Exhibit 73
SUB17-02

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December 13, 2017

Hearings Examiner
City of Camas
616 NE Fourth Avenue
Camas, Washington 98607

Re: Dawson Ridge Subdivision

Dear Hearings Examiner:

We represent the applicant and are submitting this letter for the record. Overall, most of the issues have been addressed by the staff report, but there are a few outstanding issues that remain, including most of the issues raised in the applicant's SEPA appeal (primarily related to whether the geotechnical setbacks being located on private lots) and two additional issues – whether permanent critical area fencing can be deferred until occupancy, whether the City can require the requested public viewing area.

However, it appears one issue raised in the SEPA appeal has been resolved. Applicant challenged SEPA condition 15 relating to the Comprehensive Plan policies encouraging ADA and ADU dwellings. The staff report contains a recommendation for Plat Note 1, requiring the CC&Rs to allow ADU. The applicant agrees with this plat note and agrees that the CC&Rs for the development shall contain no provisions prohibiting single-story barrier-free dwellings or ADUs. Since it appears that staff now agrees Plat Note 1 satisfies the Comprehensive Plan provisions related to ADA/ADU, this should resolve the SEPA issue relating to Condition 15.

1. The Geotechnical setback can be located on private lots.

The remaining issues set forth in applicant's SEPA appeal are still unresolved and the applicant requests its SEPA appeal be upheld. Consistent with its SEPA appeal, applicant requests that proposed Plat Note 3 be deleted. As written, Plat Note 3 contradicts the applicant's geotechnical engineer's evaluation, which was confirmed by the City's consultant, that additional geotechnical engineering analysis was only required for dwellings to encroach into the geotechnical setback, not for dwellings that respect the setback. Further, applicant has agreed to make the building envelopes shown on the plat respect the geotechnical setback, so there is no need for Plat Note 3. Showing the building envelops on the plat is an adequate enforcement mechanism to prevent construction in the geotechnical setback when all of the building envelops are located outside the setback.

The City's geotechnical regulations support the arguments in applicant's SEPA appeal for why the geotechnical setback may be located on private lots rather than in a public tract. For instance, Section 16.59.050 allows fences and nonresidential (uninhabited) buildings up to 2,500 square feet in area to be located in geologically hazardous areas without further geotechnical review. This is consistent with the recommendations of the applicant's and City's geotechnical engineer. Since these types of structures, which are allowed by code, could not be constructed in a public tract, Section 16.59.050 weighs in favor of allowing the geotechnical setback to be on the private lots, rather than forcing it into a public tract where fences and uninhabited structures would be prohibited.

Moreover, the provision in the code referring to putting critical areas into tracts is found in the general provisions for critical areas under Section 16.51.240.A, not the more specific provisions regulating geologically hazardous areas. It makes sense to put designated critical areas like a wetland or a riparian area into a tract because those types of critical areas are resources that must be protected in order to preserve their value for clean water, habitat, etc.

Geologically hazardous areas have no such "resource" value. Geotechnical hazard areas are not "resources" to be protected but instead, these are merely areas that present *potential* safety risks that must be addressed before doing construction. This differentiates them from the types of critical area resources that are appropriately protected by placing them into public tracts in order to preserve clean water and habitat values.

Further, there is no potential safety risk from developing fences or uninhabited structures in the geotechnical setback areas at issue in this case. Both applicant's and the City's geotechnical engineers have confirmed this, and uninhabited structures and fences are allowed outright, without further geotechnical review under Section 16.59.050. This is substantially different from the need to protect a "resource" like a wetland or a riparian area, and it does not make sense to put the geotechnical setback in a public tract, which would prohibit uses which are allowed outright under both the geotechnical code (Section 16.59.050) and both the applicant's and City's geotechnical engineering reports.

This is the case where the specific provisions of Section 16.59.050 control over the more general provisions of Section 16.51.240.A. In any event, the general provisions of 16.51.240.A allow other "acceptable" mechanisms such as "easements" to be used to protect critical areas. Applicant argues that an easement or CC&R prohibiting inhabited structures (but not fences or uninhabited structures under 2,500 square feet) from being located in the geotechnical setback.

That adequately protects the geotechnical setback from unauthorized intrusion. Additionally, applicant is willing to adjust the building envelops shown on the plat to reduce those building envelops so none of them cross the geotechnical setback. That would address the City's concern about "weekend warriors," since inhabited structures would need to be located within the building envelope (enforced through the plat and the building permit process), and uninhabited structures and fences are allowed in the geotechnical setback area without further geotechnical review.

Since fences and uninhabited structures are allowed in the geotechnical setback areas without further review, there is no need to stop "weekend warriors" from constructing them. In order to impose conditions, the City must have an adequate factual and legal basis to support the condition. The City has not met its burden of asserting any substantial evidence to support a condition to disallow what is expressly allowed by code (fences and uninhabited structures in geotechnical setback areas). Since both applicant's and the City's geotechnical experts confirm that there is no safety risk here, the City cannot force the geotechnical setback areas into public tracts under the circumstances of this case.

2. The subject property is not the appropriate location for a viewpoint.

Applicant also objects to the references to the Columbia Viewpoint (SU-11) in the conditions (Conditions 9, 10, and 13). The City's request for the applicant to provide a Columbia Viewpoint (SU-11) is objectionable for a number of reasons. First and foremost, the City has not met its burden of establishing proportionality under either RCW 82.02.020 or under the takings clause of the Washington or US constitutions. It is the City's burden to justify the exaction, and it is a burden the City cannot meet here.

However, the constitutional issues need not be reached here because the Columbia Viewpoint (SU-11) cannot be required of this applicant for a number of sub-constitutional issues. First, the PROS plan is merely a guideline that has not been implemented with specific code provisions requiring a park dedication of subdivision applicants. *Citizens of Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 947 P.2d 1208 (1997)("Since a comprehensive plan is a guide . . . conflicts between a general comprehensive plan and a specific zoning code [must] be resolved in the zoning code's favor"). The City has not yet adopted provisions implementing the PROS plan by requiring any specific dedication.

Moreover, the PROS plan states on page 3-2 (first bullet point) that the proposed park sites shown with an asterisk on the map is the "general" site for the proposed parks, "not intended to indicate specific parcels of land." There is nothing in the PROS plan giving the City authority to exact a park from this particular subdivision applicant.

Even if the asterisk on the map could be read to require a specific applicant to dedicate a park, the Park System Concept map in question shows the asterisk for Columbia Viewpoint (SU-11) further south than the subject property. This is probably because there are no significant views on the subject property due to the trees to the south, but there are views on the property to the south (APN 986028088 or 127146000). The applicant is submitted photos taken from the southern property line near the existing gazebo, showing there is no view in that location. The applicant is also submitting photos taken from Tract B, showing that the view from Tract B is also very limited.

Since the PROS plan was to develop the Columbia Viewpoint (SU-11) in an area with significant views of the Columbia River, requiring a dedication of a viewpoint from this applicant does not further the goals of the PROS plan and cannot be required.

Further, the PROS plan does not authorize exactions to be places on specific developments in order to provide Columbia Viewpoint (SU-11). Although Table 7.2 lists "exactions" as a "potential funding source," that table contains a specific definition of "exaction" — "Costs of necessary public improvements are passed onto the adjacent landowners through the development agreement process [emphasis added]." No development agreement is proposed here (applicant requested a development agreement but the City refused). Since the PROS plan has a very specific definition of "exaction" that is limited to voluntary conditions imposed through development agreements, there is no authority in the PROS plan (or elsewhere) to impose an involuntary condition of approval on a subdivision application requiring an exaction for the Columbia Viewpoint (SU-11), absent a development agreement, which we don't have here.

Finally, table 7.2 merely lists "potential funding sources." It does not state that these are the funding sources authorized to be used to acquire parks by the PROS plan. Those are listed in Section 7.4, which contains the City's "Proposed Short Term Financing Strategy" for implementing the PROS plan. Importantly, Section 7.4 does not list exactions as a proposed method of funding the PROS plan (although "impact fees" and voluntary donations are listed).

When read as a whole, it appears the City Council made a conscious decision not to implement park acquisition of Columbia Viewpoint (SU-11) through involuntary exactions, but instead to implement it through the general fund, impact fees, REET, grants, capital measures and voluntary donations, as specified in Section 7.4. Even if the PROS plan authorizes use of the other "potential" funding sources, table 7.2 is carefully drafted to avoid involuntary exactions, by limiting the exactions that can be used to fund the PROS plan to those which are agreed to by the property owner through a development agreement.

Therefore, the hearings examiner need not reach the constitutional issue or proportionality in order to rule in applicants favor and remove any reference to the Columbia Viewpoint (SU-11) from the conditions of approval both because there are no significant views on the subject property and because the PROS plan does not authorize acquisition of the Columbia Viewpoint (SU-11) on this property through an involuntary exaction.

3. Permanent fencing to protect critical areas can be installed at time of occupancy.

Finally, applicant also requests that conditions 48 and 51 be revised to require temporary fencing at the time of final platting but to defer permanent fencing until occupancy of the applicable lots. If permanent fencing were required at final platting, it could be damaged during home construction. Temporary fencing at the time of final platting would satisfying the need of protecting the area, while allowing permanent fencing to be installed efficiently without subjecting it to undue damage during home construction.

In reviewing Section 16.51.210, "temporary markings" are required to protect critical areas during construction under Section 16.51.210.A, but permanent fencing is not required during construction. See Section 16.51.210.B. Therefore, consistent with these code sections regulating protective fencing, applicant requests conditions 48 and 51 be revised to require protective

fencing during construction and to require permanent fencing on each lot only after construction of dwellings has been completed.

4. Other minor clarifications.

Additionally, there were a few minor factual discrepancies in the staff report that applicant wanted to point out. Contrary to what is stated on page 1 and footnote 1 of the staff report, the surveyed area of the site is 21.74 acres as surveyed by Olsen Engineering. The staff report statement to the contrary appears to be based on the original application form (submitted before the City entered into a Settlement Agreement and approved a Boundary Line Adjustment) and a typographical error in an email from Melanie Poe. Well after the original application form was submitted, but before the final completeness review, the City entered into a CR 2A Settlement Agreement (providing, among other things, that the "ridge lots" be boundary adjusted and developed separately, including provision for an easement and construction of an access road). After that Settlement Agreement was executed and a Boundary Line Adjustment was approved and recorded, applicant amended its application by submitting the documents needed to make its application complete on August 9, 2017, including a revised narrative (specifying in Section II that the parcel numbers were limited to APN 127175-000 and 127144-000. APN 127174 is not listed in Section II of the revised narrative since that tax parcel was adjusted through the approved Boundary Line adjustment and not subject to this application. Additionally, the preliminary plat map and all of the related drawings describe the subject property as only including APN 127175-000 and 127144-000, consisting of 21.74 surveyed acres.

There is also a minor discrepancy relating to a White Oak, which is located not on the property, but off site to the west as described on page 3 of applicant's June 2, 2017 Tree Report (page 1 says there are no White Oak on site) and the applicant's November 1, 2016 Habitat Report, which states on page 4 that there is no White Oak on the subject property (despite the County's GIS mapping showing a habitat area in the vicinity), and shown on applicant's tree plan stamped on June 2, 2017 by applicant's certified arborist Bryce D Hanson. Applicant wanted to clarify for the record that this White Oak was located off site and based on the evidence in the record described above, there is no White Oak on the subject property.

Applicant also would like to state for the record that any property that is conditioned to be developed as a trail or viewpoint that is on the City's capital facilities plan must be given SDC credits and the facilities must be owned and maintained by the City. Additionally, at the time the equestrian facility is redeveloped, applicant should get credit for the number of trips generated by the equestrian facility.

Finally, the applicant met with staff on December 11 to attempt to resolve the remaining outstanding issues. Based on that discussion, applicant believes the following issues were resolved with staff and requests the hearings examiner make these changes to the conditions:

- The applicant agrees to the language of Plat Note 1 relating to ADU/ADA's being allowed in the CC&Rs and requests that SEPA condition 15 be modified accordingly.

- City staff supports allowing lot sizes to be reduced below 10,500 square feet and lot width and setback standards to be reduced for lots that are adjacent to critical areas to reduce impacts. (Lots that would need to be reduced include, Lots 6 through 11 and Lots 31 through 39). City staff also supports the width where the setback is measured on the cul-de-sac lots to be reduced from 80 feet to 50 feet.

- City staff supports changing proposed Plat Note 4 to increase the lot coverage standard from 35 percent to 40 percent for lots impacted by critical areas or those that are developed with ADUs to allow more flexibility for ADU and ADA dwellings. We would propose that the plat note allow 50% on all lots to more easily accommodate ADA dwellings and 60% on any lots that are developed with an ADU based on the approval for the Parklands project (see attached). Although Parklands was processed as a PUD, Section 18.09.060.D allows additional flexibility in a density transfer subdivision where, as here, a tract includes one-half acre or more of contiguous acreage.

- City supports revision of Condition 39 to make it clear that fencing is not required around the perimeter of the stormwater pond itself (since it will be underground).

- City staff supports a revision to Condition 11 (and 26) to move the language "to the extent feasible" to the beginning of the sentence to clarify that "to the extent feasible" applies both to meeting the trail width and the ADA guidelines. The applicant requests that the trail width be allowed to range from 6' to 10', the range of width allowed in the PROS plan for a local trail.

- City staff supports a revision of Condition 40 to read as follows: "Retaining walls shall not exceed six feet in height along the side and rear property lines. If taller retaining walls are necessary and unavoidable, then they must be set back at least three feet for every additional retaining wall of up to six feet in height. The terraced three foot setback area must be landscaped and planted. Retaining walls over 42" are not allowed at the front property lines, unless they are terraced and setback by three feet for every additional three feet in height."

- City staff agreed that any trees shown on applicant's tree removal plan could be removed despite being located in a geohazard setback area and that any needed trail work could be done.

- Applicant requests that the geotechnical setback management zones be placed on private lots, not public tracts, consistent with the geotechnical study by applicant geotechnical engineer, which was confirmed by the City's geotechnical engineers. The engineers agreed that uses allowed in the setback management zone include patios, landscaping and fencing. The engineers also agreed that constructing habitable structures within the setback management zone would be contingent on additional geotechnical study on a lot-by-lot basis, and the structures should be supported directly on underlying basalt (see attached memo from PBS and Earth Eng [City reviewer] comments). The applicant

would agree to adjust the building envelopes to avoid the geotech setback line and to place an easement over the setback area.

5. Conclusion.

With the above changes and clarifications, the applicant supports the staff recommendation. Applicant thanks staff for their hard work on this application and requests approval subject to the clarifications and modifications discussed above and in applicant's SEPA appeal

Thank you for your consideration of this matter.

Sincerely,

LANDERHOLM, P.S.

STEVE C. MORASCH
Attorney at Law

SCM/jsr

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