

**SULTAN CITY COUNCIL  
AGENDA ITEM COVER SHEET**

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**ITEM NO:** A-10

**DATE:** December 10, 2009

**SUBJECT:** Final Approval Greens Estates Planned Unit Development (PUD)

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

**ISSUE:**

Adopt Resolution 09-28 authorizing Mayor, Community Development Director, and City Engineer to sign the Final Planned Unit Development Site Plan Map as provided by SMC 16.10.170

**STAFF RECOMMENDATION:**

Staff recommends that Council: Move to Approve Resolution 09-28 (**Attachment A**), authorizing the Mayor to sign the required documents for Approval of the Final Planned Unit Development of Greens Estate.

**SUMMARY:**

The Developer of Greens Estate, Sultan 144 LLC, has submitted all materials and fees required by SMC 16.10.160 for submittal of an Application for Final PUD Review and Approval.

**BACKGROUND:**

Sultan City Council Approved Greens Estates Preliminary PUD (Planned Unit Development) by Resolution No. 08-03 on February 28, 2008. (**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.)

1. 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.
2. 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 \$1,380.00 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.
3. 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. A Determination of Completeness was issued on April 29, 2009.
4. A Developer Agreement was constructed clarifying certain aspects of the Hearing Examiner's Conditions of Approval. This was adopted by the Council through Resolution 09-10 on October 22, 2009.

5. The Final PUD is now ready for review and decision by the Council as provided by SMC 16.10.160 (**Attachment B**).

**DISCUSSION:**

Staff has reviewed both the Preliminary PUD Map and materials, and the Final PUD Map and materials in detail.

The Final conforms in all respects to the drawings, Development Standards and Management provisions of the Preliminary Approval by the City Council by Resolution 08-03 on February 28, 2003. During review, Staff noted various provisions of the Management Provisions and Covenants that could be modified to improve long-term compliance with the Conditions of the Preliminary Approval, and the intent of the SMC.

In extensive meetings with the Developer, a Development Agreement was constructed which implements those changes. This is a joint and cooperative agreement meeting interests of City Staff and the Developer.

**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.

**Time Lines Linked by Developer Agreement:**

A notable provision of the Developer Agreement is that the City agrees to link expiration of the Final PUD to the expiration date of the underlying Greens Estate Subdivision, the Preliminary Approval of which expires on February 28, 2013. If the Applicant does not submit the Final Subdivision Plat of Greens Estate Subdivision by that date, both the PUD and the Subdivision will expire.

**CRITERIA, FINDINGS, CONCLUSIONS FOR APPROVAL OF FINAL PUD:**

SMC 16.10.160 D. provides the criteria for approval of a Final PUD. The criteria are presented below with Findings and Conclusions prepared by Staff for Council consideration.

**Criteria 1:**

The PUD shall not violate any of the criteria for approval found in SMC 16.10.090;

**Finding 1:**

SMC 16.090 refers to the Hearing Examiner's Conditions of Approval for the Preliminary PUD Approval. Staff has reviewed in detail the Conditions of Approval from the September 19, 2007 Hearing Examiner Recommendation and City Council Resolution 08-

03. The Final PUD submittal conforms to all applicable Conditions and Standards of the Preliminary Approval.

**Conclusion 1:**

The PUD proposal does not violate any of the approval criteria referred to in SMC 16.10.090.

**Criteria 2:**

The PUD shall not vary the lot area requirements by more than 10-percent;

**Finding 2:**

The proposal does not propose to change the lot area from the approved Preliminary PUD.

**Conclusion 2:**

The proposed Final PUD is the same as the Preliminary and is in conformance with Criteria 2.

**Criteria 3:**

The PUD shall not involve a reduction of more than 10-percent of the area reserved for the common open space and/or usable open space; provided, the minimum Open Space Requirements are met;

**Finding 3:**

The proposal does not propose a reduction of the area reserved for open space from the approved Preliminary PUD.

**Conclusion 3:**

The proposed Final PUD is the same as the Preliminary and is in conformance with Criteria 3.

**Criteria 4:**

The PUD shall not increase the floor area proposed for nonresidential use by more than 10-percent, provided the maximum square footage for nonresidential uses are not exceeded;

**Finding 4:**

The proposal does not propose any nonresidential buildings.

**Conclusion 4:**

The proposed Final PUD is the same as the Preliminary and is in conformance with Criteria 4.

**Criteria 5:**

The PUD shall not increase the total ground area covered by buildings by more than five-percent;

**Finding 5:**

The proposal does not propose an increase in the area covered by buildings from the approved Preliminary PUD.

**Conclusion 5:**

The proposed Final PUD is the same as the Preliminary and is in conformance with Criteria 5.

**Criteria 6:** The PUD shall not increase the density or number of dwelling units by more than 10-percent; provided, the maximum density increases are not exceeded.

**Finding 6:**

The proposal does not propose an increase in the density or number of dwelling from the approved Preliminary PUD.

**Conclusion 6:**

The proposed Final PUD is the same as the Preliminary and is in conformance with Criteria 6.

**ALTERNATIVES:**

Council may consider the following alternatives:

1. Adjust the proposed Findings and Conclusions and Approve the proposal with the adjusted Findings and Conclusions.
2. Direct Staff to conduct further review of the proposal and return with alternative findings. Council should direct Staff as to the direction it wants the adjusted findings to pursue.
3. Determine that the Final PUD is not in conformance with the Preliminary PUD and direct Staff as to the deficiencies that must be addressed before further Council consideration.

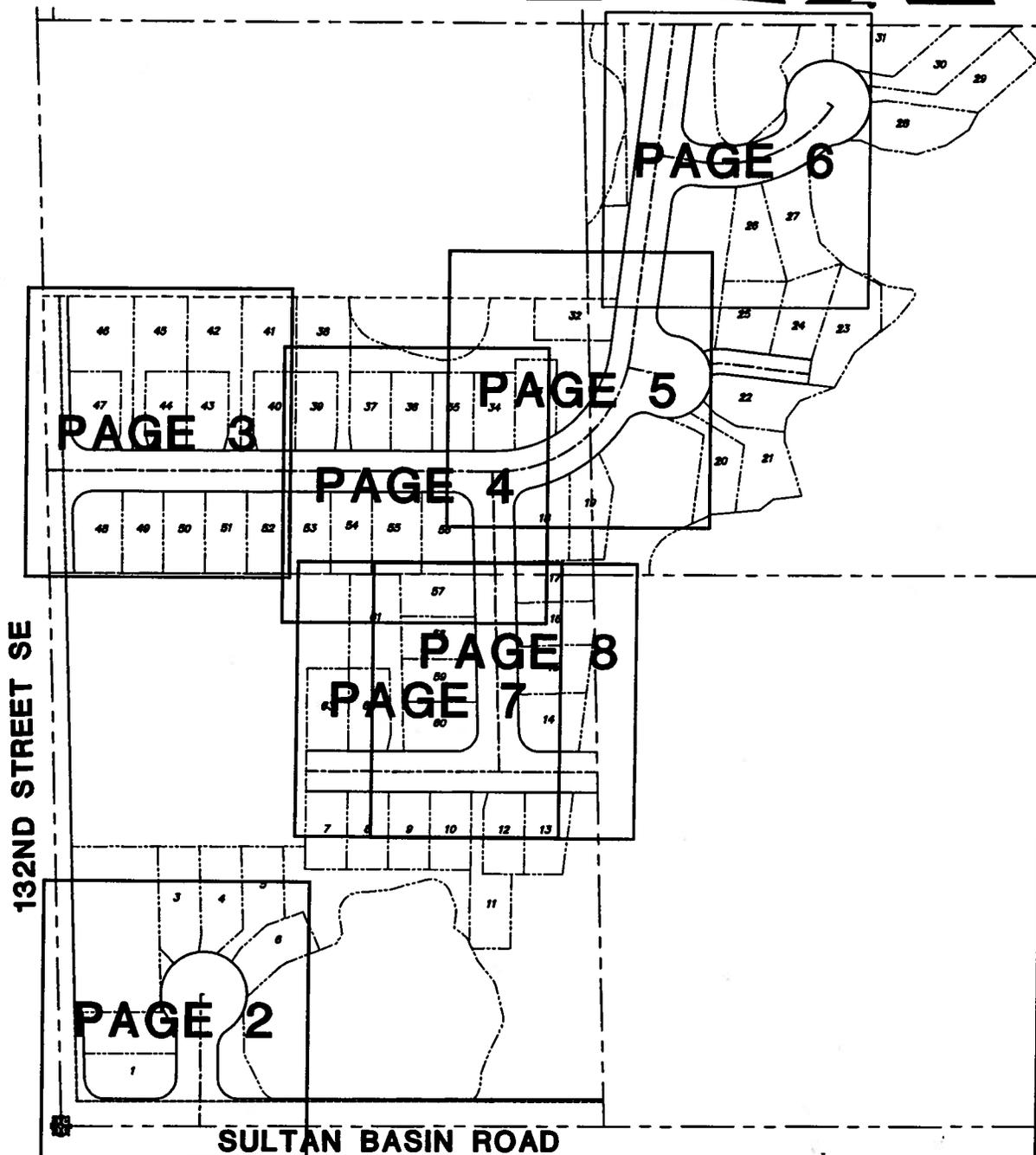
**RECOMMENDATION:**

Subject to changes as may be deemed appropriate by the Council, Staff recommends that the Council move to Approve Resolution 09-28 (**Attachment A**) authorizing the Mayor to sign the required documents for Approval of the Final Planned Unit Development of Greens Estates.

**ATTACHMENTS:**

- ATTACHMENT A** Resolution 09-28
- ATTACHMENT B** Resolution 08-03
- Council Adoption of Greens Estate Preliminary PUD 02-28-08
- ATTACHMENT C** Map showing Greens Estate Layout

EXHIBIT



132ND STREET SE

SULTAN BASIN ROAD

GREENS ESTATES  
 ROADWAY LEGAL DESCRIPTION EXHIBIT  
 NW 1/4, SEC. 33, TWP. 38 N., RNG. 8 E., W.M.



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DWN. BY	DATE	JOB NO.
DBM	12/23/08	26276
CHKD. BY	SCALE	SHEET
	1" = 200'	1 OF 8

**CITY OF SULTAN  
WASHINGTON**

**RESOLUTION NO. 09-28**

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**A RESOLUTION OF THE CITY OF SULTAN,  
WASHINGTON, AUTHORIZING THE MAYOR TO SIGN  
THE FINAL PLANNED UNIT DEVELOPMENT PLAN FOR  
GREENS ESTATE PUD.**

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WHEREAS, On February 28, 2008, the City has, through Resolution 08-03, granted Preliminary Approval of the Greens Estate Planned Unit Development (PUD); and

WHEREAS, the Preliminary PUD approval expired on February 27, 2009 unless the applicant submitted a complete Final PUD Application; and

WHEREAS, the Developer has submitted a complete Final PUD Application and a Determination of Completeness was issued on April 29, 2009 documenting that that application was complete when submitted on February 25, 2009; and

WHEREAS, On November 12, 2009, the City and the Developer have executed a Development Agreement as the appropriate means to make needed clarifications and enhancements to the provisions of Resolution 08-03, said clarifications and enhancements establishing the basis for review of the submitted Final PUD Application; and

WHEREAS, the Development Agreement provides for extension of the Final PUD approval to be subject to the same expiration date as the underlying Greens Estate Subdivision Preliminary approval, said date being February 27, 2013; and

WHEREAS, the proposed Final PUD has been reviewed by city staff as called for in SMC 16.10.160 (A); and

WHEREAS, the Community Development Director has recommended findings for Council review and recommended the Final PUD for approval by the Council as provided by SMC 16.10.160 (D), and;

WHEREAS, SMC 16.10.160 (F) authorizes the City Council to act on approval of a PUD upon recommendation from the Community Development Director that the Final PUD is in conformance with the approved Preliminary PUD and any additional conditions of approval; and

WHEREAS, the Council has reviewed the recommended findings and conclusions provided by the Community Development Director, and finds to its satisfaction that the proposed Final PUD is in conformance with the Preliminary

PUD and additional conditions of approval provided in Resolution 08-03;

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

Section 1. The Mayor is authorized to sign the Final Planned Unit Development Plan for Greens Estate PUD as proposed by Sultan 144 LLC, as conditioned by the Development Agreement authorized by the Council through Resolution 09-10 on October 22, 2009.

PASSED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON  
THE \_\_\_\_ DAY OF \_\_\_\_\_, 2009.

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:

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.

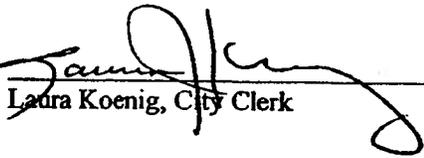
**PASSED BY THE** Sultan City Council and **APPROVED** by the Mayor this 28th day of February 2008.

CITY OF SULTAN

  
Carolyn Eslick, Mayor

Attest:

By

  
Laura Koenig, City Clerk