planner. Within 10 working days of the date of receipt of either an application or resubmitted and/or additional information, the planning department shall determine if the application is complete and accurate for the purposes of vesting. The planning department shall return the application to the plat applicant if it is deemed incomplete or inaccurate. Resubmittals with the necessary information making the application complete within six months of original filing will not be subject to additional plat filing fees.

C. The applicant shall transmit no fewer than 10 copies to the city. Whenever a preliminary plat is revised prior to public hearing, the subdivider shall submit 10 copies of the revision, appropriately marked as such to the city. The city shall take responsibility for distribution of the copies to all relevant departments and agencies.

D. Unless an applicant for preliminary plan approval requests otherwise, a preliminary plat shall be processed simultaneously with applications for rezones, variances, planned unit developments, site plan approvals and similar quasi-judicial or administrative actions to the extent that procedural requirements applicable to these actions permit simultaneous processing.

Attest:

By_____
Laura Koenig, City Clerk

By_____ By_____
Council Member Flower Council Member Champeaux

By_____ By_____
Council Member Blair Council Member Slawson

By_____ By_____
Council Member _____ Council Member _____

By_____
Council Member Wiediger

Saved as suTwinRiversResolutionversion A -approval