

**SULTAN CITY COUNCIL
AGENDA ITEM COVER SHEET**

ITEM NO: C-7

DATE: July 24, 2008

SUBJECT: 12-month Extension Request:
Preliminary Approval
Hammer Planned Unit Development
Group Four Inc.

CONTACT PERSON: Robert Martin, Community Development Director



ISSUE:

1. Consider extension of Preliminary Approval of Hammer Planned Unit Development (PUD) for 12 months as provided by Sultan Municipal Code (SMC) 16.10.150(B).

STAFF RECOMMENDATION:

Staff recommends approval of the requested 12-month extension of preliminary approval.

SUMMARY:

To continue the permit process for a Planned Unit Development (Chapter 16.10 SMC), an applicant must submit an application for Final Approval within 12 months of Preliminary Approval.

The applicant, Group Four Inc. is requesting a 12-month extension of that deadline as provided by SMC 16.10.150 B (Attachment A).

ANALYSIS:

1. Hammer Planned Unit Development was granted preliminary approval by the City Council on August 23, 2007.
2. SMC 16.10.150 A. provides that an application for final PUD approval must be received within 12 months of preliminary approval. The deadline for filing final application for this development is August 23, 2008. Group Four Inc. is requesting an extension to August 23, 2009.
3. The Council may grant the requested extension if:
"... the city council finds that such extension is consistent with the approval criteria required for each project and that no new information or change in circumstances justifies changing the city's previous preliminary PUD approval."
4. The Hearing Examiner issued a recommendation for approval to the City Council on August 2, 2007 (Attachment B).

5. Council granted Preliminary Approval of Hammer Preliminary PUD through Resolution No. 07-19 (Attachment C). This Resolution modified certain of the Hearing Examiner's conclusions of law and conditions at Page 2 of the Resolution.
6. Staff Review of the Hearing Examiner's recommendation, and Resolution 07-19, indicates that no substantive changes in circumstances justify changing the preliminary approval granted by the council in this resolution for an extension of one year from August 23, 2008.
7. The record of this proposal includes a Hearing Examiner Order Denying Reconsideration on certain PUD issues raised by the applicant (Dated June 27, 2006). This is included as "Attachment D". This action is accepted as part of the process on this proposal and does not jeopardize the requested extension.

ALTERNATIVES:

1. Do not grant the requested extension. Based on findings that significant changes in circumstances warrant termination of the preliminary approval, Council can deny the request. This will require the applicant to submit a new application for preliminary approval if they wish to continue with the project.
2. Grant the requested one-year extension with additional conditions. Based on findings that changes in circumstances warrant additional or altered conditions of approval, but not termination of the preliminary approval, the council can offer modified conditions of approval. The applicant would then determine if those conditions are acceptable and that he is interested in continuing with the development.
3. Grant the requested extension under the current preliminary approval without additional conditions. This will authorize the developer to submit a final application under the conditions of Resolution 07-19, no later than August 23, 2009.

FISCAL IMPACT:

There is no fiscal impact related to an extension if there are no changed conditions that warrant additional conditions on the preliminary approval.

Fiscal impacts of changed conditions of approval would have to be determined once Council made such changes.

RECOMMENDED ACTION:

Approve the requested 12-month extension.

ATTACHMENTS:

Attachment A: July 9, 2008 Request for Extension, Letter from Group Four Inc.

Attachment B: Hearing Examiner Recommendation to Council, August 2, 2007.

Attachment C: Council Resolution No. 07-19, August 23, 2007.

Attachment D: Order Denying Reconsideration, June 17, 2006.



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July 9, 2008

JUL 11 2008
[Handwritten signature]

Mr. Robert Martin
Community Development Director
City of Sultan
P.O. Box 1199
Sultan, WA. 98294

Via mail and E-mail

Re: Hammer Preliminary PUD approval, extension request
City of Sultan file number: FP PUD 05-002
G4 Job number: 04-8065

Dear Mr. Martin:

The purpose of this letter is to formally request, on behalf of the applicant Peter Arkison, Bankruptcy Trustee for the Estate of Barry Hammer, an extension of the Preliminary PUD approval for the above referenced Hammer subdivision and PUD. Pursuant to SMC 16.10.150(B), the City Council may grant a 12 month extension of the Preliminary PUD approval.

The original PUD approval was granted by City Council on August 23, 2007, by City Council resolution 07-19. Since the Preliminary PUD approval expires on August 23, 2008, we are requesting a 12 month extension.

SMC 16.10.150(B) says the City Council may grant an extension of 12 months for the preliminary PUD approval if the Council "finds that such extension is consistent with approval criteria required for each project and that no new information or change in circumstances justifies changing the city's previous preliminary PUD approval."

In the case of the Hammer Preliminary PUD approval, I believe this extension request meets the criteria of SMC 16.10.150(B) and consequently I would ask that you schedule our request for extension approval, before the City Council as soon as possible.

If you have any questions or comments, please contact me. I look forward to notification of the date we are scheduled before the City Council for extension approval.

Sincerely
Group Four, Inc.

Steven M. Anderson
President

Attachment A

RECEIVED
AUG 03 2007

BY:.....

**BEFORE the HEARING EXAMINER of the
CITY of SULTAN**

**RECOMMENDATION -
REVISED ON REMAND ¹**

FILE NUMBER: FPPUD05-002

APPLICANT: Barry A. Hammer Bankruptcy Estate, Peter H. Arkison,
Trustee

TYPE OF CASE: Preliminary Planned Unit Development subdivision
(*Hammer PUD*)

STAFF RECOMMENDATION: Approve subject to conditions

SUMMARY OF RECOMMENDATION: APPROVE subject to conditions (revised) ²

DATE OF REVISED RECOMMENDATION: August 2, 2007

INTRODUCTION

Barry A. Hammer Bankruptcy Estate, Peter H. Arkison, Trustee (Hammer), 103 E. Holly Street, Suite 502, Bellingham, Washington 98225, seeks preliminary approval for *Hammer PUD*, a 72 lot Planned Unit Development (PUD) subdivision for single family residential development plus six (6) tracts for future economic development. Hammer filed the preliminary PUD subdivision application on September 23, 2005.

¹ This Recommendation has been substantially revised as a result of the remand process. Most of the Introduction, Issues, Findings of Fact, and Principles of Law sections are identical with the Examiner's 2006 Recommendation; many of the Conclusions are likewise similar to the 2006 Recommendation. Paragraphs which have been added or revised through the remand process are identified by footnotes. Paragraph numbers in the Findings of Fact and Conclusions sections have been altered due to additions and deletions. Those numbering changes are not specifically identified.

² Recommendation revised on Remand.

Attachment B

(Exhibit 1.1.2³) The Sultan Department of Community Development (DCD) deemed the application complete on October 17, 2005. (Exhibit 1.7⁴)

The subject property is located at 14310 330th Avenue SE, between the *Sky Harbor* subdivision and SR 2.

³ Exhibit citations are provided for the reader's benefit and indicate: 1) The source of a quote or specific fact; and/or 2) The major document(s) upon which a stated fact is based. While the Examiner considers all relevant documents in the record, typically only major documents are cited. The Examiner's Recommendation is based upon all documents in the record and includes evaluation of credibility in the case of conflicting evidence/testimony. Exhibit numbers 6 – 11 were not used.

⁴ On August 10, 2005, the Sultan City Council (Council) enacted Ordinance No. 884-05 which imposed "a moratorium ... from and after the first day after the effective date of this Ordinance" on PUD applications "[e]xcept for those with issued sewer/water commitment letters and except for those with issued sewer/water commitment letters and have a right to sewer/water connections by preliminary injunction ...". [sic] The moratorium required that "the planning director shall not accept and the City shall not process an application for a preliminary Residential PUD Unless modified or rescinded as a result of the public hearing required by Section 2 of this Ordinance, this moratorium shall be effective for a period of six months from the effective date of this Ordinance." (Ordinance 884-05, Section 1) Ordinance No. 884-05 was published on August 13, 2005, and became effective five days thereafter, August 18, 2005, as provided by law. Therefore, the PUD moratorium became effective on August 19, 2005.

The Council convened the hearing required by Section 2 of Ordinance No. 884-05 on September 28, 2005, and continued it to October 12, 2005. On October 26, 2005, the Council enacted Ordinance No. 890-05 which declared that the PUD moratorium enacted by Ordinance No. 884-05 "is hereby affirmed and shall remain in full force and effect during its stated term." (Ordinance 890-05, Section 2) Therefore, the PUD moratorium ran from August 19, 2005, through February 18, 2006.

According to the documents contained within Exhibits 1.1.14 and 1.1.15, water and sewer commitment letters for *Hammer PUD* were issued on August 2 and 30, 2005, sixteen days before and eleven days after the PUD moratorium became effective. Each of the August 2, 2005, letters states that "Failure to submit a complete application within 45 days will result in the cancellation of this commitment letter." Each of the August 30, 2005, letters states that it "is the result of a request for a two (2) week extension which extends the time of the application date to September 23, 2005. ... Failure to submit a complete application by September 23, 2005, will result in the cancellation of this commitment letter."

The extension letters were issued during the terms of the original commitment letters. The application was filed on the deadline date. Section 16.120.060 SMC sets forth the requirements for a complete application. The record contains no evidence that Hammer was required to submit any additional materials in order for the application to be complete. Therefore, the October 17, 2005, "completeness date" must be considered to represent the date on which DCD determined that the application as submitted on September 23, 2005, was complete. (Section 36.70B.070(1) RCW allows the City up to 28 days after application submittal in which to determine whether that submittal was complete. The October 17th letter was issued within 28 days of application filing.)

Given the above facts, *Hammer PUD* was not subject to the PUD moratorium and is vested to the City's adopted regulations as they existed on September 23, 2005, the date the complete application was filed. The PUD regulations at that time contained no minimum lot size requirement.

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The Sultan Hearing Examiner (Examiner) viewed the subject property on May 10, 2006.

The Examiner held an open record hearing on May 10, 2006. DCD and Hammer gave notice of the hearing as required by the Sultan Municipal Code (SMC). (Exhibits 1.8 and 1.9) At the hearing, Hammer extended the time period in which the Examiner must issue his recommendation to June 1, 2006, in anticipation that the Sultan City Council (Council) would, before that date, issue its rulings on the Examiner's *Steen Park* and *Cascade Breeze Estates* recommendations, both of which presented some similar issues (Concurrency compliance problems). By letter dated May 25, 2006, Hammer further extended the issuance date to not later than June 15, 2006. (Exhibit 4) ⁵

On June 15, 2006, the Examiner issued a Recommendation to Deny the PUD without prejudice and Return the preliminary subdivision application for correction. (Exhibit 12) Hammer requested Reconsideration by letter dated June 26, 2006. (Exhibit 5) The Examiner denied Reconsideration by Order issued June 27, 2006. (Exhibit 13) By letter dated November 10, 2006, Hammer asked the Council to remand the application. Resolution No. 06-016, enacted by the Council on November 11, 2006, remanded the application. (Exhibits 14 and 29) ⁶

The Examiner held an open record remand hearing on July 24, 2007. DCD and Hammer gave notice of the remand hearing as required by the SMC. (Exhibits 27 and 28) ⁷

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

ISSUES

Does the application meet applicable criteria for preliminary subdivision and preliminary PUD approval?
Does the application meet concurrency requirements of Chapter 16.108 SMC?

⁵ Exhibit citation added on remand.

⁶ Paragraph added on Remand.

⁷ Paragraph added on Remand.

DISCUSSION of MAJOR ISSUES ⁸

The Examiner's 2006 Recommendation to deny without prejudice/return the application was based upon five areas of concern: Compliance with SMC 16.68.060⁹ regarding steep slope treatment; compliance with SMC 16.80.100 regarding Innovative Development Design requirements; interior street network concerns; Police concurrency; and problems with a number of the Staff-recommended conditions. (Exhibit 12)

The Council's Remand was essentially open-ended: "the Council remands the application back to the Hearing Examiner so that the applicant can modify the application." (Exhibit 14, § 2) The Remand resolution contained a request: "The City Council request the Hearing Examiner to consider their previous action and interpretations with regards to Police Level of Service (LOS) as provide for in their decision on the Skoglund Estates preliminary plat and Planned Unit Development." (Exhibit 14, § 3, *sic*)

The Examiner's 2007 Remand hearing focused on the problems identified in 2006, although a few new issues arose. Since this Recommendation is for approval of the proposal, it is best that it contain all the Findings of Fact and Conclusions necessary to support that recommendation, thus repeating many from the 2006 Recommendation. As a convenience to the reader, this section is added to summarize the new information and recommendations associated with each of the major issues of concern.

OLD ISSUES

Compliance with SMC 16.68.060 regarding steep slope treatment

Hammer has undertaken additional soils exploration and provided additional information. That additional material demonstrates compliance with applicable criteria.

Compliance with SMC 16.80.100 regarding Innovative Development Design requirements

Hammer has clarified that the Innovative Development Design applies only to the wetland buffer. Evidence now shows that the proposed treatment of the buffer/slope will enhance the buffer and that no state agency has jurisdiction over that aspect of the proposal. The proposal complies with approval criteria.

⁸ This entire section added on Remand.

⁹ The City's critical areas regulations were substantially revised through Ordinance No. 918-06, enacted subsequent to the vesting date of the *Hammer PUD* and subsequent to the Examiner's 2006 hearing and Recommendation. Nothing in the 2007 DCD Staff Report acknowledges this basic fact. (Exhibit 29) Chapter 16.68 SMC was totally repealed; steep slope regulations were moved into Chapter 16.80 SMC. Chapter 16.80 SMC was totally restructured. The Innovative Development Design procedure exists no more. (The code section (SMC 16.80.100) still exists, but now contains the City's stream and wetland classification provisions.) Because of vesting considerations, the prior versions of the critical areas regulations must be used in the review of *Hammer PUD*. The current regulations have no applicability. Therefore, all citations to Chapters 16.68 and 16.80 SMC throughout this Recommendation are to the former version of those chapters as they existed on September 25, 2005.

Interior street network concerns

Hammer has agreed to provide reasonable access across Tract D to the adjacent parcel. Access to Tract J was discussed extensively at hearing and is the subject to a special condition. Construction of the North Connector is also addressed in a condition. Street network concerns have now been adequately addressed.

Police concurrency

The applicant-Staff proposal still doesn't comply with the requirements of Chapter 16.108 SMC. But, as with all recent residential applications, the evidence allows for alternative conditions which will comply with the presently adopted code.

Problems with a number of the Staff-recommended conditions

Those problems have either been corrected by Staff or are resolved herein.

NEW ISSUES

Traffic effects on the Sky Harbor subdivision

While the *Sky Harbor* residents' objection to access through their subdivision is understandable (They presently have short, dead-end, low volume streets which function as if they were cul-de-sacs.), the facts are that those streets were designed and built to serve the Hammer property and are capable of doing so. Their objection should not deter approval of *Hammer PUD*.

Future development of the north-south road

The concept of a north-south road through the commercial/industrial portion of the proposed subdivision complies with all applicable policies. Whether it should eventually be built up the hill and opened for general traffic use is a question which need not be resolved now.

Location of the bollards on the north-south road

Hammer disagrees with DCD's recommendation regarding temporary use of the north-south road. Given the testimony and evidence, the Examiner concludes that the road should be blocked off as recommended by DCD unless Hammer agrees to build it to full City standard as a commercial/industrial street. Then and only then should normal vehicular use of it be allowed as far north as Tract J.

FINDINGS OF FACT

Project Merits

1. The subject property is a reverse, inverted "L"-shaped tract. The northern "foot" of the "L" (Parcels B and C, collectively referred to as Parcel B/C) contains 18.18 acres, is approximately 350 feet in north-south dimension, is approximately 2,075 feet in east-west dimension, and is the site of the "Sky Harbor Airport," a private grass air strip. The southern "leg" of the "L" (Parcel A) contains

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15.76 acres, varies between approximately 450 and 665 feet in east-west dimension, is approximately 1,390 feet in north-south dimension, and contains an old shop building. (Exhibit 1.2.1)

2. Hammer proposes to subdivide the entire 33.94 acres into 72 single-family residential lots (all to be located on Parcel B/C) and six "Future Development" tracts (all to be located on Parcel A). The PUD overlay is requested only for Parcel B/C, the 18.18 acres comprising the "foot" of the "L." (Exhibit 1.2.1 and testimony)
3. Parcel B/C is a relatively flat terrace carved out of a larger plateau side slope. Terrain slopes downward in all four directions from the edges of the grass runway. The slope toward the north is small; the slope toward the south is steep (greater than 25%) and approximately 80 feet in height. The runway is grass; the surrounding slopes are wooded.

Parcel A is relatively flat except for its most northern end which is a continuation of the steep slopes to the north. A mixture of scrub and overstory vegetation characterizes this portion of the site. (Exhibits 1.1.10, 1.2.1, 1.2.5, 1.2.6, 2, 16, and 17¹⁰)

4. A Type 3 stream cuts across the southwest corner of Parcel B/C.¹¹ Three Category 3 wetlands and Wagley's Creek, also a Type 3 stream, are found on Parcel A. One of the wetlands is riparian, associated with Wagley's Creek. (Exhibits 1.2.5, 1.2.6, 2, 16, and 17 and testimony¹²)
- 5.¹³ An unknown percentage of the upper portion of the Parcel B/C steep slopes are unstable. The slopes in their natural condition are stable. However, when the air strip was constructed over 40 years ago, fill was pushed into swales along the edge of the slopes to create the flat surface of the runway. That fill was not "keyed" into the hillside, was placed over loose topsoil in at least some areas, and was apparently not compacted in any systematic manner. As a result, those portions of the upper portion of the natural slopes have been over-steepened and the unconsolidated fill is not inherently stable, although the fills have performed well over the life of the airstrip. (Exhibits 1.1.13 and 15 and testimony)

Seven additional test pits were dug along the top edge of the slope during the Fall of 2006. Fill depths encountered ranged from 0.5 feet to 5.5 feet, some placed on top of topsoil. (Exhibit 15)

¹⁰ Exhibit references added on Remand.

¹¹ Some of the record documents describe this stream as Type 4. DCD staff testified that a prior fish blockage has been removed during the development of *Timber Ridge Estates*, raising its classification from Type 4 to Type 3. (See also Exhibits 16 and 17.) (Footnote revised on Remand.)

¹² Exhibit references added on Remand.

¹³ Finding revised on Remand.

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- 6.¹⁴ To the north of the site lies the *Steen Park* subdivision (the west 120 feet of the *Hammer PUD* site), the developed *Sky Harbor* subdivision which provides two public street stubs, Cedar Court and Dogwood Court (the central 1,300 feet), and two acreage parcels, one of which contains a house located on or very close to the common property line. That parcel appears to be legally landlocked (unless a right of access exists legally which is not visible on the record documents).

To the west of Parcel B/C lies an undeveloped acreage parcel.

To the south and west of Parcel B/C and one parcel removed to the west of Parcel A lies the *Timber Ridge Estates* site, separated from Parcel B/C by the stream corridor, the steep slopes, and undeveloped acreage tracts.

The property to the east is also undeveloped.

Terrain on the adjoining properties is not well depicted on record documents, although it is known that the ravine within which the Parcel B/C stream flows prevents any reasonable access to the west, southwest, or northwest. (Exhibits 1, 1.1.8, and 1.2.1 and testimony)

- 7.¹⁵ The Comprehensive Plan designation and zoning of Parcel B/C is Moderate Density Residential (MD) while the designation and zoning of Parcel A is Economic Development (ED). (Exhibit 1)

The site lies entirely within the outer boundaries of the Sultan Industrial Park Master Plan element of the Comprehensive Plan (IP Plan). The above-mentioned land use designations are reflected in the IP Plan. (IP Plan, p. 2.3) The IP Plan envisions an east-west "North Connector Street" running from Sultan Basin Road on the west to Rice Road on the east. The IP Plan's proposed North Connector alignment passes through Parcel A. (IP Plan, p. 2.11) The North Connector is to be funded through "Developer contributions or construction and/or local improvement district". (IP Plan, p. 2.18) The IP Plan encourages "common driveways or frontage roads" to serve large projects located between SR 2 and the North Connector. Specific locations for SR 2 intersections are not included in the IP Plan. (IP Plan, pp. 2.13 and 2.14)

The IP Plan also calls for the establishment of a "Wagley's Creek habitat corridor." (IP Plan, p. 2.11) The corridor is to be "±100" feet wide. (IP Plan, p. 2.12) "[S]pecific site plan review and approval procedures for projects within 150'-200' of the ordinary high water of [Wagley's] creek" are called for. (IP Plan, p. 3.7)

¹⁴ Finding revised on Remand.

¹⁵ Two sentences and citation added on Remand at the end of the second paragraph.

8. ¹⁶ Hammer has treated Parcel B/C and Parcel A quite differently in the proposed application: Substantial detail has been provided for Parcel B/C while very little detail has been provided for Parcel A.

Parcel B/C is proposed to be subdivided into 72 lots for single-family residential development. ¹⁷ Proposed lots will range from almost 14,000 square feet (SF) to just over 5,000 SF. The average of those 72 lots will be 5,790 SF. The proposed density within Parcel B/C will be about 4.1 dwelling units per acre. The proposed lots extend to and in some cases over the top of the steep slopes. ¹⁸ The lots will be served by a public street system extending south from Cedar Court and Dogwood Court and providing a stub to the east property line. A full-width (60 feet) public right-of-way will traverse the steep slope to Parcel A; the only development proposed within that right-of-way is a 12 foot wide paved emergency access road/pedestrian trail. Bollards at the north end of the trail will prevent routine vehicular use. Open space totaling 4.63 acres is proposed in six tracts (Tracts A – F); Tract D will also contain the storm water detention facilities located in a vault beneath a multi-purpose play court. (Exhibits 18.1 and 18.2 and testimony)

Although not depicted on Exhibit 18, Hammer is willing to provide a 30 foot wide ingress/egress/utilities easement across Tract D to the apparently landlocked parcel to its north. (Testimony)

A variety of two-story, 1,600 – 2,600 SF houses are proposed for the residential lots. All have gable roof lines and exhibit traditional or neo-craftsman designs. (Exhibit 1.1.19)

Parcel A is proposed to be divided into 10 tracts, six of which (Tracts H – K, M, and N, containing a total of 3.81 acres) are reserved for "Future Development." The remaining four tracts (Tracts G, L, O, and P, containing a total of 9.23 acres) are to be established as Native growth Protection Areas (NGPAs). Those tracts include a 100 foot wide buffer on both sides of Wagley's Creek (except where the Creek runs adjacent to and parallel with the north-south right-of-way). The 60 foot wide right-of-way and its 12 foot wide paved emergency access/pedestrian trail from Parcel B/C are proposed to be continued through Parcel A to SR 2 (the north-south street/road). Bollards located just north of the present access to the existing shop building on Future Development Tract J (approximately 650 feet north of SR 2) would prevent routine vehicular use north of that point. A 60 foot wide, east-west right-of-way for the North Connector is reserved through the center of Parcel A.

¹⁶ Third paragraph added, citations revised, and minor changes incorporated on Remand.

¹⁷ Current MD zoning would allow up to 127 dwelling units on Parcel B/C. (Exhibit 1.2.1)

¹⁸ The top of slope retaining wall mentioned in Exhibit 1.1.10 at page 7 is NOT a part of the current proposal. (Testimony) The only retaining wall proposed will run for about 120 feet across Proposed Lots 5 and 6, near the top of slope line on those two lots, and will have a maximum height of less than eight feet. (Exhibit 18.2, Sheet 2) (Footnote amended on Remand.)

Other than replacing the extremely substandard bridge over Wagley's Creek with an open-bottom box culvert, building the pedestrian trail, and installing bollards on the trail, no other development is proposed within Parcel A. (Exhibits 18.1 and 18.2 and testimony) Hammer expects that any development within Parcel A would be subject to an entirely separate review process. (Testimony)

- 9.¹⁹ Cedar Court presently provides access to 15 single family lots; Dogwood Court presently provides access to 22 single family lots. Both streets were designed and built to provide through access to the Hammer property. (Exhibit 18.2)

Traffic from the 72 proposed *Hammer PUD* lots will be split between those two City streets. Cedar and Dogwood Courts fit the City's Design Standards and Specifications (City Standards) definition of collector streets: "Principal traffic arteries between local access streets and higher-traffic secondary and principal arterial. Collector streets have a combined function of moving traffic and serving land uses within their neighborhood." [City Standards, § 1.09, ¶ 4] "Proposed subdivisions shall provide street connections to all street stub-ends that abut the boundary of the subdivision." [City Standards, § 1.10(A)]

Hammer PUD is projected to generate approximately 704 average daily vehicular trips (9.78 trips per household), of which 74 (10.5%), 46 (62%) inbound and 28 (38%) outbound, would occur in the P.M. peak traffic hour.²⁰ (Exhibit 1.1.10, p. 2) Applying the same trip generation rates to the existing residences along Cedar and Dogwood Courts, the estimated current trip figures for those streets would be: Cedar Court = 147 average daily trips with 15 P.M. peak hour trips of which 9 would be inbound; Dogwood Court = 215 average daily trips with 23 P.M. peak hour trips of which 14 would be inbound. (Calculated)

The Traffic Analysis (Exhibit 1.1.10) does not divide *Hammer PUD* trips between Cedar and Dogwood Courts. For estimating purposes, it is reasonable to predict that traffic to and from lots fronting on the southerly extension of Dogwood Court and lots to its east will use Dogwood Court as the shortest route and that the remaining lots will use Cedar Court as the shortest route to reach 138th Street SE. On that basis, *Hammer PUD* will add approximately 479 average daily trips to Cedar Court with 50 occurring during the P.M. peak hour (31 inbound and 19 outbound) and approximately 225 average daily trips to Dogwood Court with 24 occurring during the P.M. peak hour (15 inbound and 9 outbound). (Calculated)

¹⁹ Finding added on Remand.

²⁰ The P.M. peak hour is predicted to see a higher traffic count than the A.M. peak hour: 72 v. 55 average daily peak hour trips. (Exhibit 1.1.10, Table 1) It thus represents the worst case scenario.

Given the above predictions and calculations, average daily traffic on Cedar Court would increase from 147 to 626 with P.M. peak hour trips increasing from 15 to 65 and average daily traffic on Dogwood Court would increase from 215 to 440 with P.M. peak hour trips increasing from 23 to 47. (Calculated)

The Examiner takes official notice that a typical two-lane street is theoretically capable of handling approximately 1,000 vehicle trips per hour and that a collector street is typically expected to handle traffic volumes upwards of 2,000 trips per day.

- 10.²¹ Hammer's geotechnical consultant has serious concerns regarding the stability of lots along the edge of the south-facing slope in Parcel B/C. The consultant states that options to improve stability "include the removal or reworking of the existing fill, the placement of a wall system, daylight basements or deep foundations." (Exhibit 1.1.13, p. 7) (Deep foundations would include driving piles through the fill into solid underlying material.) In addition, the consultant recommends establishment of "a working 'effective setback' of 25 feet ... for **planning purposes**; ... each lot should be individually evaluated to establish a suitable 'effective setback'." (Exhibit 1.1.13, p. 8, bold in original) The "effective setback" concept measures the setback horizontally from the near edge of the foundation footing to the face of the native soils on the slope. (Exhibit 1.1.13, p. 8 and Figure 9)

Based on the additional exploratory testing done after the 2006 hearing (See Finding 5, above.), the geotechnical consultant continues to recommend that buildings be not closer than 10 feet from the existing top of slope and that "a working 'effective setback' of 25 feet be established The 'effective setback' is the horizontal distance measured from the nearest edge of the footing to the slope face" (Exhibit 15, p. 4) "Mass reworking" of the slope should not be necessary; only the filled swales need to be better stabilized. (Testimony)

11. Because of the extent of the steep slope and the existence of a wetland at its base, standard SMC provisions would require that the wetland buffer extend 25 feet beyond the top of slope. [SMC 16.80.040(C)] Wetland and stream protections may be waived under the Innovative Development Design procedure of SMC 16.80.100. In its decision approving the *Timber Ridge Estates PUD* subdivision (FP-PUD 04-002), the Council held that

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

²¹ Second paragraph added on Remand.

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(Council Resolution No. 05-17, p. 4, ¶ 22) The Council reiterated that view two paragraphs later: "The innovative design process is an alternative to buffer width reduction or averaging, and so long as its criteria are satisfied, standards described in SMC 16.80.080(C) for buffer width reduction do not need to be satisfied." (Council Resolution No. 05-17, p. 4, ¶ 24²²)

- 12.²³ Hammer's proposal for Parcel B/C relies on the Innovative Development Design process: The additional 25 feet of wetland buffer is not proposed. (Exhibit 18.1) Hammer proposes to plant 556 tree saplings on the south-facing steep slopes to enhance species diversity on the slope. In addition, 234 tree saplings are proposed to be planted on the north-facing slope adjacent to a large wetland located mostly within *Sky Harbor*. Hammer's consultant believes that these plantings will result in a net improvement of the wetland buffers. (Exhibits 1.2.5, 1.2.6, and 16 and testimony)

The City's independent peer review consultant, Graham-Bunting Associates (GBA), concurs in that assessment. (Exhibit 17)

No state agency has jurisdiction over the treatment of the wetland buffer in this project. The Washington State Department of Fish and Wildlife (WDFW) has jurisdiction over the Wagley's Creek bridge replacement, but not over the wetland. The Wagley's Creek bridge replacement proposal meets all City standards; the Innovative Development Design process does not encompass that part of the proposal. (Testimony)

13. The SMC restricts development on steep slopes (those of 20% or more).²⁴ [SMC 16.68.030] Special guidelines are enumerated for developments proposing to locate on steep slopes zoned MD.²⁵ [SMC 16.68.060]

²² Council decisions made in the context of a quasi-judicial proceeding on a particular application establish the "law of the case" but do not establish legal precedent for any other cases. (The same holds true for Examiner Decisions and Superior Court judgments. Legal precedent for other cases is established only by published appellate court opinions.)

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

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

²³ Second paragraph added and third paragraph revised on Remand.

²⁴ The Innovative Development Design provisions of SMC 16.80.100 are not available for slope regulations within Chapter 16.68. [SMC 16.80.100, ¶ 1, listing the two code sections whose provisions may be waived]

²⁵ The Staff Report (Exhibit 29) does not analyze compliance with these requirements. (Footnote citation revised on Remand.)

14. The SMC requires recreation areas in the amount of 75 SF per person in any residential development [SMC 16.72.040]; in developments with 71 to 150 dwelling units, four recreation areas each with a minimum of 2,000 SF are required [SMC 16.72.040(C) and .050]. *Hammer PUD*, as proposed with 72 three-bedroom dwelling units, would require four recreation areas totaling 21,600 SF. Hammer proposes five recreation facilities within Parcel B/C that exceed the area required by SMC 16.72.040: Two trail segments with benches (one within Tract C and one within the right-of-way), a picnic area, a multipurpose court, and a playground area.

All PUDs are required to provide open space in the amount of 20% of the gross land area of the site. [SMC 16.10.140] A minimum of 15% of the gross area must be "useable open space." The percentage of gross area counted toward the open space requirement is limited for "buffer open space" (2%), "constrained open space" (2%), and "unusable detention open space" (5%). Any amount of "conservation open space" may also be used to meet the minimum required open space. Parcel B/C is required to have 3.63 acres of open space. Hammer proposes to reserve 4.63 acres (25.54%) of Parcel B/C for open space of which 2.87 acres (15.78%) will be useable. (Exhibits 1, 1.2.1, and 1.1.20)

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

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

Sky Harbor contains both sidewalks and a trail system.

²⁶ Minor changes made to the fifth and sixth paragraphs.

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Community Transit (CT) runs bus service along SR 2 to Gold Bar. The nearest CT park and ride lot/bus stop is on the south side of SR 2 between 10th and 11th Streets, a little over one-half mile west of Parcel A's SR 2 frontage. (Comprehensive Plan, pp. 201 and 202) *Hammer PUD* residents interested in using CT's bus service could drive north through *Sky Harbor* to 138th Street SE and thence to Sultan Basin Road and SR 2, walk or bicycle that same route, or walk or bicycle south through Parcel A to SR 2 and thence to the bus stop. (Exhibit 1.2.1 and testimony)

The DCD Director testified in the 2006 hearing that several years ago the City had asked CT to expand its bus service to include a run up Sultan Basin Road. CT reportedly replied that the area had insufficient development to warrant service. He further testified that the City had repeated its request some three months ago.²⁷ He also stated that he had talked to CT during the week prior to the *Hammer PUD* hearing but had yet to receive a response. (Testimony)

During the 2006 hearing, Josie Fallgatter (Fallgatter) questioned *Hammer PUD's* compliance with PUD locational criterion (B)(2)(d). (Testimony)

- 16.²⁸ In 2003 (the latest date for which the record contains any data), SR 2 carried some 14,400 vehicles per day on the segment between Sultan Basin Road and 4th Street. (Exhibit 1.1.11, pp. 1 and 2) Fallgatter and Loretta Storm (Storm) both testified during the 2006 hearing that SR 2 is a dangerous highway for pedestrians. They also alleged that Sultan Basin Road, which has no defined pedestrian facilities for most of the segment between SR 2 and 138th Street SE, is equally dangerous.
17. The hearing record contains some discussion as to the correct amount of mitigation fees for traffic, school, and park impacts. That discussion is immaterial at this point in the review process. 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.²⁹

²⁷ Neither of these statements were offered during any of the prior hearings this Spring (all held within the past 45 days) where this same issue was a central factor. Therefore, this information is new to this case.

²⁸ Minor changes made on Remand.

²⁹ During the 2006 hearing, Storm questioned why Hammer was not being required to contribute toward the Washington State Department of Transportation (WSDOT) Rice Road/SR 2 signalization project. According to Hammer's traffic consultant, WSDOT asks for pro rata mitigation shares only for projects for which it has a funding shortfall; the Rice Road/SR 2 project is not on WSDOT's "collection list." (Testimony) (Footnote revised on Remand)

- 18.³⁰ Current water and sewer service availability letters were issued by the Public Works Director on June 6, 2007. (Exhibits 32 and 33)
19. Sultan's State Environmental Policy Act (SEPA) Responsible Official issued a threshold Determination of Nonsignificance (DNS) for *Hammer PUD* on April 7, 2006. (Exhibit 1.4) No appeal was filed in response to issuance of the DNS. (Exhibit 1)
- 20.³¹ DCD recommends approval of *Hammer PUD* subject to 34 conditions. (Exhibit 29, pp. 27 - 30) Most of the 2006 DCD Recommended Conditions have been carried forward, with some changes, as 2007 Recommended Conditions. The numbering is not the same:

| DCD 2006 Condition | DCD 2007 Condition |
|--------------------|--------------------|
| 1 | 1 |
| 2 | 2 |
| 3 | 3 |
| 4 | 4 |
| 5 | |
| 6 | 5 |
| 7 | 6 |
| 8 | |
| 9 | |
| 10 | 7 |
| 11 | 9 ³² |
| | 10 |
| | 11 |
| | 12 |
| | 13 |
| 12 | 14 |
| | 15 |
| 13 | 16 |
| 14 | 17 |
| 15 | 18 |
| 16 | 19 |
| 17 | 20 |

³⁰ Finding added on Remand.
³¹ Finding revised on Remand.
³² The 2007 Recommended Conditions do not contain a Condition 8.

| DCD 2006 Condition | DCD 2007 Condition |
|--------------------|--------------------|
| 18 | 21 |
| 19 | 22 |
| 20 | 23 |
| | 24 |
| 21 | |
| 22 | 25 |
| 23 | 26 |
| 24 | 27 |
| 25 | 28 |
| 26 | 29 |
| 27 | 30 |
| 28 | 31 |
| 29 | 32 |
| 30 | 33 |
| 31 | 34 |

GBA recommends ten conditions of approval. (Exhibit 17, pp. 3 and 4) Six of those ten have been expressly incorporated into DCD's list of Recommended Conditions:

| GBA Condition | DCD 2007 Condition |
|---------------|--------------------|
| 1 | 10 |
| 2 | 9 |
| 3 | |
| 4 | 11 |
| 5 | |
| 6 | |
| 7 | 14 |
| 8 | 12 |
| 9 | 15 |
| 10 | |

- 21.³³ Hammer objects to a portion of Recommended Condition 34. Recommended Condition 34 requires, *inter alia*, that bollards be installed at the north and south ends of the north-south road to block all but emergency vehicle traffic. (Exhibit 29, p. 30) Hammer wants to place the southern bollards about 650 feet north of SR 2 – just north of the driveway access to the present building on Future

³³ Finding added on Remand.

Development Tract J. (Exhibit 18.1) DCD, through its contracted consultant, stated that it had no objection to the requested placement of the southern bollards. (Testimony)

Concurrency

22.³⁴ During the 2006 hearing, Fallgatter challenged the application's compliance with Chapter 16.108 SMC, Concurrency Management System. Specifically, she argued that adopted Level of Service (LOS) standards for police services and parks, recreation, and open space would be violated by development of *Hammer PUD*. (Testimony)

During the 2007 hearing, Judy and Stan Heydrick (Heydrick) challenged the application's compliance with Chapter 16.108 SMC, Concurrency Management System. Specifically, Heydrick argues that the adopted LOS standard for police services is not met. Heydrick states that in a July 12, 2007, memo to the Council, the City Administrator declared the City to be in a fiscal crisis which is not expected to be resolved for at least a couple of years. Heydrick argues that the 5.5% population increase represented by the future residents of *Hammer PUD* would further tax the City's resources. Heydrick further argues that the City has no plan in place to raise the police LOS to meet the adopted standard. Heydrick concludes that the application should be denied for failure to meet concurrency. (Exhibit 30)

Police Services

23. The currently adopted LOS standard is 2.6 uniformed officers per 1,000 population. (Exhibit 1.11; See also 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))
24. The City conducted the inventory which formed the basis of the currently adopted LOS standard in 2003. It used an estimated 2003 population of 3,814 to develop that standard.³⁵ (2004 Comprehensive Plan, Appendix B, p. 2.75) The City had 10 full-time uniformed officers in 2003. (2004 Comprehensive Plan, Appendix F, pp. 214 – 215) The ratio of uniformed officers to population in 2003 when the LOS inventory was conducted, based on the population number used, was 2.6 officers per 1,000 population. (2004 Comprehensive Plan, Appendix B, p. 2.74)

³⁴ Minor revisions in the first paragraph on Remand. Second paragraph added on Remand.

³⁵ The basis for that 2003 population estimate is not in the record before the Examiner. According to Exhibit 1.11, the Washington State Office of Financial Management, Forecasting Division, (OFM), estimated Sultan's April 1, 2003, population to be 4,095. The LOS standard, being a legislatively adopted policy decision by the Council, may not be reconsidered, altered, or challenged in the context of this project permit application. [See RCW 36.70B.030, quoted in part in the Principles of Law section, below.]

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- 25.³⁶ The City's April 1, 2007, estimated population is 4,530. (Testimony) The City presently has six (6) full-time uniformed officers (two of which have reportedly tendered their resignations) with two or three budgeted positions vacant.³⁷ (Testimony) The current police services LOS is thus 1.32 uniformed officers per 1,000 population (based on present staff) or 1.77 – 1.99 uniformed officers per 1,000 population based on the range of budgeted positions as stated in the record. The City needs 12 uniformed officers to meet the established LOS for its 2007 estimated population.
- 26.³⁸ DCD incorporated a Certificate of Concurrency (the Certificate) in its June 15, 2007, Staff Report, for *Hammer PUD*. (Exhibit 29, pp. 24 - 26)

... The current deficit is 3 Uniform Officers which is based on the City of Sultan's Office of Financial Management (OFM) [2005] population of 4,225. The City is currently updating the Comprehensive Plan and intends to modify this LOS.

Police Services are funded through the City's General Fund and other sources. Increased tax revenue associated with the development will work towards offsetting incremental increases of police services as needed to accommodate the City's population. Police service improvements scheduled to maintain the City's adopted LOS concurrent with development are planned under the adopted 6-year Capital Facilities Plan. In order to maintain an acceptable level of service for police the developer should provide a development agreement to guarantee the LOS for police services.

...

Certificate of Concurrency

The proposed Hammer Preliminary PUD and Plat will not lower the existing Level of Service (LOS) of public facilities and services or impacts of the development are anticipated to be offset by facility or service improvements within six years of the time of development. This Staff Report shall serve as the Certificate of Concurrency.

³⁶ Finding updated on Remand. Applications vest to regulations, not to facts. Therefore, current population and staffing figures must be used, not those from 2005 – 2006.

³⁷ Storm testified under oath at the 2007 hearing that the present budget has eight or nine budgeted uniformed officer positions, six of which are filled, and two of those have tendered resignations. Storm further testified that the City's draft 2008 budget would reduce budgeted uniformed officer positions to five and contract with the Snohomish County Sheriff for additional police services.

No City representative present at the 2007 hearing could (or would) testify regarding Storm's information, including her statement as to the number of currently budgeted positions.

³⁸ Finding revised on Remand.

(Exhibit 29, pp. 25 and 26, bold in original)

The Certificate issued prior to the 2006 hearing stated that the Police "Department is currently operating with a deficit of 3-Officers". (Exhibit 1.11, p. 2) The Certificate noted that the "deficit is not caused by the proposed development." (*Id.*)

Moreover, the City Council as part of a City wide reorganization plan is developing a financial plan to address deficits, affecting all City Departments including the Police Department.

Police services are funded through the City's General Fund and other sources. Increased tax revenue associated with the development will work towards offsetting incremental increases of Police Services as needed to accommodate the City's population. Police services improvements, financial plans and strategies are in place and under development to maintain or attain the City's adopted LOS, or an adjusted LOS as determined by the City Council planning efforts. The development is therefore, based on the financial plans and strategies, concurrent.

(*Id.*, emphasis added)

27. The latest adopted Capital Facilities Plan (CFP) is Appendix D to the 2004 Comprehensive Plan, dated November 22, 2004. (Official notice) The discussion of the Police Department in the CFP mentions a new station, but does not address staffing (not unexpected since staffing is not a capital facility). (2004 Comprehensive Plan, Appendix D, p. VIII-19)
- 28.³⁹ One of DCD's 2006 recommended conditions provided that "[i]n order to maintain an acceptable Level of Service for police the Applicant shall provide a development Agreement to guarantee the LOS for Police Services." (Exhibit 1, p. 17, Recommended Condition 21) DCD has removed that condition from its current recommendation, but has added a clause to Recommended Condition 2 which would require that a standard "Developer Agreement" include a provision for "payment of pro-rata share of police officer costs". (Exhibit 29, pp. 27 – 30, quote from p. 27)
- 29.⁴⁰ During the 2006 hearing, Hammer verbally offered to enter into an agreement for police services matching that offered by the applicant in the *Skoglund Estates* case. A proposed agreement was not offered during either of the Examiner's hearings.

³⁹ Finding revised on Remand.

⁴⁰ First paragraph revised on Remand.

The *Skoglund Estates* applicant presented a draft agreement which offered to enter into a "Developer Agreement to Establish Concurrency" (the Police Services Agreement). The Police Services Agreement was predicated on an estimated population within *Skoglund Estates* of 127 and an annual cost to the City for a police officer of \$110,878. Based on the adopted police services LOS of 2.6 uniformed officers per 1,000 population, the Police Services Agreement calculated that 0.33 of a uniformed police officer would be needed to provide 2.6 police officers per 1,000 population for the 127 residents of *Skoglund Estates*. The applicant then offered to contribute \$36,612.00 (33% of the first year's cost of a uniformed officer) plus \$9,964.00 "as a contribution to a reserve for future years of service." (Official notice)

The *Skoglund Estates* Police Services Agreement proposed that the fee be paid on a lot-by-lot basis when building permits are issued. The Police Services Agreement also provided that: if the Council lowers the police services LOS standard before payments are made, the obligation shall be commensurately lowered; if the Council raises the police services LOS standard before payments are made, the obligation shall not be raised; and if the Council lowers or eliminates the police services LOS standard after payments are made, no refund(s) shall be required. (Official notice)

- 30.⁴¹ The City placed a levy on the November, 2006, ballot to raise funds to hire additional police officers. The levy was defeated. (Testimony)

Parks, Recreation, and Open Space

31. The currently adopted LOS standard is 42.6 acres of parks, recreation, and open space facilities per 1,000 population. (Exhibit 1.11; see also 2004 Comprehensive Plan, Appendix B, p. 2.75) (The LOS standard in the prior 1994 Comprehensive Plan was 5.0 acres of City park land per 1,000 population. (2004 Comprehensive Plan, Appendix B, p. 2.75))
32. The City conducted the inventory which formed the basis of the currently adopted LOS standard in 2003. It used an estimated 2003 population of 3,814 to develop that standard.⁴² (2004 Comprehensive Plan, Appendix B, p. 2.75) The City had 162.4 acres of qualifying "[a]cres devoted to recreational or open space activities within the urban growth area" in 2003. (2004 Comprehensive Plan, Appendix F, pp. 248) That acreage was composed of City-owned property, Sultan School District-owned property, and Washington State Department of Fish and Wildlife-owned property. The ratio of park, recreation, and open space land to population in 2003 when the LOS inventory was conducted, based on the population number used, was 42.6 acres per 1,000 population. (2004 Comprehensive Plan, Appendix B, p. 2.75)

⁴¹ Finding added on Remand.

⁴² See Footnote 35, above.

- 33.⁴³ The City's April 1, 2007, estimated population is 4,530. (Testimony) The 2007 Certificate of Concurrency states that 35.69 acres of qualifying land has been added to the inventory of park and open space lands since the Plan was prepared. The added lands consist of 0.41 acres adjacent to Osprey Park, 0.28 acres at the northwest corner of 1st Street and Main for a new skateboard park, and the 35 acre Water Treatment Plant property which was designated for "Open Space and Parks." (Exhibit 29, p. 25)

Therefore, the current acreage of parks, recreation, and open space lands stands at 198.09 and the current ratio of parks, recreation, and open space lands to population stands at 43.7 acres per 1,000 population. (Calculated) The City has 5.11 excess acres of park, recreation, and open space lands above the established LOS for its 2007 estimated population. (Calculated)

- 34.⁴⁴ One of DCD's 2007 recommended conditions provides that "[t]he Developer, in order to maintain the LOS for parks, shall dedicate Native Growth Protection Tracts G, L, N and O to the City for open space and park purposes." (Exhibit 29, p. 8, Recommended Condition 7)

Tract N was not proposed by Hammer to be a Native Growth Protection Tract. Rather, it is one of the proposed Future Development tracts. Tract N, located on the east side of north-south road through Parcel A at its intersection with SR 2, has approximately 50 feet of frontage on SR 2 and an average depth of about 60 feet. Tract N contains 4,796 SF (0.11 acres). (Exhibit 18.1) DCD stated that it believed Tract N was too small and too constrained by its corner location to effectively provide any opportunity for future commercial/industrial development. Tract N abuts the south edge of Tract O. For those reasons, DCD recommends that it be dedicated as part of the Wagley's Creek corridor (Tracts L and O). Hammer has no objection to converting Tract N into a Native Growth Protection tract. (Testimony)

DCD also stated that City ownership of Tracts G, L, N, and O would facilitate Wagley's Creek restoration projects which the City intends to undertake. (Testimony)

Recent Council Actions

- 35.⁴⁵ On June 8, 2006, the Council passed Resolution Nos. 06-06 and 06-07, approving the *Steen Park* and *Cascade Breeze Estates* applications, respectively. Both Resolutions contain identical language regarding the police services LOS issue:

⁴³ Finding revised on Remand. See Footnote 36.

⁴⁴ Finding revised on Remand.

⁴⁵ Citation added on Remand.

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4. The City's existing Level of Service for police is below the adopted LOS in the Comprehensive Plan. The LOS failure for police, however, was not caused by this proposed Development, and the further reduction in the LOS caused by this proposed Development is modest by comparison to the existing deficiency.
5. The Council takes notice of the Recommendations in the Prothman Report accepted by the Council and Ordinance 900-06. The City has adopted a utility tax applicable to its municipal utilities and has received Recommendations for additional tax adoptions, including a utility tax on cable television service, an increased real estate excise tax, and a B & O tax. Other funding sources could include potential developer loans to advance the receipt of payment of needed funds, and monies contributed by proposed development for their impacts on the LOS. A combination of developer agreements and public funds will put in place the required public services for police concurrent with the development impacts, and provide appropriate strategies for the six years from the time of development to achieve the necessary police LOS as now established or as subsequently revised.
6. The Council takes notice of the Applicant's offer at the Closed Record Hearing to deliver to the City a Developer Agreement to pay Applicant's incremental share for a police officer for one year.
7. Based upon the foregoing, this proposed Development is deemed concurrent.

(Exhibits 19 and 20)

- 36.⁴⁶ On June 29, 2006, the Council passed Resolution No. 06-09A approving the *Skoglund Estates* Planned Unit Development application. Council Conclusions of Law in that Resolution are substantively identical with the above-quoted provisions of Resolution Nos. 06-06 and 06-07. (Exhibit 21)
- 37.⁴⁷ On August 24, 2006, the Council passed Resolution No. 06-11A approving the *AJ's Place* Preliminary Binding Site Plan application. Council Conclusions of Law in that Resolution are substantively identical with the above-quoted provisions of Resolution Nos. 06-06 and 06-07. (Exhibit 22)

⁴⁶ Finding added on Remand.

⁴⁷ Finding added on Remand.

- 38.⁴⁸ On February 22, 2007, the Council passed Resolution No. 07-01A approving the *Vodnick Lane* Planned Unit Development application. Council Conclusions of Law in Section C of that Resolution are substantively identical with the above-quoted provisions of Resolution Nos. 06-06 and 06-07. (Exhibit 25)
- 39.⁴⁹ Also on February 22, 2007, the Council passed Resolution No. 07-02A denying the *Twin Rivers Ranch Estates* Planned Unit Development application. The paragraphs in Section A of that Resolution are substantively identical with the above-quoted provisions of Resolution Nos. 06-06 and 06-07. (Exhibit 26)

General

- 40.⁵⁰ Storm objects to the possibility of through traffic on the north-south street through *Hammer PUD*. She believes that residents will use the street to exit the residential areas to the north, creating an adverse traffic situation at the SR 2 intersection. (Testimony)
- 41.⁵¹ Fire District No. 5 (Fire District) also objects to the north-south street, but for different reasons. The Fire District owns a parcel on the south side of SR 2 directly opposite the north-south street's intersection with SR 2. The Fire District intends to construct a fire station with heli-pad on that property. According to the Fire District, the City's Transportation Improvement Plan (TIP)⁵² includes a southerly extension of the north-south street across the Fire District's property to intersect with Cascade View Drive. The Fire District opposes that extension and sees the north-south street in *Hammer PUD* as a "Trojan horse": Getting a foot in the door for the future extension across SR 2.
- The Fire District also believes that a 12 foot wide paved surface would be inadequate for effective emergency equipment operations. Therefore, the District suggests that the north-south street, if allowed, be barred by bollards at its south end to prevent any usage. (Testimony)
- 42.⁵³ The Sky Harbor Homeowners Association (SHHOA) worries about the added traffic that *Hammer PUD* will place on Cedar and Dogwood Courts. They are also concerned about children's safety during construction of the subdivision. The SHHOA would prefer that the north-south street be

⁴⁸ Finding added on Remand.

⁴⁹ Finding added on Remand.

⁵⁰ Finding added on Remand.

⁵¹ Finding added on Remand.

⁵² The current TIP was invalidated by the Central Puget Sound growth Management Hearings Board in February, 2007. Such actions are prospective and do affect vested applications. [RCW 36.70A.302(2)] Therefore, that action has no effect on *Hammer PUD*.

⁵³ Finding added on Remand.

opened for general traffic so that drivers would not be as likely to travel through *Sky Harbor*.
(Testimony)

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

PRINCIPLES OF LAW

Authority

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

Review Criteria

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

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

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

The SMC provides for both Retail Center PUDs and several types of Residential PUDs. [SMC 16.10.030]
The general review criteria for PUDs are set forth at SMC 16.10.090(B):

The hearing examiner recommendation shall include, at a minimum, findings and conclusions regarding the preliminary PUD’s compliance with the criteria for location and approval for the particular type of preliminary PUD listed in SMC 16.10.100 (retail PUDs), SMC 16.10.110 (residential PUDs). A preliminary PUD shall be recommended for approval

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

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

(1) Fundamental land use planning choices made in adopted comprehensive plans and development regulations shall serve as the foundation for project review. The review of a proposed project's consistency with applicable development regulations or, in the absence of applicable regulations the adopted comprehensive plan, under RCW 36.70B.040 shall incorporate the determinations under this section.

(2) During project review, a local government or any subsequent reviewing body shall determine whether the items listed in this subsection are defined in the development regulations applicable to the proposed project or, in the absence of applicable regulations the adopted comprehensive plan. At a minimum, such applicable regulations or plans shall be determinative of the:

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

[RCW 36.70B.030]

Chapter 16.108 SMC, Concurrency Management System

Chapter 16.108 SMC was adopted by Ordinance No. 630 in 1995. It has not been amended since its adoption. The following sections within Chapter 16.108 SMC are particularly relevant to the present case:

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.

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.

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).

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 development 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.

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.

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.

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.

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.

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 *Hammer PUD* is vested to the regulatory system in effect on September 23, 2005.

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. ⁵⁴ *Hammer PUD* presents multiple issues requiring resolution: the merits of the proposal; compliance with the codified concurrency management system; and adequacy of the recommended conditions. Each major topic will be addressed separately in the following Conclusions. The Conclusions will focus on those criteria which have been challenged.
2. ⁵⁵ In summary, *Hammer PUD* can be conditioned to meet all requirements for approval, including compliance with the Concurrency Management System. The verbally offered Police Services Agreement does not comply with the requirements of Chapter 16.108 SMC, but a method is available by which compliance may be obtained. Finally, even though most of the short-comings in the 2006 staff-recommended conditions have been corrected, the 2007 recommended conditions still require revision/supplementation.

⁵⁴ Minor revision on Remand.

⁵⁵ Conclusion revised on Remand.

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

Preliminary Subdivision and PUD Requirements

- 4.⁵⁶ The record now contains evidence that the proposal complies with SMC 16.68.060 requirements for development on steep slopes.⁵⁷ The evidence indicates that the natural slopes are stable but that limited fill areas along the top of the south-facing slope are unstable due to the grading work associated with construction of the air strip. The current evidence indicates that relatively modest re-work of the upper levels of those slopes to remove the unstable fill would be necessary.⁵⁸ With the stabilization work kept to a minimum, *Hammer PUD* will comply with SMC 16.68.060(A)(1) – (4) and (6).

Although the record contains no evidence (or even argument) that the south-facing slope on the *Hammer PUD* site is a “significant hillside” as that term is defined in SMC 16.68.060(5), the proposal complies with the requirements for such hillsides: The vast majority of the hillside will be preserved in its natural condition (subject to additional vegetation plantings) and the proposed residential lots are placed on the flattest portion of the property (the former runway).

Hammer PUD complies with SMC 16.68.060(B): The re-grading needed to stabilize the old swale fills will not destabilize the slope nor create erosion problems if performed in accordance with the geotechnical recommendations contained in the hearing record.

Therefore, *Hammer PUD* now complies with all applicable requirements of Chapter 16.68 SMC.

- 5.⁵⁹ The record now demonstrates compliance with the requirements for approval of an Innovative Development Design under SMC 16.80.100. The previously identified two shortcomings have been resolved. First, adopted code requires state agency approval before local approval of an Innovative Development Design. However, the Innovative Development Design proposal relates to the wetland and steep slope buffers. No state agency has jurisdiction over those elements of the proposal. The proposal does not rely on any aspect of the Wagley’s Creek corridor treatment. Therefore, the requirement for state agency approval is moot.

⁵⁶ Conclusion revised on Remand.

⁵⁷ As noted in the Findings, above, the Innovative Development Design flexibility related to wetland and stream buffers has no legal applicability to steep slope requirements. Therefore, approval of the requested Innovative Development design does not obviate compliance with SMC 16.68.060.

⁵⁸ This aspect of the proposal will have to be very carefully regulated as the current applicant, a bankruptcy estate, is unlikely to be the actual developer. Promises made now will have to be incorporated clearly into conditions so as to govern the actions of the eventual developer.

⁵⁹ Conclusion revised on Remand.

Second, massive slope re-working is not necessary. The preponderance of the evidence shows that with proper revegetation of the disturbed areas at the top of the slope and extensive supplemental vegetation across the breadth of the slope, the result would be a better, more functional wetland buffer.

The evidence now shows that: The proposal will provide a net improvement in wetland buffer function; no state resource agency has any jurisdiction over this aspect of the project; revegetation of the hillside will further the objectives of Chapter 16.80 SMC; revegetation will not harm water quality, damage fish or wildlife habitat, have any effect upon the stormwater control system, or create unstable soil conditions; slope alterations are proposed to be kept to a minimum; and the proposal will not harm any adjacent properties. The proposal thus meets the approval criteria at SMC 16.80.100(B).

6. ⁶⁰ Four public use and interest questions regarding the proposed interior street network can now be answered in the affirmative. First, evidence supports a conclusion that extension of the east-west street to the west or northwest boundary would serve no purpose: The adjacent terrain makes extension of a street in that direction impractical.

Second, evidence supports a street stub to the apparently landlocked parcel adjacent to Tract D near the northeast corner of the site. The best available evidence seems to suggest that a modest buildable area exists across the property line, but that the property may be legally landlocked. That property, like Parcel B/C, is zoned MD which means that the Council desires it to be developed at a moderate residential density, not to remain as an isolated acreage tract within its urbanizing surroundings. The public use and interest will be served if a 30 foot wide ingress/egress/utility easement is provided across Tract D as orally offered by Hammer and recommended by DCD. A 30 foot wide easement would allow creation of up to four lots through the short subdivision process. [SMC 16.28.230(B)(2) and (3)]

Third, it seems apparent that the applicant envisions routine vehicular use of the southern end of the "pedestrian trail" as access to the shop on Tract J: The bollards on the south end of the trail are placed north of the shop's driveway, far off SR 2, whereas those at the north end of the trail are located very close to the east-west street through Parcel B/C. (Exhibit 18.1)

Recordation of the plat will make all of the Future Development tracts on Parcel A viable lots, eligible for development. Hammer has not offered any mechanism to prevent their use pending full construction of the north-south street through Parcel A. Therefore, the City must consider that they

⁶⁰ Conclusion revised on Remand.

will be developed and must insure that adequate street access is provided to each Future Development tract. The current concept is unacceptable. Hammer can't have it both ways: Defer improvements while simultaneously making it possible for development requiring those improvements to occur.

There is nothing wrong with using a portion of the north-south right-of-way to serve Tract J. However, a 12 foot wide paved surface is wholly unsuitable as vehicular access to an industrial site, even on a temporary basis. If the bollards are located as desired by Hammer, then the portion of the north-south street south of the bollards must be constructed to full commercial/industrial street standards. The Examiner will recommend that Recommended Condition 34 be revised to so provide.

Fourth, the question of when and by whom the portion of the North Connector which passes through the *Hammer PUD* site will be built must be resolved before preliminary subdivision approval is granted. The preliminary subdivision process establishes the conditions which must be fulfilled before the subdivision may be recorded; conditions may not be added later. Once the subdivision is recorded, all lots within it become legal building lots. As has just been noted, the Future Development Tracts in Parcel A would be included as legal building lots unless an express restriction were imposed on the face of the final plat requiring some further review. To date, neither Hammer nor DCD have offered/made any such proposal.

If those Parcel A Future Development Tracts are to be eligible for development upon recordation of the final plat, then the road system serving them, consisting of the north-south street from SR 2 north to the North Connector and the North Connector across the property, must be constructed to serve industrial traffic as a part of the subdivision's infrastructure development process. Not only is such construction obviously necessary to provide access to the Tracts, but it is necessary in order to conclude that the proposed subdivision complies with the adopted Comprehensive Plan.⁶¹

Hammer's perception that future development within Parcel A will be subject to some type of separate review is not a proposal. In fact, the Examiner knows of no review procedure within the SMC which would mandatorily apply to future development in Parcel A. The Conditional Use Permit process would not apply unless a use proposed for one of the Future Development Tracts was a listed conditional use in the ED zone. The Binding Site Plan process would not apply as all the lots would have been legally created through this subdivision process. The reality is that no review process exists in code to accomplish what Hammer and DCD seem to want.

⁶¹ The situation here is different than in *Timber Ridge Estates*: The section of the North Connector which crossed the southeast corner of the *Timber Ridge Estates* site provided access to no lots within the proposed subdivision.

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Three choices exist: Either fully develop the infrastructure within Parcel A during the development of this subdivision; or place a restriction on the face of the final plat restricting development within Parcel A until the north-south and North Connector streets are fully constructed; or record the subdivision in two phases with the Parcel A phase delayed until Hammer (or its successor) is prepared to make the necessary infrastructure improvements. If the latter option were chosen, the north-south and North Connector rights-of-way would have to be dedicated with the first phase.

- 7.⁶² Hammer requests a PUD overlay for only Parcel B/C, the northerly 18.18 acres. PUD criteria compliance has been evaluated for only that portion of the property, and only for a single-family residential PUD. The conditions must clearly indicate that the PUD overlay is a PUD-SF and that it applies only to Parcel B/C. The recommended Conditions still do not make that critical point clear at all.
8. The only PUD-SF locational criteria under challenge in this application is that relating to transit facilitation. [SMC 16.10.110(B)(2)(d)] This same issue arose during the *Skoglund Estates* case. The Examiner's Recommendation in that case included the following Conclusions:

18. The locational criteria of SMC 16.10.110 are mandatory: A PUD which does not meet all criteria applicable to its type of PUD can not be approved.
19. Compliance with the transit facilitation criterion of SMC 16.10.110(B)(2)(d) is mandatory for single-family residential PUDs. *Skoglund Estates* is a single-family residential PUD proposal.
20. The transit facilitation criterion of SMC 16.10.110(B)(2)(d) is subjective in nature. It does not establish a measurable "bright line" for what constitutes "sufficient proximity" to "facilitate transit access".
21. What is "sufficient proximity" to "facilitate transit access"? *Skoglund Estates* is at least 1.5 miles from the nearest transit line (using existing and/or proposed streets and pedestrian paths – not as the crow flies). Is that "sufficient proximity"?

Two aspects of transit access must be considered. First is pedestrian access to a transit stop. Common sense dictates that Americans will not walk 1.5 miles through the rain to reach a bus stop – not if they have any other choice. A

⁶² Minor change made on Remand.

PUD located 1.5 miles from the nearest transit line does not have “sufficient proximity” to “facilitate transit access” for pedestrians.

The second aspect is vehicular travel to a park-and-ride location. If the standard is read to include this aspect, it becomes totally meaningless and would not provide locational discrimination for any site in Sultan: One can drive from anywhere in Sultan to a transit park-and-ride lot. Thus, every site in Sultan would meet the criterion. But if the Council intended that every site in Sultan would be eligible for a single-family PUD, why would it even establish the criterion? One must conclude that the Council did not intend for every site in Sultan to be eligible for a single-family PUD and that this criterion was established to filter out unacceptable sites.

22. A site which is 1.5 miles from the nearest transit line does not have “sufficient proximity” to “facilitate transit access” and does not meet the criterion of SMC 16.10.110(B)(2)(d). No PUD approval may be granted for such a site.⁶³

Summary

23. The *Skoglund Estates* site does not meet the mandatory locational criterion of SMC 16.10.110(B)(2)(d). No condition can be imposed which would alleviate the problem: The site can not be physically moved closer to the transit facilities; O’Brien is in no position to direct Community Transit to establish a bus line on Sultan Basin Road. Therefore, *Skoglund Estates* may not be approved as a single-family PUD; that portion of the application must be denied.

(Official notice) The Council concluded that *Skoglund Estates* met the transit facilitation requirement. (Exhibit 21, p. 2)

⁶³ (This footnote was in the *Skoglund Estates* Recommendation and is simply repeated here to make the quote complete.) This is the third PUD application considered since the Council adopted new PUD standards and procedures in 2002. The first was *Stratford Place* (PUD04-001, Recommendation issued February 1, 2005). The nearest transit route to *Stratford Place* was on High Street, approximately 200 feet from the site. Such close proximity unquestionably met the transit facilitation criterion.

The second was *Timber Ridge Estates* (FPPUD04-002, Recommendation Revised after Reconsideration issued May 23, 2005), approved by the Council in mid-2005 (Resolution No. 05-17). *Timber Ridge* is located on the east side of Sultan Basin Road approximately one-quarter mile north of SR 2. Although the transit facilitation criterion was not an issue in that application, the Examiner would have concluded that one-quarter mile was close enough to meet the criterion.

9. The location of the *Hammer PUD* presents a different set of circumstances than did the *Skoglund Estates* site. The present site has frontage on an established bus line: SR 2. The less than half-mile walk from Parcel B/C through Parcel A on the proposed 12 foot paved trail is not an unreasonable distance to walk to get to a bus stop.

The criterion requires only transit facilitation. Were the developer to provide a widened shoulder along the frontage of the site on SR 2 for establishment of a bus stop, it would most definitely be facilitating transit use. The City's so far unsuccessful contacts with CT do not fulfill the requirement, but the site's proximity to a transit line and the developer's offer do fulfill the requirement.

- 10.⁶⁴ Although not challenged in this case, compliance with SMC 16.10.110(B)(2)(c) needs to be addressed as it did become an issue in the *Twin Rivers Ranch Estates* case. The location criteria of SMC 16.10.110(B)(2) are designed (for the most part) to help limit the places within the City which are eligible for PUDs. Had the Council intended that PUDs could be located anywhere in the City, it would not have enacted restrictive location criteria. Those criteria must be given meaning.⁶⁵

The criterion in SMC 16.10.110(B)(2)(c) contains three key elements. First, a site must be able to connect to a pedestrian and bicycle system. Second, that system must be in existence when the evaluation is performed; a proposed or potential system will not meet the "existing" restriction of the criterion. Third, the connection must be to a "circulation system," a term which is undefined in the code. DCD's Director testified during the *Twin Rivers Ranch Estates* hearing on May 18, 2006, that even an unimproved street shoulder would meet the criterion. Were that in fact the case, the criterion would be meaningless: Every site with any public street access connects to at least an unimproved shoulder. Thus, every site in the City would meet the criterion, rendering the criterion useless. The Council included the criterion to limit potential PUD sites; that purpose must be preserved in any interpretation of the criterion. The idea that an unimproved shoulder would qualify as a pedestrian and bicycle circulation system stretches the meaning of "system" beyond the breaking point.

Hammer PUD meets the Subsection (B)(2)(c) criterion. Its trail and sidewalks provide a direct connection to the trails and sidewalks within *Sky Harbor*.

⁶⁴ Minor revision on Remand.

⁶⁵ Locational criterion (B)(2)(f) offers an instructive contrast. It was expressly written so as to not limit potential PUD sites: So long as a site has access to public services equal to that of a standard development, the criterion is met. The language of Subsection (B)(2)(f) clearly demonstrates a difference of intent on the part of the Council. It wrote that criterion to be non-limiting while all the others in Subsection (B)(2) are intended to limit.

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11. ⁶⁶ The record evidence, summarized in the Findings, above, demonstrates that *Hammer PUD* (Parcel B/C) now meets applicable PUD-SF criteria at SMC 16.10.110(B): Parcel B/C is designated for residential development on the Comprehensive Plan; the proposed density complies with the MD zone; Parcel B/C takes access from two collector streets; the area of Parcel B/C is greater than two acres; Parcel B/C connects to sidewalks in *Sky Harbor*; transit service is available on SR 2 via the pedestrian trail down the face of the slope; utility services are available; *Hammer PUD*'s residents will have access to schools equal to that of any other area residents; the open spaces coordinate with and extend those in *Sky Harbor*; the proposal complies with applicable development standards.
12. ⁶⁷ The record evidence, summarized in the Findings, above, demonstrates that *Hammer PUD* (Parcels A and B/C) now meets applicable preliminary subdivision criteria at SMC 16.28.330(A): It complies with the Comprehensive Plan and zoning code; services and utilities are available and have been shown to be able to meet adopted City standards; the lots and Future Development tracts avoid the on-site wetlands and stream corridors.

The public use will be served by platting the property in such a way as to allow residential development of Parcel B/C while preserving Parcel A for commercial/industrial development in accordance with the Comprehensive Plan. The alignment for the street down the slope follows the existing sewer line alignment. Exhibit 18.2, Sheet 2, includes information from which the grade of that alignment may be calculated: the top elevation of each manhole and the distance between each manhole. The steepest existing grade between any two manholes is 14.9% between Manholes 5 and 6: A 17 foot elevation change over 114 feet horizontal distance. The other grades between manholes along that alignment are less than 10%. A city street could be built along that alignment.

Whether the City wants to eventually do so is another matter. Such a connection may be desirable if and when the Industrial Park actually develops. No decision is needed now. The alignment is to be preserved and be available for pedestrian usage.

Concurrency ⁶⁸

⁶⁶ Conclusion added on Remand.

⁶⁷ Conclusion added on Remand.

⁶⁸ The Examiner concludes that Resolution Nos. 06-06 and 06-07 and the series of subsequent Resolutions which essentially repeated the content of those Resolutions do not establish precedent for this or future cases. The analysis which follows has benefited from the Council's holdings in those Resolutions, but does not agree in full with the Resolutions' holdings. Those Resolutions imposed no concurrency conditions on either development. (Conclusion 6 in each Resolution "takes notice" of an applicant offer to provide a developer agreement for an "incremental share for a police officer for one year." Neither Resolution, however, imposes any such requirement on the application.) (Footnote revised on Remand.)

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13. Subdivision PUD applications are development permits. [SMC 16.120.050] *Hammer PUD* is not categorically exempt from SEPA threshold determination requirements. (Exhibit 1.4) Therefore, *Hammer PUD* is subject to the concurrency requirements of Chapter 16.108 SMC. [SMC 16.108.020]
14. DCD's concurrency determination is to be considered part of its recommendation to the Examiner. [SMC 16.108.040(B)] The Examiner can not recommend and the Council can not approve a development application which does not demonstrate compliance with the concurrency requirements of Chapter 16.108 SMC. [SMC 16.108.060]
15. Section 16.108.060 SMC states that development approval is to be granted "only if the proposed development does not lower the existing level of service (LOS) of public facilities and services below the adopted LOS in the comprehensive plan." But what happens where the existing LOS is already below the established standard? May a development be approved because it is not the one which "broke" the LOS standard?

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

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

- 16.⁶⁹ 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."
17. 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,

⁶⁹ Conclusion revised on Remand.

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.⁷⁰ If the required LOS is not present, then SMC 16.108.060 provides two alternative mechanisms by which a development may still be found to be concurrent.

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

For residential subdivisions, significant development impacts really begin to occur when houses are completed and occupied. Therefore, a condition requiring that the LOS standard be met when each residence is approved for occupancy (every residential building permit is subject to a Final Inspection before occupancy may legally occur) would fulfill Subsection (B). This requirement would have to appear on the face of the final plat as a legal notification to prospective purchasers (since one could build a house and be unable to occupy it if the LOS standard were not met at that 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.⁷¹ And, the developer always has the option to wait until the City makes the necessary commitments to raise the LOS.

⁷⁰ To read this subsection as one prior applicant has suggested (the LOS must meet the standard for only the one day on which the Council will act on the proposal) is simply illogical and makes a mockery of the entire concurrency system chapter. If such was the true intent of the Council when it enacted Chapter 16.108 SMC, the Council will have to so declare on its own initiative: The Examiner declines to even suggest that such an interpretation might have been intended.

⁷¹ 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.

- 18.⁷² According to SMC 16.108.070, .120, and .130, the LOS standards for police services and parks, recreation, and open space are the standards as set in the 2004 Comprehensive Plan: 2.6 uniformed officers per 1,000 population and 42.6 acres per 1,000 population, respectively. The City currently meets its parks, recreation, and open space standard but does not meet its police services standard. The remainder of this section will address police services LOS only.

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

Whether that was the Council's intent when it adopted the 2004 Comprehensive Plan is unknown. (Legislative intent is not relevant where the enactment is clear and unambiguous on its face.) Whether the Council even realized the effect of the standards it was adopting is equally unknown. Even if the Council were to change the standards now, new standards could not legally be applied in the review of *AJ's Place* because of the vested rights doctrine: The application must be reviewed against the regulations which existed on January 30, 2006, the date the application was deemed complete. Further, an applicant may not "selectively waive" some old regulations while retaining a vested right to others. [*East County Reclamation Co. v. Bjornsen*, 125 Wn. App. 432, 105 P.3d 94 (2005)]

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

⁷² Conclusion revised on Remand.

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

Second, the costs in the previously offered Police Services Agreements have been based on the City's cost to support one uniformed police officer. If, as testimony in the 2007 hearing suggests, the City may reduce its uniformed officer count substantially and replace it with contracted police services, the costs of such contracted services may be wholly different from the City's present costs. A carbon copy of prior agreements may or may not represent a fair share of actual costs.

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

Fourth, even if all the offered funds were paid at one time, it would take many developments to fund just one police officer, and that one officer would not raise the police services LOS to the established standard. It would take many, many developments, all developed at essentially the same time, to raise the LOS to the established standard. But that simple equation (1 officer funded by the fees based on the previously offered schedule yields 2.54 officers after approximately 381 dwelling units) fails to account for the fact that those 381 dwelling units would themselves raise the City's population by some 1,029 people (2.7 persons per household, the number stated in the previously offered Police Services Agreements), thus lowering the LOS again. In fact, all a program such as offered by Hammer does is hold the LOS at its current level as new houses are added to the community – and then only if development occurs fast enough that the payments for fractional officers can be combined to actually hire a police officer.

This concept simply is not what Chapter 16.108 SMC requires. The Council may certainly change the SMC requirement if it wishes. But in the meantime, the code is what controls – and even if the

⁷³ Conclusion added on Remand.

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code were changed today, that change would not apply to any subdivision application filed in a complete fashion before the change became effective.

Finally, such incremental funding arguably would run afoul of the RCW 82.02.090 prohibition against collecting impact fees for police services. The Police Services Agreement concept is essentially a *pro rata* share payment system for police services. (In fact, that is exactly the term used by DCD in Exhibit 29, Recommended Condition 2, to describe it.) Such a system is not allowed under State law. If Chapter 16.108 SMC is read as the Examiner believes it has to be, no such conflict would exist as the chapter would not be charging an impact fee.

- 23.⁷⁴ The City has no “strategy in place” to increase police staffing. The electorate defeated its latest proposed strategy. The discussion in Resolution Nos. 06-06, 06-07, 06-09A, 06-11A, 07-01A, and 07-02A regarding possible additional taxes that could or might be adopted to raise revenue is a strategy, but it is not in place. Utility and cable taxes have been adopted. But the record is devoid of any data that would support the notion that those taxes will enable the City to raise the Police Level of Service to meet the adopted standard. However, that Council discussion (that additional tax revenues coupled with developer funds could raise the LOS to meet the standard) could be converted into a condition which could read as follows:

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

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

- 24.⁷⁵ 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).

⁷⁴ Conclusion revised on Remand.

⁷⁵ Conclusion revised on Remand.

25. Under the present circumstances, the best Concurrency solution would be to impose an “either - or” condition: Require compliance with a condition as suggested in Conclusion 23, above, or compliance with a condition as suggested in Conclusion 24, above. Unfortunately, the Police Services Agreement does neither.

Conditions

- 26.⁷⁶ DCD has partially corrected the short-comings in the Recommended Conditions which were identified in the Examiner’s 2006 Recommendation. (Exhibit 12, pp. 27 – 29) The following subsections identify both old and new Condition numbers using the format: (old number) new number.
- A. Recommended Condition (1) 1. This condition has been partially corrected. The site plan reference has been corrected, but as proposed the Condition still fails to cite the typical building plans. Further, this Condition must make the distinction between what is granted PUD approval and what is being granted preliminary subdivision approval. Those changes will be recommended.
 - B. Recommended Condition (4) 4. This condition has been corrected.
 - C. Recommended Condition (5). This condition was superfluous and has been omitted.
 - D. Recommended Condition (7) 6. This condition has not been corrected. Like former Recommended Condition 5, the second sentence in this condition is not a condition, it is a summary of an applicant statement. As such, it should not be in a condition.
 - E. Recommended Condition (8). This condition was superfluous and has been omitted.
 - F. Recommended Conditions (10) 7 and (21). These two conditions related to the Concurrency Management System issues and required the developer to dedicate land for parks (10) and to present a “Development Agreement to guarantee the LOS for Police Services” (21). These conditions were presumably justified by SMC 16.108.060(C). Recommended Condition (10) has been slightly revised to become Recommended Condition 7; Recommended Condition 21 has been replaced by a nine word clause in Recommended Condition 2: “payment of pro-rata share of police officer costs.” As previously noted, that clause violates state law and must be deleted.

⁷⁶ Conclusion revised on Remand.

Recommended Condition 7 still suffers from the fact that the agreement mentioned in that condition is one which must be offered voluntarily by an applicant, not something the City can force on an applicant. If an applicant has presented a proposed agreement (which Hammer as of this date has not), then the City may accept it (assuming that it fulfills the SMC requirement) and memorialize that acceptance through a condition. Until a written offer is made, nothing exists to be memorialized.

More importantly, DCD has offered a new, different justification for dedication of Tracts G, L, N, and O which does not rely on Chapter 16.108 SMC. Therefore, all reference to that chapter should simply be eliminated from the condition.

Conversion of Tract N from Future Development to Native Growth Protection is justified. That tract is simply too small for safe, effective use as commercial/industrial property. In the first place, Tract N doesn't meet the ED zone's minimum lot width, depth, and area requirements for virtually every permissible use. Second, with a front setback of 25 feet and a rear setback of 35 feet for most permitted ED uses, no room would be left for a building. [SMC 16.12.060(E)]

- G. Recommended Condition (16) 19. This condition has been corrected.
- H. Recommended Condition 18. This condition has been corrected.
- I. Recommended Condition (29) 32. This condition has been corrected.

27.⁷⁷ A few additional changes to the new recommended Conditions should be made.

- A. Recommended Condition 9. The report date is incorrect and should be corrected.
- B. Recommended Conditions 15 and 16. These two conditions lack a needed temporal element to indicate at what point in the development process they are to be fulfilled. Based upon discussion at hearing, Recommended Condition 15 should be fulfilled on a lot-by-lot basis prior to occupancy of the residence on each lot and Recommended Condition 16 should be fulfilled or bonded for completion prior to final plat approval.
- C. *Hammer PUD* must be regulated to avoid the Future Development Tracts problems mentioned elsewhere in this Recommendation. The best way to achieve that objective is to place a restriction on the face of the recorded plat which bars development of any of the

⁷⁷ Conclusion added on Remand.

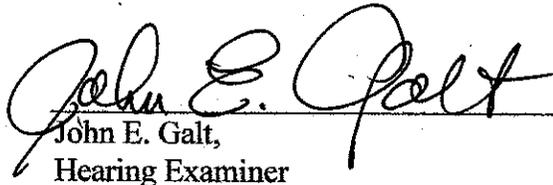
Future Development Tracts until the North-South street is fully constructed from SR 2 to the North Connector and the North Connector has been fully constructed across the width of the property.

- D. The GBA-Recommended Conditions which have not been expressly incorporated should be incorporated by reference.
 - E. 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 recommended.
28. Recommended Condition 34 is justified as is, but could be modified to provide an option to the developer. A 12 foot wide paved trail is simply not adequate to serve as access to Tract J. Once access is established, it will be impossible to effectively regulate the amount of usage over that narrow trail. Since the trail is to serve as a pedestrian link to SR 2, it cannot also serve as a vehicular access for industrial use of Tract J. Either the bollards go up at the SR 2 end, as described in Recommended Condition 34, or the Road is constructed to full commercial/industrial standard within the proposed 60 foot wide right-of-way from SR 2 north to the Tract J access, in which case the bollards could be installed at the point where the street narrows to trail width.
29. Any Finding of Fact deemed to be a Conclusion is hereby adopted as such.

RECOMMENDATION

Based upon the preceding Findings of Fact and Conclusions, the testimony and evidence submitted at the open record hearing, and the Examiner's site view, the Examiner **RECOMMENDS APPROVAL** of the proposed preliminary subdivision and planned unit development of *Hammer PUD* **SUBJECT TO THE ATTACHED CONDITIONS..**

Revised Recommendation issued August 2, 2007.



John E. Galt,
Hearing Examiner

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NOTICE OF RIGHT OF RECONSIDERATION

This Recommendation, dated August 2, 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 August 13, 2007 (which is the first business day after the tenth calendar day after the date of mailing of this Recommendation). Any reconsideration request shall specify the error of law or fact, procedural error, or new evidence which could not have been reasonably available at the time of the hearing conducted by the Examiner which forms the basis of the request. Any reconsideration request shall also specify the relief requested. See SMC 2.26.120(D) and 16.120.110 for additional information and requirements regarding reconsideration.

NOTICE OF COUNCIL CONSIDERATION

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

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

RECOMMENDED CONDITIONS OF APPROVAL
FPPUD05-002
Hammer PUD

This Preliminary Subdivision and Planned Unit Development are subject to compliance with all applicable provisions, requirements, and standards of the Sultan Municipal Code, standards adopted pursuant thereto, and the following special conditions:

Preliminary Plat and General PUD Design--

1. The general configuration, lot shapes and sizes, setbacks, site density, and areas of open space shall be as indicated on the resubmitted site plan (Exhibit 18) dated March 1, 2007, subject to these Conditions of Approval. Preliminary subdivision approval is granted to the entirety of the property as depicted on Exhibit 18. Preliminary Planned Unit Development – Single Family approval is granted only to Parcel B/C, comprised of Proposed Lots 1 – 72 and Proposed Tracts A – F as depicted on Exhibit 18. Exhibit 1.1.19 represents approved typical house plans for the Planned Unit Development. Revisions to approved preliminary Planned Unit Developments are regulated by SMC 16.10.160(D) and (E); revisions to approved preliminary subdivisions are regulated by SMC 16.28.360. The Final PUD map shall be recorded as an amendment to the underlying zoning following Final PUD approval. All subsequent conditions apply to the entire subdivision unless expressly stated to the contrary.

This subdivision may be recorded in phases or divisions. Recordation of any portion of Parcel B/C shall require simultaneous dedication of the north-south street and the North Connector rights-of-way through Parcel A to SR 2.

2. In accordance with SMC 16.28.340, the 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 PUD, including improvements to all common areas. The Developer Agreement shall also include commitments for payment of impact fees; dedication of native growth protection tracts; and monitoring guarantees for wetland, stream, and steep slope enhancements. 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. 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

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public services for police concurrent with the development impacts, and provide appropriate strategies for the six years from the time of development to achieve the necessary police LOS as now established or as subsequently revised; or, in the alternative, the police services LOS in existence at the time of final building permit inspections shall be met before approval for occupancy is granted.

4. The Developer shall establish a Home Owners' Association to assume responsibility for maintenance of common areas. The Home Owners' Association shall be recorded with the plat. The wording and Conditions of the Home Owners' Association shall be subject to City approval prior to Final Plat.
5. The Developer/Owner shall maintain the landscaping, open space improvements, drainage facilities, private streets, and other common areas within the site for a two-year period following installation. Such maintenance shall be secured with a performance bond filed with the City. Subsequent to the two-year period, maintenance responsibility shall be passed to the homeowners association.

Setbacks –

6. The Developer shall meet privacy requirements of SMC 16.10.120(B)(1)(a) through placement or screening of windows or service yard requirements of SMC 16.10.120(B)(1)(c) to reduce side yard setbacks from 10 feet to 5 feet.

Off-Street Parking

7. In accordance with SMC 16.60.140, the minimum number of required off-street parking spaces for single-family dwelling units is two.

Recreation and Open Space –

8. The Developer shall dedicate Tracts G, L, N, and O to the City for open space and park purposes.

Wetlands, Streams and Steep Slopes –

9. Wetland impacts shall be mitigated in accordance with the revised Critical Areas Study and Innovative Development Design Plan dated February 26, 2007 (Exhibit 16). The Developer shall maintain and monitor wetland, steep slope, and stream mitigation twice yearly for a three-year period following installation and report to the City annually. Such mitigation shall be secured with a performance bond in the amount of \$15,021 filed with the City.
10. Final as-built site plans showing the location of all-new planting in the enhanced buffers shall be submitted to the City.
11. Specific best management practices for design and construction set forth in the Geotechnical Report (Exhibits 1.1.13, 1.2.4, and 15) shall be followed including: dry season excavation operations, direct stormwater runoff to approved drainage outlets, silt fences including at the top of the banks to mark the edge of construction and protect the slopes from sediment runoff, on-site monitoring, required

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slope setbacks, and inspections during construction. All disturbed slope areas shall be revegetated as soon as feasible to minimize erosion potential.

12. The setback recommendations within the Geotechnical Report Dated 2-6-07 shall be followed for the 10-foot minimum setback from top of slope provided the foundations are extended in depth to satisfy the "Effective Setback recommendations".
13. Any work performed during wet weather shall protect exposed soils with approved coverings.
14. Prior to occupancy, the Developer shall install fencing on the edge of residential lots (5-24 and 29-34) adjacent to wetlands, streams, their buffers, or buffer average areas.
15. Prior to occupancy of the residence on each affected lot, one sign, at the minimum, per lot shall be placed adjacent to critical area buffers denoting habitat conditions.
16. Prior to final plat approval, a new culvert shall be installed or bonded for installation at Wagley's Creek in accordance with approval of a Hydraulic Project Approval by the state Department of Fish and Wildlife.
17. All recommendations within Exhibit 17 which have not been expressly incorporated herein are hereby incorporated by reference as if set forth in full.

Water –

18. The Developer/Owner is responsible for any necessary improvements to the City's water system in order to provide adequate water to the site. Construction and materials shall conform to the City of Sultan 2004 Water and Sewer Engineering Standards.

Sewer –

19. The Developer/Owner is responsible for any necessary improvements to the City's sewer system in order to provide sewer service to the site. Construction and materials shall conform to the City of Sultan 2004 Water and Sewer Engineering Standards.

Surface Water Management –

20. The Developer shall inspect weekly, maintain, and repair all temporary and permanent erosion and sediment control BMPs to assure continued performance throughout the construction phase. During wet weather construction, access roads and on-site utilities shall be phased to minimize open soil exposure.
21. Temporary stormwater management facilities shall be constructed before any significant amount of site grading commences.

Transportation –

22. Street trees shall be planted every 20 lineal feet along the entire local access road.
23. Final street design, including paving, sidewalks, frontage improvements, parking, and emergency access must be approved by the City Engineer prior to construction.
24. Street lighting shall be required on the local access streets. Prior to site development, the developer shall submit a detailed lighting plan that depicts continuous street illumination throughout the PUD to City staff for review and approval. SMC 16.10.120(B)(4)(a).
25. A 30 foot wide ingress, egress, and utilities easement across Tract D from Road A to the adjacent northern parcel shall be dedicated.

Other –

26. Fire hydrant locations shall be designated and shown on the plat engineering plans.
27. The 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.
28. All utilities shall be placed underground.
29. Prior to construction, the Developer shall prepare a Construction Storm Water Pollution Prevention Plan for approval by the City Engineer. The developer shall provide a copy of the Department of Ecology, Construction Storm water General Permit, issued for this project.
30. During construction, the Developer shall ensure that trucks are cleaned before leaving the site. The developer shall provide street cleaning of Dogwood and Cedar Court, SR 2, and Sultan Basin Road 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, 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 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 house and 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.

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33. Traffic, Parks and Recreation, and School Impact Fees and their administrative processing costs shall be paid in accordance with Chapters 16.112 and 16.116 SMC.
34. The Developer shall deactivate the Emergency Airstrip prior to any construction activity on or around the existing runway.
35. Development of the emergency/maintenance road from the PUD to SR 2 through Parcel A shall include the dedications and all construction activities required by the City on Sheet 3, Conceptual Roadway and Utilities dated March 1, 2007 (Exhibit 18.2). Lockable, removable bollards shall be constructed at the northern and southern ends of the emergency/maintenance road and keys shall be provided to the Police and Fire Departments. In addition, the frontage along SR 2 shall be widened to provide for a bus stop in conjunction with the pedestrian trail. The face of the final plat shall contain a notation that no development is allowed within Tracts H, I, J, K, and M until such time as the north-south road has been constructed to full commercial/industrial street standards from SR 2 north sufficient to provide access to Tract H.

OR

35. Development of the emergency/maintenance road from the PUD to SR 2 through Parcel A shall include the dedications and all construction activities required by the City on Sheet 3, Conceptual Roadway and Utilities dated March 1, 2007 (Exhibit 18.2). The north-south road and that portion of the North Connector which crosses the subject property shall be constructed to full commercial/industrial street standards from SR 2 north sufficient to provide access to Tract H. The remainder of the north-south road on the steep slope shall be considered as an emergency/maintenance road. Lockable, removable bollards shall be constructed at the northern and southern ends of the emergency/maintenance road and keys shall be provided to the Police and Fire Departments. In addition, the frontage along SR 2 shall be widened to provide for a bus stop in conjunction with the pedestrian trail.

**CITY OF SULTAN
RESOLUTION NO. 07-19**

**A RESOLUTION OF THE CITY OF SULTAN APPROVING
THE HAMMER PLAT AND PLANNED UNIT DEVELOPMENT
APPLICATION TO THE HEARING EXAMINER.**

WHEREAS, the Barry A. Hammer Bankruptcy Estate, Peter H. Arkison, Trustee filed an application for approval of the Hammer Preliminary Plat and Planned Unit Development;

WHEREAS, an open record hearing occurred before the City's Hearing Examiner on May 10, 2006;

WHEREAS, the Hearing Examiner made a recommendation on the application dated June 15, 2006;

WHEREAS, Steve Anderson, President of Group Four, Inc on behalf of the applicant the Barry A. Hammer Bankruptcy Estate, Peter H. Arkison, Trustee filed a request with the City Council on November 10, 2006 to remand the Hammer Preliminary Plat and Planned Unit Development back to the Hearing Examiner in order to respond to the issues identified in the recommendation.

WHEREAS, City Staff supported remanding the application back to the Hearing Examiner in order to address the issues in the examiner's recommendation.

WHEREAS, on November 21, 2006 the City Council conducted a Closed Record Hearing to review this matter.

WHEREAS, the City Council accepted the Applicants letter of November 10, 2006 formally requesting remanding the application back to the Hearing Examiner.

WHEREAS, the City Council on November 11, 2006 as requested by the Applicant and upon recommendation of staff to the Council remanded the application back to the Hearing Examiner so that the applicant could modify the application; .

WHEREAS, the applicant submitted a revised application addressing the issues identified by the Hearing Examiner in his June 5, 2006 report;

WHEREAS, The Hearing Examiner held an open record hearing on July 24, 2007:

WHEREAS, the Hearing Examiner on August 2, 2007 issued a revised recommendation to Approve the Preliminary Planned Unit Development Subdivision with conditions, and

WHEREAS, a request for reconsideration of the Hearing Examiner's recommendation was not filed by the applicant, parties of record or the City.

NOW, THEREFORE BE IT FOUND AND RESOLVED BY THE CITY COUNCIL OF THE CITY OF SULTAN, WASHINGTON AS FOLLOWS:

Section 1. The City council accepts the recommendations of the Hearing Examiner dated August 2, 2007 and adopts the Findings of Fact, Conclusions of Law, and recommended decision of the Hearing Examiner as the Findings of Fact, Conclusions of Law and decision of the City Council.

Section 2. The Preliminary Planned Unit Development subdivision (Hammer PUD) FPPUD05-002 as shown on Exhibit A is approved and found to be in conformance with the adopted comprehensive plan and applicable zoning and development regulations of the City.

Section 3 The applicant , Barry A. Hammer Bankruptcy Estate, Peter H. Arkison, Trustee shall satisfy all Conditions of Approval imposed on the Preliminary Planned Unit Development subdivision (Hammer PUD) as set out in the Recommendation dated August 2, 2007, a copy of which conditions are attached hereto as Exhibit A.

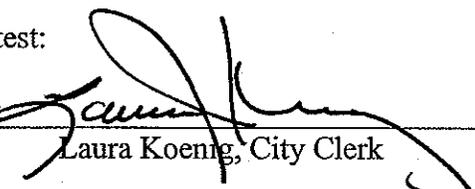
PASSED BY THE Sultan City Council and **APPROVED** by the Mayor this 23rd day of August 2007.

CITY OF SULTAN

By 

Ben Tolson, Mayor

Attest:

By 

Laura Koenig, City Clerk

EXHIBIT A

**Preliminary Planned Unit Development Subdivision Maps
Hammer PUD File Number FPPUD05-002**

EXHIBIT B
CONDITIONS OF APPROVAL FPPUD05-002
HAMMER PUD

This Preliminary Subdivision and Planned Unit Development are subject to compliance with all applicable provisions, requirements, and standards of the Sultan Municipal Code, standards adopted pursuant thereto, and the following special conditions

Preliminary Plat and General PUD Design—

1. The general configuration, lot shapes and sizes, setbacks, site density, and areas of open space shall be as indicated on the resubmitted site plan (Exhibit 18) dated March 1, 2007, subject to these Conditions of Approval. Preliminary subdivision approval is granted to the entirety of the property as depicted on Exhibit 18. Preliminary Planned Unit Development – Single Family approval is granted only to Parcel B/C, comprised of Proposed Lots 1 – 72 and Proposed Tracts A – F as depicted on Exhibit 18. Exhibit 1.1.19 represents approved typical house plans for the Planned Unit Development. Revisions to approved preliminary Planned Unit Developments are regulated by SMC 16.10.160(D) and (E); revisions to approved preliminary subdivisions are regulated by SMC 16.28.360. The Final PUD map shall be recorded as an amendment to the underlying zoning following Final PUD approval. All subsequent conditions apply to the entire subdivision unless expressly stated to the contrary.

This subdivision may be recorded in phases or divisions. Recordation of any portion of Parcel B/C shall require simultaneous dedication of the north-south street and the North Connector rights-of-way through Parcel A to SR 2.

2. In accordance with SMC 16.28.340, the 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 PUD, including improvements to all common areas. The Developer Agreement shall also include commitments for payment of impact fees; dedication of native growth protection tracts; and monitoring guarantees for wetland, stream, and steep slope enhancements. 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. Prior to issuance of a certificate of occupancy and/or occupancy of any residence within the subdivision, a combination of developer agreements and public funds, including additional tax adoptions (such as an increased real estate excise tax and a B & O tax), other funding sources (such as potential developer loans to advance the receipt of payment of needed funds), and monies contributed by the proposed development for its impacts on the LOS, shall put in place the required public services for police concurrent with the development impacts, and provide

appropriate strategies for the six years from the time of development to achieve the necessary police LOS as now established or as subsequently revised; or, in the alternative, the police services LOS in existence at the time of final building permit inspections shall be met before approval for occupancy is granted.

4. The Developer shall establish a Home Owners' Association to assume responsibility for maintenance of common areas. The Home Owners' Association shall be recorded with the plat. The wording and Conditions of the Home Owners' Association shall be subject to City approval prior to Final Plat.
5. The Developer/Owner shall maintain the landscaping, open space improvements, drainage facilities, private streets, and other common areas within the site for a two-year period following installation. Such maintenance shall be secured with a performance bond filed with the City. Subsequent to the two-year period, maintenance responsibility shall be passed to the homeowners association.

Setbacks –

6. The Developer shall meet privacy requirements of SMC 16.10.120(B)(1)(a) through placement or screening of windows or service yard requirements of SMC 16.10.120(B)(1)(c) to reduce side yard setbacks from 10 feet to 5 feet.

Off-Street Parking

7. In accordance with SMC 16.60.140, the minimum number of required off-street parking spaces for single-family dwelling units is two.

Recreation and Open Space –

8. The Developer shall dedicate Tracts G, L, N, and O to the City for open space and park purposes.

Wetlands, Streams and Steep Slopes –

9. Wetland impacts shall be mitigated in accordance with the revised Critical Areas Study and Innovative Development Design Plan dated February 26, 2007 (Exhibit 16). The Developer shall maintain and monitor wetland, steep slope, and stream mitigation twice yearly for a three-year period following installation and report to the City annually. Such mitigation shall be secured with a performance bond in the amount of \$15,021 filed with the City.
10. Final as-built site plans showing the location of all-new planting in the enhanced buffers shall be submitted to the City.
11. Specific best management practices for design and construction set forth in the Geotechnical Report (Exhibits 1.1.13, 1.2.4, and 15) shall be followed including: dry season excavation operations, direct stormwater runoff to approved drainage outlets, silt fences including at the top of the banks to mark the edge of construction and protect the slopes from sediment runoff, on-site monitoring,

- required slope setbacks, and inspections during construction. All disturbed slope areas shall be revegetated as soon as feasible to minimize erosion potential.
12. The setback recommendations within the Geotechnical Report Dated 2-6-07 shall be followed for the 10-foot minimum setback from top of slope provided the foundations are extended in depth to satisfy the "Effective Setback recommendations".
 13. Any work performed during wet weather shall protect exposed soils with approved coverings.
 14. Prior to occupancy, the Developer shall install fencing on the edge of residential lots (5-24 and 29-34) adjacent to wetlands, streams, their buffers, or buffer average areas.
 15. Prior to occupancy of the residence on each affected lot, one sign, at the minimum, per lot shall be placed adjacent to critical area buffers denoting habitat conditions.
 16. Prior to final plat approval, a new culvert shall be installed or bonded for installation at Wagley's Creek in accordance with approval of a Hydraulic Project Approval by the state Department of Fish and Wildlife.
 17. All recommendations within Exhibit 17 which have not been expressly incorporated herein are hereby incorporated by reference as if set forth in full.

Water --

18. The Developer/Owner is responsible for any necessary improvements to the City's water system in order to provide adequate water to the site. Construction and materials shall conform to the City of Sultan 2004 Water and Sewer Engineering Standards.

Sewer --

19. The Developer/Owner is responsible for any necessary improvements to the City's sewer system in order to provide sewer service to the site. Construction and materials shall conform to the City of Sultan 2004 Water and Sewer Engineering Standards.

Surface Water Management --

20. The Developer shall inspect weekly, maintain, and repair all temporary and permanent erosion and sediment control BMPs to assure continued performance throughout the construction phase. During wet weather construction, access roads and on-site utilities shall be phased to minimize open soil exposure.
21. Temporary stormwater management facilities shall be constructed before any significant amount of site grading commences.

Transportation –

22. Street trees shall be planted every 20 lineal feet along the entire local access road.
23. Final street design, including paving, sidewalks, frontage improvements, parking, and emergency access must be approved by the City Engineer prior to construction.
24. Street lighting shall be required on the local access streets. Prior to site development, the developer shall submit a detailed lighting plan that depicts continuous street illumination throughout the PUD to City staff for review and approval. SMC 16.10.120(B)(4)(a).
25. A 30 foot wide ingress, egress, and utilities easement across Tract D from Road A to the adjacent northern parcel shall be dedicated.

Other –

26. Fire hydrant locations shall be designated and shown on the plat engineering plans.
27. The 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.
28. All utilities shall be placed underground.
29. Prior to construction, the Developer shall prepare a Construction Storm Water Pollution Prevention Plan for approval by the City Engineer. The developer shall provide a copy of the Department of Ecology, Construction Storm water General Permit, issued for this project.
30. During construction, the Developer shall ensure that trucks are cleaned before leaving the site. The developer shall provide street cleaning of Dogwood and Cedar Court, SR 2, and Sultan Basin Road 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, 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 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 house and 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. Traffic, Parks and Recreation, and School Impact Fees and their administrative processing costs shall be paid in accordance with Chapters 16.112 and 16.116 SMC.
34. The Developer shall deactivate the Emergency Airstrip prior to any construction activity on or around the existing runway.
35. Development of the emergency/maintenance road from the PUD to SR 2 through Parcel A shall include the dedications and all construction activities required by the City on Sheet 3, Conceptual Roadway and Utilities dated March 1, 2007 (Exhibit 18.2). Lockable, removable bollards shall be constructed at the northern and southern ends of the emergency/maintenance road and keys shall be provided to the Police and Fire Departments. In addition, the frontage along SR 2 shall be widened to provide for a bus stop in conjunction with the pedestrian trail. The face of the final plat shall contain a notation that no development is allowed within Tracts H, I, J, K, and M until such time as the north-south road has been constructed to full commercial/industrial street standards from SR 2 north sufficient to provide access to Tract H.

**BEFORE THE HEARING EXAMINER
for the
CITY of SULTAN**

RECEIVED
JUN 27 2006
CITY OF SULTAN

ORDER DENYING RECONSIDERATION

FILE NUMBER: FPPUD05-002

APPLICANT: Barry A. Hammer Bankruptcy Estate, Peter H. Arkison, Trustee

TYPE OF CASE: Preliminary Planned Unit Development subdivision (*Hammer PUD*)

WHEREAS, the City of Sultan Hearing Examiner (Examiner) issued a Recommendation to Deny without Prejudice the Planned Unit Development (PUD) portion and to Return the preliminary subdivision portion of the above-entitled matter on June 15, 2006. The very nature of the Examiner's Recommendation contemplates that the applicant would make revisions to the proposal and, after necessary Staff review, return for a further open record hearing. The Examiner's Recommendation stands as just that, a recommendation to the City Council. Neither the applicant nor the Examiner know whether the City Council would concur with the Examiner's Recommendation in whole or in part; and

WHEREAS, the applicant, Barry A. Hammer Bankruptcy Estate, Peter H. Arkison, Trustee (Hammer), filed a timely Request for Reconsideration (the Request) on June 26, 2006. The Request does not overtly allege any error in the Recommendation, does not propose any revisions to the plans submitted for approval, and does not offer to submit any new evidence. The Request essentially asks the Examiner to revise the Recommendation to approval subject to a revised set of conditions proposed by Hammer in the Request; and

WHEREAS, the adopted Hearing Examiner Rules of Procedure (RoP) give the Examiner four options to dispose of the Request: (1) Deny the Request; (2) Approve the Request; (3) Issue a call for written argument on the Request; (4) Hold a further hearing on the Request; [RoP 504(d)(1) – (4)] and

WHEREAS, Hammer's suggested revisions to the Staff-recommended conditions of approval (Request, pp. 2 – 6) do not fully address the project shortcomings identified in the Conclusions within the Examiner's Recommendation:

1. Conclusions 4 and 5 discuss lack of compliance with SMC 16.68.060. Hammer's (new) Condition 34 defers any analysis of compliance with this code requirement until after preliminary project approval. Such deferral of compliance analysis is not consistent with adopted code. Steep slope compliance evaluation must be concluded before preliminary approval is granted. Hammer's proposal is unacceptable.

Attachment D

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2. Conclusion 6 discusses failure to comply with the requirements for approval of an Innovative Development Design contained in SMC 16.80.100. Specifically, the Conclusion notes that code requires state agency approval before City approval of any Innovative Development Design. Hammer proposes in his Condition 11 that state agency approval simply not be required. That proposal is directly in conflict with a clear and unambiguous code provision. The City simply cannot wish away its code in order to accept a condition directly in conflict with its code. Hammer's proposal is unacceptable.
3. Conclusion 7 raised three issues regarding the internal road system. Hammer's revised conditions do not address in any way the stated concern regarding access needs of the parcel north of Tract D. Hammer's proposal is unacceptable.

Hammer's revised Conditions 19 and 22 resolve the "pedestrian trail" and North Connector construction and use issues. The Examiner would recommend acceptance of the proffered concepts.

4. Conclusion 8 discussed the need to expressly limit application of the PUD overlay to only Parcel B/C, the northern, single-family residential portion of the proposal. Hammer's proposal does not address this issue at all, but it is a problem which could easily be corrected with appropriate language in Condition 1 once the other more substantive shortcomings have been corrected.
5. Conclusions 12 – 23 addressed police services Level of Service (LOS). Hammer's additions to Condition 23 (formerly 21) are inconsistent with the Examiner's Conclusions as to what may be done to comply with code requirements. As noted in the Examiner's Recommendation (Footnote 23, p. 23), Council Resolution Nos. 06-06 and 06-07 are not accepted as legal precedent: The Council in those Resolutions simply declared that projects were concurrent when the evidence showed otherwise; the Council did not impose any conditions to assure concurrency. The Examiner respectfully declines to follow the logic within those Resolutions. Hammer's proposal is unacceptable.
6. Conclusion 25 identified problems with 10 Staff-recommended conditions in nine lettered sub-sections. Although Hammer states unequivocally in the Request (p. 1, last paragraph) that he concurs with all of the Examiner's recommended revisions listed in Conclusion 25, his proposed list of conditions does not incorporate changes to correct all of those deficiencies. Therefore, Hammer's intent is somewhat unclear as the basic concept of the request is to receive Examiner approval of the revised set of conditions:
 - A. Recommended Condition 1. Hammer proposes no change to this condition to remedy its deficiencies. Hammer's proposal is unacceptable.

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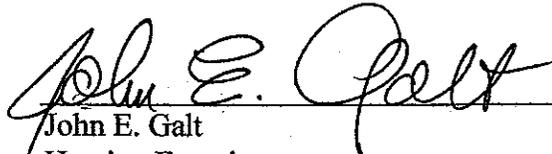
- B. Recommended Condition 4. Hammer proposes no change to this condition to remedy its deficiencies. Hammer's proposal is unacceptable.
- C. Recommended Condition 5. Hammer proposes no change to this condition to remedy its deficiencies. Hammer's proposal is unacceptable.
- D. Recommended Condition 7. Hammer proposes no change to this condition to remedy its deficiencies. Hammer's proposal is unacceptable.
- E. Recommended Condition 8. Hammer has attempted to correct the defects in this condition by adding a new sentence. The Examiner still believes that the entire condition is unnecessary as the approved plans will (or should) clearly depict the number, size, and nature of the recreation facilities to be built. The condition is superfluous as the approved plans control. Hammer's proposal is unacceptable.
- F. Recommended Conditions 10 and 21 (23 in Hammer's proposal). Hammer has deleted Condition 10 as suggested by the Examiner. However, as noted previously in this Order, Hammer's Condition 23 (former 21) is unacceptable.
- G. Recommended Condition 16. Hammer proposes no change to this condition to remedy its deficiencies. Hammer's proposal is unacceptable.
- H. Recommended Condition 18. The additional sentence added to this Condition by Hammer does not solve the identified problem. Hammer's proposal is unacceptable.
- I. Recommended Condition 29 (31 in Hammer's proposal). Hammer proposes no change to this condition to remedy its deficiencies. Hammer's proposal is unacceptable.

Therefore, the Examiner finds and concludes that it would be inappropriate to approve the revised conditions under RoP 504(d)(2). Since Hammer does not present any argument against the substance of the Examiner's Conclusions nor offer to present any new evidence, the options under RoP 504(d)(3) and (4) are inappropriate.

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NOW, THEREFORE, the Examiner **DENIES** the request for reconsideration and reaffirms the Recommendation as issued on June 15, 2006.

ORDER issued June 27, 2006.



John E. Galt
Hearing Examiner

NOTICE OF COUNCIL CONSIDERATION

The Examiner's Order Denying Reconsideration makes the Examiner's original Recommendation 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."