

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

**DECISION: REVISED AFTER RECONSIDERATION**

FILE NUMBER: PP19-001

APPLICANT: Acme Homes, LLC  
ATTN: Robert Cumming  
10211 180<sup>th</sup> Street SE  
Snohomish, WA 98296

TYPE OF CASE: Preliminary subdivision (*Daisy Meadows*)

STAFF RECOMMENDATION: Approve subject to conditions

EXAMINER DECISION: APPROVE subject to revised conditions

DATE OF DECISION: December 4, 2019

**INTRODUCTION**<sup>1</sup>

Acme Homes, LLC (“Acme Homes”) seeks preliminary approval of *Daisy Meadows*, a 70-lot single family residential subdivision of a 14.11 acre site zoned partly Low Density Residential (“LDR”) and partly Moderate Density Residential (“MDR”).

Land Resolutions, represented at the hearing by Ry McDuffy (“McDuffy”), filed the application on Acme Homes’ behalf on January 31, 2019. (Exhibit 11<sup>2</sup>) The Sultan Department of Community Development (“DCD”) deemed the application complete when filed. (Exhibits 1, p. 1; 7) DCD issued a Notice of Application on March 18, 2019 (publication date) and April 16, 2019 (mailing and posting date). (Exhibit 7)

The subject property is located at 31931 135<sup>th</sup> Street (Bryant Road), about 700 feet west of Sultan Basin Road.

The Sultan Hearing Examiner (“Examiner”) viewed the subject property on August 23, 2019.

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<sup>1</sup> Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.  
<sup>2</sup> 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.

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The Examiner held an open record hearing on August 23, 2019 (the “initial hearing”). DCD gave notice of the initial hearing as required by the Sultan Municipal Code (“SMC”). (Exhibit 8)

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

- Exhibits 1 - 19: As listed on the prehearing Exhibit List prepared by DCD
- Exhibit 20: Photographs (2) taken on Yew Avenue
- Exhibit 21: Preliminary civil plans set (11 sheets)

The Examiner held the initial hearing record open for submittal by the Public Works Director of a response to two possible changes to the proposed plat: Converting the street connection to Yew Avenue into emergency access only; and eliminating dedication as public right-of-way of the northerly 19 feet of the subject property. The initial hearing record closed on August 27, 2019, with submittal of:

- Exhibit 22: Memorandum, Nate Morgan, Public Works Director, to the Examiner, August 27, 2019

On September 6, 2019, the Examiner issued a Decision granting preliminary subdivision approval for *Daisy Meadows* subject to conditions. On September 16, 2019, Acme Homes and the City each filed a Request for Reconsideration, both challenging Conditions 11 and 13. On September 27, 2019, the Examiner issued an Order Accepting a Request for Reconsideration and Setting the Matter for Further Hearing.<sup>3</sup> That hearing was held on November 21, 2019 (the “reconsideration hearing”). DCD gave notice of the reconsideration hearing as required by the SMC. (Exhibit 32)

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

- Exhibit 23: Decision, issued September 6, 2019
- Exhibit 24: City Request for Reconsideration, filed September 16, 2019
- Exhibit 25: Acme Homes Request for Reconsideration, filed September 16, 2019
- Exhibit 25.1: Attachment 1 - Conformed Agreement – City Streets as Part of State Highways, April 2, 2013, filed September 16, 2019
- Exhibit 25.2: Attachment 2 - US 2 Route Development Plan, March 30, 2007, filed September 16, 2019
- Exhibit 25.3: Attachment 3 - Revised Preliminary Plat of *Daisy Meadows*, dated 8/28/2019, filed September 16, 2019

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<sup>3</sup> That Order did not set a specific date for the reconsideration hearing. Rather, it left selection of a date up to DCD and Acme Homes.

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- Exhibit 25.4: Attachment 4 - E-mail, Nate Morgan, City Public Works Director, to Acme Homes, presumably sent sometime on or after September 11, 2019;<sup>4</sup>
- Exhibit 26: Order Accepting a Request for Reconsideration and Setting the Matter for Further Hearing, issued September 27, 2019
- Exhibit 27: Memorandum, Galuska to Examiner, October 31, 2019, received November 8, 2019
- Exhibit 27.A: Letter, Morgan to Examiner, November 1, 2019
- Exhibit 27.B: Memorandum, TSI to Galuska, October 29, 2019
- Exhibit 28: Revised Preliminary Plat of *Daisy Meadows*, dated 11/7/19
- Exhibit 29: Letter, Land Resolutions to Galuska, Lot Averaging Calculations, filed November 8, 2019
- Exhibit 30: Memorandum, Gibson Traffic Consultants to ORCA Land Surveying, filed November 8, 2019

The Examiner held the reconsideration hearing record open for submittal by Acme Homes and the City of proposed replacement language for Conditions 11 and 13. The following documents were submitted during that period:

- Exhibit 31: Memorandum, Galuska to Examiner, November 25, 2019, joint proposed conditions language
- Exhibit 32: Notice of Reconsideration Hearing, issued November 8, 2019<sup>5</sup>

The reconsideration hearing record closed with receipt of Exhibit 31 on November 25, 2019.

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 initial hearing was likely held beyond the 90<sup>th</sup> net review day. (Testimony) Acme Homes, through McDuffy, verbally agreed during the initial hearing to waive any timeline irregularities. (Testimony)

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.

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<sup>4</sup> The header information on Exhibit 25.4 appears to be incomplete: It has no date/time data. The Morgan to Acme Homes e-mail is followed at the bottom of the second page of the e-mail by the header of an Acme Homes to Morgan e-mail which is dated September 11, 2019, at 11:41 a.m. (The text of that e-mail is not included in the Attachment.) The Examiner thus presumes that Morgan’s response came after Acme Homes’ September 11<sup>th</sup> e-mail.

<sup>5</sup> Exhibit 32 was available at the reconsideration hearing on November 21, 2019, but the Examiner simply overlooked formally entering it into the record. That oversight is herewith corrected.

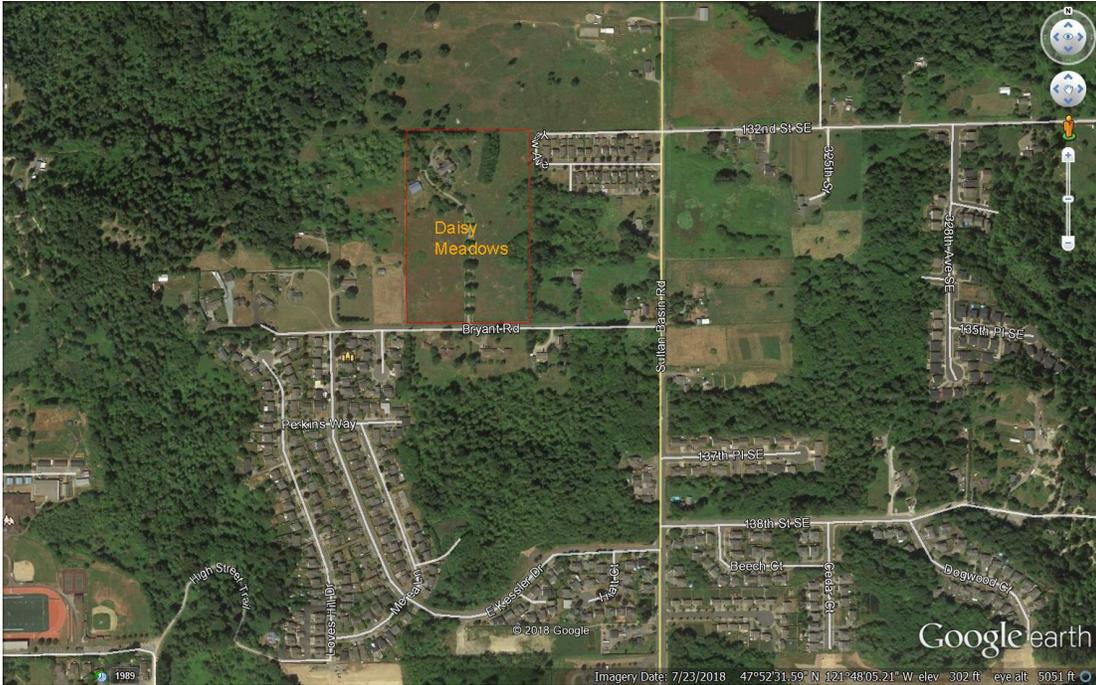
## FINDINGS OF FACT

1. The subject property is a rectangular assemblage of three parcels (Parcel Numbers 28083200100200 (“Parcel 002”, the northerly 5.3 acres), 28083200103400 (“Parcel 034”, the east-central 1.53 acres), and 28083200101000 (“Parcel 010”, the remaining 7.07 acres)) located along the north side of Bryant Road. (Exhibit 17.2, Fig. 2; 13.2, unnumbered figure following Figure 2; and Official notice of parcel number locations and areas from “<https://snohomishcountywa.gov/3752/PDS-Map-Portal>”, last visited August 28, 2019<sup>6</sup>) A single-family residence and associated barn are located in the west end of Parcel 002. (Exhibit 21, Sheet 3 of 11) The subject property has about 644 feet of frontage on the north side of Bryant Road and a north-south depth of about 956 feet. (Exhibit 3) “Vegetation on the property consists of very sparsely distributed mature trees, located mainly around the northern and eastern perimeter of the property, and a meadow of grasses, weeds, and low-groundcover throughout the interior of the property.” (Exhibit 16, p. 2) The property “slopes gently from the northwest to the southeast at gradients less than five degrees (nine percent grade).” (*Ibid.*)
2. The subject property contains no streams or ponds. (Exhibits 15.1; 15.2; 16) Acme Homes’ wetland consultant believes that no wetlands exist on the subject property. (Exhibits 15.1; 15.2; and testimony) The City’s peer review consultant believes that a small wetland area exists in the southeast corner of Exhibit 3’s Proposed Tract 999 (which is located in the southeast corner of Parcel 002). (Exhibits 3; 13.2, unnumbered figure following Figure 2) The two consultants “agreed to disagree;” Acme Homes altered its more recent plat designs to avoid construction in the disputed area and preserve the area immediately around it. (Exhibit 3, Proposed Open Space Tract 999; Exhibit 25.3, Proposed Open Space Tract 999; Exhibit 28, Proposed Open Space Tract 993)
3. The subject property is bisected by a 100-foot wide electrical transmission easement. The easement cuts diagonally through the center of the property along a west-northwest to east-southeast axis. The easement is part of Puget Sound Power and Light Company’s Rock Island Transmission Line and dates from 1930. (Exhibit 21, Sheet 1 of 11) There are no power lines in the easement.
4. The subject property is located in an area transitioning from rural to suburban as is evident from this annotated July 23, 2018, Google Earth photograph.

(Remainder of page purposefully left blank.)

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<sup>6</sup> The subject property area according to the PDS Map Portal totals 13.99 acres based on GIS area calculations. The Examiner accepts the 14.11 acre total provided on Exhibit 3, prepared under the supervision of a licensed Professional Land Surveyor, as more credible.



- A. The small-lot residential subdivision abutting the northeast corner of the subject property is *Miller Farms*. (Statement by City staffer) *Miller Farms* has 22 single-family residences, 13 on the north side of Yew Avenue and nine on the south side of Yew Avenue. The southwest corner of *Miller Farms* is a City-owned recreation/open space tract. All of the residences in *Miller Farms* are “alley loaded:” Garages are accessed from private alley easements which run along the north and south (except for south of the open space tract) boundaries of the plat. (Exhibits 3<sup>7</sup>; 13.2, Figure 1; 21, Sheet 1 of 11) The alley easements appear to be 20 feet wide. (Exhibit 17.2, Fig. 2) Yew Avenue exists as a 50-foot wide, dedicated right-of-way from Sultan Basin Road to the west boundary of the plat. The street section within that right-of-way is 28 feet wide with curb, gutter, planter strip, and sidewalk on both sides and parking allowed on one side only. (Exhibits 13.2, Figure 1; 18, p. 1; 20) The Yew Avenue right-of-way extends along the west edge of *Miller Farms* as a 20-foot wide dedicated right-of-way from the end of the east-west street to the north line of the plat, providing access to the west end of the northern alley easement. Access to the west end of the southern alley easement is via a 20-foot wide dedicated right-of-way along the east edge of the recreation/open space tract. (Exhibits 13.2, Figure 1; 17.2, Fig. 2)
  
- B. The small-lot residential development diagonally southwest across Bryant Road from the subject property is the northern end of the large *Eagle Ridge* development. (Testimony)

<sup>7</sup> The alley easements are not depicted on Exhibit 3; see Exhibit 21.

- C. The acreage property along the west side of the subject property was recently annexed into the City. The southern 2.26 acres of that area is the subject of a 14-lot residential subdivision known as *Wyndham Highlands 3* which received preliminary subdivision approval on October 7, 2019; reconsideration denied November 4, 2019.<sup>8</sup> McDuffy represented the developer of *Wyndham Highlands 3*. The acreage parcel north of *Wyndham Highlands 3* is the proposed *Wyndham Highlands 2* subdivision which has not as yet come on for hearing. *Wyndham Highlands 3* as approved has a half-street section along its east edge; *Wyndham Highlands 2* will apparently propose to extend that half-street section along the entirety of its east edge. (Exhibit 21; testimony; official notice)
- D. The north boundary of the subject property aligns with the centerline of 132<sup>nd</sup> Street SE (extended) which presently ends in a “T” intersection on the east side of Sultan Basin Road. If 132<sup>nd</sup> Street SE were extended westerly along its current alignment, it would eliminate the northern alley in *Miller Farms*.
- 132<sup>nd</sup> Street SE is a designated City arterial.<sup>9</sup>
- E. The acreage property along the north side of the subject property was also recently annexed into the City. That property is the subject of the *Wyndham Highlands* proposed single-family residential subdivision, which was heard by the Examiner on November 22, 2019. (Decision pending.) As proposed, *Wyndham Highlands* would create 171 single-family residential lots, would extend the half street in *Wyndham Highlands 3 and 2*, and would not include a street along its southern edge. McDuffy is also representing the developer of *Wyndham Highlands*. (Testimony; official notice)
5. The subject property exhibits split zoning: The northern 5.3 ± acres of the site (Parcel 002) is zoned LDR while the southern 8.6 ± acres of the site is zoned MDR. (Exhibits 3; 5)
6. *Daisy Meadows* underwent design revisions between the date it was filed and the original hearing date; and even further design revisions after the original hearing.

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<sup>8</sup> Footnote 6 in the original Decision (Exhibit 23) discussed a discrepancy between information on the City’s web site and testimony presented by McDuffy regarding the number of proposed lots in *Wyndham Highlands 3*. At the time the original Decision was prepared, the Examiner accorded the official City web site greater credibility and stated that the number of proposed lots in *Wyndham Highlands 3* was 12. Having now heard and decided the *Wyndham Highlands 3* application, the Examiner can state as a fact that the number of lots in that plat, as approved, is 14.

<sup>9</sup> Exhibit 18 states that 132<sup>nd</sup> Street SE is classified as a rural local access street. (Exhibit 18, p. 1) A City staffer testified that it is a designated arterial. The adopted Comprehensive Plan designates 132<sup>nd</sup> Street SE as a Rural Minor Arterial. [Comprehensive Plan, Chapter 8, § 8.6.2, Fig. 8-B].

- A. Exhibit 21 depicts an October, 2018, design (likely the design when the application was filed in January, 2019). That design depicted 70 lots served by four dedicated, public streets: a half-street along the west edge of the subject property (Road A) which veered off the property as it approached the northwest corner of the site; two 50-foot wide street rights-of-way running north to south, connecting with one another and Yew Avenue near the north end of the site (Roads B and C); and a half-street along the north property line (Road D). The proposal placed the transmission line easement (except where it crosses proposed rights-of-way) in open space tracts (Tracts 997, 998, and 999).
- B. Exhibit 3 depicts an August 14, 2019, design that was before the Examiner during the original hearing on August 23, 2019. That design has the same basic street network and the same 70 proposed lots as Exhibit 21. The transmission line easement (except where it crosses proposed rights-of-way) was again placed in open space tracts, renumbered as Tracts 996, 997, and 998). The major differences between Exhibits 3 and 21 are: Exhibit 21 did not include any open space in the area of the contested wetland, whereas Exhibit 3 proposed an approximate one-half acre open space tract (Tract 999) abutting the open space tract in *Miller Farms*; the half-street along the north edge of the property was proposed as right-of-way dedication only; and Tract 996 extended along the east edge of the subject property as a 40-foot wide open space area between the south line of Tract 999 and Bryant Road.

The initial Decision approved Exhibit 3 but required elimination of the half-street right-of-way along the north property line (since a public street extension to the east was impractical due to the layout of *Miller Farms*) and creation of a public trail within the powerline right-of-way. It affirmed the need to connect Proposed Roads B and C to the end of Yew Avenue. (Exhibit 23)

- C. Exhibit 25.3 depicts an August 28, 2019, design that was generated after the original hearing but before the initial Decision was issued.<sup>10</sup> Exhibit 25.3 was apparently presented at a neighborhood meeting which Acme Homes held at some time after the initial hearing. (Testimony) Exhibit 25.3 eliminated the half-street right-of-way along the north edge of the subject property, eliminated the connection to Yew Avenue, and connected the north end of Roads B and C to create an upside-down “U” shaped configuration. The design was otherwise quite similar to Exhibit 3.
- D. Exhibit 28 depicts a November 7, 2019, design prepared for the reconsideration hearing. While it is derived from Exhibit 3, it has a number of notable differences: It creates one oversized lot (Proposed Lot 58, containing about one acre) centered on the existing house on the property (Acme Homes has decided to preserve that home rather than demolish it); Road B extends north from Bryant Road only to the transmission easement where it turns left to join

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<sup>10</sup> The Examiner never saw Exhibit 25.3 before issuance of the initial Decision.

the half-street along the west edge of the site; the half-street along the west edge extends all the way to the north edge of the site; the half-street right-of-way along the north edge of the subject property has been eliminated; Road C turns east at its north end to connect with Yew Avenue; a short private road (Tract 999) provides access to 6 – 8 of the proposed lots; and a pedestrian trail is depicted within the transmission easement connecting Road B to Road C and extending on to the east property line. The open space tracts within the transmission easement are now Tracts 995 and 996; former Tract 996, now Tract 995, does not extend north of the transmission easement, and thus does not connect with Tract 993 (former Tract 999).

Exhibit 28 utilizes the lot size averaging provisions of SMC 19.44.040 with which it complies. (Exhibit 29) The proposed lots vary in size from about 3,800 square feet (“SF”) to about one acre. The average lot size is 5,774 SF. The smaller lots are south of the transmission easement in the area zoned MDR. (Exhibit 28)

7. As a result of testimony during the initial hearing (See Findings of Fact 9 and 13, below.), McDuffy stated in the initial hearing that Acme Homes was willing: to construct a paved pedestrian path the full width of the property within the transmission easement; to eliminate the 19-foot wide dedication strip along the north edge of the subject property; and to install a barrier of some sort at the current end of Yew Avenue to prevent through traffic. (Testimony)
8. The Public Works Director responded to McDuffy’s offers in a memorandum submitted on August 27, 2019. (Exhibit 22) The Public Works Director concluded that dedication of the 19-foot wide strip along the north edge of the subject property would serve no useful purpose: It could not be extended to the east as the south half of a 132<sup>nd</sup> Street SE extension without condemning the entire northern alley easement in *Miller Farms*. The Public Works Director believed that to be extremely unlikely. Therefore, the 19-foot wide strip is not needed as right-of-way. (Exhibit 22)

The Public Works Director further noted that the configuration of the Yew Avenue right-of-way in *Miller Farms* indicates that the street was intended from the beginning to extend westerly to serve additional development in that area: “no permanent turnaround or cul-de-sac was constructed.” (Exhibit 22) The Public Works Director believed “that there is a public benefit to increasing the number of public road connections because it increases the mobility of citizens and helps prevent traffic issues.” The Public Works Director opposed eliminating the Yew Avenue connection. The Public Works Director also opposed making the connection but blocking it with bollards or their equivalent. (Exhibit 22)

Finally, on a different aspect of *Daisy Meadows*, the Public Works Director supported placing a pedestrian trail within a 10-foot wide tract within the transmission easement for City ownership and maintenance of the pathway. (Exhibit 22)

9. The trail through the transmission easement mentioned in previous Findings of Fact is depicted on both Exhibits 25.3 and Exhibit 28 because both of those versions were prepared after the initial hearing.<sup>11</sup> City staff recommends that construction of such a trail be a condition of subdivision approval. (Exhibit 1, p. 13, Recommended Condition 6) The basis for staff’s recommendation is that the block lengths exceed City standards and that a public connection of some type is needed within the extra-long blocks. (Exhibit 1, p. 7, § III)

McDuffy initially asserted that the pathway requirement was unjustified because the City’s street standards do not set a maximum block length. (Testimony at initial hearing) The City has adopted the Snohomish County Engineering Design and Development Standards (“EDDS”) as its street standards. [SMC 11.12.010] EDDS § 3.01.B.3 provides that “[t]he road network shall be designed with intersecting public or private roads, as applicable, so that the maximum distance between intersections (measured from centerline to centerline), or between an intersection and a road end, does not exceed 800 feet in urban areas . . .” EDDS § 3.01.B.7 provides that “Block lengths in urban areas shall be between 125 feet and 800 feet.” EDDS § 3-01.B.12 provides that the Public Works Director “may determine that a non-motorized connection (shared use path or bikeway) between developments is appropriate in place of a roadway, through the deviation process.”

Later in the initial hearing McDuffy acknowledged that the standards do include a maximum block length. McDuffy then offered on behalf of Acme Homes to construct a 5-foot wide, hard surfaced path across the subject property within the transmission easement provided that the City accepted ownership and maintenance responsibility for a 10-foot wide strip containing the pathway. (Testimony) That offer is depicted on both Exhibits 25.3 and 28.

10. Sultan’s State Environmental Policy Act (“SEPA”) Responsible Official issued a threshold Determination of Nonsignificance (“DNS”) for *Daisy Meadows* on August 5, 2019. (Exhibit 8) The DNS was not appealed. (Exhibit 1, p. 3, Finding of Fact D.b)
11. 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;”

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<sup>11</sup> The statement in § IX of the Staff Report (at p. 8) that Acme Homes proposed construction of the pedestrian path is incorrect.

Facts: The subject property has split land use designations matching its split zoning designations. (Exhibit 5) The lot layout and density conforms with the split designations. (Exhibits 1; 3)

“b. Sultan water system plan;”

Facts: The City’s water system can provide pressure and flow for the 70 proposed residences without any off-site improvements. (Exhibit 14, p. 2)

“c. Sultan general sewer plan;”

Facts: Prior hydraulic modeling of the City’s sewer system shows that the sewer mains under Main Street may have insufficient capacity for existing and projected flows. However, those sewer mains have not been observed to have any surcharging issues in the past. (Exhibit 1, p. 6) The City is conducting further study to determine if any off-site sewer improvements are actually required to properly handle sewage flows from *Daisy Meadows*. (Exhibit 27)

Based on data currently available and the formula used by the City when approving the *Skyridge* preliminary subdivision, each new lot would be responsible to upgrade 6.6 feet of sewer main at an estimated cost of \$2,640.00. (Exhibit 27.A)

Given that information, the City and Acme Homes jointly recommend that *Daisy Meadows* be provided with two options to ensure availability of adequate sewer service: Upgrade 6.6 feet of sewer main per lot; or pay a fee-in-lieu not to exceed \$2,640.00 per lot. Both options are subject to change should continuing study determine that the sewer main is actually not over capacity. (Exhibit 31)

The Certificate of Concurrency (Exhibit 14) provides additional information about sewer system capacity. The City contracted with Murraysmith for an hydraulic analysis of the City’s sewer (and water) system. Murraysmith used

the City’s recently converted water and sewer hydraulic models, respectively. Murraysmith found that the addition of the Daisy Meadows development does not increase deficiencies beyond those existing and, as a result, does not trigger the need for immediate water or sewer improvements. However, these results reinforce the presence of deficient areas that should be addressed for both the water and sewer systems. The proposed Daisy Meadows development contributes to, but is not solely the reason for, future water and sewer

capacity issues, as growth and development within the City is anticipated. ...

**Assumptions**

Murraysmith assumed in the sewer modeling effort that the Main Street Pump Station had been upgraded, along with the discharge forcemain and piping to the outfall at the wastewater treatment plant. Murraysmith also assumed for both models that the following developments were existing and, therefore, included in the demands and loading of the water and sewer models, respectively, including: Skyridge Estates, Green’s Estates, Daisy’s Landing, Timber Ridge, Cascade Breeze, O’Reilly Auto Parts, Housing Hope, and Drury Lane in addition to the Daisy Meadows development.

(Exhibit 14, Attachment B, p. 1, bold in original) The Certificate of Concurrency concludes that *Daisy Meadows*’ “70 single family units May [*sic*] require off-site sewer system improvements ... additional improvements may be required based upon a more detailed analysis of the existing sewer system.” (Exhibit 14, p. 2, § 3) Thus, the Certificate of Concurrency is contingent on the potential of sewer system improvements.

“d. Sultan critical areas regulations;”

Facts: As a result of the “agreement to disagree” mentioned previously, the subject property has no regulated critical areas. (Exhibit 1, p. 6; 13.2; 15)

“e. Sultan concurrency management system;”

Facts: A Certificate of Concurrency was issued for *Daisy Meadows* on August 16, 2019. (Exhibit 14)

“f. Sultan stormwater management performance standards;”

Facts: The on-site soils are well suited for infiltration of stormwater runoff. (Exhibit 16)  
The preliminary drainage plan contemplates infiltration of all stormwater runoff. (Exhibit 17)

“g. Sultan shoreline master program;”

Facts: The subject property does not lie within the jurisdictional area of the Shoreline Management Act of 1971. (Exhibit 1, p. 7)

“h. Stormwater Management Manual for Western Washington;”

Facts: The on-site soils are well suited for infiltration of stormwater runoff. (Exhibit 16)  
The preliminary drainage plan contemplates infiltration of all stormwater runoff. The infiltration systems will be designed to be in conformance with the Stormwater Management Manual for Western Washington. (Exhibit 17)

“i. Sultan park recreation and open space plan;”<sup>12</sup>

Facts: If approved as recommended by DCD, a public path will be constructed across the property within the transmission easement, approximately two acres of open space will be provided within the subdivision, and park impact mitigation fees will be paid as development occurs. (Exhibits 1; 3)

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

Facts: All bulk regulations within Title 16 SMC are met with the proposed plat design. (Exhibits 1, p. 7; 29; and testimony)

“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 Public Works Director granted a deviation from the 800-foot block length standard because of the location of the transmission easement. The recommended and now agreed-to pedestrian path across the site within the transmission easement will reasonably provide the pedestrian connectivity that a cross street would have provided. Other than that deviation, the proposal complies with these standards. (Exhibit 1)

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

Facts: The Public Works Director granted a deviation from the 800-foot block length standard because of the location of the transmission easement. The recommended and

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<sup>12</sup> Analysis of this criterion was omitted (presumably inadvertently) from DCD’s analysis. (Exhibit 1, p. 7)

now agreed to pedestrian path across the site within the transmission easement will reasonably provide the pedestrian connectivity that a cross street would have provided. Other than that deviation, the proposal complies with this standard. (Exhibit 1)

- “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 full-width street sections will provide 28 feet of pavement (two 10-foot travel lanes and an 8-foot parking lane) with curb, gutter, planter strip, and sidewalk on both sides, meeting the EDDS standard for a local access street. The half-street section along the west property line will provide 20 feet of travel lanes. (Exhibits 21, Sheet 5 of 11; and 28)

The Yew Avenue connection issue will be addressed in the Conclusions of Law, below.

*Daisy Meadows* is projected to generate approximately 651 vehicular trips on an average week day (“AWDT”). Of those trips, approximately 51 are projected to occur during the morning peak traffic hour and approximately 68 are projected to occur during the evening peak traffic hour. (Exhibit 18, p. 3, Table 1) Eighty-five percent (85%) of the AWDT are projected to travel between the project and US-2 (aka SR-2) on Sultan Basin Road, with 80% (521 AWDT) traveling to and from the west through downtown on US-2. (Exhibit 18, Figure 3)

The City’s adopted Level of Service (“LOS”) standard is “D.” (Exhibit 18, p. 8) All affected intersections are projected to meet that LOS standard after development of *Daisy Meadows* except for the Main Street/US-2 intersection, which would be at LOS F because of delays to outbound left turns from Main Street onto US-2. If left turns out of Main Street were prohibited, the resultant LOS would be C. (Exhibit 18, p. 13) The developer of *Daisy Meadows* has no authority to prohibit outbound left turns from Main Street; only the City and/or WSDOT have that authority.

An alternative is to limit outbound traffic from Main Street to US-2 to right-turn only during P.M. peak hours. This alternative would preserve LOS D at the Main Street/US-2 intersection, but would divert enough traffic to the 5<sup>th</sup> Street/US-2 intersection<sup>13</sup> that it would drop to LOS E. To remedy that LOS condition, the southbound leg of the 5<sup>th</sup> Street/US-2 intersection (the north leg of the intersection)

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<sup>13</sup> 5<sup>th</sup> Street is known as Mann Road on the south side of US-2.

could be re-stripped to provide an exclusive left turn and a shared through-right turn lane. That action would increase the 5<sup>th</sup> Street/US-2 LOS to D. (Exhibits 27.B; 30)

Given that information, the City and Acme Homes jointly recommend that *Daisy Meadows* be provided with two options to ensure adequate LOS when the plat is developed: Install the changes described in the previous paragraph plus posting advisory signs along Main Street prior to final plat application; or pay a fee-in-lieu of \$145.00 per lot towards a City-designed improvement that would preserve compliant LOS. (Exhibit 31)

- “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: See Subsection 1.b, above, regarding water service.

See Subsection 1.c, above, regarding sewer service.

The on-site soils are well suited for infiltration of stormwater runoff. (Exhibit 16)  
The preliminary drainage plan contemplates infiltration of all stormwater runoff. The infiltration systems will be designed to be in conformance with the Stormwater Management Manual for Western Washington. (Exhibit 17)

- “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 site has very mild topography; no significant grading will be required. (Exhibit 21, Sheet 5 of 11) The site has very little overstory vegetation. (Exhibit 13.2, unnumbered figure after Figure 2) The City has no tree retention regulations. The lot sizes meet zoning code requirements. (Exhibits 28; 29; and testimony)

- “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: No geologically hazardous conditions exist on the subject property. (Exhibit 16)

12. DCD recommended approval of *Daisy Meadows* subject to 21 conditions. (Exhibit 1, pp. 13 & 14) Acme Homes objected to several of DCD’s recommended conditions during the initial hearing. (Exhibit 23, Finding of Fact 12) The Examiner approved *Daisy Meadows* subject to 21 revised

conditions. (Exhibit 23) Acme Homes and the City objected to Conditions 11 and 13. (Exhibits 25; 26) Acme Homes and the City have jointly proposed replacement language for Conditions 11 and 13. (Exhibit 31)

DCD acknowledged that Recommended Conditions 1 and 4 were duplicates. (Testimony during initial hearing) The Examiner eliminated Recommended Condition 1. (Exhibit 23)

13. The record at the conclusion of the initial hearing contained a total of 14 written comments from 13 people and oral testimony from five people, two of whom had also submitted written comments. (Exhibits 9.1 – 9.14; 20; and testimony) Many of the comments opposed rezoning the LDR portion of the subject property to MDR. The original application included a request to rezone the LDR portion of the subject property. (Exhibit 11) Since a rezone is a Type IV process (not involving the Examiner), that request was separated from the preliminary subdivision application and considered separately by the City Council. McDuffy testified that the City Council denied the rezone on August 22, 2019; he also stated that the applicant intended to appeal that denial. (Testimony) The rezone action has no bearing on the current *Daisy Meadows* proposal: The preliminary plat which is before the Examiner has been designed to conform to current zoning and is vested to the current zoning. Even if the zoning were changed, the changed zoning would not apply to the current *Daisy Meadows* application.

Another major objection was the Yew Avenue connection. Residents living along Yew Avenue felt that their street would always be a dead-end street and opposed any change to its current status. Some felt that at 28 feet wide, it is too narrow for two-way traffic and one lane of parking.

A third area of major concern was traffic volumes and congestion on Sultan Basin Road. Many of the comments contained anecdotal stories of serious congestion at the Sultan Basin Road/US-2 traffic light, especially on weekends when tourist use of US-2 is heavy. Some believed that no additional development should be allowed until a solution to that situation has been implemented.

One writer opposed any new development in the City until a new comprehensive plan has been developed and adopted. Another urged the City to slow down its development rate.

Several mentioned concerns regarding school overcrowding.

14. Three of the witnesses during the initial hearing also testified during the reconsideration hearing. Two continue to adamantly oppose connection to Yew Avenue. They essentially restated their earlier arguments: The street is too narrow, children play in the street, it should remain a dead-end street. (Testimony)

The third witness argued that the subdivisions in this area should all be considered at one time so that cumulative impacts and the interrelationship of the several subdivisions could be considered. That witness also felt that the proposed density was excessive and the home values would not be varied enough to provide anything but starter homes in the area. That witness also felt that local residents' opinions should be given greater consideration when making decisions on proposed developments. (Testimony)

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

### **LEGAL FRAMEWORK**<sup>14</sup>

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 11, 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.

(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

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<sup>14</sup> Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

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] Therefore, *Daisy Meadows* is vested to the development regulations as they existed on January 31, 2019.

#### 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 role of a comprehensive plan in development review is different now than it was before enactment of the Growth Management Act (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.

The content of adopted plans and regulations may not be challenged in the context of considering a project permit application. A wholly separate process is available to challenge adoption of plans and regulations. But, that process must be employed immediately after the local legislative officials have adopted new or amendatory plans and/or regulations. Therefore, adopted plans and regulations must be applied as adopted, not as some may wish they had been adopted. The Examiner is obligated to implement the adopted regulations and may not accord substantial weight to neighborhood opinions if those opinions deviate from the adopted regulations.

2. 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 Comprehensive Plan policies that might otherwise be applicable in this case (except for a listing of street classifications and the LOS standard). Therefore, consideration of Comprehensive Plan policies is neither appropriate nor required except for street classifications and the LOS standard.

3. As noted in Finding of Fact 13, above, the “companion” rezone is completely irrelevant to the outcome of this application: Statutory vesting law would prevent consideration of any change in zoning that might occur during the pendency of this application.
4. Not only would holding up this application until the City adopts a new comprehensive plan be illegal (only the City Council can adopt a moratorium on new development), it would be ineffective since vesting laws require that only those development regulations in effect when a complete application is filed be used in the review of an application. Any new City policy, regulation, or moratorium would be inapplicable to this application.
5. Exhibit 28 is the preliminary plat which Acme Homes now desires the Examiner to approve. Exhibit 28 implements the changes to Exhibit 3 which the Examiner required in the original Decision. It also offers some changes that may potentially ameliorate traffic impacts to Yew Avenue while still providing interconnectivity as required by the EDDS. The Examiner concludes that Exhibit 28 should be treated as the proposed preliminary plat.
6. Road C must connect to Yew Avenue without any usage restrictions for at least three compelling reasons. First, the EDDS require such a connection. EDDS § 3-01.B.1 requires that “[t]he road network shall be designed to promote the convenient circulation of traffic without reliance on the arterial road system.” EDDS § 3-01.B.4 requires that “[p]ublic roads shall be constructed to the boundary of adjacent parcels to create an interconnected road network.” Finally, EDDS § 3-01.B.8 requires that “[p]ublic road connections shall be constructed to any public road stubs on adjacent parcels that have been constructed to shared boundaries ... [unless] it can be shown that topography, the surrounding road network, soils, hydrology or other factors make the connection impractical or infeasible.” A connection to the current end of Yew Avenue is neither impractical nor infeasible. In fact, there is no physical impediment to the required connection.

Second, it is clear from the physical layout of *Miller Farms* that the intent from the outset was for Yew Avenue to be continued westerly to serve development of the subject property. If Yew Avenue had been intended to be a permanent dead-end street, it would have been designed with a standards-

compliant turnaround, cul-de-sac, or something similar. It was not so designed. The full-width right-of-way simply dead-ends against the west boundary of *Miller Farms*, a clear indication of an intent to extend the street westerly into the adjoining property.

Third, the street section of Yew Avenue is exactly the same as currently required for a non-arterial, local street: 28 feet of pavement, providing two 10-foot travel lanes and one 8-foot parking lane. Some witnesses argued (in both the original and in the reconsideration hearing) that the current Yew Avenue 28-foot section would not be safe for additional traffic volumes. That argument flies directly in the face of the fact that the new streets in *Daisy Meadows* will be constructed to exactly that same section standard as that is the current standard for all local access streets in the City. Twenty-eight feet of pavement with curbs, gutters, planter strips, and sidewalks is the standard and, therefore, cannot be considered to be substandard or unsafe. Dedicated streets are constructed for vehicular travel, not as play areas for children. Playing in any street is unsafe. The Examiner declines to bar an appropriate and standards-compliant connection to Yew Avenue because neighborhood children play in the street.

7. The Examiner understands that apparently many *Miller Farms* residents bought their properties under the mistaken belief that Yew Avenue would never be extended. How they came to that belief cannot be determined from this record and would be irrelevant in any event. The Examiner does sympathize with them, but facts are facts and standards are standards. That they didn't understand the reality of what the plat design meant is not a legal basis to avoid compliance with adopted standards.
8. The pathway within the transmission easement is consistent with EDDS § 3-01.B.12.
9. The options to Conditions 11 and 13 jointly suggested by Acme Homes and DCD (Exhibit 31) provide an appropriate solution to both the adequacy of sewer service and traffic LOS. They also fulfill the "rational nexus" and "proportionality" concepts established in case law. The Examiner will "tweak" the wording slightly, but will retain the substance of the joint proposals. The Examiner will also revise Condition 1 so that it approves Exhibit 28 rather than Exhibit 3. Except for those changes, the conditions of approval as contained in the original Decision will be retained.
10. Traffic impact and school overcrowding, although seemingly quite different, are actually quite similar from an analytical perspective. In both cases the City has adopted standards and created financial impact mitigation systems to proportionally assess mitigation costs to developments. In the case of traffic, the City established a LOS standard. In the case of public schools, the School District calculated the share of its capital needs attributable to new development and the City approved a mitigation fee schedule based on the District's calculation. If those standards are met, nothing more is required other than payment of the established mitigation fees.

11. Subject to the above discussion, *Daisy Meadows* meets the criteria for preliminary subdivision approval contained in SMC 19.08.080 as documented in Finding of Fact 11, above. In addition, *Daisy Meadows* 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. *Daisy Meadows* meets all applicable review criteria. Therefore, it must also be concluded that it serves the public health, safety, and welfare.<sup>15</sup>

12. *Daisy Meadows* passes the concurrency test: Both the LDR and MDR zones permit single-family residences; the proposed density is consistent with the requirements of the LDR and MDR zones; and, properly conditioned, the City has adequate public services to meet the development's needs.
13. 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 *Daisy Meadows* **SUBJECT TO THE ATTACHED REVISED CONDITIONS.**

Revised Decision issued December 4, 2019.

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

John E. Galt,  
Hearing Examiner

## HEARING PARTICIPANTS<sup>16</sup>

Ry McDuffy, for the applicant

A.J. Bredberg, for the applicant

<sup>15</sup> 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.

<sup>16</sup> The official Parties of Record register is maintained by the City's Hearing Clerk.

Andy Galuska, for the City  
Eliza Klett  
Bronn Journey  
Courtney Akers

William Bassett  
Colleen Rupke  
Daniel Klett

### **NOTICE OF RIGHT OF APPEAL** <sup>17</sup>

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.

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."

### **REVISED CONDITIONS OF APPROVAL** **PP19-001** ***DAISY MEADOWS***

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. Exhibit 28 is the approved preliminary plat and Exhibit 21 is the approved preliminary supporting plans (adjusted for the plat configuration shown on Exhibit 28). Any discrepancies between the approved preliminary plat and the SMC shall be resolved in the favor of the SMC.
2. The project shall implement all of the applicable recommendations contained in the following technical reports submitted to the City:

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<sup>17</sup> "The Examiner's action following reconsideration is not subject to further requests for reconsideration." [Hearing Examiner Rule of procedure 504(f)]

- a) Geotechnical Report, prepared by Nelson Geotechnical Associates, Inc. dated October 12, 2018.
  - b) Drainage Report, prepared by Joseph M. Smeby dated April, 2019.
  - c) Traffic Report, prepared by Gibson Traffic Consultants, Inc. dated February 2019.
3. 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 Report for the project or subsequent versions approved by the City.
  4. Nothing in this approval excuses the applicant, developer, owner, lessee, agent, successor or assigns from compliance with any other federal, state, or local statutes, ordinances, or regulations applicable to this project.
  5. The developer shall construct a public pedestrian trail from Road A to Road C through the PSE easement.

**Prior to commencement of any site work:**

6. The developer shall obtain a grading permit for the proposed civil improvements.
7. Final engineering plans which depict street, water, sewer, and drainage improvements shall be submitted to the City's Public Works Director for final review and approval prior to issuance of any grading permits onsite. All improvements shall be designed in accordance with the City's most current Engineering Design and Development Standards (EDDS).
8. A comprehensive erosion and sedimentation control plan shall be submitted and approved by the City's Public Works Director.
9. The developer shall obtain a General Construction Permit from the Washington State Department of Ecology prior to beginning construction.
10. Critical area buffers shall be marked in the field with silt fencing prior to any work onsite. No grading or other work may occur in the critical area or its buffer without express City approval.
11. The City has determined that certain improvements may be required to resolve sewer main deficiencies pertaining to this development. Prior to final plat approval, the developer shall decide which of the following options it will choose with respect to off-site sewer improvements. However, if the City updates its sewer model and the City finds that off-site sewer improvements are not necessary or are smaller in scale than currently proposed, the City may reduce or eliminate the

amount of sewer pipe or the sewer improvement in-lieu fee in either of the options listed below. In no event shall the options below be increased.

Option 1:

The developer shall replace sections of the deficient off-site sewer main not to exceed 6.6 feet per lot. Said improvements shall be identified by the City. Installation shall occur prior to final plat approval.

OR

Option 2:

The developer shall pay a sewer improvement in-lieu fee not to exceed \$2,640.00 per lot. The payment in-lieu fee may be deferred by the developer until the 25<sup>th</sup> building permit has been issued. The 25<sup>th</sup> building permit shall not be issued until all deferred in-lieu fees have been paid in full.

**Prior to Final Plat Approval**

12. All improvements shall be installed, inspected, and approved by the City Engineer or Public Works Director pursuant to the approved plans. All improvements shall be constructed in accordance with the approved engineering plans and approved preliminary plat map.
13. The City has determined that certain improvements are required to resolve possible traffic deficiencies pertaining to this development. Prior to construction plan approval, the developer shall decide which of the following options it will choose with respect to traffic improvements. If one of these options is completed by another development, no further action is required by the developer.

Option 1:

Prior to final plat application, the developer shall install the traffic improvements recommended in the TSI Report (Exhibit 27.B). This includes a “no left-hand turn” sign at the Main Street/US-2 intersection to restrict left hand turn movements during peak hours (4-6 PM weekdays), signage along Main Street to encourage eastbound US-2 traffic to use the 5<sup>th</sup> Street/US-2 intersection, as well as channelization improvements at the 5<sup>th</sup> Street/US-2 intersection to provide an exclusive left turn and a shared through-right turn lane. The sign language and actual location of the improvements shall be directed by the City.

OR

Option 2:

If the City has designed an alternative traffic improvement which provides an improved level of service at the Main Street/US-2 and the 5<sup>th</sup> Street/US-2 intersections, the City may allow the applicant to pay an in-lieu fee equal to the construction cost of Option 1. These fees will be used to fund the City designed improvement. The City has determined that the appropriate per lot cost would be \$145.00 to be paid at the time of building permit application.

14. Any required maintenance securities shall have been submitted and approved by the Public Works Director.
15. The developer shall pay the required fee in lieu of providing on-site recreation improvements as required by SMC 16.62.070.
16. A note shall be included on the face of the final plat which states that the proposed lots may only be developed with single-family residences as required by SMC 19.44.030(A).
17. The developer shall submit a mail box plan, approved by the U.S. Post Office, to the Planning Director. This shall include mailbox type and locations and staff will confirm they have been installed as approved.

**Prior to Building Permit Issuance**

18. The final plat shall have been recorded with the Snohomish County Auditor.
19. Park, traffic, and school impact fees assessed in accordance with Chapter 16.72 SMC shall be required and paid at the rate in effect at the time of building permit issuance.
20. The water general facility charge, in accordance with SMC 13.12.080(B)(2), shall be paid.
21. The sewer general facility charge, in accordance with SMC 13.08.030, shall be paid.