

**SULTAN CITY COUNCIL
AGENDA ITEM COVER SHEET**

ITEM NO: PH-1

DATE: June 26, 2008

SUBJECT: Public Hearing on Sultan Crossing Street Vacation Petition
Terra Ex Land Group, Petitioner

CONTACT PERSON: Robert Martin, Community Development Director

Refile

ISSUE:

1. Open the public hearing on Sultan Crossing Street Vacation Petition.
2. Continue the hearing until July 10, 2008 so that proper notice can be posted.

Council, by resolution 08-17 set the June 26th regular meeting as the date for a public hearing on this vacation proposal. RCW 35.79.020 requires posting of written notice on the property at least 20 days prior to the date of the hearing. Due to staff changes, this posting date was not met.

If Council accepts this recommendation, no testimony will be received on the proposal at this meeting. All testimony and action on this proposal will be deferred until the required posting is provided.

STAFF RECOMMENDATION:

Staff recommends opening the hearing and continuing the hearing so that proper notice can be posted.

SUMMARY:

Vacation of a public right-of-way is a process controlled by statute (RCW 35.79). Once a petitioner has completed the submittals required by the statute, it is necessary for the legislative body (or designee) to hold a public hearing. The City Council carries that responsibility in Sultan.

In a vacation, the petitioner is not purchasing land. The petitioner is purchasing the public right-of-way (the public's right to access across the land) that is a legal encumbrance on the land.

Terra Ex Land Group is requesting vacation of approximately 860 lineal feet of un-used right-of-way of Sultan Basin Road north of its previous intersection with Hwy 2 (Attachment C). Sultan Basin Road has been reconstructed such that its intersection with Hwy 2 is approximately 600-feet east of its previous intersection. The right-of-way proposed for vacation is no longer used as a public traveled way. The petitioner is pursuing a commercial development that will include the land proposed for vacation.

Petitions for vacation must be accompanied by:

1. Appropriate fees (received)
2. An appraisal of the property by a qualified appraisal firm (received).
3. Legal description of the property proposed for vacation (received).
4. Signatures of at least 2/3 of the property owners abutting the proposed vacation (received).
5. Indication that no property will lose legal access to a public right-of-way through the proposed vacation (received).
6. A discussion of the public interest served by the proposed vacation (received).

ANALYSIS:

1. The statute (RCW 35.79.010) requires that a vacation petition be "signed by the owners of more than two-thirds of the property abutting upon the part of such street or alley sought to be vacated." The petitioner owns property well in excess of the two-thirds minimum. There is only one other owner abutting. This owner is not required to sign the petition.
2. The right-of-way proposed for vacation occupies 43,743 sq. ft. (just over one acre).
3. If the vacation is ultimately approved, the right of access for a public street will no longer exist. Since there are utilities in the street corridor, the city will need to retain easements for the operation and maintenance of these utilities. This will limit use of the vacated corridor to parking lots, landscaping, and other uses that do not include construction of buildings.
4. The application shows that all affected properties will retain access to public roads.
5. The application indicates that the public interest served by the petition is pursuit of a commercial development that will benefit the community's economic development interests. (Note that consideration or approval of the street vacation does not imply any such consideration or approval of the intended commercial development.)

ALTERNATIVES:

1. Hold the public hearing: The statutory requirement for posting on-site at least 20-days prior to the hearing date has not been met. Holding the hearing without that requirement would place subsequent action in jeopardy if a challenge were filed based on the statutory notice requirement.
2. Do not hold the public hearing: Council could determine to not proceed with the hearing, effectively rejecting the proposed street vacation and any further action on the proposal.
3. Continue the public hearing to July 10: This will allow Council to continue action on the proposal in conformance with the statutory process. By conducting the public hearing, Council is not approving the proposed vacation, it is only taking the step of gathering public input before continuing to consider the proposal.

FISCAL IMPACT:

1. It is expected that the municipality receive, on behalf of the public, compensation for the public's loss of access rights. An independent appraisal paid for by the petitioner is the customary basis for establishing the value. If, after the public hearing, Council determines to continue action on the vacation, Council has the option of hiring its own appraiser for a second opinion.
2. The appraisal submitted by the petitioner has been completed by a Certified General Appraiser (Paul C. Bird of Macaulay & Associates Limited). He has determined the value of the acquired right-of-way (subject to ongoing utility easements which prevent building of structures on the vacated property) to be \$130,000.
3. RCW 35.79.030 provides that the owners abutting the right-of-way
"shall compensate such city or town in an amount which does not exceed one-half the appraised value of the area so vacated. If the street or alley has been part of a dedicated public right-of-way for twenty-five years or more, ... the city or town may require the owners of the property abutting the street or alley to compensate the city or town in an amount that does not exceed the full appraised value."
4. As this has been right-of-way for over twenty-five years, the Council has the prerogative of charging up to the full-appraised value. For a vacation in July of 2005, the City charged one-half of the appraised value, but this is not a precedent. There is no code-prescribed or statute-prescribed methodology for negotiating the charge other than that cited in item 6 above.

RECOMMENDED ACTION:

1. Open the Public Hearing on Sultan Crossing Street Vacation Petition.
2. Continue the Hearing until July 10, 2008 so that proper notice can be posted.

ATTACHMENTS:

Attachment A: Steve Harris Letter of April 18 (Received April 22, 2008) responding to requirements of RCW35.79.020.

Attachment B: Excerpt of Property Appraisal (Received April 8, 2008)

Attachment C: Map and legal description of proposed vacation

Attachment D: Map indicating location of creek on adjacent property

Attachment E: May 8, 2008 Council Agenda Item Cover Sheet

Attachment F: May 8, 2008 Council Meeting Minutes (Consent Item C-6)

The City of Sultan
319 Main Street Suite 200
P.O. Box 1199
Sultan Washington 98294-1199

RECEIVED
APR 22 2008

BY:

Dear City of Sultan,

I am requesting a road vacation of the Old Sultan Basin Road. This is my 4th request. According to Erin Martindale, there is a RCW that states I need to describe why I need the property and why it is in the best interest of The City of Sultan to provide this property to Terra-Ex Land Group and The Sultan Crossing. I have read the RCW 35.79.010 and find no verbiage for this request Erin Martindale is making. But I will be happy to provide this.

1. The road is in need of major improvements and is substandard, and is considered a health and safety issue. The City of Sultan therefor would be required to bring this Old Sultan Basin road up to City and county standards for the health and safety of the public. If the city of Sultan grants the road Vacation to Terra-Ex Land Group, we will be responsible for the repair and Maintenance. Of this road, as required for the health and public safety.
2. This road dead end onto nothing, in fact any cars that travel down this road would have to trespass onto my property to turn around and this would be unacceptable to Terra-Ex Land Group, because I do not want to take on the City of Sultans Liabilities for traffic, or public Health and Safety allowing The City of Sultan to have public traffic use my property as a turn around.
3. The utilities that are suppose to be located within the Old Sultan Basin Road easement, is outside of the utilities easement and is severely encroaching onto my property, with out the proper easement's. If the City of Sultan grants the road vacation, Terra-Ex Land Group will grant the proper easements as required.

In closing the Road Vacation has been discussed with the City of Sultan, as well as Thom Graafstra on behalf of the City. I was also told that the City received this road for free, therefor could not pass the cost onto Terra-Ex Land Group.

The extra cost the City of Sultan will have to pay in fixing the substandard road for Health and Safety reason's as well as purchasing the required utilities easement's on the property owned by Terra-Ex Land Group, will put a extra burden on the City of Sultan already cash poor budget.

Enclosed is a copy of the Letter from Thom Graafstra and the RCW 35.79.010. It states that either the property owner or the legislative authority itself initiate it. Per prior meetings with the City of Sultan, again this was always a given, in order for the City of Sultan to help promote the vision of The Industrial Park Master plan, and in following the approved EIS, paid for by CTED.

Thank You


Steve Harris
Terra-Ex Land Group

425-343-3777

18 April 2008

Page 1 of 6

Attachment A

RECEIVED

APR 08 2008

CITY OF SULTAN
BUILDING DEPT.

Summary Appraisal Report

14.59 Acres of Commercially Zoned Land

Location:

North corner of U.S. Highway 2 and Sultan Basin Rd,
Sultan, WA.

Ostensible Owner:

Terra-ex Land Group, LLC

Prepared for:

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

Date of Valuation:

March 5, 2008

Date of Report:

March 24, 2008

Job #08-171

File: 08-171 SultanCrossing.wpd

Prepared by:

Paul C. Bird, Senior Associate
MACAULAY & ASSOCIATES, LTD.
Everett, Washington

Attachment B

Charles R. Macaulay, MAI
Robert J. Macaulay, MAI
Jim E. Dodge
Kelly R. Hao

Paul C. Bird
Richard J. DeFrancesco
Yvonne Alexander-Smith
Lauran J. Williams

Summary Appraisal Report

March 24, 2008

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

Re: 14.59 acres of commercially zoned land, located on the north corner of U.S. Highway 2 and Sultan Basin Rd, Sultan, WA. Job No. 08-171.

Dear Mr. Cisar:

As requested, a personal inspection has been made of the above-referenced property, together with a study of current market data, for the purpose of providing an estimate of the market value of the fee simple interest in the subject property, subject to known encumbrances, both before and after the acquisition of proposed right-of-way by the property owner. Your attention is invited to the following report for the narrative description, analyses and conclusions of value.

This summary report is intended to comply with the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation (USPAP), particularly Standard 1 for development and Standard 2 for reporting. The format presents only summary discussions of the data, reasoning, and analyses that were used in the appraisal process to develop the appraiser's opinion of value. Supporting documentation is retained in the appraiser's file. In addition, the appraisal process is intended to comply with the standards set forth by the Washington State Department of Transportation.

Based on the investigation and analyses described herein, I have formed the opinion that market value of the fee simple interest in the subject property, as of March 5, 2008, is:

Before Acquisition	\$2,045,000
After Acquisition	\$2,175,000
Difference (Estimated Just Compensation)	\$130,000

Respectfully submitted,
MACAULAY & ASSOCIATES, LTD.

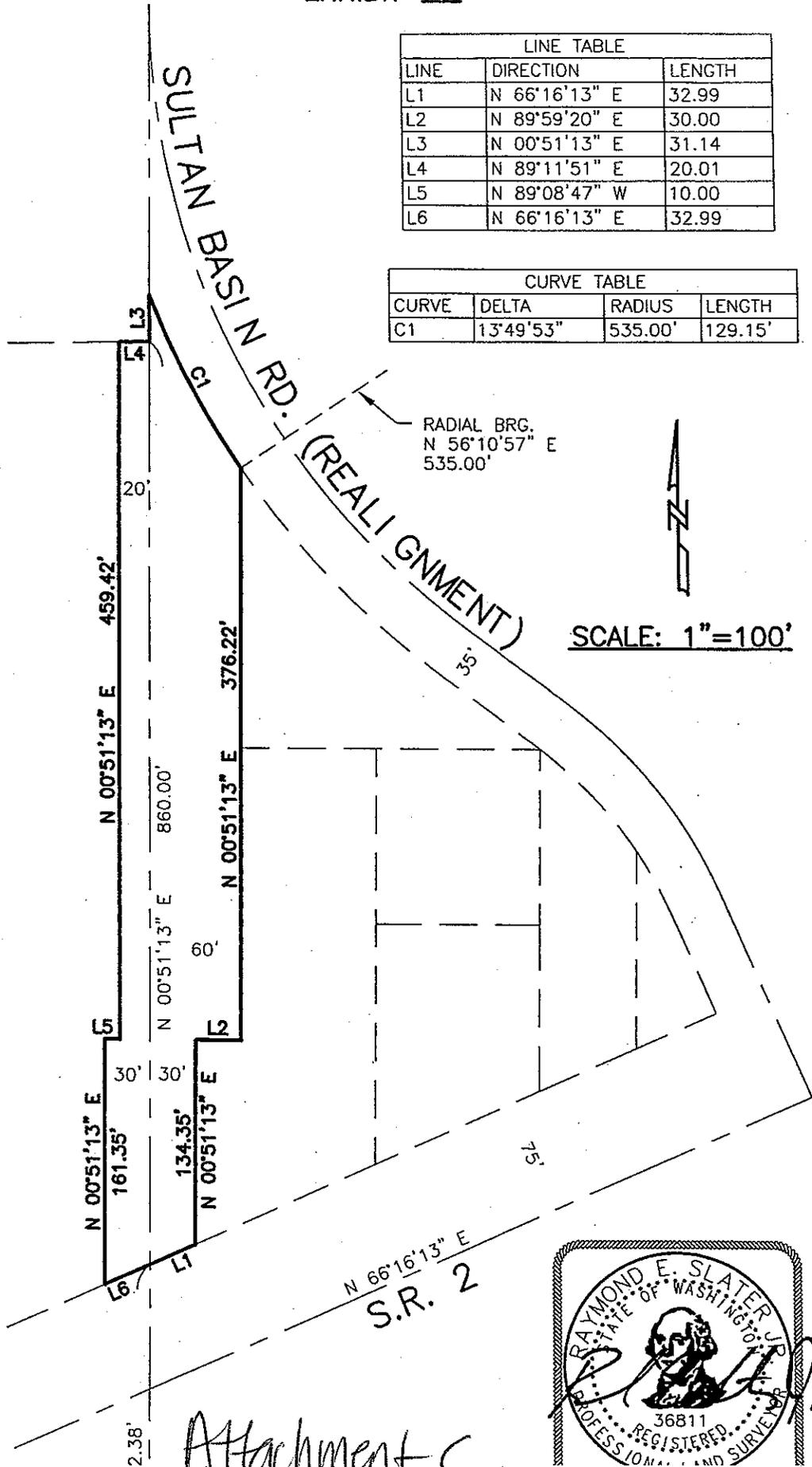
Paul C. Bird, Senior Associate
WA State Certified - General Appraiser No. 1100902

Attachment B

EXHIBIT —

LINE TABLE		
LINE	DIRECTION	LENGTH
L1	N 66°16'13" E	32.99
L2	N 89°59'20" E	30.00
L3	N 00°51'13" E	31.14
L4	N 89°11'51" E	20.01
L5	N 89°08'47" W	10.00
L6	N 66°16'13" E	32.99

CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C1	13°49'53"	535.00'	129.15'



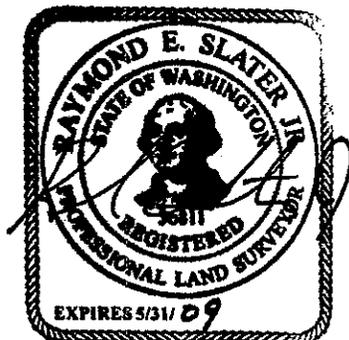
Attachment C

EXHIBIT _____

RIGHT OF WAY VACATION LEGAL DESCRIPTION

THAT PORTION OF SECTIONS 32 AND 33, TOWNSHIP 28 NORTH, RANGE 8 EAST, W.M., IN SNOHOMISH COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID SECTION 33; THENCE NORTH $00^{\circ}51'13''$ EAST ALONG THE WEST LINE THEREOF 252.38 FEET TO THE NORTHERLY MARGIN OF STATE ROUTE 2 AND THE TRUE POINT OF BEGINNING; THENCE NORTH $66^{\circ}16'13''$ EAST ALONG SAID MARGIN 32.99 FEET TO A POINT 30 FEET EAST OF SAID SECTION LINE AS MEASURED AT RIGHT ANGLES THERETO; THENCE NORTH $00^{\circ}51'13''$ EAST PARALLEL WITH SAID SECTION LINE 134.35 FEET; THENCE NORTH $89^{\circ}59'20''$ EAST 30.00 FEET TO A POINT 60 FEET EAST OF SAID SECTION LINE AS MEASURED AT RIGHT ANGLES THERETO; THENCE NORTH $00^{\circ}51'13''$ EAST PARALLEL WITH SAID SECTION LINE 376.22 FEET TO THE SOUTHWESTERLY MARGIN OF SULTAN BASIN ROAD REALIGNMENT, BEING ON A CURVE TO THE RIGHT, THE CENTER OF WHICH BEARS NORTH $56^{\circ}10'57''$ EAST 535.00 FEET; THENCE ALONG SAID CURVE AN ARC LENGTH OF 129.15 FEET THROUGH A CENTRAL ANGLE OF $13^{\circ}49'53''$ TO THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 33; THENCE ALONG SAID WEST LINE SOUTH $00^{\circ}51'13''$ WEST 31.14 FEET TO A POINT 860.00 FEET NORTH OF THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 33 AS MEASURED ALONG THE WEST LINE THEREOF; THENCE SOUTH $89^{\circ}11'51''$ WEST 20.01 FEET TO A POINT 20 FEET WEST OF SAID SUBDIVISION LINE AS MEASURED AT RIGHT ANGLES THERETO; THENCE SOUTH $00^{\circ}51'13''$ WEST PARALLEL WITH SAID SUBDIVISION LINE 459.42 FEET; THENCE NORTH $89^{\circ}08'47''$ WEST 10.00 FEET TO A POINT 30 FEET WEST OF SAID SUBDIVISION LINE AS MEASURED AT RIGHT ANGLES THERETO; THENCE SOUTH $00^{\circ}51'13''$ WEST PARALLEL WITH SAID SUBDIVISION LINE 161.35 FEET TO THE NORTHERLY MARGIN OF STATE ROUTE 2; THENCE NORTH $66^{\circ}16'13''$ EAST ALONG SAID MARGIN 32.99 FEET TO THE TRUE POINT OF BEGINNING.



11-6-07

Attachment C

**SULTAN CITY COUNCIL
AGENDA ITEM COVER SHEET**

ITEM #: Consent C 6
DATE: May 8, 2008
SUBJECT: Sultan Basin Road Street Vacation
CONTACT PERSON: Laura Koenig, Clerk/Deputy Finance Director

ISSUE:

The issue before the Council is a petition from Terra-Ex Land Group requesting the City to vacate a portion of the Sultan Basin Road (Attachment A).

SUMMARY STATEMENT:

The City has received a petition from Terra-Ex Land Group to vacate a portion of the Sultan Basin Road. In accordance with RCW 35.79.010 the "legislative authority by resolution shall fix a time when the petition will be heard and determined by such authority or a committee thereof, which time shall not be more than sixty days nor less than twenty days after the date of the passage of such resolution".

To comply with the requirements of RCW 35.70.010, staff is recommending that a public hearing on the petition to vacate a portion of the Sultan Basin Road be set June 26, 2008 at 6:30 PM.

Staff is reviewing the materials submitted with the petition and will provide a detailed report for the public hearing.

ALTERNATIVES

- 1) Set a public hearing to consider the request to vacate a portion of the Sultan Basin Road.
- 2) Do not set a public hearing to consider the request to vacate a portion of the Sultan Basin Road and direct staff to provide alternatives to the petitioner.

RECOMMENDATION:

Set a Public Hearing for June 26, 2008 at 6:30 PM on the petition from Terra-Ex Land Group to consider a petition to vacate a portion of Sultan Basin Road.

Attachments:
A. Resolution 08-17
B. RWC 35.79
C. Petition from Terra-Ex Land Group

Attachment E

CITY OF SULTAN COUNCIL MEETING – May 8, 2008

CONSENT AGENDA:

The following items are incorporated into the consent and approved by a single motion of the Council. On a motion by Councilmember Champeaux, seconded by Councilmember Slawson, the consent agenda was approved as presented. Champeaux – aye; Wiediger – aye; Slawson – aye; Davenport-Smith – aye; Flower – aye; except for item 3 – voted nay; Blair – aye; Doornek – aye.

- 1) Minutes of the April 24, 2008 regular Council Meeting as on file in the Office of the City Clerk.
- 2) Approval of vouchers in the amount of \$234,974.20 and payroll through April 18, 2008 in the amount of \$86,247.59 to be drawn and paid on the proper accounts.
- 3) Adoption of Ordinance 982-08 adopting the Findings of Fact for Ordinance 981-08, Land Use Moratorium.
- 4) Adoption of Resolution 08-15 to co-sponsor a Farmers Market.
- 5) Adoption of Resolution 08-16 to donate Spar Pole trees for the Sultan Summer Shindig.
- 6) Adoption of Resolution 08-17 to set a public hearing on June 26, 2008 at 6:30 PM on the Street Vacation request on the Sultan Basin Road.
- 7) Law Enforcement Day Proclamation.
- 8) Renewal of the service contract with the Department of Corrections.

ACTION ITEMS:

Perteet – Engineering Contract Amendment: The City Council approved a contract for \$11,500 with Perteet Engineering on February 28, 2008 to assure consistency within the city's comprehensive plan between the land use element and the transportation element, review and recommend revisions to the city's development regulations and the transportation element to assure consistency and to revise the draft transportation element, prepare a revised traffic impact fee report, and a report recommending revisions to the City's development regulations to assure consistency with the revised draft transportation element. The initial contract underestimated the number of meetings needed to complete the work. The amendment would add two additional tasks to the scope of work:

1. Present draft transportation element and related transportation recommendations at scheduled public open houses, Planning Board meetings, City Council meetings, and a GMA compliance meeting in Seattle as part of the development and adoption of the City Comprehensive Plan.
2. Make revisions to the draft transportation element, as directed by City Council, in response to comments received from CTED and through the Draft SEIS (DSEIS)

Discussion was held regarding the number of hours required to complete the work. Council members expressed displeasure with CTED's prior approval of the plan and the requests now to go outside the scope of GMA requirements that will cost the City more money.

On a motion by Councilmember Slawson, seconded by Councilmember Wiediger, the Mayor was authorized to sign contract amendment number one with Perteet Inc. for the revised scope of work in the amount of \$8,760 to fund additional hours from May 1, 2008 through November 30, 2008 to attend meetings and provide review/responses to CTED and Supplemental Environmental Impact Statement comments. All ayes except for Flower and Blair who voted nay.

Community Development Director – Robert Martin: The position of Community Development Director has been vacant since the end of December 2007 and since then, the City has contracted with Perteet Engineering to provide interim Planning Director services. The City advertised the position of Community Development Director in February 2008 and received eight applications. Interviews were held in March and it was determined that Robert Martin was the

Attachment F

