

**SULTAN CITY COUNCIL  
AGENDA ITEM COVER SHEET**

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**ITEM NO:** A-6

**DATE:** June 25, 2009

**SUBJECT:** Resolution No. 09-10  
Greens Estates Planned Unit Development (PUD) Subdivision;  
Developer agreement to extend Preliminary PUD Approval

**CONTACT PERSON:** Robert Martin, Community Development Director *RM*

**ISSUE:** Adopt resolution 09-10 authorizing the Mayor to sign a developer agreement with "Sultan 144 LLC", developer of Greens Estates PUD Subdivision, providing for:

- extension of the City's Preliminary Approval of Greens Estates PUD from one year,
- adding an additional four years to coincide with expiration of the Greens Estates Subdivision approval which expires on February 27, 2013.

**STAFF RECOMMENDATION:**

Staff recommends that Council approve Resolution 09-10, authorizing the Mayor to sign the developer agreement (**Attachment A**) adding four years to the one-year Preliminary Approval of the Greens Estates PUD.

**SUMMARY:**

City staff recommends that the Council legislatively extend the expiration of the Greens Estate Preliminary PUD Approval from February 27, 2009 to February 27, 2013. The extension is tied to a Developer Agreement which addresses a variety of items that staff requested to clarify details of the PUD design and administrative procedures.

A decision by the Council to approve this extension adds four years to the expiration date provided by SMC 16.10.150-A (see Background Item 2 below). By entering into a Developer Agreement, the Council is not setting a precedent that all other preliminary PUD approvals will be automatically extended. The Developer Agreement mechanism provides the developer an opportunity to validate compliance with the code standards as provided by SMC 16.10.150-B (see Background Item 3 below).

If a developer chooses not to address any outstanding issues with the Preliminary PUD Approval, the Council may make findings that the conditions of SMC 16.10.150-B are not met, and the Preliminary PUD Approval expires one year from approval.

Staff finds that the Greens Estate Subdivision and PUD was a quality development application, and that the developer has been fully cooperative and addressed all outstanding issues that were found to exist in the preliminary PUD as it was approved by Resolution 08-03 on February 28, 2008. Current economic conditions result in a housing market that is too uncertain for the developer to proceed with completion of the project at this time. Subject to questions raised in the Alternatives section below, city staff feels that it is appropriate to extend approval of the Greens Estates Preliminary PUD approval to February 27, 2013.

## **BACKGROUND:**

1. Sultan City Council approved Greens Estates Preliminary PUD (Planned Unit Development) by Resolution No. 08-03 on February 28, 2008 (**Attachment B**).
2. SMC 16.10.150-A provides that an application for Final PUD approval shall be filed within 12 months from the date of Preliminary Approval.
3. SMC 16.10.150-B provides that the City Council may authorize one additional one-year extension for filing a final PUD if it finds that such extension is consistent with the approval criteria required ... and that no change in circumstances justifies changing the City's previous preliminary PUD approval.
4. On February 5, 2009, L.D.C. Engineering, on behalf of Sultan 144, LLC, filed application for Final PUD, submitted a check in the amount of \$1,380, and a group of documents including a proposed Developer Agreement, revised Final PUD Plans, and a 16-page Final PUD Submittal document addressing conditions from the Hearing Examiner and City Council processes.
5. On February 25, 2009, L.D.C. Engineering, submitted additional amendments to the Developer Agreement as requested by the City. This submittal was determined to be complete and filed in a timely manner, thereby meeting the requirements of SMC 16.10.150, and validating submittal of the PUD documents.
6. On March 23, 2009, L.D.C. Engineering provided final copies of the proposed Developer Agreement, including the request to extend Preliminary PUD Approval as provided by SMC 16.10.150A.
7. SMC 16.10.150A provides for expiration of a Preliminary PUD Approval one year from the date of preliminary approval. The expiration date for the Greens Estate Preliminary PUD Approval is February 27, 2009 unless extended by the Council.
8. The proposed Developer Agreement Requests that the Council legislatively extend the expiration date for a period of four years from February 27, 2009 to February 27, 2013. This adds three years to the extension contemplated by SMC 16.10.150-B.
9. The proposed developer agreement would coordinate expiration of the PUD Preliminary Approval on the same date as the expiration of the Subdivision Preliminary Approval which is the underlying approval for this project.

Resolution 08-03, is included herewith as "**Attachment B**". The Hearing Examiner Decision and other documents are available in the file. Council is encouraged to contact staff to review these documents if so desired.

## **DISCUSSION:**

### **Introduction to the Issue:**

The current economic downturn has placed many developers in difficult circumstances. Sultan has several developments that invested in land and in the development approval process just prior to a precipitous drop in the housing market. The community has also invested

considerable effort in the process leading to approval of these preliminary plats. To the extent that these plats are quality development proposals, it is in the City's interest to allow developers to proceed with projects once the housing market recovers.

**Time Lines, 1-year and 5-year:**

For developments that have a Planned Unit Development component overlaid onto their subdivision, there are two time lines that apply.

- The subdivision code, in conformance with state statute, provides a 5-year time line between preliminary approval and the submittal of the Final Plat for review by the city
- The Planned Unit Development provisions of the SMC provide for a 1-year time line between preliminary approval and submittal of the Final PUD.
- The PUD time line is much shorter because a PUD is submitted and designed to not conform to the general standards of the subdivision development standards. It is permitted to vary from those standards in specific ways that are applicable at the time and location involved in the application.
- When PUD permissions are granted, they should be carried out quickly. The conditions under which the variations in design were approved can change and communities typically do not want those permissions to live on into changed conditions without the opportunity to review how the permissions fit current realities.

**Support Development in Current Economic Situation:**

Despite the general desire to have a short time line on PUD approvals, the current economic situation makes clear that the several developments that received preliminary PUD approval in 2007-2008 are not going to be submitted for final approval in 2009 as required by the 1-year time line.

The Council has been supportive of quality development and not supportive of unnecessary process. In cases where there is preliminary approval of a PUD development that meets all applicable code standards, it would be unnecessary process to require submittal of a new PUD application for public hearing at the Hearing Examiner for a development that still has a valid Preliminary Subdivision Approval.

In response to the current economic situation, staff has worked to provide a mechanism that would not normally be recommended, but which provides developers and the City a way through to a more positive future. This is called a Developer Agreement.

**Developer Agreement:**

The question is how to accommodate the need to review past PUD approvals to make sure that they are quality developments and that they respond to current realities, while at the same time not requiring the developer to go back to the beginning of the application process.

The answer is provided by a concept called a Developer Agreement. This is a contract between the City and the Developer that is voluntarily agreed to by both parties. The Agreement cannot be less restrictive than the standards of the Preliminary Approval, and must, in fact, reference all standards and requirements of that approval. From there, it can be constructed to accommodate any additional standards and requirements that the City feels necessary to accommodate current conditions and to result in a quality development.

It is not in the City's interest to require greatly different or more costly standards for the development, or the developer has no reason to participate in the Agreement. It is not in the

Developer's interest to refuse to agree with any requested changes, because the City can simply allow the Preliminary Approval to expire, sending the developer back to the application stage.

**Case-by-Case Agreement:**

Some of the PUD approvals granted in 2007 and early 2008 were good quality developments that used the latitudes offered by the PUD process to improve the quality of the development. The danger with PUD options is that they can also be used to reduce the development costs of a project while reducing the quality of the project for its residents and the community.

The Developer Agreement concept can be adapted to either situation. In cases where Preliminary Approval was given to a high quality development, the Developer Agreement can be used to clarify any issues not fully addressed in the project, and the extension is approved. In cases where the development was not what it should have been, the Developer Agreement can be used to insure that the development meets code standards.

Again, if the Developer chooses not to agree with the City's position, it does not mean that the development cannot proceed. It means that the Preliminary Subdivision approval is still in place, and that the PUD application expires after one year, just as was the case when the application was submitted. The PUD, where variations from the normal subdivision standards are granted, then needs to go back through the application and approval process.

**GREENS ESTATE DEVELOPER AGREEMENT:**

Staff finds that the Greens Estate PUD was a quality development that meets the spirit and intent of the PUD process. The proposal, as preliminarily approved, used the options provided by the PUD system to deliver a better development than would have been available on the site under normal subdivision standards. The proposed Developer Agreement is included herewith as "**Attachment A**".

The modifications that staff and the developer have agreed to in the Developer Agreement were all in the category of clarification of the intent of requirements and development procedures. For example, the development calls for several different street widths and structural setbacks that are variable based on the design of the street in that part of the development. Staff asked for and the developer provided a set of diagrams that show exactly how the various street widths and setbacks are to be handled on each lot. This eliminates much unnecessary discussion about how homes are to be positioned on each lot.

There were dozens of similar clarifications that the developer did an excellent job of responding to as we worked to formulate the Developer Agreement. There were no substantive changes to the map of the PUD.

**OTHER PUD'S WITH EXTENSIONS:**

There are three other Preliminary PUD approvals that have not completed submittal for final approval, these are:

- Caleb Court: This development is on a one-year extension as provided by SMC 16.10.150-B, expiring on April 10, 2010. (Preliminary PUD approved by Council by Resolution 08-12 on April 10, 2008. One-year extension approved by Council at the March 12, 2009 regular meeting.)
  
- Hammer PUD: This development is on a one-year extension as provided by SMC 16.10.150-B, expiring on August 23, 2009. (Preliminary PUD approval by Council

through Resolution 07-19 on August 23, 2007. One-year extension approved by Council at the July 24, 2008 regular meeting.)

- Vodnick Lane PUD: This development is on a one-year extension as provided by SMC 16.10.150-B, expiring on July 13, 2009. Applicant has applied for additional extension which is being reviewed and prepared for Council action. (Preliminary approval granted by Resolution 07-01A on February 22, 2007 (Effective date of Resolution 07-01A was July 13, 2007 due to appeal proceedings. One-year extension approved by Council at June 26, 2008 regular meeting.)

**ALTERNATIVES:**

While staff recommends that the Developer Agreement be approved for signature by the Mayor, there are items that the Council may want to consider.

1. The Council could determine to extend the Preliminary PUD approval for a period less than the requested four years. That means that the proposal would have to come back for another review of the developer agreement before the Preliminary Subdivision Approval expired unless the developer submitted the Final Subdivision for approval prior to the expiration date of the PUD.
2. This development, and others which have preliminary approval, have received Water and Sewer Availability letters from the City. The Council has received staff input regarding the value of these rights, and the potential of charging for ongoing access to those rights. The current draft of the Developer Agreement is silent on this issue. Council may choose to request inclusion of a provision that makes clear that the City may adopt a policy to charge for ongoing access to sewer and water services.

**RECOMMENDATION:**

Subject to changes as may be deemed appropriate by the Council, staff recommends that the Council move to authorize the Mayor to sign the proposed Developer Agreement.

**ATTACHMENTS:**

ATTACHMENT A: Proposed Developer Agreement with Sultan 144 LLC

ATTACHMETN B: Resolution 08-03, Approving Preliminary PUD of Greens Estates (2/28/08)

# CITY OF SULTAN

## WASHINGTON

RESOLUTION NO. 09-10

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**A RESOLUTION OF THE CITY OF SULTAN, WASHINGTON, AUTHORIZING THE MAYOR TO SIGN A DEVELOPER AGREEMENT WITH SULTAN 144 LLC TO EXTEND PRELIMINARY APPROVAL OF GREENS ESTATE PLANNED UNIT DEVELOPMENT FOR A PERIOD OF FOUR YEARS, TO EXPIRE ON FEBRUARY 27, 2013, AND PROVIDING FOR VARIOUS MODIFICATIONS OF THE PREVIOUSLY APPROVED PRELIMINARY PUD APPROVAL GRANTED BY RESOLUTION 08-03 ON FEBRUARY 28, 2008.**

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WHEREAS, The City has, through Resolution 08-03, granted Preliminary Approval of the Greens Estate Planned Unit Development (PUD); and

WHEREAS, the Preliminary PUD approval expires on February 27, 2008 unless extended by the Council; and

WHEREAS, Extensions of PUD approvals are handled on a case-by case basis as provided in SMC 16.10.150-B ; and

WHEREAS, the applicant filed a timely request for extension on February 25, 2008, which was within the one-year required in SMC 16.10.150-B; and

WHEREAS, the applicant has requested a four-year extension instead of a one-year extension ; and

WHEREAS, the applicant has provided a Developer Agreement that addresses issues that city staff raised regarding the PUD as approved by Resolution 08-03 ; and

WHEREAS, it is the intent of the City Council to assist in quality economic development efforts that will benefit the community and where authorized to make such efforts ; and

WHEREAS, Council is advised by city staff that Sultan 144 LLC has met code standards and the intent of the previously granted approval and current code standards in the current application for extension of approval of Greens Estate PUD; and

WHEREAS, it is in the best interest of the community and the City to make reasonable efforts to reduce process and duplication of effort where legally possible; and

WHEREAS, it is within the legislative authority of the Council to extend the provisions of SMC 16.10.150-B,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SULTAN, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. The Mayor is authorized to sign the proposed Developer Agreement with Sultan 144 LLC, amending various aspects of the PUD as Preliminarily Approved by Resolution 08-03, and extending the requirement for submittal of the Final PUD Application for a period of four years, which Preliminary Approval shall expire on February 27, 2013.

Section 2. It is specifically recognized that the additional three years being added to the normal one-year extension, as provided by SMC 16.10.150-B are in recognition of the current economic difficulties in the housing market, and in recognition of the quality of the initially approved development proposal and the modifications that the developer has made and agreed to in the proposed Developer Agreement .

Section 3. It is specifically stipulated that any and all requests for extension of Preliminary PUD Approvals are to be handled by the city staff on a case-by-case basis to insure compliance with code standards, community benefit, and that specific decisions on one proposed development extension do not constitute a precedent for other such applications except as regards compliance with code standards.

PASSED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 2008.

CITY OF SULTAN

\_\_\_\_\_  
Carolyn Eslick, Mayor

ATTEST/AUTHENTICATED:

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

Approved as to form:

\_\_\_\_\_  
Margaret J. King, City Attorney

Passed by the City Council:

Resolution No.:

Date Posted:

AFTER RECORDING RETURN TO:

Jeffrey E. Hamilton  
Sultan 144, LLC  
15 Lake Bellevue Drive, Suite 102  
Bellevue, WA 98005-2485

**CITY OF SULTAN  
DEVELOPER/SUBDIVISION AGREEMENT  
GREENS ESTATES**

GRANTOR: **SULTAN 144, LLC**  
GRANTEE: **CITY OF SULTAN, a municipal corporation**  
Parcel Numbers: **28083300200700**

**THIS AGREEMENT**, by and between the City of Sultan, a Municipal Corporation, hereinafter referred to as “City,” and Sultan 144, LLC, c/o Jeff Hamilton, hereinafter referred to as the “Developer”;

**RECITALS**

WHEREAS, this Agreement is intended to implement the conditions of approval for this planned unit development and subdivision application, including the revised and additional conditions established by City Resolution NO. 08-03, a copy of which is amended hereto as Exhibit A and incorporated by reference.

WHEREAS, the legal description for the Green’s Estate is attached as Exhibit B.

**AGREEMENT**

In consideration for the development approvals granted by Resolution No. 08-03, the Parties agree as follows:

I. Compliance with Existing Laws.

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

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ATTACHMENT A

II. Conformance with Conditions of Approval.

The Developer agrees to conform with the following Conditions of Approval, which include the revised and new conditions established by the City Council in Resolution No. 08-03:

1. The general configuration, lot shapes and sizes, setbacks, site density, and areas of open space shall be as indicated on the site plan resubmitted June 27, 2007 (Exhibit 4Y), subject to and as revised by these Conditions of Approval.
2. The application shall generally comply with the House Plans submitted December 6, 2006. (Exhibit 4S) Prior to building permit submittal, house plans that deviate from the submitted House Plans shall be subject to the approval from the Community Development Director.
3. Prior to issuance of a certificate of occupancy and/or occupancy of any residence within the subdivision, a combination of developer agreements and public funds, including additional tax adoptions (such as an increased real estate excise tax and a B & O tax), other funding sources (such as potential Developer loans to advance the receipt of payment of needed funds), and monies contributed by the proposed development for its impacts on the LOS, shall put in place the required public services for police concurrent with the development impacts, and provide appropriate strategies for the six years from the time of development to achieve the necessary police LOS as now established or as subsequently revised; or, in the alternative, the police services LOS in existence at the time of final building permit inspections shall be met before approval for occupancy is granted.<sup>1</sup>
4. Prior to approval of the Final Plat, all site improvements, including streets, sidewalks, bicycle lanes, frontage improvements, drainage improvements, open space landscaping and improvements, mitigation plantings and other common area improvements shall be installed, inspected and approved by the City of Sultan, with the exception of the final paving of streets. All improvements shall be constructed in accordance with the approved engineering plans, landscaping and recreation plans, mitigation plans, and Preliminary PUD and Plat. Alternatively, the City may approve a financial bond or assurance for items not completed prior to Final Plat, as approved by the City Engineer and/or Community Development Director.

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<sup>1</sup> See item I in Section III Clarifications to Selected Conditions of Approval

5. The following notes shall appear on the face of the Final Plat:
- a. Pursuant to SMC 16.10.120(B)(1)(a) and (d), those lots where the rear lot lines are adjacent to dedicated open space are permitted to have reduced rear yard setbacks of ten (10) feet. Other lots that apply for a reduced yard setback of up to ten (10) feet shall provide a 6-foot fence or landscaping that provides a full screen within 5 years of planting, in order to meet the privacy requirements of this section of the code. All other lots shall have rear yard setbacks of twenty (20) feet.<sup>2</sup>
  - b. Pursuant to SMC 16.10.120(B)(1)(f), porches may extend into the setback, up to fifteen (15) feet from the front property line. The houses may not extend into the setback – the minimum setback for the houses, including second stories, shall be twenty (20) feet measured from the front lot line.<sup>3</sup>
  - c. No direct vehicular access shall be taken from any lot directly to either Sultan Basin Road or 132<sup>nd</sup> Street SE. All lots abutting either or both such streets shall take all vehicular access from an internal plat street.
  - d. Garages whose vehicular door(s) face a street with reduced right-of-way and a sidewalk easement must maintain a 20 foot setback between the back edge of the constructed sidewalk and the near face of the garage.
  - e. PSE's facilities may require tree and brush cutting within and adjacent to the easement right-of-way. PSE retains the right to cut, remove, and dispose of any and all brush, trees, and other vegetation upon the easement area. PSE shall also have the right to control, on a continuing basis and by any prudent and reasonable means, the establishment and growth of bushes, trees and other vegetation upon the easement areas which, in the opinion of PSE, interfere with the exercise of PSE rights or create a hazard to PSE systems. PSE shall, prior to the exercise of such rights, identify such trees and make a reasonable effort to give prior notice that such trees will be cut, trimmed, removed or disposed of (except that PSE shall have no obligation to identify such trees or give such prior notice when trees are cut, trimmed, removed or otherwise disposed of in response to emergency conditions). Owners shall be entitled to no compensation for trees cut, trimmed, removed or disposed of, except for the actual market value of merchantable timber (if any) cut and removed from the property by PSE. All shrubs and trees to be situated in the

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<sup>2</sup> See item 2 in Section III Clarifications to Selected Conditions of Approval

<sup>3</sup> See item 3 in Section III Clarifications to Selected Conditions of Approval

easement area must be of low-growing varieties that normally do not exceed 15 feet in height at maturity.

- f. The Developer or future lot owners must pay for any and all costs associated with changes in vertical line clearance, re-stabilization of any electrical structure or anchor, or facilities access as a result of uses that do not comply with PSE conditions or restrictions outlined herein.
6. Proposed Lots 54 and 55 shall be sold as one and treated as a single lot for building purposes until such time as the existing garage on Lot 54 is removed or until such time as a building permit is obtained to build a single-family residence on Lot 54.
7. Private street and stormwater maintenance agreements shall be prepared for review by the City as part of the Final Plat applications and recorded with the Final Plat.
8. A drainage easement between the *Greens* Property and *Skoglund* Property to the east will be required to be recorded with the Final Plat.
9. The following revisions shall be made to the Final Plat Map:
  - a. The required setbacks shall be shown.
  - b. Correct square footages for all lots and tracts shall be shown.
  - c. Remove Parcel A from the plat (unless it is shown simply as adjacent property)..
  - d. Label those tracts that contain wetlands and wetland buffer as “Native Growth Protection Areas”.
  - e. The Puget Sound Energy aerial high voltage transmission easement shall be delineated with particularity.
10. Prior to any activity on-site, the NGPA buffers and the property corners of the adjacent lots shall be staked out in the field under the supervision of a professional surveyor licensed in the State of Washington. No clearing activities shall occur until the location of the survey stakes are inspected and accepted by the City of Sultan.
11. In order to enforce SMC 16.10.110(B)(2), final engineering drawings shall show a bus turnout adjacent to Road F on Sultan Basin Road for future bus service to this area. Final design shall comply with Community Transit’s design standards, subject to the City Engineer’s approval.

12. Roads A, B, C, and E will provide the standard City of Sultan road section within a reduced right-of-way (50 feet instead of 60 feet) and will place the required sidewalks within easements on private property. All sidewalk easements on private property shall allow for public access. Roads D and F, as shown on the preliminary plans, are permitted to deviate from the design standards. Roads D and F have a reduced right-of-way width (50 feet instead of 60 feet) and have eliminated one (1) parking lane. Sidewalks will be within the right-of-way for Roads D and F. "No parking" signs shall be installed where no on-street parking is allowed.
13. All public rights-of-way shall be dedicated to the City with road improvements constructed to current City standards, with approved deviations. Roads A through F shall be dedicated to the public. Dedications shall be completed prior to Final Plat approval.
14. Prior to construction, the Developer shall prepare a final Construction Stormwater Pollution Prevention Plan (SWPPP) for approval by the City Engineer and the Department of Ecology. The Developer shall provide a copy of the Department of Ecology, Construction Stormwater General Permit, issued for this project prior to issuance of City permits.
15. Site development shall follow all recommendations of the final stormwater report.
16. All phases of plat development, including drainage and earthwork construction, shall be in accordance with the geotechnical reports prepared for the project, including the Earth Solutions NW, LLC report dated November 27, 2006, and the Terra Associates, Inc. report dated July 27, 2005 (Exhibit 4M); as well as any subsequent addendums as accepted by the City Engineer. A note to this effect shall be placed on the Final Plat.
17. Prior to permit issuance, a final geotechnical report shall be submitted with recommendations on the final design of the plat improvements. The final report shall also state which lots require a separate report to be submitted with building permit application. The required note on the Final Plat under the above condition shall reference the final geotechnical report, and any subsequent addendums as accepted by the City Engineer.
18. A geotechnical addendum shall be submitted with each house design at the time of building permit submittal for those lots that are subject to the requirement. The geotechnical addendum shall address foundations, setbacks, drainage control and any other issues deemed pertinent by the geotechnical engineer or the City Engineer. A note to this effect shall be placed on the face of the Final Plat, stating which lots are subject to this requirement.

19. All phases of plat development shall be in accordance with the critical area study and mitigation plans prepared for the project by the Jay Group, Inc. revised December 4, 2006 (Exhibit 4J), and any subsequent reports as accepted by the Community Development Director.
20. The critical areas study states that invasive species removal will be undertaken within the wetland buffer by mechanical means. All removal of invasive species shall be done using only handheld equipment. The Community Development Director and City Engineer may approve mechanical equipment under the supervision of a qualified professional. No equipment may be used within any wetland.
21. A 20 foot wide easement shall be established/dedicated through the Final Plat process allowing the City to access from Road D, for mitigation and maintenance purposes, the property dedication accepted under Resolution No. 07-17 ( a.k.a. Wetland DT).
22. The conditions recommended by Graham-Bunting Associates, dated March 19, 2007, regarding the wetland and buffer mitigation shall be followed. (Exhibit 9)
23. The final mitigation plan shall be submitted with the following revisions:
  - a. A split rail fence shall be installed on all reduced buffers and adjacent to proposed lots and active open space areas. The fence shall allow for the movement of wildlife in and out of the wetlands and shall protect the critical areas and the newly installed plans from human impacts. The design and location of the fence is subject to the approval of the Community Development Director.
  - b. Increased buffer plantings shall be shown on the north side of Wetland AA to increase the functions and values of that wetland, as it is being used as a mitigation to reduce buffers on the other wetlands and for the wetland fill.
  - c. Show that species compatible with the storm drainage system will be planted within Tracts 986 and 987.
  - d. All trails shown within wetland buffers shall demonstrate compliance with the requirements of former SMC 16.80.080.
24. A Time-Zero/As-Built mitigation planting plan report shall be submitted to the City with Final Plat submittal.

25. The mitigation plantings shall be monitored annually for three (3) years. A monitoring report shall be submitted to the City each year on the anniversary of the completion approval of the mitigation plantings. Success of the mitigation plan will depend on adherence to the minimum standards below, the detailed goals in the mitigation report, and the proposed Contingency Plan:
  - a. 100% replacement/survival of plants after Year 1
  - b. Minimum 80% survival at end of Year 2
  - c. Minimum 80% survival at end of Year 3.
  - d. Adherence to the proposed Contingency Plan if 80% is not reached.<sup>4</sup>
26. As part of the proposed Covenants, Conditions and Restrictions of the Homeowners Association shall address the potential increase of litter or garbage in the critical areas. Maintenance for these areas shall be the responsibility of the Homeowners Association after the monitoring period.
27. All phases of plat development shall be in accordance with the Vegetation Inventory and Plant Preservation Management Plan prepared the Jay Group, Inc. revised August 4, 2005 (Exhibit 4K), and any subsequent reports as accepted by the Community Development Director.
28. The following revisions to the Recreation Plan shall be made prior to permit issuance:
  - a. Correct square footages that also match the square footages shown on the plat maps and on the civil plans.
  - b. Delineate between the general open space areas and those areas that will be designated recreation areas.
  - c. Recalculate the open space areas to include the bus turnaround adjacent to Road F.
  - d. Provide a landscaping plan for each of the recreation areas, per SMC 16.72.040. The landscaping for these areas shall meet the requirements of SMC 16.72.040, Recreation Design Requirements. At a minimum, there shall be a ten (10) foot landscaped perimeter and protective fencing a minimum of four (4) feet in height. All fences require a separate permit under SMC 15.08. This landscaping plan is subject to the approval of the Community Development Director and City Engineer.
  - e. Provide details for the recreation area equipment and amenities.

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<sup>4</sup> See item 4 in Section III Clarifications to Selected Conditions of Approval

- f. Specified the construction details for the trail. Pursuant to the pre-application meeting, a five (5) foot wide path made of 5/8 inch minus gravel is required.
  - g. A pedestrian path is required to be installed within the Plat, in conformance with the 2004 Comprehensive Plan. This trail shall be installed as shown on the approved plans, and shall connect through the property dedicated to the City (Parcel C) through the Boundary Line Adjustment process to the south, at no cost to the City.
- 29. The latecomers fee due under the Bethany Terrace Ordinance shall be due prior to permit issuance.
  - 30. The development is subject to traffic mitigation measures as assessed by the Washington State Department of Transportation (WSDOT) for impacts upon the State Highway System. The pro-rata share payment for the Sultan WCL West Bound Passing Lane project as determined by WSDOT shall be paid directly to WSDOT and verification of that payment shall be provided to the City prior to issuance of City permits.
  - 31. Prior to permit issuance for plat development, the easement recorded under AFN 9711070477 shall be vacated, and new plans and a new title report shall be submitted to the City showing this easement removed. If this easement cannot be vacated, new plat and civil drawings shall show no buildable area within this easement; a major revision to the plat may be necessary.
  - 32. The Developer, contractor, and any geotechnical or wetland specialist required to be on-site during construction, shall attend a pre-construction meeting with City staff to discuss expectations and limitations of the project permit before starting the project.
  - 33. The project shall comply with the Consent for Use of Puget Sound Energy, Inc. Transmission Line Easement executed by Sultan 144, LLC on December 13, 2007, and the Consent shall be recorded prior to approval of the final plat. Final civil drawings shall demonstrate compliance with the Use Agreement, the December 12, 2007 letter from PSE, and the February 13, 2008 email from PSE.
  - 34. Each lot shall provide four off-street parking spaces. Up to two spaces may be within an enclosed garage. These spaces shall be a minimum of eight and one-half feet wide and eighteen feet long.

### III. Clarifications to Selected Conditions of Approval.

- 1. Condition 3 – Police Concurrency - This condition no longer applies since the Level of Service requirement for police was removed from the Comprehensive

Plan on September 9<sup>th</sup>, 2008. Therefore no further action on this condition is required.

2. Condition 5.a. – Rear Yard Setbacks – It has been agreed by the Developer and the City to adopt the following revised language for this condition in order to clarify the intent of this requirement as follows:

“Pursuant to SMC 16.10.120(B)(1)(a) and (d), those lots where the rear lot lines are adjacent to dedicated open space are permitted to have rear yard building setbacks of ten (10) feet. All other lots shall have a rear yard building setback of twenty (20) feet unless a reduced setback is applied for. This setback can be reduced to a total rear yard building setback of ten (ten) feet if one of the following is provided: a) 6-foot fence or b) landscaping that provides a full screen within 5 years of planting.”

3. Condition 5.b - Front Yard Setbacks – It has been agreed by the Developer and the City to adopt the following revised language for this condition in order to clarify the intent of this requirement as follows:

“Pursuant to SMC 16.10.120(B)(1)(f), porches may extend into the setback, up to five (5) feet. This will provide a minimum of fifteen (15) feet from the front property line to the building setback line for the porch. Houses may not extend into the porch setback area. The minimum front yard building setback for the houses, including second stories, shall be twenty (20) feet measured from the front lot line.”

4. Condition 25 – Wetland Mitigation Planting - It has been agreed by the Developer and the City to adopt the following revised language for this condition in order to clarify the intent of this requirement as follows:

“The mitigation plantings shall be monitored annually for three (3) years. A monitoring report shall be submitted to the City each year on the anniversary of the completion approval of the mitigation plantings. Success of the mitigation plan will depend on adherence to the minimum standards below, the detailed goals in the mitigation report, and the proposed Contingency Plan:

- a. 100% replacement/survival of plants after Year 1 of the original approved plantings
- b. Minimum 80% survival at end of Year 2 of the original approved plantings
- c. Minimum 80% survival at end of Year 3 of the original approved plantings
- d. Adherence to the proposed Contingency Plan if 80% of the original approved plantings are not reached.”

IV. Plan Submittals, Review, Construction, Inspections, and Bonding.

1. The Developer agrees that the construction of any infrastructure items or additions thereto, shall not commence until the following conditions have been fulfilled:
  - A. The Developer shall furnish the City with four sets (4) of detailed plans for the proposed improvement, or additions thereto, at the Developer's own expense, prepared by a qualified engineer currently licensed in the State of Washington.
  - B. The above plans shall require the review and approval by the City of Sultan and its Engineer, and the cost of such review shall be at Developer's expense.
  - C. Once the plans are ready for issuance and prior to commencement of construction the Developer agrees that any changes to the City's construction specification or details will be incorporated into the design plans. The Parties agree that the cost of the changes will not increase the cost of the design or construction by more than 10 percent of the estimated cost of construction and design determined at the time that the permits are issued.
2. The construction of the Developer's proposed improvements or additions thereto, for the subdivision shall be inspected by the City in such a manner and at such times as the City deems reasonably necessary to assure that construction of the improvements and additions thereto will conform to the approved plans and specifications and minimum City standards. The Developer herewith agrees to allow such access and inspections and agrees to cooperate providing reasonable advance notice of his construction schedule during the various construction phases as requested by the City. The Developer further agrees to deposit the sum of \$8,000.00 with the City to be applied against the City's cost for engineering fees and expenses incurred by the City for inspections including special testing if required by the City. The Developer shall schedule and pay for testing services and copy testing reports to the City. In addition, special inspections for the installation of the retaining walls shall be included. Normal City inspections will involve an allowance of four (4) hours per day in addition to any time required beyond the 4 hours when underground utilities are being installed. For the purpose of this agreement, the anticipated daily site inspections will involve approximately four (4) hours per day for a four (4) month construction period for a total of three hundred and fifty two (352) hours based on twenty two (22) working days per month at four (4) hours per day. The City will provide detailed invoices to the Developer for that billing period. The City shall withdraw funds from the deposit amount until the balance approaches \$4,000.00. Once the

balance approaches \$4,000.00 the City will request additional funds from the Developer so the balance of the deposit does not drop below \$4,000.00.

3. The Developer's proposed improvements, or additions thereto, shall not be accepted for service and use until the same have been fully inspected, approved and accepted by the City Council.

V. Final Approval, Acceptance of Improvements and Maintenance Bonds:

Upon performing all requirements as set forth in this Agreement and providing the appropriate maintenance bond(s), the City shall accept the public improvements as provided for in this Agreement, and issue final approval of the subject subdivision.

VI. Intent and Termination of Agreement and Term of Preliminary Plat:

This Developer/Subdivision Agreement is intended to memorialize the requirements of law for the preliminary approval of the subject subdivision. To the extent of any inconsistency between this Agreement and the requirements of law, this Agreement shall control. This Agreement shall terminate and have no further effect upon:

- A. Completion of the subdivision in accordance with the terms of this Agreement, or
- B. On February 27, 2009, unless application is made for Final PUD (SMC 16.10.150 (A) or an extension is requested per SMC 16.10.150(B). , or
- C. If an extension is made and approved by Council per SMC 16.10.150(B), the Preliminary PUD approval shall expire concurrent with the expiration of the five (5) year term for the preliminary subdivision approval which will occur on February 27<sup>th</sup>, 2013.

VII. Covenants and Assigns.

1. This Agreement shall run with the land and bind and inure to the benefit of the Parties hereto and their respective successors, heirs, legatees, representatives, receivers, trustees, successors, transferees and assigns.
2. This Agreement shall be binding upon the parties and their respective heirs, successors and assigns.

VIII. Recordation of Agreement.

This agreement shall be recorded with the Snohomish County Auditor.

IX. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

X. Severability.

This Agreement does not violate any federal or state statute, rule, regulation or common law known; but any provision that is found to be invalid or in violation of any statute, rule, regulation or common law shall be considered null and void, with the remaining provisions remaining viable and in effect.

XI. Equal Opportunity to Participate in Drafting.

The Parties have participated and had an equal opportunity to participate in the drafting of this Agreement. No ambiguity shall be construed against any Party based upon a claim that that Party drafted the ambiguous language.

XII. Full Understanding.

The Parties each acknowledge, represent and agree that they have read this Agreement; that they fully understand the terms thereof; that they have had the opportunity to be fully advised by their legal counsel, accountants and other advisors with respect thereto; and that they are executing this agreement after sufficient review and understanding of its contents.

The undersigned covenant and represent that they are fully authorized to enter into and execute this Agreement.

**CITY OF SULTAN**

By \_\_\_\_\_  
Mayor Date

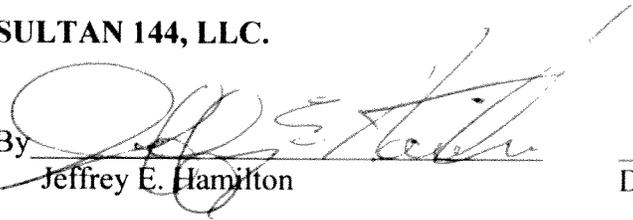
Attest:

By \_\_\_\_\_  
City Clerk Date

Approved as to form:

By \_\_\_\_\_  
City Attorney Date

SULTAN 144, LLC.

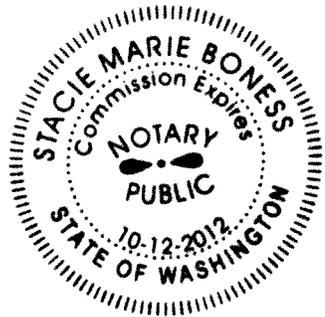
By  Date 3/20/09  
Jeffrey E. Hamilton

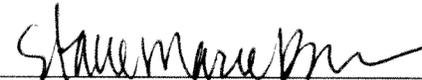
STATE OF WASHINGTON

County of King

I certify that I know or have satisfactory evidence that Jeffrey E. Hamilton signed this instrument and on oath stated that he was authorized to execute the instrument and acknowledged it as the Manager of Sultan 144, LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 3/20/2009



  
Notary of Public for the State of Washington.  
My appointment expires: 10/12/2012

CITY OF SULTAN  
Sultan, Washington

RESOLUTION NO. 08-03

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

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

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

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

**WHEREAS** the application came before the City Council for a closed record hearing and appeal by the applicant on the "Recommendation" on February 28, 2008;

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

**NOW, THEREFORE:**

- A. The City Council rejects the Recommendation of the Hearing Examiner dated September 19, 2007.
- B. The City Council hereby accepts the Hearing Examiner's Findings of Fact.
- C. The City Council hereby adopts the Hearing Examiner's Conclusions of Law 1, 3, 9, 12, 14-21, 23-32 and makes its own or revised Conclusions of Law as follows:

Revised Conclusion of Law 2: "In summary, the Conclusions which follow demonstrate that Greens Estates meets all of the PUD approval criteria, meets preliminary subdivision approval criteria, and could be conditioned to comply with the requirements of Chapter 16.108 SMC, Concurrency. None of the other challenges raised by citizen participants reveal any defects requiring denial of the application. The revised condition list, with minor changes and additions, is justified and would serve the public use and interest."

Substitute Conclusions of Law 4-7: SMC 16.10.110(B)(2)(d) requires that "transit is available in sufficient proximity to the site to facilitate transit access to the PUD-SF". Greens Estates is about one mile from the nearest transit stop, a park-and-ride lot, and is generally situated similarly to Skoglund Estates, a PUD which this Council has approved. The site fronts and has direct access on Sultan Basin Road. As recorded in the Findings of Fact, the applicant proposes to provide a bus pullout at the southwest corner of the site along Sultan Basin Road.

The Council concludes that this provision of the code does not require that transit be available for pedestrians to access transit. Vehicular proximity must also be taken into account.

SMC 16.10.120(B)(4)(c)(i) requires "transit and school bus routes and transit and school bus stops, either within the development or on the collector or arterials that provide the major access to the proposed development...". This council concludes that for Greens Estates, with the provision of a bus turnaround on Sultan Basin Road, the PUD meets the residential development standards of SMC 16.10.120(B)(4)(c)(i).

This Council also concludes that as Greens Estates meets the requirements of SMC 16.10.120(B)(4)(c)(i), then the locational requirements in SMC 16.10.110(B)(2)(d) are also met.

Substitute Conclusion of Law 8: Under SMC 16.10.120(B)(4)(b), "right-of-way width and street roadway widths may also be reduced, especially where it is found that the plan for the PUD provides for the separation of vehicular and pedestrian circulation patterns and provides for adequate off-street parking facilities."

Here, right-of-way width reduction is not coupled with reduced street sections or off-street parking areas, but rather is offset by a sidewalk easement on each side of the street. Greens Estates is proposing to construct standard width streets and sidewalks within rights-of-way, which are too narrow to contain them (except on Roads D and F).

The "left over" parts of the sidewalk are then placed within public access easements encumbering the front five feet of each frontage lot. On Roads D and F, a reduced right-of-way of fifty feet is coupled with the elimination of one parking lane. The sidewalks will be in the public right-of-way on these roads.

The Council concludes that the provision for allowing reduced right-of-way is met. This project provides a pedestrian trail system, providing separation of pedestrian and vehicular traffic patterns, the first criteria for reduced right-of-way. In addition, a project condition has been added that requires each lot in the development to provide four off-street parking spaces. With this condition, the project will meet the second criteria for reduced street right-of-way.

Revised Conclusion of Law 10: Greens Estates complies with adopted regulations.

Substitute Conclusion of Law 11: SMC 16.150.010 (3) requires that "a lot shall abut by no less than 20 feet upon and have direct access to: (A) an opened, constructed and maintained public road; or (B) a private road in plat or short plat approved by the city of Sultan; or (C) an exclusive, unshared, unobstructed permanent access easement at least 20 feet wide". In this application, the applicant has designed access panhandles for a number of lots that are 15 feet wide and that flare to 20 feet wide at the property line that abuts the street. The Council concludes that there is no requirement for the panhandle to maintain the twenty foot width for the entire length of the panhandle.

Revised Conclusion of Law 13: Greens Estates meets the public use and interest.

Revised Conclusion of Law 22: DCD erred in concluding that Greens Estates meets the concurrency standard for police services. The police staffing statements contained within DCD's Certificate are factually incorrect and were incorrect when the Certificate was issued on August 27<sup>th</sup>.

New Conclusion of Law 33: The Council concludes that with the PSE letter and Use Agreement dated December 12, 2007 and the follow up email from PSE dated February 12, 2008, Greens Estates satisfies the requirements of the Hearing Examiner's recommendation that the location of the aerial transmission easement be defined prior to Council approval. The Use Agreement recommends two conditions be placed on the plat; the Council concludes that these conditions are necessary for the public health, welfare and safety.

- D. Based on the foregoing, the Council imposes the following additional or revised conditions on the project:

Revised Condition 5(d): Garages whose vehicular door(s) face a street with reduced right-of-way and a sidewalk easement must maintain a 20-foot setback between the back edge of the constructed sidewalk and the near face of the garage.

New Condition 5(f): Transmission or distribution lines have been or will be constructed, operated, and maintained within the Puget Sound Energy (PSE) easement area, shown on the plat map. At no time shall PSE's existing

transmission line easement be used for storage of flammable or volatile material or placement of any buildings or other structures, including but not limited to the following: decks, patios, septic drainfields, and outbuildings of any nature. At no time shall PSE's access to the transmission lines or structures along the easement area be permanently blocked off or unduly restricted.

New Condition 5(g): PSE's facilities may require tree and brush cutting within and adjacent to the easement right-of-way. PSE retains the right to cut, remove, and dispose of any and all brush, trees, and other vegetation upon the easement area. PSE shall also have the right to control, on a continuing basis and by any prudent and reasonable means, the establishment and growth of bushes, trees and other vegetation upon the easement areas which, in the opinion of PSE, interfere with the exercise of PSE rights or create a hazard to PSE systems. PSE shall, prior to the exercise of such rights, identify such trees and make a reasonable effort to give prior notice that such trees will be cut, trimmed, removed or disposed of (except that PSE shall have no obligation to identify such trees or give such prior notice when trees are cut, trimmed, removed or otherwise disposed of in response to emergency conditions). Owners shall be entitled to no compensation for trees cut, trimmed, removed or disposed of, except for the actual market value of merchantable timber (if any) cut and removed from the property by PSE. All shrubs and trees to be situated in the easement area must be of low-growing varieties that normally do not exceed 15 feet in height at maturity.

New Condition 5(h): The developer or future lot owners must pay for any and all costs associated with changes in vertical line clearance, re-stabilization of any electrical structure or anchor, or facilities access as a result of uses that do not comply with PSE conditions or restrictions outlined herein.

Revised Condition 12: Roads A, B, C, and E will provide the standard City of Sultan road section within a reduced right-of-way (50-feet instead of 60-feet) and will place the required sidewalks within easements on private property. All sidewalk easements on private property shall allow for public access. Roads D and F, as shown on the preliminary plans, are permitted to deviate from the design standards. Roads D and F have a reduced right-of-way width (50-feet instead of 60-feet) and have eliminated one (1) parking lane. Sidewalks will be within the right-of-way for Roads D and F. "No parking" signs shall be installed where no on-street parking is allowed.

New Condition 33: The project shall comply with the Consent for Use of Puget Sound Energy, Inc. Transmission Line Easement executed by Sultan 144, LLC on December 13, 2007, and the Consent shall be recorded prior to approval of the final plat. Final civil drawings shall demonstrate compliance with the Use Agreement, the December 12, 2007 letter from PSE, and the February 13, 2008 email from PSE.

New Condition 34: Each lot shall provide four off-street parking spaces. Up to two spaces may be within an enclosed garage. These spaces shall be a minimum of eight and one-half feet wide and eighteen feet long.

E. The Greens Estates Planned Unit Development is hereby approved for a 63-lot Planned Unit Development and Subdivision subject to the Conditions as reviewed and revised by the Hearing Examiner and as further revised by Substitute Conclusions of Law 2, 4, 5, 6, 7, 8, 10, 11, 13, and 22; new Conclusion of Law 33; and paragraph D above.

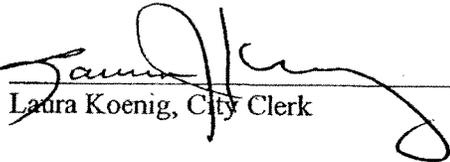
**PASSED BY THE** Sultan City Council and **APPROVED** by the Mayor this 28th day of February 2008.

CITY OF SULTAN

  
Carolyn Eslick, Mayor

Attest:

By

  
Laura Koenig, City Clerk

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