

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

DECISION

FILE NUMBER: PP2017-001

APPLICANT: Skyridge Estates, LLC
ATTN: Rusty Drivstuen
P.O. Box 124
Monroe, WA 98272

TYPE OF CASE: Preliminary subdivision (*SkyRidge Estates*)

STAFF RECOMMENDATION: Approve subject to conditions

EXAMINER DECISION: APPROVE subject to conditions

DATE OF DECISION: May 8, 2018

INTRODUCTION ¹

Skyridge Estates, LLC (“Drivstuen” ²) seeks preliminary approval of *SkyRidge Estates*, a 206-lot single family residential subdivision of a 38.972 acre site zoned Moderate Density (“MD”).

Drivstuen filed the application on September 21, 2017. (Exhibits 5; 21 ³) The Sultan Department of Community Development (“DCD”) deemed the application complete on October 10, 2017. (Exhibit 5) DCD issued a Notice of Application on October 13, 2017. (Exhibit 9)

The subject property is located at 31805 124th Street SE, about 1,500 feet west of the Sultan Basin Road.

The Sultan Hearing Examiner (“Examiner”) viewed the subject property on April 26, 2018.

The Examiner held an open record hearing on April 26, 2018. DCD gave notice of the hearing as required by the Sultan Municipal Code (“SMC”). (Exhibit 11)

¹ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

² Since the applicant’s name and the proposed subdivision’s name are essentially the same, the Examiner elects to use the applicant’s agent’s last name to refer to the applicant.

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.

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

- Exhibits 1 - 20: As listed on the prehearing Exhibit List prepared by DCD
- Exhibit 21: Type III Permit Application – Preliminary Plat, received September 21, 2017
- Exhibit 22: Materials submitted by Bonnie Whyte during the hearing
- Exhibit 23: Statement by Judy Heydrick, submitted on her behalf during the hearing
- Exhibit 24: E-mail with attachment from Charlie Weaver, Sultan School District No. 311, April 25, 2018

Preliminary subdivision applications generally are to “be approved, disapproved or returned to the applicant for modification or correction within 90 days [of the date the application is complete], unless the applicant consents to the extension of such time period” [SMC 19.08.060(A)] The Examiner’s open record hearing was likely held beyond the 90th net review day. (Testimony) Drivstuen verbally agreed to waive any timeline irregularities. (Statement of counsel)

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.

FINDINGS OF FACT

1. On September 1, 2016, the Snohomish County Boundary Review Board (“BRB”) approved annexation of about 80 acres (the “124th Street Annexation”) along the north edge of the City of Sultan (“City”) from unincorporated Snohomish County (“County”) into the City. [Official notice: BRB No. 02-2016, p. 1, ll. 13 – 18; on-line at <https://snohomishcountywa.gov/DocumentCenter/View/38384/02-2016-Decision>, last visited May 6, 2018] The 80 acres was within the City’s Urban Growth Area (“UGA”). (Exhibits 6; 8, sheet 2) The County’s pre-annexation land use designation of the area was Low Density Residential (9 dwelling units per acre (“du/ac”); upon annexation the City designated the 80 acres Medium Density (6 – 10 du/ac). [Official notice: Central Puget Sound Growth Management Hearings Board (“GMHB”) Case No. 17-3-0006, Final Decision and Order, p. 13, ll. 16 – 25; on-line at <http://www.gmhb.wa.gov/Global/RenderPDF?source=casedocument&id=6066>, last visited May 6, 2018] The County’s pre-annexation zoning of the 80 acres was R-7,200⁴; upon annexation the City zoned the 80 acres Medium Density Residential (“MD”).⁵ (Exhibits (respectively) 8, sheet 2; 6) The *SkyRidge Estates* 38.972 acre site is essentially the eastern 50 acres of the 124th Street Annexation less about 10 acres. (Exhibits 3; 6)

⁴ A single-family residential zone generally requiring 7,200 square feet (“SF”) per lot. [Official notice]

⁵ City land use designation and zoning of the 124th Street Annexation were unchanged as of 2017. (Exhibits 6 – 8)

- Two appellate matters are pending which directly or indirectly relate to the *SkyRidge Estates* property: Neighbors Against Annexation (“Neighbors”) is before the State Court of Appeals challenging the 124th Street Annexation [*Neighbors v. Sultan*, 769367-1]; Neighbors is also before the GMHB challenging the City’s 2011 Comprehensive Plan [*Neighbors v. City of Sultan*, GMHB 17-3-0006] In that latter proceeding, on February 9, 2018, the GMHB found that the City “failed to act to review and revise its comprehensive plan and development regulations consistent with the population allocations and growth targets as adopted in Snohomish County Amended Ordinance 13-032 by June 30, 2015, as required under RCW 36.70A.130(5)(a),” remanded the matter to the City, and set August 13, 2018, as the deadline to submit corrections. [Official notice: GMHB Final Order in 17-3-0006, pp. 12, 14, 15; *Op. Cit.*]

Neither the Court of Appeals nor the GMHB has issued a Stay or Injunction barring processing of the *SkyRidge Estates* preliminary subdivision application.⁶ In the absence of a Stay or Injunction, the Examiner conducted the open record, pre-decision *SkyRidge Estates* hearing.

- As noted above, the City designated the *SkyRidge Estates* site Moderate Density and zoned the site MD. (Exhibits 6; 7) The 80-acre 124th Street Annexation plus the 40 acres abutting to the west, owned by the City and designated and zoned for Public Use, constitute the outer extent of the City and its UGA in this area. (Exhibits 6; 7; 22.8) Surrounding lands in unincorporated County are designated R-5 on the County Comprehensive Plan and zoned R-5. About 1,300 feet north of the site the County’s Comprehensive Plan land use designation and zoning change to Commercial Forest; no forestry designation or zoning abuts the *SkyRidge Estates* site. A County commercial forestry notice area extends 500 feet south of the Commercial Forestry zoned lands, thus ending some 800 feet north of the *SkyRidge Estates* site. A County mineral resource notice area extends to the City limit along the north side of the site. None of the County notice areas apply inside the City limits. (Exhibit 8)
- The *SkyRidge Estates* preliminary subdivision application involves approximately the eastern 50 acres of the 80-acre 124th Street Annexation less about 10 acres. The subject property, an assemblage of four tax account parcels, forms an inverted “U” on the north side of 124th Street SE. The western leg of the “U” is about 470 feet wide by about 630 feet north-south; the eastern leg of the “U” is much narrower: It is only about 110 feet wide at its 124th Street SE frontage. The bulk of the property is about 1,800 feet wide (east-west). The property contains three single-family residences (with accessory buildings) and also has some commercial buildings on the western parcel(s). The approximate 10-acre exception lies between the two legs of the “U.” (Exhibits 3; 15, p. 2; 23.6; and testimony)
- The bulk of the subject property is relatively flat; a steep slope cuts diagonally across the southern edge of the property from southwest to northeast. The elevation drop across that slope is about 40

⁶ At the outset of the hearing the Examiner asked that any such Stay or Injunction be brought forward. There was no response from the attendees. (Counsel for Neighbors was in attendance.)

feet. Except for the south end of the eastern leg of the “U,” the site is devoid of any overstory vegetation to speak of. A high-voltage electrical transmission easement, containing two high-voltage electrical lines, crosses the south end of the western leg of the “U.” (Exhibits 3, Sheet C-2; 18; 22.8⁷; 23.7⁸) No regulated critical areas exist on the site. (Exhibit 15)

6. Drivstuen proposes to demolish/remove all existing structures and develop a 206-lot, single-family residential subdivision on the 38.972 acre site. The development will be served by a public street system consisting of a series of internal loops connecting to a main loop that connects to 124th Street SE through each of the site’s “legs.” One street stub is proposed near the center of the west property line; no other street stubs to abutting properties are proposed. The development has been designed for phased development, with the phases running from east to west. Phase 1 will contain 61 lots, two park tracts, and two open space tracts; Phase 2 will contain 40 lots and one park tract; Phase 3 will contain 39 lots and one park tract; and Phase 4 will contain 66 lots, two park tracts, one open space tract, and one stormwater control tract. (Exhibits 3; 16)
7. All proposed lots comply with those zoning regulations for the MD zone which can be determined at the preliminary subdivision stage of development.⁹

SMC 16.12.020		
Dimension and Density Requirements Comparison		
	Code Requirement¹⁰	<i>SkyRidge Estates</i>¹¹
Minimum Lot Size	4,500 SF	4,500 SF
Minimum Lot Width	50 feet	50 feet
Minimum Lot Depth	80 feet	80 feet
Minimum Front Yard Setback	20 feet	20 feet
Minimum Side Yard Setback	5 feet	5 feet
Minimum Rear Yard Setback	10 feet	10 feet
Maximum Lot Coverage	60 percent	Will meet limit
Maximum DU/AC for Single Family Detached Housing	10 du/ac	5.3 du/ac (Gross basis); 8.86 du/ac (Net basis)

⁷ The attachments to Exhibit 22 were numbered by the submitter as 1 – 8. They will be cited herein as Exhibit 22.*n*, where *n* is the attachment number.

⁸ The attachments to Exhibit 23 were numbered by the submitter as 1 – 9. They will be cited herein as Exhibit 23.*n*, where *n* is the attachment number.

⁹ Building height limits, for example, cannot be assessed at the preliminary subdivision stage since preliminary plats do not have to depict proposed building designs. Future building heights are regulated by the zoning code when individual building permits are sought.

¹⁰ Column source: Exhibit 1, p. 5.

¹¹ Column source: Testimony except for density; Density source is Exhibit 1, p. 5.

8. The *SkyRidge Estates* site is bordered by seven parcels/ownerships, four of which lie in unincorporated County.

To the west is the remainder of the 124th Street Annexation, an undeveloped parcel containing about 30 acres which is forested (except where the electrical transmission easement crosses it). The owner of that parcel (Matt Anderson) supports the *SkyRidge Estates* proposal. To the west of the Anderson parcel is a 40-acre parcel owned by the City which contains two water storage tanks. (Exhibit 22.8; and testimony)

To the north are two acreage parcels in unincorporated County. The westerly parcel (“Parcel 1-003”) is forested. The Weyerhaeuser Company (“Weyerhaeuser”) enrolled Parcel 1-003 in the state forest land taxation program under RCW 84.33.140 at some time prior to 1985. In January, 1985, Weyerhaeuser removed Parcel 1-003 from the forest land taxation program when it transferred the parcel (along with a number of others) to the State Department of Natural Resources (“DNR”) “in a trade for like property.” (Exhibit 22.4) DNR still owns Parcel 1-003. (Exhibit 9)

The easterly parcel (“Parcel 1-004”), also located in unincorporated County, is a largely forested parcel owned by Gordon and Bonnie Whyte (the “Whytes”). In March, 1974, the Whytes enrolled their 30-acre parcel in the state forest land taxation program under RCW 84.33.140. The Whytes’ residence and pasture occupy about six of the 30 acres. (Exhibits 22.1; 22.8) The Whytes oppose *SkyRidge Estates*. (Exhibits 10-A; 22; see also Finding of Fact 16, below)

The *SkyRidge Estates* site is bordered on its east by three parcels, two of which (“Parcel 1-008” and “Parcel 1-014”) lie in unincorporated County. Both are partly forested and appear to contain a single-family residence. The third parcel on the east lies in the “notch” in the southeast corner of the *SkyRidge Estates* site and is within the City. It is also partly forested and contains a single-family residence. (Exhibit 22.8)

The seventh abutting parcel is known as the “Kidling Pit,” occupies the area inside the upside-down “U,” and is owned by the County. The Kidling Pit is located on a 9.2 acre parcel. Under the terms of an Interlocal Agreement (“ILA”) entered into between the City and the County in June, 2016, the County retains the right to excavate minerals, store minerals, and store construction equipment and materials on the parcel. (Exhibits 23.1; 23.2) Drivstuen’s consultant stated that the County is not actively “extracting [material from the pit] in an aggressive fashion;” Neighbors asserts that the pit is “actively used” by the County. (Testimony) The pit was excavated into the side of the aforementioned steep slope, has an at-grade access onto 124th Street SE, and a maximum excavated cut-bank height of about 40 feet. The top of the cut-bank lies more than 100 feet from the common boundaries with the *SkyRidge Estates* site except near the northeast corner of the pit property where the cut-bank top is as close as about 20 feet to the edge of the *SkyRidge Estates* site. (Exhibit 3, Sheet C-2) Slope stability analysis of the Kidling Pit cut-bank by a professional geotechnical consultant (Materials Testing & Consulting, “MTC”) concluded that the pit’s north and west slopes were far

enough from the *SkyRidge Estates* site to not pose a slope stability hazard. At the northeast corner of the pit, MTC recommends a slope stability setback that intrudes onto a corner of the *SkyRidge Estates* site. MTC recommends that both structures and “individual lot stormwater infiltration features should be sited behind the setback lines.” (Exhibit 18, pp. 22 – 24 and 72¹²; quote from p. 24)

The south side of 124th Street SE across from *SkyRidge Estates* has two very different land uses. The area south of the western leg of the “U” is within the City, is zoned Low Density Residential and has been divided into about 18 lots known as *Rosewood*. (Exhibits 3; 6; 18, p. 4; and testimony) The area to the east of *Rosewood*, essentially south of the Kidling Pit and the eastern leg of the “U,” lies in unincorporated County, is zoned R-5, and is sparsely developed. (Exhibits 8; 17, p. 9, Fig. 5-1)

9. “Each proposed subdivision shall be reviewed for its compliance with all of the criteria and standards listed in [SMC 19.08.080(A)].” [SMC 19.08.080(A)] Those criteria and the facts relating to each are as follows:

- “1. The proposal conforms to:
“a. The goals, policies, criteria and plans set forth in the city of Sultan comprehensive plan;”

Facts: DCD posits that *SkyRidge Estates* is consistent with the 2011 Comprehensive Plan’s designation of the site as MD, noting that its proposed density, whether measured on a gross acre or net acre basis, does not exceed the density limit stated in the Comprehensive Plan. (Exhibit 1, pp. 5 and 6)

Neighbors¹³ cited many policy and program provisions of the 2011 Comprehensive Plan in support of its argument that the MD zoning of the 124th Street Annexation area is inconsistent with the Comprehensive Plan. (Testimony/argument)

- “b. Sultan water system plan;”

Facts: The City-retained engineering consultant (“RH2”) evaluated the City water “system’s capability to handle the projected additional water demands” generated by *SkyRidge Estates*. (Exhibit 13-A, p. 1) RH2 assumed that the internal water main system will

¹² The plat design used by the consultant as depicted on page 72 of Exhibit 18 is not the current plat design. Comparison of Figure 13 on page 72 of Exhibit 18 with Sheet C-3 of Exhibit 3 shows that most of the recommended setback area will fall within Proposed Park Tract A, with only a small portion affecting Proposed Lot 1. The proposed setback provides a factor of safety “of 1.5 or greater for static and 1.125 or more for seismic conditions”. (Exhibit 18, p. 23) The 1.5 and 1.125 factor of safety targets are industry standards. (*Ibid.*)

¹³ The composition of Neighbors is not disclosed in the record except that its January 18, 2018, letter to the City lists one member: Judy Heydrick (“Heydrick”). (Exhibit 10-B, p. 3) Neighbors was represented at the hearing by Jocelyne Fallgatter (“Fallgatter”), Attorney at Law, who asked to be sworn so she could offer testimony as well as serve in a representational role. Fallgatter’s statements/testimony will be attributed to Neighbors.

connect to the existing City water main at the Rosewood Drive/124th Street intersection (along the site's 124th Street SE frontage). (Exhibit 13-A, p. 3) The analysis concluded that both water pressure and fire flow will be greater than minimum state standards "without any off-site water system improvements." (Exhibit 13-A, p. 4)

"c. Sultan general sewer plan;"

Facts: The closest the City's sewer system is to *SkyRidge Estates* is the Sultan Basin Road/132nd Street SE intersection. Drivstuen proposes to extend the City sewer (at the developer's expense) from that point north and west to the *SkyRidge Estates* site. Alternative routes are available; a final route decision is not required for preliminary subdivision approval, but will be required before site construction can begin. (Exhibit 13-A, pp. 6 and 7; and testimony)

RH2 also evaluated the City sewer system flow and treatment capacity. RH2's analysis assumed a maximum day flow of 70.5 gallons per minute and a maximum peak hour flow of 115.5 gallons per minute from *SkyRidge Estates*. Those flow rates include sewage, groundwater infiltration into the sewer system, and rainfall-dependent infiltration into the sewer system. (Exhibit 13-A, p. 6) While the sewer treatment plant has sufficient capacity to handle the additional flows, three segments of existing sewer mains were found to be technically inadequate under current conditions. Interestingly, even though those segments were calculated to be insufficient for current flow volumes, no surcharging of those segments has been reported. RH2 suggested that if improvement of those segments is not done in conjunction with development of *SkyRidge Estates*, they should be closely monitored. (Exhibit 13-A, pp. 6 – 10)

DCD has recommended that the *SkyRidge Estates* developer be required to upgrade the three inadequate sewer main segments prior to occupancy of Phase 1 of the development. (Exhibit 1, p. 17, Recommended Condition 11) The possibility exists that some grant money may be received by the City to partially fund those improvements. (Testimony)

"d. Sultan critical areas regulations;"

Facts: As noted previously, no regulated critical areas exist on the *SkyRidge Estates* site. A slope failure safety setback associated with the Kidling Pit encumbers a small area in the vicinity of Proposed Lot 1 and Proposed Park Tract A. (Exhibits 3, Sheet C-3; 15)

"e. Sultan concurrency management system;"

Facts: The City issued a Certificate of Concurrency pursuant to SMC 16.70.070 on March 23, 2018. (Exhibit 14) The Certificate of Concurrency certifies that: *SkyRidge Estates* will not lower street Level of Service (“LOS”) below the adopted City standard;¹⁴ adequate water supply and pressure are available;¹⁵ the City’s sewer system can handle expected sewage flows (with some off-site improvements);¹⁶ and park impact fee payments are required.¹⁷ (Exhibit 14, pp. 2 and 3) The Certificate of Concurrency requires payment of water and sewer connection fees, traffic impact mitigation fees, and park impact mitigation fees. Fees are collected in conjunction with issuance of individual building permits and are based on the fee schedules in effect at that time. The currently applicable fee schedules would result in payment of approximately \$5,463,112. (Exhibit 14, p. 3)

“f. Sultan stormwater management performance standards;”

Facts: Soils underlying the *SkyRidge Estates* site are primarily recessional outwash deposits. (Exhibit 18, p. 6) No evidence of a perched groundwater table was encountered during soil explorations. (Exhibit 18, p. 9) The on-site soils are sufficiently permeable to be suitable for infiltration of stormwater. (Exhibit 18, pp. 18 - 20)

A preliminary stormwater management plan complying with the 2014 Department of Ecology (“Ecology”) Manual for Western Washington has been developed. The preliminary plan contemplates infiltration of stormwater on-site: An infiltration pond will serve the western phases while the eastern phases will be served by infiltration trenches beneath sidewalks. (Exhibit 17) The location of the infiltration pond is depicted on the proposed preliminary plat. (Exhibit 3, Sheet C-3)

“g. Sultan shoreline master program;”

Facts: The *SkyRidge Estates* site does not lie within the jurisdictional area of the Shoreline Management Act. (Exhibit 1, p. 7) Thus, the City’s Shoreline Master Program does not apply.

“h. Stormwater Management Manual for Western Washington;”

Facts: See “f,” above.

¹⁴ See Finding of Fact 11, below.

¹⁵ See “b”, above.

¹⁶ See “c”, above.

¹⁷ See “i”, below, and Finding of Fact 13, below.

“i. Sultan park recreation and open space plan;”

Facts: The Parks and Recreation chapter of the 2011 Comprehensive Plan contains no policies or requirements that would affect *SkyRidge Estates*. The Parks and Recreation chapter calls for park impact fees, which have been established by city ordinance. The remaining policies are either directives for development of standards, requirements, etc. (legislative directives) or pertain to areas of the City far removed from *SkyRidge Estates*. [Official notice: 2011 Comprehensive Plan, Chapter 7 – Parks and Recreation; on-line at <https://ci.sultan.wa.us/wp-content/uploads/2014/10/Chapter-7-Park-and-Recreation.pdf>, last visited on May 3, 2018]

“2. The proposal conforms to the development standards set forth in SMC Title 16, Zoning Code;”

Facts: The City’s consultant has confirmed compliance with “current City of Sultan codes and approved standards.” (Exhibit 13-B)

“3. The proposal conforms to the requirements of this chapter and Public Works Engineering, Design, and Development Standards (EDDS), and Chapter 19.42 SMC, Public Facility Requirements;”

Facts: The City’s consultant has confirmed compliance with “current City of Sultan codes and approved standards.” (Exhibit 13-B)

“4. The proposed street system conforms to the Public Works Design and Development (*sic*) Standards (EDDS);”

Facts: The City’s consultant has confirmed compliance with “current City of Sultan codes and approved standards.” (Exhibit 13-B)

“5. The proposed subdivision is laid out in such a manner as to provide for the safe, orderly and efficient circulation of traffic;”

Facts: The proposed street system provides for future extension westerly to facilitate development of the remainder of the 124th Street Annexation. No street stubs are proposed to the north or east as those abutting properties lie outside the City’s UGA boundary. (Exhibits 3; 6)

“6. The proposed subdivision will be adequately served with city-approved water and sewer and other utilities appropriate to the nature of the subdivision;”

Facts: Water and sewer service have been discussed above. “[S]ufficient electric system capacity” is available to serve *SkyRidge Estates*.¹⁸ (Exhibit 10-C)

- “7. The layout of lots and their size and dimensions take into account topography and vegetation on the site in order that buildings may be reasonably sited, to minimize disruption of the site, topography, trees and vegetation;”

Facts: The majority of the site is nearly level and devoid of trees. Measurable grading will be required on only a handful of the proposed lots. (Exhibits 3, Sheet C-4; 22.8)

- “8. Identified hazards and limitations to development have been considered in the design of streets and lot layout to assure street and building sites are on geologically stable soil considering the stress and loads to which the soil may be subjected;”

Facts: The site is geologically stable. (Exhibit 18)

10. All internal streets will be provided with sidewalks. (Exhibit 16) The Sultan School District will establish a school bus stop in each of the four phases, for a total of four school bus stops within *SkyRidge Estates*. (Exhibit 24) Students will be able to walk to the bus stops on sidewalks.
11. The Traffic Impact Analysis (“TIA”) prepared for *SkyRidge Estates* projects that the development will generate 1,933 net (new) average daily trips (“ADT”) upon full build-out, of which approximately 152 will occur during the A.M. peak traffic hour and approximately 203 will occur during the P.M. peak traffic hour. (Exhibit 19-A, p. 1) All *SkyRidge Estates*-related trips will use 124th Street SE to and from Sultan Basin Road and Sultan Basin Road to and from SR-2. (Exhibit 19-B, Fig. 2) The current P.M. peak hour volume on 124th Street SE west of Sultan Basin Road is 14. (Exhibit 19-B, Fig. 5) The P.M. peak hour volume on 124th Street SE west of Sultan Basin Road upon full build-out is projected to be 217 (14 current + 203 development trips = 217).¹⁹ The City’s Level of Service (“LOS”) standard for streets is “D,” including SR-2. [SMC 16.70.100(A)(1)] The TIA-projected intersection LOS in 2027 for the P.M. peak hour with full build-out of *SkyRidge Estates* is “C” at both Sultan Basin Road/124th Street SE and Sultan Basin Road/SR-2. (Exhibit 19-B, p. 13, Table 5)

¹⁸ Contrary to the indication in Exhibit 1 at page 3, natural gas service is not available in this area. (Testimony)

¹⁹ The project’s TIA was prepared at a time when the plat design depicted 237 lots. (Exhibit 19-B, p. 1, § 1) Since that time, the plat design has been reduced to 206 lots. (Exhibit 3) The TIA author provided a brief update to correct trip generation numbers and mitigation fee estimates. (Exhibit 19-A) The “Future w/ Development” trip volume for 124th Street SE as shown on Figure 7 of Exhibit 19-B, the original TIA, was incorrect even for a 237-lot proposal: The consultant failed to add in the traffic from the project. (Testimony) Page A-15 in Exhibit 19-B contains the correct raw data for the “Future with Project” condition for a 237-lot proposal. (Bottom chart on the page.) Because those numbers are for a 237-lot development, not a 206-lot development, they are high. The Examiner has added the correct number for a 206-lot proposal to arrive at the correct traffic volume projection stated here.

12. The City's 2011 Comprehensive Plan designates the arterial street system within the City. Sultan Basin Road is a Rural Minor Arterial from SR-2 north to 124th Street SE and a Rural Major/Minor Collector Arterial north of 124th Street SE. 124th Street SE is a Rural Major/Minor Collector Arterial. [Official Notice, 2011 Comprehensive Plan, Chapter 8, Figure 8-B; on-line at <https://ci.sultan.wa.us/wp-content/uploads/2014/10/Chapter-8-Transportation.pdf>, last visited May 6, 2018]
13. The *SkyRidge Estates* preliminary plat depicts approximately 3.21 acres or 139,770 SF of private recreation space in six tracts (Proposed Park Tracts A-F). The following amenities are proposed in the park tracts:
- Park Tract A: Approximately 13, 956 square feet with 4 (four) picnic tables, 2 (two) BBQ stands and vegetation;
 - Park Tract B: Approximately 27,240 square feet with four 5 (five) foot walking paths from public roads to the play structure and benches with vegetation;
 - Park Tract C: Approximately 27,010 square feet with a 30 foot x 60 foot sports court, four 5 (five) foot walking paths from public roads, benches and vegetation;
 - Park Tract D: Approximately 26,326 square feet with one 5 (five) foot walking path from one public road to the another, 4 (four) picnic tables, 2 (two) BBQ stands and vegetation;
 - Park Tract E: Approximately 34,290 square feet with a Fitness Station course with 10 (ten) stations, a 5 (five) foot walking path around tract and connects to two public streets, 2 (two) benches and vegetation; and
 - Park Tract F: Approximately 10,948 square feet with a play structure, 2 (two) benches, and vegetation.

(Exhibit 4). All park improvements are in compliance with SMC 16.62.050(B) for residential subdivisions over 200 lots. (Exhibit 1, p. 10)

In addition to recreation facilities requirements, SMC 16.62.060 requires that at least 5 percent of the total land area of a residential subdivision of more than 10 lots be dedicated as open space tracts which shall be conveyed to the homeowners association and/or held in an equal and undivided interest among all lots within the subdivision. The total land area in *SkyRidge Estates* is 1,697,621 SF. Therefore, the minimum required open space is 84,881 SF. The proposed plat includes three open space tracts (Open Space A – C) totaling 90,804 square feet. (Exhibit 3)

14. *SkyRidge Estates* lies within a “High Aquifer Vulnerability” critical aquifer recharge area. Northwest HydroGeo Consultants issued a hydrogeological investigation report on November 30, 2017, which analyzes ground water conditions beneath the *SkyRidge Estates* site.²⁰ (Exhibit 20) The hydrological

²⁰ DCD states that the hydrogeological investigation report was prepared pursuant to “SMC Chapter 17.12.030(c).” (Exhibit 1, p. 10) In fact, SMC 17.12.030(C) requires preparation of a hydrogeological site evaluation only for approval of “project actions listed below”. A list of six actions follows: Underground storage tanks, hazardous waste handling

investigation determined that although the site lies within the mapped “High Aquifer Vulnerability” area, the aquifer beneath the *SkyRidge Estates* site “is confined and under pressure”,²¹ “the main recharge area for the confined aquifer(s) probably lies in a northeasterly direction and the [confined] groundwater is moving in a southwesterly direction toward the Sultan River”, and “[b]ecause of the depth to the underlying aquifer at the SkyRidge Estates site, estimated to be generally in excess of 117 feet, and because it is a confined aquifer, surface activities are highly unlikely to have any measurable affect on the aquifer.” (Exhibit 20, quotes from pp. 9, 8, and 9, respectively) The consultant did recommend that the following best management practices be followed.

1. “Trash, recyclables and garbage are to be stored in approved containers and collected on a regular basis.”
2. “Any hazardous materials such as pesticides, herbicides, and petroleum products should be properly stored in original containers with lids kept closed when not in use.”
3. “Only approved lawn care and weed control products should be used in this development, and only in recommended quantities.”
4. “Any spills or leaks should be promptly contained and cleaned up.”

(Exhibit 20, p. 10) DCD has recommended that approval of *SkyRidge Estates* be conditioned on application of those best management practices. (Exhibit 1, p. 16, Recommended Condition 6; and testimony)

15. Sultan’s State Environmental Policy Act (“SEPA”) Responsible Official issued a threshold Determination of Nonsignificance (“DNS”) for *SkyRidge Estates* on January 3, 2018. (Exhibit 12) The DNS was not appealed.²² (Testimony)

facilities, on-site sewage disposal systems serving large developments, petroleum pipelines, solid waste facilities, and land application of sewage sludge. [SMC 17.12.030(C)(1) – (6)] Approval of a preliminary subdivision is not one of the six listed actions. Therefore, technically, a hydrogeological site evaluation was not required. Nevertheless, the hydrogeological investigation report prepared for Drivstuen provides valuable information about subsurface conditions in the area.

²¹ A “confined” aquifer is one lying beneath “overlying low permeable or confining layers such as clay, silt or compacted sand, or a combination of all”. (Exhibit 20, p. 6)

²² A January 18, 2018, letter from Neighbors refers to itself as a “comment/appeal letter”. (Exhibit 10-B) That letter, although submitted on the last day of the SEPA appeal period (See Exhibit 12, p. 2, “Appeals” section.), did not meet SMC requirements for an appeal. Subsection 17.04.240(D) SMC requires that SEPA appeals be “governed” by SMC and UDC provisions. Subsection 19.36.030(D) SMC states that administrative appeals must be accompanied by an appeal fee as set forth in the City’s fee schedule. The 2018 adopted City fee schedule states that the fee for an administrative appeal to the Examiner is \$500 plus Examiner costs. Under similar circumstances, Division 1 of the State Court of Appeals has held that failure to pay a required appeal filing fee acts as a jurisdictional bar to an appeal. [*Graham Thrift Group v. Pierce County*, 75 Wn. App. 263 (1994)]

16. The Whytes oppose approval of *SkyRidge Estates*. The Whytes believe that because their property is in the forest land taxation program it is designated forest land benefitted by protections contained in the Snohomish County Code for lands designated and zoned for commercial forestry. They believe that Drivstuen should be required to provide a 200 foot buffer from the south edge of their property. They believe that the subdivision is incompatible with forestry use of their property (and the adjoining DNR parcel). (Exhibits 10-A; 22; and testimony)
17. Neighbors opposes approval of *SkyRidge Estates*. Neighbors argues that the *SkyRidge Estates* subdivision does not serve the public health, safety, and welfare because it does not fulfill the purpose of subdivisions as set forth at SMC 19.02.010 (and RCW 58.17.010). Neighbors argues that a binding development agreement is necessary to assure completion of off-site improvements. Neighbors asserts that the County still actively uses the Kidling Pit and that the proposed subdivision is incompatible with such usage. Neighbors asserts that an Ecology Model Toxics Clean-up Act (“MTCA”) site exists on the western portion of the *SkyRidge Estates* site associated with prior dumping of foundry slag by “Urban Accessories.” Neighbors asserts that state law requires construction of off-site safe walking facilities for school children even if all such children will be bused to their schools from bus stops within the development. Neighbors cites numerous Comprehensive Plan policies and programs with which the proposed subdivision is alleged to be inconsistent. Neighbors asserts that application of the MD zone to the 124th Street Annexation is inconsistent with the 2011 Comprehensive Plan. Neighbors is concerned about emergency vehicle response times, especially on weekends when SR-2 (a.k.a. US-2) is handling heavy tourist-related traffic volumes. Neighbors questions how the City street system can have an acceptable LOS after development of *SkyRidge Estates* when the 2011 Comprehensive Plan states that some street segments and intersections will fall below the LOS standard by 2025. (Testimony/Statement of counsel)
18. Heydrick opposes approval of *SkyRidge Estates*. Heydrick asserts that the Kidling Pit cut-banks are unstable and that homes should not be allowed as close to the pit as proposed. Heydrick asserts that placing home sites adjacent to designated forests is wrong. Heydrick notes the presence of many species of wildlife in the area, including bears. Hedrick also mentions the Urban Accessories MTCA site. Heydrick objects to a large concentration of houses near the end of 124th Street SE. Heydrick asserts that the high voltage electrical transmission lines will create a health hazard for nearby residents. Heydrick asserts that a “development with over 200 building sites that sprawls into the County’s Unincorporated rural areas and is not served by transit will not help attain the [state’s] greenhouse emission reduction goal.” (Exhibit 22, p. 3) Heydrick asserts that the project’s TIA is inadequate and does not accurately reflect conditions on SR-2 through the City. (Exhibit 22)
19. Gerry Gibson (“Gibson”) wants assurance that Drivstuen, not the general public, will pay for any needed infrastructure improvements. He asserts that traffic on SR-2 is terrible on weekends and at other times of the week. He wants assurance that the sewer system has adequate capacity to handle

flows from *SkyRidge Estates*. Gibson feels that *SkyRidge Estates* will not benefit the community. (Testimony)

20. David Hockenson (“Hockenson”) asserts that the County uses the Kidling Pit “as needed.” He questions how a sewer main will get to the *SkyRidge Estates* site. He, too, asserts that the Sultan Basin Road/SR-2 intersection is currently overloaded at times and will only get worse with development of *SkyRidge Estates*. Hockenson opines that the City can’t properly maintain its existing infrastructure, let alone the additional infrastructure associated with a 206-lot plat.
21. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

LEGAL FRAMEWORK ²³

The Examiner is legally required to decide this case within the framework created by the following principles:

Authority

Preliminary subdivisions are subject to a pre-decision open record hearing before the Examiner. The Examiner makes a final decision on the application which is subject to the right of reconsideration and appeal to Superior Court. [SMC 2.26.125, 2.26.140, 19.06.060(A), 19.08.100, and Chapter 19.26 SMC]

Review Criteria

The review criteria for preliminary subdivisions as set forth in SMC 19.08.080 have been stated in Finding of Fact 9, above.

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.

²³ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

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

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

[RCW 36.70B.030]

Vested Rights

Subdivision and short subdivision applications are governed by a statutory vesting rule: such applications “shall be considered under the subdivision or short subdivision ordinance, and zoning or other land use control ordinances, in effect on the land at the time a fully completed application ... has been submitted” [RCW 58.17.033; see also SMC 19.08.060]

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 OF LAW

1. The *SkyRidge Estates* site is located within an incorporated city. It is, as required by the Growth Management Act (“GMA”), planned for and zoned for urban density development. (In fact, it was zoned for urban density development prior to annexation when it was located in unincorporated County.) The *SkyRidge Estates* site may be largely surrounded by unincorporated, rural lands (both by comprehensive plan designation and by zoning), but that doesn’t change the reality that the *SkyRidge Estates* site is in the City and is zoned urban.
2. Although not expressly detailed in the hearing record, it is commonly understood that urban density development destroys the natural habitat for many wildlife species. The loss of wildlife habitat is a

known result of urbanization – large wildlife species and humans do not coexist in close quarters well. When the City’s legislative body, the City Council, designated the 124th Street Annexation area MD and then zoned it MD, it made a conscious trade-off: Human habitat over wildlife habitat. Except as required to comply with Title 17 SMC, Environment, loss of wildlife habitat is to be expected as the City develops. Loss of wildlife habitat is not a basis to deny a subdivision that complies with SMC requirements.

3. The Examiner understands the Whytes’ arguments, but concludes that they are confusing forest taxation laws with land use planning regulations. Their parcel does benefit from tax deferral under the state’s forest taxation program. But their parcel is not (and apparently never has been) designated for commercial forestry protection by the County. Their parcel is in an area designated on the County Comprehensive Plan as R-5 and zoned R-5. The nearest designated forest land under County regulations lies well to the north of the *SkyRidge Estates* site.

A further misunderstanding is the Whytes’s apparent belief that County land use restrictions would apply within the corporate limits of the City. They would not. County land use regulations apply in unincorporated County, City regulations apply within the City. Even if the Whytes’s property were zoned by the County as commercial forest (which it is not), the County buffer and notice requirements associated with zoned commercial forest lands would not apply within the City.

4. Neighbors wants the Examiner to apply certain select City 2011 Comprehensive Plan policy and program statements against *SkyRidge Estates*. While the Examiner recognizes that the SMC refers to comprehensive plan policies in one of the subdivision approval criteria, the Examiner must also recognize the limits placed by state law on application of a comprehensive plan in project permit review.

The role of a comprehensive plan in development review is different now than it was before enactment of the GMA in 1990 and the Local Project Review Act, Chapter 36.70B RCW, in 1995. The GMA requires localities which are subject to its requirements, which the City is, to enact development regulations to implement their comprehensive plans. [RCW 36.70A.040(3)] The Local Project Review Act establishes a mandatory “consistency” review for “project permits”, a term defined by the Act to include subdivisions. [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, emphasis added] Thus, state law holds that a comprehensive plan is applicable during project review only where development regulations have not been adopted to address a particular topic. The regulatory assumption is that plans set a framework for subsequent regulations which serve to control development actions.

5. The state Supreme Court has also addressed this issue. In *Citizens v. Mount Vernon* [133 Wn.2d 861, 947 P.2d 1208 (1997), *reconsideration denied*] the Court ruled that “[RCW 36.70B.030(1)] suggests ... a comprehensive plan can be used to make a specific land use decision. Our cases hold otherwise.” [at 873]

Since a comprehensive plan is a guide and not a document designed for making specific land use decisions, conflicts surrounding the appropriate use are resolved in favor of the more specific regulations, usually zoning regulations. A specific zoning ordinance will prevail over an inconsistent comprehensive plan. If a comprehensive plan prohibits a particular use but the zoning code permits it, the use would be permitted. These rules require that conflicts between a general comprehensive plan and a specific zoning code be resolved in the zoning code’s favor.

[*Mount Vernon* at 873-74, citations omitted] The City has adopted development regulations to implement any 2011 Comprehensive Plan policies that might otherwise be applicable in this case. Therefore, consideration of Comprehensive Plan policies is neither appropriate nor required.

Further, virtually all of the goals, policies, and programs cited by Neighbors are of the type that by their very nature and wording call for the City to develop regulations or plans to accomplish something; they do not impose a requirement that would apply to an individual development application. The City has developed regulations setting acceptable LOS standards for public services. The proposal, as proposed to be conditioned by DCD, complies with those development standards.

6. Neighbors's perception of the "safe walking conditions" requirement in RCW 58.17.110(2) is erroneous. Chapter 58.17 RCW is the state subdivision regulation. The clause at issue reads:

A proposed subdivision and dedication shall not be approved unless the city, town, or county legislative body makes written findings that: (a) Appropriate provisions are made for ... sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school;

[RCW 58.17.110(2); similar language is found in RCW 58.17.110(1)(a)] Leaving aside whatever effect the rather awkward placement of the word "only" has on the requirement, it is clear that the requirement pertains to children who will live in a proposed subdivision who will have to walk to school or, in the Examiner's interpretation of the requirement, walk to a school bus stop. If the school district states that it will run school buses through the subdivision to pick up children going to school (as is the case here), and if the subdivision streets will include sidewalks (as is the case here), then nothing more is required. The children living in the proposed subdivision will have safe walking conditions to their school bus pick-up points. There is no basis in law to require a developer to provide off-site walkways for any other pedestrian uses.

7. Heydrick has raised a number of objections to *SkyRidge Estates*; some have already been addressed.

With but one exception (the area of Proposed Lots 1 and 2), the rear property line of all proposed lots will be 80 feet or more from the top of the Kidling Pit cut-bank, and the intervening area is wooded. There is no City regulation requiring fencing of residential developments. The Examiner believes that if a proposed development will create a safety hazard, then fencing can be required under the public health and safety provision. Here that approach would require fencing only along the south line of Proposed Park Tract A and the west lot lines of Proposed Lots 1 and 2. The Examiner will add a condition to that effect.

The record contains no factual evidence about the Urban Accessories supposed MTCA site. All that exists in this record is a copy of a 28-year old complaint. An old complaint does not provide evidence that something actually exists in the present. Nor does it indicate the outcome of any investigation or clean-up spawned by such a complaint. The Examiner declines to consider imposing any conditions based solely on a 28-year old complaint.

The effect of EMFs associated with high voltage electrical transmission lines has been argued for years, if not decades. Heydrick's submitted materials are conclusory documents from sources of unknown credibility or objectivity obtained from on-line web sites. Heydrick's submitted materials do not constitute substantial evidence. Substantial evidence is "evidence sufficient to persuade a fair-minded person of their truth." [*City of Vancouver v. State Pub. Emp't Relations Comm'n*, 180 Wn. App. 333, 347, 325 P.3d 213 (2014)] The City has no regulations regarding residential

proximity to such facilities. This topic arguably could have been raised in an appeal of the SEPA threshold determination, but no SEPA appeal was filed; it is too late to now raise a SEPA appeal.

8. The City issued a Certificate of Concurrency as required by Chapter 16.70 SMC. The Certificate of Concurrency, among other things, stands for the proposition that the development for which the Certificate is issued will not violate the City's adopted water, sewer, traffic, and parks LOS standards. The code unequivocally states that a Certificate of Concurrency "is a document issued by the building and zoning official" [SMC 16.70.020(A)], not by the Examiner. Chapter 16.70 SMC provides a right of administrative appeal from denial of a Certificate of Concurrency [SMC 16.70.150(B)(3)], but provides no other right of administrative appeal. Express inclusion of one type of administrative appeal means that other types of administrative appeal are not available. Thus, the Certificate of Concurrency cannot be challenged at the Examiner level.
9. Purpose statements in ordinances are not regulatory. "Declarations of policy in an act, although without operative force in and of themselves, serve as an important guide in determining the intended effect of the operative sections." [*Hearst v. Hoppe*, 90 Wn.2d 123, 128, 580 P.2d 246 (1978)] However, a decision maker cannot ignore regulatory provisions by looking to purpose statements. [*Cox v. Lynnwood*, 72 Wn. App. 1, 7, 863 P.2d 578 (1993)] Neighbors's reliance on purpose statements is, thus, unavailing.
10. The concerns raised by the other witnesses have been adequately addressed earlier in this Decision and need not be revisited.
11. No hearing participant presented any evidence to refute the Kidling Pit cut-bank stability analysis prepared by MTC. (Exhibit 19) That analysis was prepared by a state-licensed geologist and a state-licensed professional engineer. The Examiner finds their analysis to be credible and reliable: it is substantial evidence. The Kidling Pit cut-bank presents no measurable slope failure danger to the lots in *SkyRidge Estates* provided that a small portion of Proposed Lot 1 and Proposed Park Tract A are kept undeveloped through a setback buffer. The proposed plat depicts the setback buffer recommended by MTC.
12. *SkyRidge Estates* meets the criteria for preliminary subdivision approval contained in SMC 19.08.080 as documented in Finding of Fact 9, above. In addition, *SkyRidge Estates* meets the criteria for preliminary subdivision approval contained in RCW 58.17.110(2), the vast majority of which are covered by the SMC 19.08.080 criteria.

There must be some criteria by which to judge whether a proposed subdivision serves the public health, safety, and welfare. The content of adopted City regulations forms reasonable criteria.

SkyRidge Estates meets all applicable review criteria. Therefore, it must also be concluded that it serves the public health, safety and welfare.²⁴

13. *SkyRidge Estates* passes the concurrency test: single-family residential is a permitted land use in the MD zone; the proposed residential density, whether measured on a gross or net acre basis, is within the limit set by the MD zone; adequate utility services are available to serve the proposed residences, after extensions and improvements to be made by the developer.
14. The recommended conditions of approval as set forth in Exhibit 1 are reasonable, supported by the evidence, and capable of accomplishment with the following changes:
 - A. Recommended Condition 1. The preliminary road and utility plans contained in Exhibit 16 should also be cited as an element of the approved preliminary plat package. The Examiner will slightly restructure the condition while retaining its substantive content.
 - B. Recommended Condition 5. The word “Applicant” in this and other conditions will be replaced with “developer,” the term used in a number of the Recommended Conditions to refer to the party developing the subdivision. A land use approval, including a preliminary subdivision, “runs with the land.” That means that the approval remains valid regardless of whether the land is subsequently sold. Many people interpret the word “applicant” to refer only to the party which initially sought the approval. In order to ensure that no confusion occurs in the future, a word which means the holder of the approval will be substituted for the word “Applicant.”
 - C. Recommended Condition 6. DCD testified that its intent with this condition is for it to apply as a restriction on activities taken by future lot owners, not just as something to be followed by the developer. That intent is not clear. In order to continue as a restriction beyond the date the final plat is recorded, the restrictions must appear on the face of the final plat as conditions. In addition, the developer should be required to follow the same restrictions during development of the plat. The condition will be appropriately revised.
 - D. Recommended Condition 11. Testimony indicated that the City may receive some grant funds towards completion of the three sewer improvements listed in this condition. Sewage flows from *SkyRidge Estates* will exacerbate the capacity problems in these segments of the City’s sewer main, but they are not the cause of them. Therefore, it is entirely fitting that the

²⁴ It would be illogical to conclude that a project which met every established standard of review was nevertheless contrary to public health, safety and welfare. If such were the case, then the adopted standards must be woefully deficient. Even if some believe that the adopted standards are deficient, there is no basis in this case to conclude that compliance with those standards is not sufficient: the application is vested to the standards which existed when it was deemed complete regardless of any subsequent changes. New standards would apply to new applications but not to applications in process.

developer's responsibility could be offset by the amount of any grant monies received by the City.

- E. Recommended Condition 20. This condition contains a typographical error identified during the hearing: The word "road" should be "rod".
- F. Recommended Condition 35. This condition also contains a typographical error identified during the hearing: The word "now" should be "not".
- G. A few minor, non-substantive structure, grammar, and/or punctuation revisions to Recommended Conditions 22, 27, and 33 will improve parallel construction, clarity, and flow within the conditions. Such changes will be made.

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

DECISION

Based upon the preceding Findings of Fact and Conclusions of Law, the testimony and evidence submitted at the open record hearing, and the Examiner's site view, the Examiner **APPROVES** the proposed preliminary subdivision of *SkyRidge Estates* **SUBJECT TO THE ATTACHED CONDITIONS.**

Decision issued May 8, 2018.

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

John E. Galt,
Hearing Examiner

HEARING PARTICIPANTS ²⁵

Duana Koloušková, unsworn counsel
Kristi Kyle
David Hockenson
Jocelynne Fallgatter, sworn counsel
Brad Lincoln

Neil Latta
Gerry Gibson
Bonnie Whyte
Matt Anderson

²⁵ The official Parties of Record register is maintained by the City's Hearing Clerk.

NOTICE OF RIGHT OF RECONSIDERATION

This Decision, dated May 8, 2018, is subject to the right of reconsideration pursuant to SMC 2.26.125. 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 May 18, 2018 (which is the tenth calendar day after the date of mailing of this Decision). Any reconsideration request shall specify the error of law or fact, procedural error, or new evidence which could not have been reasonably available at the time of the hearing conducted by the Examiner which forms the basis of the request. Any reconsideration request shall also specify the relief requested. See SMC 2.26.125 for additional information and requirements regarding reconsideration.

NOTICE OF RIGHT OF APPEAL

This Decision becomes final and conclusive as of the eleventh calendar day after the date of mailing of the Decision unless reconsideration is timely requested. If reconsideration is timely requested, the Examiner's order granting or denying reconsideration becomes the final and conclusive action for the City. The final action may be reviewed in Superior Court pursuant to the procedures established by Chapter 36.70C RCW, the Land Use Petition Act. Section 36.70C.040 RCW requires that any appeal be properly filed with the Court within 21 days of the issuance of the final action. Please refer to SMC 2.26.140 and Chapter 36.70C RCW for further guidance regarding judicial appeal procedures.

<p>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."</p>

CONDITIONS OF APPROVAL
PP2017-001
SKYRIDGE ESTATES

This Preliminary Subdivision is subject to compliance with all applicable provisions, requirements, and standards of the Sultan Municipal Code and standards adopted pursuant thereto. The permittee is responsible to obtain all necessary State and Federal permits and approvals required for completion of the project. In addition, development shall comply with the following special conditions:

1. All improvements shall be constructed in accordance with the approved preliminary plat and supporting preliminary plans: Exhibits 3, 4, and 16. Minor Modifications of the approved plans may be approved by the Planning Director if the modifications meet the criteria outlined in SMC 19.08.140.
2. Final engineering drawings depicting street improvements, water and sewer improvements, and drainage design shall be submitted to the City's Public Works Director for final review and approval prior to issuance of any grading permits. The street, water and sewer, and drainage improvements shall be designed in accordance with the City's most current Engineering Design and Development Standards (EDDS).
3. A subdivision phasing plan meeting the criteria of SMC 19.08.090(C) shall be submitted as part of the site civil construction phase.
4. The project shall implement all of the applicable recommendations contained in the following technical reports submitted to the City:
 - a. Storm Drainage Report, prepared by Latta Engineering, PLLC date November 30, 2017 (Exhibit 17).
 - b. Geotechnical Report, prepared by Materials Testing & Consulting, Inc., dated August 2, 2017 (Exhibit 18).
 - c. Traffic Report, prepared by Gibson Traffic Consultants, Inc., dated July 2017 and amended to that report dated November 30, 2017 (Exhibit 19).
 - d. Hydrogeological Investigation Report, dated November 30, 2017 (Exhibit 20)
5. Where applicable and required by the City, the developer shall implement the provisions and recommendations within the latest versions of any referenced reports, plans, or supporting documents made record as exhibits accompanying this Staff Analysis and Recommendation for the project or subsequent versions approved by the City.

6. Pursuant to the Hydrogeological Site Investigation Report (Exhibit 20) the following best management practices shall be employed both during site development and thereafter:
 - a. Trash, recyclables and garbage are to be stored in approved containers and collected on a regular basis.
 - b. Any hazardous materials such as pesticides, herbicides, and petroleum products should be properly stored in original containers with lids kept closed when not in use.
 - c. Only approved lawn care and weed control products should be used in this development, and only in recommended quantities.
 - d. Any spills or leaks should be promptly contained and cleaned up.

The above four requirements shall be placed on the face of the final plat as conditions of use of the lots and tracts within the subdivision.

CLEARING AND GRADING

7. A comprehensive erosion and sedimentation control plan to ensure appropriate on-site and off-site water quality control shall be developed and implemented for all construction activities. The Best Management Practices outlined in the 2014 DOE Stormwater Management Manual for Western Washington shall be incorporated into the design. At a minimum, the plan shall include the following elements.
 - a. Exposed soils shall be stabilized and protected with straw, hydro-seeding or other appropriate materials to limit the extent and duration of exposure.
 - b. Disturbed areas shall be protected from stormwater runoff impacts through the use of silt fence. Other means of filtration of stormwater runoff and for limiting erosion/sedimentation such as check dams, and sediment traps may be required and are recommended.
 - c. Clearing and grading activities shall not be performed in the winter-wet season when soils are unstable unless determined suitable by the Public Works Director.

STORM DRAINAGE IMPROVEMENTS

8. The stormwater system design and stormwater discharge shall utilize the Best Management Practices of the 2014 DOE Stormwater Management Manual for Western Washington.

9. Stormwater pollution prevention measures shall be employed per the approved Stormwater Pollution Prevention Plan and as necessary to ensure appropriate on-site and off-site water quality control. Site runoff during construction shall be handled and treated as to quantity and quality impacts by utilizing Best Management Practices, as defined in the 2014 DOE Stormwater Management Manual for Western Washington.
10. The developer shall obtain a General Construction Stormwater NPDES Permit from the Washington Department of Ecology (DOE) prior to beginning construction.

UTILITIES

11. Prior to Certificate of Occupancy of the first phase of single family residential building permits (61 single family lots), the developer shall complete all off-site improvements required by the Sultan Municipal Code and identified in Title 13 and the RH2 Hydraulic modeling of the City's sewer system as listed below.
 - a. CIP-WW1-Replace approximately 475 LF of 12-inch-diameter gravity main along US Highway 2 with 24-inch-diameter pipe.
 - b. CIP DF1A-Replace approximately 375 LF of 15-inch-diameter gravity main along Main Street with 27-inch-diameter pipe.
 - c. CIP DF1C-Replace approximately 1,275 of 15-inch-diameter gravity main along Main Street with 27-inch diameter pipe.

The developer's cost may be off-set by any grant funds obtained by the City for these projects to the extent approved by the City Council.

ROAD IMPROVEMENTS

12. Frontage improvements, including curb, gutter, sidewalk, landscaping and traffic control devices shall be provided for all streets within the subdivision; shall be constructed on accordance with the approved preliminary plat prior to final plat application.

FEES

13. Prior to approval of the final plat, all landscaping associated with the plat shall require the submittal of an acceptable warranty surety to warrant all required landscaping improvements against defects in labor materials for a period of 24 months after acceptance of those improvements by the City. The

warranty amount shall be equal to fifteen (15) percent of the costs of improvements, as determined by the Planning Director.

14. Prior to approval of the final plat, the developer shall submit an acceptable warranty surety to warrant all required public improvements, installed, against defects in labor and materials for a period of 24 months after acceptance of those improvements by the City. The warranty amount shall be equal to ten (10) percent of the costs of the improvements, as determined by the Public Works Director. The surety shall be submitted to and approved by the City of Sultan and executed prior to final plat approval.
15. Park, Traffic and School impact fees assessed in accordance with SMC Chapter 16.72, shall be required and paid at the rate in effect at the time of building permit issuance.
16. The water general facilities charge, in accordance with SMC Section 13.12.080(B)(2) shall be required and paid prior to issuance of the building permit and/or installation.
17. The sewer general facilities charge, in accordance with SMC Section 13.08.030 shall be required and paid prior to issuance of the building permit and/or installation.
18. Credits for infrastructure improvements and right-of-way dedication may be applied for during the site civil construction phase of the development consistent with SMC 16.72.070 and 16.72.080 and 16.72.090.

FINAL PLAT

19. Prior to final plat submittal, all improvements shall be installed, inspected, and approved by the City Engineer/Public Works Director per the approved plans. All improvements shall be constructed in accordance with the approved engineering plans and approved preliminary plat map. Minor Modifications of the plans submitted may be approved by the Planning Director if the modifications meet the criteria outlined in SMC 19.08.140.
20. All lot corners shall be installed with rod and cap or other City-approved survey method prior to final plat approval.
21. All existing and proposed easements and maintenance agreements shall be clearly shown and labeled on the final plat.

22. The following note shall appear on the face of the final plat map: “The Homeowners Association, with an equal and undivided interest among all lots of *SkyRidge Estates*, is responsible for maintaining, in a uniform manner, all landscaping, parks, and drainage within all commonly owned tracts and easements”.
23. The following waiver of Claim for Damages Statement shall appear on the face of the final plat map: “This dedication includes conveyance of roads, tracts, utility and storm drainage infrastructure, and other areas of right-of-way intended for public use and/or any ownership as shown on or otherwise referenced by the plat. The (INSERT NAME HERE) hereby waives all claims against the City of Sultan and/or any other governmental authority for damages which may occur to the adjacent land as a result of the construction, drainage, and maintenance of such facilities and improvements.”
24. The following shall be shown on the recording block section of the plat map: “Refer to Auditor Recording Number”.
25. The final plat shall provide space for approving signatures, of the Planning Director, Public Works Director, and the mayor, and the City Clerk shall attest the signatures.
26. The title block on the final plat map shall have the names of all the legal owners of the property named on the plat and the name of the surveyor/engineering firm which prepared the final plat map.
27. An Auditor’s Certificate shall be shown on the final plat map.
28. The following are required to be shown on the final plat map:
 - a. Surveyor Certificate;
 - b. Correct legal description of all lots as set out in Chapter 58.17 RCW;
 - c. Owners Statement;
 - d. All new easement(s) over the property, their legal description(s) and associated dedication block(s);
 - e. Recording block/Certification blocks for City approval;
 - f. North arrow;
 - g. Certification of Payment of Taxes and Assessments;
 - h. Auditor’s Certificate; and
 - i. The survey control scheme, monumentation, basis of bearing and references.

MISCELLANEOUS

29. Preliminary plat approval shall be effective for a maximum time period of five years upon which a final plat meets all conditions of the preliminary plat approval submitted, in accordance with SMC Title 19.
30. The developer shall apply to the Snohomish County Auditor at 3000 Rockefeller Avenue, Everett WA 98201-4060 for a plat name reservation certificate and furnish the City with a copy of the approved reservation certificate at the time of final plat submittal.
31. If applicable, at the time of final plat submittal the developer shall submit a mail box plan, approved by the U.S. Post Office, to the Planning Department for final addressing.
32. Mail routes, including mailbox type and locations, shall be approved by the Postmaster prior to construction.
33. All construction equipment, building materials, and debris shall be stored on the applicant's property, out of the public rights-of-way. In no case shall the access to any private or public property be blocked or impinged upon without prior consent from the affected property owners and the City of Sultan.
34. If at any time during clearing or grading and construction the streets are not kept clean and clear, all work will stop until the streets are cleaned and maintained in a manner acceptable to the Public Works Director.
35. Construction Noise is not allowed between ten (10) p.m. and seven (7) a.m. weekdays and ten (10) p.m. and nine (9) a.m. weekends.
36. All signs shown on the approved plans for the subdivision are for illustrative purposes only. Pursuant to Sultan Municipal Code Chapter 22.06. A sign permit must be obtained for the placement of any non-exempt signage. Applications for the sign permit shall include an approved site plan specifying the location of all signs.
37. The developer and contractor shall attend a pre-construction meeting with City staff to discuss expectations and limitations of the project permit before starting construction.
38. Prior to recordation of Phase 1, a fence at least four (4) feet tall shall be erected along the south line of Proposed Park Tract A and the west lot lines of Proposed Lots 1 and 2. A taller fence and/or additional perimeter fencing is at the developer's discretion within limitations imposed by City code.