

MAIL TAX STATEMENTS TO:

AFTER RECORDING RETURN TO:

5 Jordan Ramis PC
Attn: James D. Howsley
1499 S.E. Tech Center Place, Suite 380
Vancouver, WA 98683

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This space provided for recorder's use.

15 INSTRUMENT TITLE: DEVELOPMENT AGREEMENT

GRANTOR(S): ASPEN DEVELOPMENT LLC, a Washington
limited liability company (Phases 1 through 3); and
CHINIDERE, LLC, a Washington limited liability
20 company (Phase 4)

GRANTEE: CITY OF STEVENSON, a Washington municipal
corporation

ABBREVIATED LEGAL DESC:

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FULL LEGAL DESC: Lot 1 and Lot 2 of the Feliz Short Plat as recorded
with the Skamania County Auditor as AFN
2008170088.

30 ASSESSOR'S PROPERTY TAX
PARCEL ACCOUNT NUMBER(S): 03-75-36-3-0-0500 and 03-75-36-3-0-1200

REFERENCE NUMBER OF
RELATED DOCUMENTS:

35

AFN 2008170088

DEVELOPMENT AGREEMENT

Effective Date: _____, 2016

PARTIES:

40 Aspen Development, LLC is the owner of APN 03-75-36-3-0-1200, legally described as
Lot 1 of the Feliz Short Plat as recorded with the Skamania County Auditor as AFN
2008170088. Chinidere, LLC is the owner of APN 03-75-36-3-0-0500, legally described
as Lot 2 of the Feliz Short Plat as recorded with the Skamania County Auditor as AFN
2008170088.

45 Collectively these owners are referred to as the "Developer".

The City of Stevenson is a Washington municipal corporation ("City"), and is responsible
for land use planning and permitting pursuant to the Growth Management Act, RCW
35A.63 and RCW 58.17.

50 Developer and City are collectively referred to as the Parties.

AUTHORITIES

55 The parties are authorized to enter this Development Agreement by RCW 36.70B.170(1).

Whereas, pursuant to RCW 36.70B.170, a development agreement may set forth the
development standards and other provisions that will apply to, govern and vest the
development, use and mitigation of the development of real property for the duration
specified in the agreement, which statute provides:

60 (1) A local government may enter into a Development Agreement with a
person having ownership or control of real property within its jurisdiction.
A city may enter into a development agreement for real property outside
its boundaries as part of a proposed annexation or a service agreement.
65 A development agreement must set forth the development standards and
other provisions that will apply to and govern and vest the development,
use, and mitigation of the development of the real property for the
duration specified in the agreement. A development agreement will be
consistent with applicable development regulations adopted by a local
70 government planning under chapter 36.70A RCW;

Whereas, the legislative findings supporting the enactment of this section provide:

75 The legislature finds that the lack of certainty in the approval of
development projects can result in a waste of public and private resources,
escalate housing costs for consumers and discourage the commitment to
comprehensive planning which would make maximum efficient use of
resources at the least economic cost to the public. Assurance to a
80 development project applicant that upon government approval the project
may proceed in accordance with existing policies and regulations, and
subject to conditions of approval, all as set forth in a development
agreement, will strengthen the public planning process, encourage private
participation and comprehensive planning, and reduce the economic costs
85 of development. Further, the lack of public facilities and services is a
serious impediment to development of new housing and commercial uses.
Project applicants and local governments may include provisions and
agreements whereby applicants are reimbursed over time for financing
public facilities. It is the intent of the legislature by RCW 36.70B.170
90 through 36.70B.210 to allow local governments and owners and
developers of real property to enter into development agreements;

RCW 58.17.140 provides that a final plat must generally be submitted for approval
within five (5) years after preliminary plat approval. However, if the preliminary plat was
95 approved before January 1, 2015, the applicant has seven (7) years to submit a final plat;
and if a preliminary plat was approved before January 1, 2008 and is not subject to the
Shoreline Management Act, the applicant has ten (10) years to file for final plat approval.
Cities and counties may adopt procedures by ordinance for extensions of these time
periods. Further, RCW 58.17.140 provides that nothing prevents a City from adopting by
100 ordinance procedures which would allow extensions of time that may or may not contain
additional or altered conditions and requirements.

Stevenson Municipal Code Section 16.26.090 (Section 4 of Ordinance 2016-1096)
authorizes the City Council to extend final plat approval through a development
105 agreement mutually agreed by an applicant and the City pursuant to RCW 36.70B.170,
upon findings by the City that such extension is in the City's best interests.

RECITALS:

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The City initially issued "Chinidere Mountain Estates" preliminary plat approval subject
to conditions on February 24, 2006 and modified said approval and conditions after
Superior Court remand as part of the Final Order dated September 21, 2006, as thereafter
partially amended on September 10, 2008 and April 7, 2009, and thereafter varied on July
115 11, 2016; attached respectively as Exhibits "A", "B", "C", and "D".

The Project was to be constructed in Phases (Phases 1 through 4), with Phase 1 final map approval anticipated to be complete by the third week of August 2016, and with final map approval for Phases 2 through 4 to be completed at a future time either within the time period defined in RCW 58.17.140, or as otherwise extended to a date mutually agreed by the City and Developer.

Phase 1 consists of 27 lots, Phases 2 and 3 collectively consist of 45 lots, and Phase 4 consists of 8 total lots (total 80 lots).

Preliminary plat approval will expire September 21, 2016.

The Parties acknowledge that the Great Recession which began in 2007 had significant impacts on the development and sale of real property, housing and related development projects. The subject Project suffered from the effects of the Great Recession, so that development did not proceed in accordance with the timeframes initially contemplated.

The Parties acknowledge that due to the factors associated with the Great Recession, the Developer (Aspen Development LLC with respect to Phases 1 – 3) and Chinidere LLC (Owner of Phase 4) require an extension to obtain final plat approval (for Phases 2 – 4, and possibly Phase 1), and requested an extension from the City prior to the September 21, 2016 expiration date.

The Parties agree that it is in the best interest of the City and the Developer to reasonably extend the Preliminary plat approval for a **period of five (5) years** from the current expiration date, so that the new Preliminary plat expiration date for any Phase that has not received final plat approval before September 21, 2016 shall be September 21, 2021.

The City will benefit from the extension, as it will enable the plat to be timely and appropriately developed to meet current residential housing needs and generate associated revenue for the City. Other cities in Washington have similarly found that factors associated with the Great Recession support extensions such as the extension authorized by this Agreement. *See, for example, Haagen Development Agreement Extension – City of Vancouver, Washington.*

Further, the extension is supported by the fact that the Developer acquired this project in the midst of the development process, and has been required to take action to address and resolve issues not caused by the Developer. *See, for example, recent court action required to resolve the Lutheran Church Road issue.*

On July 11, 2016 the City Planning Commission varied the requirement that 80% of each phase must be sold or developed prior to commencing development of the next phase. This action will help the property owners develop the properties under more natural market conditions.

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

155 **Note: Phases 1 through 3 are separate and distinct from Phase 4 and no action or**
inaction with respect to Phase 4 shall relate in any manner to, or affect, Phases 1
through 3, and vice versa.

All Phases

160 1. Preliminary plat approval for all Phases that have not received final plat approval
before September 21, 2016 is extended to September 21, 2021.

Phase 1

Phase 1 is owned by Aspen Development, LLC, and the following shall apply with
respect to Phase 1:

- 165 1. **Submittal and Action Timeline (Phase 1):** Infrastructure development and
associated work on Phase 1 shall be substantially completed by March 21, 2017,
with associated follow-up development and associated work to be complete by
September 21, 2018.
- 170 2. Developer's failure to meet the above timelines, unless extended in advance by City
Council action upon a showing of good cause, shall result in the expiration of the
Preliminary Plat approval period for the phase or phases subject to the timeline.
3. **Bonding (Phase 1):** Preliminary plat approval Condition #29 remains in effect
regarding the posting of bonds for the completion of required improvements.

Phases 2 and 3 Details:

175 Phase 2 and 3 are owned by Aspen Development, LLC, and the following shall apply
with respect to Phases 2 and 3.

- 180 1. **Phases Combined:** Phases 2 and 3 shall be combined into a single "Phase 2/3".
2. **Submittal and Action Timeline (Phase 2/3):**
- a. Developer agrees to submit, by September 21, 2018, surveys, maps and
associated documents for Phase 2/3.
 - b. Initial work shall be initiated by September 21, 2019 on Phase 2/3.
 - c. Infrastructure development and associated work on Phase 2/3 shall be
substantially completed by September 21, 2020, with associated follow-up
development and associated work to be complete by January 1, 2021.
- 185 3. Developer's failure to meet the above timelines, unless extended in advance by City
Council action upon a showing of good cause, shall result in the expiration of the
Preliminary Plat approval period for the phase or phases subject to the timeline.
4. **Bonding (Phase 2/3):** Preliminary plat approval Condition #29 remains in effect
regarding the posting of bonds for the completion of required improvements.

190 **Phase 4 Details:**

Phase 4 is owned by Chinidere, LLC, and the following shall apply with respect to Phase 4:

1. **Submittal and Action Timeline (Phase 4):**

- 195 a. Developer agrees to submit, by September 21, 2018, surveys, maps and associated documents for Phase 4.
- b. Initial work shall be initiated by September 21, 2019 on Phase 4.
- c. Infrastructure development and associated work on Phase 4 shall be substantially completed by September 21, 2020, with associated follow-up development and associated work to be complete by January 1, 2021.
- 200 2. Developer's failure to meet the above timelines, unless extended in advance by City Council action upon a showing of good cause, shall result in the expiration of the Preliminary Plat approval period for the phase or phases subject to the timeline.
3. **Bonding (Phase 4):** Preliminary plat approval Condition #29 remains in effect regarding the posting of bonds for the completion of required
- 205 improvements.

MISCELLANEOUS PROVISIONS

Recitals. Each of the Recitals contained herein are intended to be, and are incorporated as, covenants between the Parties and will be so construed.

210 **Counterparts.** This Agreement may be executed in counterparts; however all signature pages will be recorded together, and the complete recorded Agreement will constitute the final instrument.

215 **Effective Date/Recording.** This Agreement is effective on the date of recording. If the date of recording occurs after September 21, 2016, this agreement shall not take effect. Following Council approval, a recordable original shall be delivered to Counsel for Aspen Development, LLC, who agrees to secure the remaining signatures and record the original document with the Skamania County Auditor. City assumes no liability for

220 obtaining the remaining signatures nor recording the original.

Termination. This Agreement will terminate upon the mutual agreement of the Parties in writing, which will be recorded.

225 **City's Reserved Authority.** Notwithstanding anything in this Agreement to the contrary, the City will have the authority to impose new or different regulations to the extent required by a serious threat to public health and safety as required by RCW 36.70B; provided, however that traffic congestion generally is not a serious threat to public health and safety but the impact of congestion at any particular location may degrade to a level that constitutes a safety hazard, and that such action will only be taken by legislative act of

230 the Stevenson City Council after appropriate public process. The City further retains all
police power regulation and all authority not subject to vested rights limitations under
RCW 58.17.033.

235 **Authorization.** The persons executing this Agreement on behalf of Developer and the
City are authorized to do so and, upon execution by such parties, this Development
Agreement will be a valid and binding obligation of such parties in accordance with its
terms. The Parties have each obtained any and all consents required to enter into this
Agreement and to consummate or cause to be consummated the transactions contemplated
hereby.

240 **Run with the Land.** This Agreement will run with the land and be binding on the Parties'
successors and assigns, and will be recorded with the Skamania County Auditor.

Term. The Term of this Agreement will expire on September 21, 2021, unless earlier
extended by the Parties.

Public Hearing. The Stevenson City Council has approved execution of this Agreement by
resolution after a public hearing.

245 **Dispute Resolution.** Should a disagreement arise between the Parties, the Parties agree to
attempt to resolve the disagreement by first meeting and conferring. If such meeting
proves unsuccessful to resolve the dispute, the disagreement may be resolved by a civil
action.

250 **Venue.** This Agreement will be construed in accordance with the laws of the State of
Washington, and venue is in the Skamania County Superior Court.

Performance. Failure by any Party at any time to require performance by the other Parties
of any of the provisions hereof will not affect the Parties' rights hereunder to enforce the
same, nor will any waiver by a Party of the breach hereof be held to be a waiver of any
succeeding breach or a waiver of this clause.

255 **Severability.** If any portion of this Agreement will be invalid or unenforceable to any extent,
the validity of the remaining provisions will not be affected thereby. If a material provision
of this Agreement is held invalid or unenforceable such that a Party does not receive the
benefit of its bargain, then the other Parties will renegotiate in good faith terms and
provisions that will effectuate the spirit and intent of the Parties' agreement herein.

260 **Inconsistencies.** If any provisions of the Stevenson Municipal Code and land use regulations
are deemed inconsistent with this Agreement, the court shall first attempt to harmonize the
provisions and if unable to do so, the provisions of this Agreement will prevail, excepting
the City's reserved authority as explicitly defined herein.

265 **Amendments.** This Agreement may only be amended by mutual written agreement of the
Parties, and all amendments will be recorded in the Skamania County deed records.

Survival. Any covenant or condition set forth in this Agreement, the full performance of which is not specifically required prior to the expiration or earlier termination but which by its terms is to survive the termination of this Agreement, will survive the expiration or earlier termination of this Agreement and will remain fully enforceable thereafter.

No Benefit to Third Parties. The Parties are the only parties to this Agreement and are the only parties entitled to enforce its terms, except as otherwise specifically provided in this Agreement. There are no third-party beneficiaries.

Entire Agreement. This Agreement constitutes the entire agreement between the Parties as to the subject matter, and merges, supersedes, and terminates the Prior Development Agreements.

Notices. All notices will be in writing and may be delivered by personal delivery, by overnight courier service, or by deposit in the United States Mail, postage prepaid, as certified mail, return receipt requested, and addressed as follows:

City: City of Stevenson
7121 East Loop Road, PO Box 371
Stevenson, WA 98648

With a copy to: Kenneth B Woodrich, City Attorney
110 Columbia St., Suite 109
Vancouver, WA 98660-3515

Developer:

ASPEN DEVELOPMENT, LLC

With a copy to:

REN GRENDAHL
150 COMMERCE STREET
SAN FRANCISCO, CA 94111

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Aspen Development, LLC

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With a copy to: Jordan Ramis, PC
 Attn: James D. Howsley
 1499 SE Tech Center Place, Suite 380
 Vancouver, WA 98683

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PHASE 4

Developer:

Chinidene, LLC

With a copy to:

Steve Muesch, Landerholm

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Jean McCoy, Landerholm
 805 Broadway St. Ste 1000
 PO Box 1086
 Vancouver, WA 98666

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Notices will be deemed received by the addressee upon the earlier of actual delivery or refusal of a party to accept delivery thereof. The addresses to which notices are to be delivered may be changed by giving notice of such change in address in accordance with this notice provision.

Time is of the Essence. Time is of the essence in the performance of and adherence to each and every provision of this Agreement.

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Non-waiver. Waiver by any Party of strict performance of any provision of this Agreement will not be deemed a waiver of or prejudice a Party's right to require strict performance of the same or any other provision in the future. A claimed waiver must be in writing and signed by the Party granting a waiver. A waiver of one provision of this Agreement will be a waiver of only that provision. A waiver of a provision in one instance will be a waiver only for that instance, unless the waiver explicitly waives that provision for all instances.

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Headings, Table of Contents. The section headings are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

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Interpretation of Agreement; Status of Parties. This Agreement is the result of arm's-length negotiations between the Parties and will not be construed against any Party by reason of its preparation of this Agreement. Nothing contained in this Agreement will be

340 construed as creating the relationship of principal and agent, partners, joint venturers, or
any other similar relationship between the Parties.

Future Assurances. Each of the Parties will promptly execute and deliver such
additional documents and will do such acts that are reasonably necessary, in connection
with the performance of their respective obligations under this Agreement according to
345 the Schedule so as to carry out the intent of this Agreement.

Execution of Agreement; Counterparts; Electronic Signatures.

350 (a) This Agreement may be executed in several counterparts, each of which shall be
deemed an original and all of which shall constitute one and the same instrument, and
shall become effective when counterparts have been signed by each of the Parties and
delivered to the other Parties; it being understood that all Parties need not sign the same
counterparts.

355 (b) The exchange of copies of this Agreement and of signature pages by facsimile
transmission (whether directly from one facsimile device to another by means of a dial-
up connection or whether mediated by the worldwide web), by electronic mail in
“portable document format” (“.pdf”) form, or by any other electronic means intended to
preserve the original graphic and pictorial appearance of a document, or by combination
of such means, shall constitute effective execution and delivery of this Agreement as to
360 the Parties and may be used in lieu of the original Agreement for all purposes. Signatures
of the Parties transmitted by facsimile shall be deemed to be their original signatures for
all purposes.

365 Signatures appear on the following pages.

DEVELOPER

355

By: [Signature]
Its: MANAGING MEMBER

Date 8/15/16

360

State of Washington)
County of Clark) ss.
City of Clark)

365

I certify that I know or have satisfactory evidence that Ben Grendahl is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the 15th day, of August
370 2016 to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

375

Dated: August 15, 2016.

[Signature]
Signature

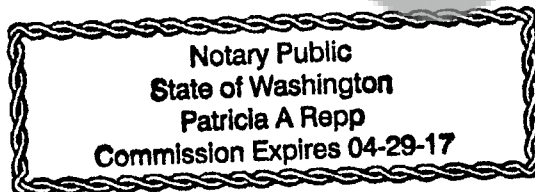
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(Seal or stamp)

Patricia A. Repp
Title - Notary Public
My appointment expires 4-29-17

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DEVELOPER – PHASE 4

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By: Catherine A. Sawyer
 Its: Chinidere LLC, Manager

Date 8/8/16

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State of Washington)
) ss.
 410 City of Vancouver)

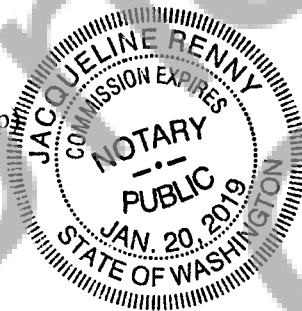
I certify that I know or have satisfactory evidence that Catherine A. Sawyer is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and
 415 acknowledged it as the Manager, of Chinidere, LLC
 _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

420

Dated: August 8, 2016.

425

(Seal or stamp)



Jacqueline Renny
 Signature

Notary Public
 Title
 My appointment expires 1-20-2016

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City of Stevenson

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By: Frank Cox
Its: Mayor

Date

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State of Washington)
) ss.
City of Stevenson

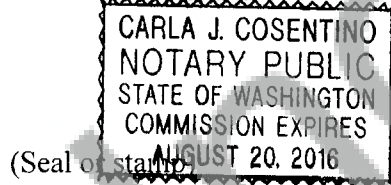
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I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the _____, of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

450

Dated: August, 2016.

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Signature

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Title

My appointment expires 8/20/16

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Approved as to form:

[Signature]
City Attorney

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EXHIBIT "A"
9/21/2006 Preliminary Plat Approval (25 pages)

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**BEFORE THE CITY OF STEVENSON, WASHINGTON
PLANNING COMMISSION**

Regarding a request by John Feliz, applicant, for a) <u>AMENDED</u>
Preliminary Plat to divide 25.4 acres into 83 lots for) <u>FINAL PLANNING</u>
Mixed single family detached and multi-family residential) <u>COMMISSION</u>
In the R-1 and R-3 zones in the newly-annexed area on the) <u>RECOMMENDATIONS</u>
East side of Stevenson, South of the Skaalheim tracts and) <u>AS ADOPTED BY</u>
North of SR-14.) <u>CITY COUNCIL 9/21/06</u>

Per the Superior Court's

Order of Remand

A. SUMMARY

1. John Feliz (the "applicant") requests approval of a preliminary plat to divide 25.4 acres of property partially zoned R-1 and partially zoned R-3 into 83 home sites consisting of 83 residential structures, of which no more than four structures shall be multi-family and the remaining structures shall be single family detached homes. The applicant also proposes to create two tracts designated as open space or habitat buffers and one space designated as a park, totaling 3.65 acres. The two tracts designated as open space serve to protect and preserve stream corridors and wildlife habitat on three streams that cross the property. The original plat application was changed to address staff concerns and the amended preliminary plat application was filed in June, 2005.

2. The applicant will dedicate right of way for and construct several new public streets within the site. The applicant will extend Pine Street, Tari Lane, Fir Street and Spruce Street on the North end of the property, and on the South end of the property make improvements to Lutheran Church Road and its connection to SR-14. The applicant submitted a Traffic Impact Analysis dated March 9, 2005, and a later addendum. The applicant requests the following variances:
 - i. To reduce the right-of-way width requirement (from 60 feet to 50 feet)
 - ii. To reduce the 36-foot paved road surface requirement to a 32-foot paved surface;
 - iii. To provided sidewalks on one side of the paved surface only (the City road standards require sidewalks on both sides);
 - iv. To exceed the 15% maximum grade for a section of Fir Street, up to a 16.67% grade;
 - v. To exceed the maximum 15% grade for the proposed pedestrian paths;

- vi. To eliminate the requirement of connectivity between the new road system and the existing city streets adjoining the subdivision.
3. The applicant will collect storm water from impervious areas and direct it into a pipe collection system, directing all stormwater to a stormwater treatment area, which discharges to Vallett Creek, a Type 3 stream, and then to the Columbia River. See Preliminary Stormwater Plan. No changes are proposed for the drainage of the existing intermittent stream.
4. The applicant has provided a Geotechnical Engineering Report showing cross sections of the site and making recommendations to direct groundwater from the site. The study concludes that residential development is technically feasible on the site with detailed engineering considerations and construction supervision.
5. The applicant provided an Oregon White Oak Habitat Management Plan to address the project's impact on flora and fauna found on the site and to address concerns from the Washington Department of Fish and Wildlife.
6. Skamania County PUD will provide electrical power and the City of Stevenson will provide domestic water and sanitary sewer to each proposed lot.
7. The City of Stevenson issued a Mitigated Determination of Non-Significance (MDNS) for the subdivision pursuant to the State Environmental Policy Act ("SEPA"). The MDNS contained the following mitigation measures:
 1. As part of Phase 1, off-site improvements to Lutheran Church Road and the State Route 14 approach shall be constructed to provide more adequate vehicular and pedestrian safety.
 2. Development activities such as site preparation, grading and the construction of roads and utilities, construction, except for necessary utility line and emergency access road corridors on other parts of the site.
 3. In conjunction with the phased development, off site street improvements to portions of Pine Street, Tari Lane, Fir Street and Spruce Street shall be constructed by the applicant to provide the needed street linkages to the project site.
 4. To address the need of adequate water supplies and sewer services to the project site, the applicant shall provide the water main extension along Second Street Lutheran Church Road, an upgrade at the Kanaka Creek pump station and shall participate with the City on the upgrade of the water main along Pine Street.
 5. Project plans shall include stormwater drainage facilities, site grading plans and erosion control measures using best management practices, acceptable to the City Engineer.
 6. Prior to site construction activities for Phases 2, 3 and 4, a wildlife/bird breeding survey shall be conducted, as recommended by the Washington Department of Fish and Wildlife, to assess priority habitat

and species. Identification of priority habitat or species may require site mitigation.

7. If cultural or archeological resources are discovered on the site during construction activity, the Office of Archeology and Historic Preservation in Olympia and the City of Stevenson shall be notified immediately.

The City Planning Director provided notices to interested agencies as required by Ch. WAC 197-11 and received comments. As a result of the comments, the City Planning Director has amended mitigation measure numbers 4, 6 and 7 to the following

4. To address the need of adequate water supplies and sewer services to the project site, the applicant shall provide the water main extension along Second Street Lutheran Church Road, an upgrade at the Kanaka Creek pump station if other measures to control inflow/infiltration on-site are not adequate, and shall participate with the City on the upgrade of the water main along Pine Street.

6. Prior to site construction activities for Phases 2, 3 and 4, a wildlife/bird breeding survey shall be conducted, as recommended by the Washington Department of Fish and Wildlife, to assess priority habitat and species, such as the Western Gray Squirrel, and may require a comprehensive wildlife plan and amendments to the project plans.

7. Prior to site disturbing activities, an archeological/cultural resources survey of the site shall be conducted by a qualified professional and shall be made available to appropriate agencies for review. If cultural or archeological resources are discovered on the site during construction activity, the Office of Archeology and Historic Preservation in Olympia and the City of Stevenson shall be notified immediately.

8. It is understood that the applicant has applied for preliminary plat approval of the entire four-phase proposal. Preliminary plat approval would remain valid for five years, subject to completion of improvements and submission of a final plat.

9. Based on the finding provided or incorporated herein, the Planning Commission (hereinafter "PC" or "Commission")) recommended approval of the subdivision subject to the conditions at the conclusion of this final order.

10. On February 16, 2006 the City Council summarily adopted the PC Recommendations.

11. The Applicant, Columbia Riverkeepers (Riverkeepers), and a neighbor by the name of Avis Dunas (Dunas) appealed the City's Approval to the Skamania County Superior Court. The City was named a respondent in these appeals. The administrative record was presented to the court. The parties submitted briefs on the factual and legal issues. Upon review of each side's

arguments, the Applicant, Riverkeepers and Dinas reached an agreement to address what they perceived to be defects in the City's Approval. Appeals followed, and on September 14, 2006, the City Council authorized the City Attorney to sign a Stipulated Motion and Order of Remand to resolve the parties' respective appeals dispute. On September 15, 2006 the Court entered a Stipulated Order of Remand to require the City to make changes to its conditions of Approval. A copy of the court's Order of Remand is attached to herein as Exhibit "A", the PC Recommendations as agreed upon by the Petitioners and by the City, at a public subject to public hearing on September 21, 2006. No one appealed the Court's Order of Remand.

12. On September 21, 2006, the City Council conducted a public hearing where it considered the court's Order and approved the adoption of these Amended Final Planning Commission Recommendations as contained herein.

B. HEARING AND RECORD HIGHLIGHTS

1. The Planning Commission conducted a public hearing, continued with the consent of the applicant on three meeting dates: August 8, 2005, August 16, 2005 and January 17, 2006. The testimony and evidence, including an audiotape of the public hearing and the casefile maintained by the City, are included herein as exhibits, and they are filed at City Hall. Appendix 1 contains a summary of testimony and evidence offered at the hearing. As set forth above, the City Council also held a public hearing on September 21, 2006 to consider the court's Order of Remand and the previously established record.

C. DISCUSSION

1. City staff and consultants recommended that the Commission approve the preliminary plat, based on the findings set forth in the Engineer's report and Staff report and subject to conditions of approval in the Engineer's and Staff Reports, as modified at the hearing. The applicant largely accepted those findings and conditions as modified, with exceptions discussed below.

2. The Commission finds that the Staff Report accurately identifies the applicable approval criteria for the preliminary plat and contains affirmative findings that the proposed preliminary plat does or can comply with the applicable standards of the SMC (including cited plans and codes) and the Revised Code of Washington, provided the applicant complies with recommended conditions of approval as amended herein. The Commission adopts the affirmative findings in the Staff Report as its own, except to the extent that those findings are inconsistent with the findings in this Final Order.

3. There is a dispute about whether the proposed variance requests should be allowed. These will be treated in order:

- i. To reduce the right-of-way width requirement (from 60 feet to 50 feet)
 1. Choice of standard. The threshold question in this case is what standard should be applied to the variance request. Mr. Keith Hirokawa argues on behalf of neighbor Avis Dunas and Columbia Riverkeeper that the proponent must in each instance meet the multi-part test set forth in SMC 16.38.010. That section addresses variances pertaining to subdivision requirement. However, that section specifically pertains to standards set forth “within this article” and Article II of SMC does not define road width. That requirement is mandated by the City road standards. The PC finds that the standard to be applied in the case of a request for a variance from the road standards appears in the City Road Standards. That is within the sound discretion of the City Engineer, who has concluded that a 50-foot right-of-way is adequate under the conditions existing on this property.
 2. PC finds that the City Engineer has considered the evidence introduced to the City, including reports submitted to the PC as well as the topography and soil composition of the site, and has concluded that a 50-foot right of way will be adequate for the project.
 3. The PC adopts the City Engineer’s recommendation relating to the 50-foot right-of-way request, with the **additional condition** that the City Engineer and Public Works director agree that this right-of-way is adequate considering the decision below concerning the sidewalk variance request.
- ii. To reduce the 36-foot paved road surface requirement to a 32-foot paved surface, consisting of two twelve-foot driving lanes and a single eight-foot parking lane;
 1. Again, the road standards should be applied in this case, and the PC again considers the testimony of the neighbors opposing the reduction of the road width. The discussion focused on the relative dangers to vehicles and pedestrians negotiating a narrower roadway, contrasted by the argument that wider roads lead to faster traffic, more surface area for stormwater and less of a residential feeling.
 2. The PC finds that the narrower roadway will be adequate considering the increased slope cuts that would be required for the larger roadway, the increased stormwater runoff that would result from the larger impermeable surface area and the benefits of slower traffic within the subdivision. The

PC again adopts the City Engineer's findings and recommendations relating to this variance request.

- iii. To provided sidewalks on one side of the paved surface only (the City road standards require sidewalks on both sides);
 1. There was considerable testimony relating to the request for a variance from the standards requiring sidewalks on both sides of the travel lanes. The City Engineer generally supported the variance request, but conceded during deliberations that the PC was more familiar with local standards and conditions and a departure from the Engineer's recommendations might be appropriate if the PC considers the variance to be inappropriate for this subdivision.
 2. The proponent argued that there is adequate pedestrian circulation around the subdivision with sidewalks on only one side of the roadway, especially considering the proposed trail network. Several citizens argued that the development is intended for moderately-sized and priced homes, and that it is likely to house younger families with school-aged children. They expressed concern that children living on lots without contiguous sidewalks would have to cross the street to play safely on a sidewalk, and that would place younger children in peril, or require higher parent supervision.
 3. The developer conceded the trail system is not being built to the standards of sidewalks insofar as it will exceed grade requirements in some areas, have an unimproved gravel surface, and no lighting or other security measures. The PC finds the trail system is not equivalent to sidewalks and the request for a variance to this standard should be denied. Again, to the extent this decision impacts the right-of-way and/or road width variance requests, the proponent will have to meet the condition that the right-of-way must be approved as adequate by both the City Engineer and Public Works director.
- iv. To exceed the 15% maximum grade for a section of Fir Street, up to a 16.67% grade;
 1. The City Engineer's report addressed the request for a variance from the grade requirements, and concluded the request could be allowed, provided the developer is willing to work with the City Engineer and Public Works director to minimize that grade as the site is developed.
 2. The PC finds the increase grade will not adversely the safety of the traffic circulation in the area, provided the

developer provide adequate connectivity as set forth below so that vehicles may use alternate routes during snow and ice events. The PC adopts the City Engineer's recommendation to allow this variance.

- v. To exceed the maximum 15% grade for the proposed pedestrian paths;
 - 1. The City Engineer concludes in his report that this variance may be allowed without making the trail system less safe. Considering the previous ruling that sidewalks must be built on both sides of the roadway, and thus that the trail system supplements rather than replaces the sidewalk system, this variance request is allowed. The PC adopts the City Engineer's findings and recommendations in this regard.
- vi. To eliminate the requirement of connectivity between the new road system and the existing city streets;
 - 1. Standard of review. There was considerable testimony dedicated to this variance request. In this case, this road standard is part of the subdivision code, SMC 16.30.120, particularly subsection (A) dealing with ingress and egress points, subsection (B) which specifically requires "continuation of major roads which serve property contiguous to the subdivision", subsection (E) which mandates "ready access for fire and other emergency vehicles and equipment, and routes of escape for inhabitants" and subsection (F) that requires the road pattern to "conform to the general circulation of the area and provide for future roads and connections." Thus, the applicant would have to meet the variance standards set forth in SMC 16.38.010, including the showing of undue hardship and deprivation of property rights enjoyed by other properties in the area, that granting the variance will not be detrimental to the public welfare, and that allowing the variance will not nullify the intent and purpose of the subdivision regulations.
 - 2. First, the proponent expressed concern that drivers heading down Loop Road, or between SR-14 and the high school, will choose a "shortcut" through the development, thereby increasing traffic both in the development and in the Skaalheim neighborhood. To address the recognized need to emergency access to the neighborhood, the proponent shows a narrow "emergency access only" roadway connecting the upper and lower areas, and bollards to prevent unauthorized use of the road.

3. The City Fire Chief opposes the use of bollards and the City Engineer concurs that bollards will slow emergency response time. The City Engineer opposes the applicant's proposal relating to connectivity. He observed that connectivity between all city roads provides good vehicle circulation throughout the City and gives emergency vehicles better access in all weather conditions. The City Engineer indicated he would not oppose speed bumps to reduce traffic speed and discourage "cutting through" through the development.
4. The applicant based its reasons for limiting access to the subdivision on safety, but made no real showing of hardship to the applicant based on special circumstances relating to the parcel.
5. The PC considered the proponent's testimony regarding circulation and safety, but finds that the applicant has failed to meet the hardship and comparative privilege requirements of SMC 16.38.010(a), and allowing the variance would frustrate the purpose of the road standards set forth in SMC 16.30.120. City Engineer's recommendations will best advance the access to the site for emergency personnel and do not wish to set a precedent of allowing a subdivision in the City become an insulated "island" from other neighborhoods. The PC adopts the City Engineer's findings and conclusions in denying the connectivity variance request.

vii. Lutheran Church Road radius

1. To improve the safety of the existing 35-foot radius curve on Lutheran Church Road, the City Engineer is recommending as a condition that a minimum centerline curve radius of 100 feet be provided by realigning the road.
2. The PC adopts the City Engineer's findings and conclusions regarding the curve radius of Lutheran Church Road.

4. Zoning criteria.

- a. The ordinance¹ annexing this parcel adopted R-1 zone for the northernly section of the parcel and R-3 for the southernly section. The exact delineation has not been established between the two zones, and City Council approval of the exact demarcation will be a condition of preliminary plat approval. The applicant is contemplating not more than four multi-family structures on the southern (phases 1 & 2) section of the development. Single

¹ Ordinance 985&986.

family residential is a permitted use in either zone, and multi-family is permitted in R-3 zone.

b. The preliminary plan shows an approximately ½ acre parcel designated as a “park”. Mr. Hirokawa correctly observed that both R-1 and R-3 zones designate a “park” as a condition use, and that no conditional use application was submitted for this park. The applicant argues that the term “park” in the zoning code is intended to mean “public park” and this “park” is not intended to be dedicated to the City – it is reserved for the use of the subdivision residents only. The PC observes that “park” is not defined in 16.02.010 or in Ch. 16.16. While the PC is given discretion in interpreting its own ordinances², it can not be arbitrary in its interpretation. The dictionary meaning of the word “park” is “an area of land, usually in a largely natural state, for the enjoyment of the public, having facilities for rest and recreation, often owned, set apart, and managed by a city, state or nation”³.

This contemplates both that the area will be open to the public and that it is typically owned by the municipality. This area does not include either of these factors, and thus is not a “park” in that sense but something more akin to the “greenspace” areas designated in other parts of the development. Absent a definition of “park” in the ordinance that includes privately owned and operated areas, the PC is inclined to disregard this area’s designation as a “park” and consider it to be an open space that does not require a conditional use application. If at any time the developer or the property owners wish to dedicate this site to the public for public use and maintenance and the City agrees to accept the dedication, a conditional use application will be necessary.

Given the developer’s designation of this property as a “park” we will require as a condition the redesignation of this property as an allowed use, provided the use does not trigger either additional SEPA or PC requirements. If at any time the applicant wishes to redesignate the area as a “park” it will have to apply for a conditional use permit.

In order to allow the County Assessor to properly provide for an assessment of the greenspace and open spaces, the PC imposes a condition to designate all such spaces with Lot numbers.

c. Mr. Hirokawa mentions the R-3 zoning overlay that appears in Ordinance 986 must be addressed for this site. The R-3 design overlay that is contained in the current City Zoning Ordinance applies only to the area around Rock Creek Drive, as denoted on the Official Zoning Map. For the subdivision site, an R-3 overlay was considered for the subject area, but it was never completed or adopted. Thus, the overlay does not apply to the subject parcel.

² Courts generally accord deference to an agency’s interpretation of an ambiguous ordinance. Citizens to Preserve Pioneer Park LLC v. City of Mercer Island, 106 Wash.App. 461, 475, 24 P.3d 1079, 1087 (2001).

³ *Webster’s Encyclopedic Unabridged Dictionary of the English Language*, Thunder Bay Press, 2001.

Based on the foregoing, the PC adopts the Staff report and recommendations and finds the application meets the zoning designation for this parcel with the conditions set forth.

5. PC Review Standards.

The PC must review the subdivision application according to the review standards set forth in SMC 16.02.180-230

i. Chapter 16.30 Design Standards

1. 16.30.010 General Standards. Except as specifically addressed in the variance discussion, above, the PC adopts the City Engineer's findings and recommendations relating to the roads, sidewalks, drains, fire protection systems, storm sewers and other systems.
2. 16.30.020. Protective improvements required when – Denotation on final plat required. Mr. Hirokawa states that due to the steep topography the area is vulnerable to slides and is therefore "hazardous to the safety or general welfare of persons or property in or near a proposed subdivision" and can not be developed. However, the PC has reviewed the applicant's Geotechnical Engineering Report and its conclusion that the site may be developed safely under the conditions stated in that report and heard testimony from the consultant geotechnical engineer at the public hearings of August 8 and 16, 2005. Absent any expert testimony on the record to the contrary, the PC concurs with the City Engineer's findings and conclusions that the site is not inherently hazardous for development.
3. 16.30.030 Lot size and dimensions. The PC adopts the Planning Director's findings and conclusions that the applicant's proposed lot size and dimensions meet the City's applicable standards.
4. 16.30.040 Blocks. The PC adopts the Planning Director's findings and conclusions that the applicant's proposed block design meets the City's applicable standards.
5. 16.30.050 Reverse frontage lots. The PC adopts the Planning Director's findings and conclusions that the applicant's lot configuration design meets the City's reverse frontage standards.
6. 16.30.060 Lot access. The PC adopts the City Engineer and Planning Director's findings and conclusions that the applicant's proposed lot layout provides adequate public road access to each lot, except as modified by the variance decisions discussed above.

7. 16.30.070 Utility Easement. The PC finds that the preliminary plat map provides for adequate utility easements, provided the City Engineer and Public Works Director do not require more than the 50' right-of-way allowed conditionally above.
8. 16.30.080. Underground utility installations. The PC finds that the project intends to underground utilities and that this requirement is therefore met. The PC finds that the Skamania County PUD has reviewed the plans and agreed to the underground re-routing of its overhead transmission lines, at the applicant's expense.
9. 16.30.090 Drainage and storm sewer easements. The applicant has submitted a Preliminary Stormwater Plan. That plan shows a drain collection system that directs the stormwater to a central bioswale treatment facility on-site next to Lutheran Church Road. From there, the treated water will flow into Vallett Creek and then into the Columbia River.
 - a. Mr. Hirokawa cautions that the area designated for the bioswale is a wetland, and the applicant must first apply for a further critical areas permit pursuant to SMC Ch. 18.12. However, as will be discussed in the critical areas section, below, the area is not mapped as a wetland area and the site assessment of the property failed to identify wetlands as contemplated under this chapter. In addition, the bioswale would not intrude on the required 50-foot buffer area for Vallett Creek, a type 3 stream.
 - b. The PC finds that the Preliminary Stormwater Plan adequately addresses the need to collect and treat stormwater from the site, conditioned upon the City Engineer's review and approval of a final stormwater plan. The PC adopts the City Engineer's findings and recommendations relating to stormwater.
 - c. The PC finds the Preliminary Stormwater Plan shows a general location of stormwater facilities and **a condition** will be imposed requiring adequate easements for the improvement and maintenance of those facilities.
10. 16.30.100 Water supply and sanitary sewer systems.
 - a. Water supply. The City Engineer has considered the applicant's preliminary water system engineering and concludes that both the City water system and the on-site water system will adequately

supply the proposed residences, with the conditions imposed.

- b. Sewer supply. The City Engineer has considered the applicant's preliminary sewer system engineering and concludes that both the City sewer system and the on-site sewer system will adequately supply the proposed residences, with the conditions imposed.

11. 16.30.120 Roads.

- a. Lutheran Church Road approach.

- i. Considerable testimony related to the Lutheran Church Road approach. While this is also relevant to the SEPA application, it is also part of the PC's analysis by virtue of SMC 16.30.120. Subsection (A) requires a subdivision to provide ingress and egress to a subdivision at not less than two points. Provided the connectivity requirement is met, this subdivision will be accessed by more than two points, even without considering Lutheran Church Road. However, subsection (B) requires the subdivision to provide for the continuation of major roads within a subdivision. Also, subsection (E) requires road networks within the subdivision to have "ready access" for fire and emergency personnel, and subsection (F) requires the roads to "conform to the general circulation of the area".

- ii. The Washington Department of Transportation (WSDOT) commented on the application, and provided specific conditions, including improvements to the intersection and increasing the road width from approximately 20' to 26' within WSDOT right-of-way from SR-14. The proponent's plan shows the road width decreasing from 26' to approximately 20' after the WSDOT-required widening. The applicant's attorney, Brad Andersen, explained the road width was partly a function of not knowing the City's right-of-way width, since no deed or easement was apparently recorded for this right-of-way, and that proscriptive use will need to be

established or something worked out with the adjacent property owners.

- iii. Considerable public comment focused on the danger that would result from the traffic in that area being focused on a narrow road with a close turning radius. The PC finds that a 20' width for this access point fails to provide adequate ingress or egress from this subdivision, and that approval will be conditioned on an increase of this road to a width that meets the City Engineer's standards, preferably to match the 26' required by WSDOT. Prior to preparation of road improvement plans, the Project Engineer shall confirm the existing right-of-way and shall confer with adjoining property owners to identify and resolve potential conflicts.

- b. Connectivity to streets adjoining Skaalheim addition. As discussed above, the developer will be required to provide connectivity with the streets to the North of the subdivision. Further, the developer will be required to provide adequate surfacing of the adjoining streets for a reasonable distance as required by the City Engineer and Public Works Director.

- c. Connectivity within the subdivision. As discussed above, the developer will be required to provide connectivity between the North section of the development and the South section, both during and after construction. The road connecting the sections must be up to the standards required of other roads within the development.

12. 16.30.140 Street right-of-way width. This section addresses commercial development and roads along subdivision boundaries, neither of which is applicable to this development.

- 6. The City Council has also considered the Court's Order of Remand and finds that the court's order is appropriate and is based upon substantial evidence as demonstrated by the record.

D. CONCLUSION

The PC concludes that the applicant sustained the burden of proof that the proposed subdivision does or can comply with the applicable provisions of the Stevenson

Municipal Code and Revised Code of Washington, provided it is subject to reasonable conditions of approval warranted to assure compliance in fact with those provisions. The City Council also finds that it is bound by the Court's Order of Remand and hereby adopts the required changes to this Approval.

E. DECISION

In recognition of the findings and conclusions contained herein, and incorporating the reports of affected agencies and exhibits received in this matter, the Commission and the City Council hereby approves the application of John Feliz to subdivide his parcel between SR-14 and the Skaalheim addition into 83 lots, subject to the following conditions:

1. Compliance with City regulations, plans and standards: The design and construction of water and sewer systems, streets, street lights, and storm drainage systems, and site grading and erosion control plans, shall be in accordance with City regulations and Engineering Standards, except as specifically approved otherwise. Complete construction plans, including detailed storm water calculations and downstream analysis, shall be finalized and submitted for review and approval prior to proceeding with construction on the site. Unless otherwise specified herein, at the time of construction and at all times thereafter, the applicant shall comply with all approval requirements established in applicable plans, policies, regulations and standards adopted at the time of this application, including but not limited to, the *Stevenson Municipal Code (SMC)*, the *Stevenson engineering and road standards*, *current water and sanitary sewer plans*, and the *Storm water Management Manual for the Puget Sound Basin (Puget Sound Manual)*.

Zoning and Lots.

2. The applicant shall provide two (2) off-street parking spaces per lot. One of the parking spaces shall be located within a garage containing at least 200 square feet. There shall be a minimum of 20 feet between the front lot line and front door of a garage for all lots.
3. **Prior to final plat approval**, the applicant shall provide a site plan and detailed construction and cost estimates for all development activities associated with the on-site storm water facilities. The agreement shall require payment of a maintenance fund of sufficient size to guarantee maintenance by the City of the storm water facilities. The City may elect to accept dedication of this storm water facilities, subject to a Level 1 Environmental Hazard Assessment or greater, if the area to be dedicated is shown to be free of contaminants, trash and nuisance or poisonous plants, and if the City Council determines that the City has the staffing and funding resources necessary to maintain said dedication.

4. **Prior to the start of construction**, the final grading plan must be reviewed and approved, and earthwork construction, including trenching, shall be observed and tested with documentation provided to the city as construction proceeds, by a licensed geotechnical engineer, and the applicant shall apply for and receive building permits from the city for all proposed site grading and construction. The site grading shall be done during the dry weather season and completed early enough in the year to allow sufficient time for seeding and planting to become established before the onset of wet weather.
5. **Prior to soil disturbing activities** the applicant shall provide the city with a landscaping plan showing all trees to be retained including all large conifers identified by the Washington Department of Fish and Wildlife ("WDFW") and to meet all criteria set forth in the Oregon White Oak Habitat Plan as approved by the City Planner Director.
6. The applicant shall obtain a permit pursuant to PC review for any entry monument on the site.
7. Prior to final plat approval, the applicant shall specify which four lots are reserved for multi-family construction and a note shall be added to the face of the plat to limit multi-family construction to the designate lots.
8. ~~The applicant shall sell or build on not less than 80% of lots in each phase before commencing soil disturbing activities on the next phase, except that the applicant shall have the right to install the necessary and required infrastructure (i.e. underground utilities), not including roads, provided such installation will be done in a manner that minimizes the ground disturbing activities.~~ ~~The applicant shall sell or build on not less than 80% of lots in each phase before commencing soil disturbing activities on the next phase.~~
9. Prior to the initiation of any construction or final plat approval the applicant shall demonstrate to the city's satisfaction that:
 - i. The applicant shall establish a homeowner's association (HOA) and the Articles of Incorporation, By-laws and CC&R's of the HOA shall reflect that the city's operation and maintenance costs for the stormwater facilities shall be borne by the HOA.
 - ii. The HOA shall be empowered to assess its member's fees to be reserved and used to pay the city for the operation and maintenance of the facilities.
 - iii. The city shall have the right of third party enforcement to ensure that the HOA remains intact and collects the fees and the city shall have the right to recapture any fees and costs associated with enforcement actions.

- iv. The means of enforcement shall be proposed and approved prior to final plat approval by the City Attorney.
- 10. The City shall not be responsible for sub drains that may be installed and such responsibility shall be charged to individual lot owners or a homeowners association.
- 11. Because the highway predates this development, WSDOT will not be responsible for any traffic highway noise mitigation measures. A note will appear on the face of the plat to this effect.

Critical Areas

- 12. **Prior to final plat approval or initiation of any soil disturbance**, the applicant shall address Oregon White Oak habitat and riparian buffer requirements as follows:
 - a. The applicant shall:
 - i. Record conservation easements prohibiting building construction and removal of native or mitigation vegetation within the wetland and riparian buffer areas; and
 - ii. Amend the preliminary plat to show that all lots are platted outside of the required riparian and wetland buffers as proposed in the applicant's Oregon White Oak Habitat Plan and all subsequent mitigation measures based on the spring breeding bird survey.
 - iii. Provide a note on the final plat denoting the Oregon White Oak Habitat Plan and Conservation Easement and their recording numbers with the Skamania County Auditor.
 - iv. The applicant shall include the Oregon White Oak Habitat Management Plan in Chinidere's CC&Rs
 - b. In addition, the applicant shall provide the Public Works Director with detailed plans and specifications related to work performed in or near critical areas buffers, when applicable: a vegetation removal and mitigation plan where protected native plants are to be removed; a buffer mitigation and enhancement plan, including a grading and re-vegetation plan; an erosion control plan; and a tree canopy plan and mitigation plan for tree retention and removal within the subdivision including critical areas and buffers. Each report and plan shall consider the cumulative environmental impacts of each phase of development. The requirement in this section that no ground disturbing activity shall occur "near" critical area shall not apply if the applicant submits, and the City approves,

a map that delineates the site's critical area and the applicant has flagged these areas on the ground.

- c. Prior to undertaking any land disturbing activities on the site the applicant shall identify and stake the critical area boundaries in the field prior to construction consistent with SMC 18.12.070.
- d. Prior to final plat approval the applicant shall install physical demarcations along the upland boundary of the critical area buffers. The applicant shall modify the text of the signs as necessary to require protection of the riparian area and stream buffers. The applicant shall revise the CC&Rs to require that the homeowners association and/or lot owners permanently maintain the required signs and demarcation.
- e. ~~_____~~ e. ~~_____~~ The applicant shall show the boundaries of the critical areas on the face of the final plat.

13. If cultural or archeological resources are discovered on the site during construction activity, including burial sites, the applicant is to stop work immediately and notify the Office of Archaeology and Historic Preservation in Olympia and the city of Stevenson Public Works Department are to be notified immediately. Failure to comply with these requirements may constitute a Class C felony, subject to imprisonment or fines. The applicant shall place a note to that effect on the face of the final plat.

14. **Prior to final plat approval** all easements for the private pathway system shall be denoted on the plat. A note shall be added to provide for the right of public access, as intended by the applicant, and shall construct a pedestrian path as shown on the applicant's Pedestrian Circulation Map to provide pedestrian connections through and within the subdivision.

15. No development, including adding landscaping, shall be permitted in any delineated critical areas or within 50 feet of the middle point of any of the streams identified on the applicant's preliminary plat map. Nothing contained herein shall prevent Chinidere from constructing or maintaining a non-impervious trail within the designated critical areas or within the 50-foot set-back area or any other roads, utilities or sidewalks as depicted on the Preliminary Plat Map. Moreover, nothing contained herein shall prevent Chinidere or any subsequent parcel owners to remove or maintain any invasive vegetation (blackberry bushes, scotch broom, and other similar noxious weeds or vegetation) from growing or spreading or to remove hazardous trees or limbs. Nothing herein shall prevent the applicant from planting native plants in accordance with the Oregon White

Oak Habitat Management Plan. The applicant shall add this restriction to the Chinidere CC&Rs.

Engineering

15.16. The design and construction of streets, streetlights, street trees and storm drainage systems, and site grading and erosion control plans, shall be in accordance with adopted city standards.

16.17. Proposed Road "C" shall be extended to Pine Street and Tari Lane, and proposed Road "E" shall be extended to Fir Street and Spruce Street. Water and sewer mains shall be extended with the streets. The proposed Road "C" shall connect with Lutheran Church Road by a road meeting the standards required of other roads within the subdivision. Speed regulating devices may be proposed by the developer for review and approval by the City Engineer and Public Works Director.

17.18. The applicant shall work with the City Engineer and Public Works Director to design and install streets and sidewalks that reduce impervious surfaces to the extent deemed safe and appropriate, but not less than 28 feet. To accomplish this objective, the applicant needs only to design and install sidewalks on one side of the street as deemed appropriate by the City Engineer and Public Works Director. ~~The applicant shall design and construct the subdivision roads as non-arterial Local Access street with a 50-foot right-of-way and 32-foot paved width consistent with the City road standards and allowed variances.~~

18.19. The street centerline curve radius at Lutheran Church Road shall be in accordance with the City Engineer's recommendations and the maximum street grade for Pine Street shall not exceed 15%, unless approved by the City Engineer and Public Works Director, but in no event shall the grade on Pine Street shall exceed 16.67%.

19.20. The tract identified as "Park" is not a permitted use within either the R-1 or R-3 zone. This lot must be redesignated as a permitted use such as "green space" that does not further impact traffic, stormwater or other standards that contemplated this use as a park. Applicant may later seek a conditional use of this lot as a park.

20.21. All open space and green space areas must be assigned Lot numbers **prior to final plat approval.**

24.22. The applicant shall obtain City approval of a final storm water management plan in compliance with adopted City standards.

- a. For the southern end of the site the applicant shall provide sufficient detail to demonstrate that the proposed pre-treatment and

treatment facilities will comply with the requirements of the Puget Sound Manual.

- b. As set forth in item 9, above, the applicant shall amend the CC&Rs to require the homeowners association pay the city for actual costs of maintaining the storm water facilities on the site after the initial two-year monitoring and maintenance period, and shall provide on the face of the plat that the owners consent to the later implementation of a Stormwater Improvement District if at any time the City determines the Homeowner's Association has failed or refused to maintain the stormwater facilities.

22,23. Storm conveyance easements shall be provided in accordance with city standards.

23,24. **Prior to the initiation of any construction or final plat approval** the applicant shall demonstrate to the city's satisfaction that:

- a. The applicant shall establish a homeowners association (HOA) and the Articles of Incorporation, By-laws and CC&Rs of the HOA shall reflect that the operation and maintenance costs for the storm water facilities shall be borne by the HOA, and the HOA shall provide a facilities maintenance manual and facilities maintenance contracts for city approval.
- b. The HOA shall be empowered to assess its member's fees to be reserved and used to pay the city for the operation and maintenance of the facilities.
- c. The city shall have the right of third party enforcement to ensure that the HOA remains intact and collects the fees and the city shall have the right to recapture any fees and costs associated with enforcement actions.

24,25. An NPDES permit must be secured from the Department of Ecology and a copy provided to the city prior to construction.

25,26. The site grading for each phase shall be done during the dry weather season (May 1 and October 31) and completed early enough in the year to allow sufficient time for seeding and planting for erosion control to become established before the onset of wet weather, prior to October 31. Grading and construction outside of the critical areas shall comply with the NPDES permit issued by the Department of Ecology.

~~26-27.~~ The recommendations of the Geotechnical report prepared by GeoPacific Engineering, Inc. shall be incorporated herein and considered as conditions of approval through final design of the subdivision.

~~27-28.~~ The applicant shall provide the city with final plan documents prior the city's approval of the final plat for any phase of development.

~~29.~~ Pursuant to RCW 58.17.140, the applicant shall submit the final plans for City approval within five (5) years of the date of the preliminary plat approval as amended herein. Upon the applicant's request, the City may allow the applicant extensions of time that may or may not contain additional or altered conditions and requirements. The applicant may also, as provided in RCW 58.17.140, post a bond in an amount and with surety and conditions satisfactory to the City that will secure the completion of the actual construction of any of the required improvements.

Streets

~~28-30.~~ The intersection of Lutheran Church Road and 2nd St./SR14 shall be improved in accordance with WSDOT requirements.

~~29-31.~~ The applicant shall make a reasonable effort to obtain additional right-of-way to allow reconstruction of the existing sharp curve in Lutheran Church Road to provide a minimum centerline curve radius of 100 ft. If reasonable efforts are unsuccessful then the alignment of Lutheran Church Road shall be changed to increase the radius of this curve to 100 ft. minimum and extend it to the site in the proximity of the area envisioned for the proposed lot 3.

~~30-32.~~ Lutheran Church Road off-site shall be improved to a width of 26 ft. plus an overlay of the existing pavement, a curb and abutting 6 ft. sidewalk along the west and north side, and a guardrail at the Vallet Creek crossing. Street lighting shall be installed and No Parking signs shall be installed along both sides.

~~34-33.~~ The road surface of Lutheran Church Road may be reduced in width to 26' within the subdivision from the West property line to the common lot boundaries between Lots 1 and 2.

~~32-34.~~ The extension of Lutheran Church Road shall continue to Road C to eliminate the proposed cul-de-sac and to provide vehicular and pedestrian connectivity in accordance with City standards.

~~33-35.~~ The maximum street grade of 15% may be exceeded as requested along the existing Lutheran Church Road, Road "D", and Tari Lane and the southward extension of Fir St. The extension of Pine St. shall be evaluated during final design to seek a design solution that will adhere to

the maximum allowable grade as closely as possible subject to the City's approval.

~~34.36.~~ The applicant shall provide an updated traffic study after redesign of the extension of Lutheran Church Road to Road "C" for review and approval by the City Engineer.

~~35.37.~~ All curves shall have a minimum centerline radius of 70 ft, except Lutheran Church Road in the subdivision which shall have a 100 ft centerline radius.

~~36.38.~~ The existing pavements of Pine, Tari Lane and Fir Streets shall be extended to the new streets and existing pavements overlaid south of Tari Lane.

~~37.39.~~ The intersection of Road A/Fir St. shall be constructed with Phase I to provide a turnaround or a temporary turnaround.

~~38.40.~~ An emergency access road with an all weather surface 20 ft. wide and maximum grade of 15% shall be extended with Phase I to Pine Street at the north edge of the site to provide alternate ingress and egress to the site until such time as fully improved public streets are constructed with subsequent phases.

~~39.41.~~ No bollards shall be allowed within public streets.

~~40.42.~~ The applicant shall construct and dedicate public sidewalks, streets and public ways consistent with the applicable adopted City standards.

~~41.43.~~ The applicant shall provide a minimum 3-inch diameter PVC or steel pipe of equivalent as approved by the Public Works Director, weep hole through the curb at each lot line. This allows for connection of roof drains to the street and maintains the integrity of the curb, post construction. This detail or requirement must be shown on the construction drawings.

~~42.44.~~ The applicant shall provide a maintenance warranty or assurance in a form acceptable to the City Engineer for a period of two years in the amount of 10% of the cost of construction as certified by a professional engineer following final acceptance by the city for all other public or city-owned improvements including streets, street lighting, landscaping, water and sanitary sewer systems and stormwater collection and treatment facilities.

~~43.45.~~ The applicant shall pay a reasonable sum as its proportionate share towards the cost of off-site improvements to the intersection of Pine and Shepard Streets, as determined by the City Engineer and Public Works Director.

~~53.54.~~ Storm water facilities shall be located in separate tracts or within public road rights of way.

Erosion Control

~~53.55.~~ All erosion control ("EC") measures shall be designed, approved, installed and maintained consistent with city standards. All EC Measures shall be in place prior to removal of vegetation or any construction activity and maintained during all phases of construction.

~~54.56.~~ Construction plans shall identify staging areas for all equipment, contractors, deliveries, and supplies prior to construction plan approval.

Utilities

~~55.57.~~ In addition to the 12-inch main extension through the site for phase 1 the 10-inch main north through the site shall also be constructed with Phase 1.

~~56.58.~~ The Zone 3 pump station improvements identified in the 2003 Water System Plan Amendment must be completed before issuance of any building permits in Phase 3. The applicant must bear an equitable proportionate share

~~57.59.~~ If the on-site sewer re-routing does not reduce I/I sufficiently the Kanaka Creek sewage pump station and force main shall be upgraded as necessary.

Fire Safety

~~58.60.~~ Fire suppression and hydrant systems shall meet approved city standards and Fire Chief recommendations.

Improvement Agreement

~~59.61.~~ Consistent with its agreement with the city of Stevenson, the applicant shall sign the form "Agreement to Pay Professional Review Expenses Related to Land Use Application." The cost of review by outside professionals beyond the normal and regular costs of application review includes, but is not limited to, out side professional assistance for engineering and land use planning services, traffic engineering, legal support, inspection, testing and sign installation.

Planting Restriction for Lots

~~62.~~ The applicant shall include in the CC&Rs a requirement that "Each lot owner shall use best management practices when cultivating gardens and lawns. Each property owner shall plant plants that are native to the region,

~~44-46.~~ The applicant shall provide the city with verification that sight distance at the intersection of Pine and Shepard Streets, is adequate and safe for the increase traffic created by the subdivision, and shall contribute a reasonable sum toward the improvement of that intersection representing the developer's proportional share of the improvement.

~~45-47.~~ The final plat shall contain street names and addresses as approved and provided by the city.

~~46-48.~~ Title 16 outlines fees, subdivision provisions, monumentation, and survey standards. Monumentation shall be provided in accord with the Survey Requirements and Standards of SMC Title 16, Chapter 16.34 and Chapter 58.17 RCW; Plats, Subdivisions and Dedications.

~~47-49.~~ As constructed drawings will be provided in '.dwg' electronic format as well as Mylar and paper.

Storm water Management

~~48-50.~~ The storm water drainage system shall be in accordance with the City's Engineering Standards and Puget Sound Manual. The downstream conveyance system shall be evaluated with particular attention to state highway and railroad facilities to verify adequacy and any upgrades needed shall be constructed. The stormwater design analysis shall be provided to WSDOT for review and comment. The downstream conveyance system is considered to extend from the site to the Columbia River. On-site detention may be reduced or eliminated depending upon the results of the conveyance analysis. The applicant shall install a stormwater bio-filtration system and a storm water detention facility, which shall be designed by certified engineer to meet or exceed the standards set by the Department of Ecology's applicable Stormwater Management Plan for the Puget Sound Basin. Prior to construction, the storm water detention facility shall be approved by a geotechnical review.

~~49-51.~~ The applicant shall produce and provide the city with a copy of the operation and maintenance manual for any drainage facilities **prior to final platting or issuance of any building permits.**

~~50-52.~~ Catch basins shall be installed according to city approved standards.

~~51-53.~~ All lots will drain to the street. Separate storm water laterals shall be provided at each lot as practicable. Roof drains shall be connected to the weep holes at the curb. Suitable alternatives for lot or roof must be identified and approved prior to construction.

and limit the portion of each lot that may be covered with lawn to no more than 15% of the parcel. However, if multiple lots are combined for use as a single residential parcel, the impact of additional lawn would be mitigated by the reduction in density and additional structures. Therefore, when lots are combined, the percentage of gross lot area covered by law may be increased up to 25% of the gross area of two combined lots and up to 40% of the gross area if three or more lots are combined.

63. The City Council further states that to the extent the revisions are inconsistent with the original conditions, the revised conditions shall control as per the court order.

DATED this 30th-21st day of SeptemberJanuary,
2006.

Joseph Sehlbrek Monica Masco, Mayor Pro
Tem Chairman

City of Stevenson Planning Commission

FINDINGS OF FACT
FOR
DECISION TO AMEND THE FINAL PLANNING COMMISSION
RECOMMENDATIONS FOR THE CHINIDERE SUBDIVISION

1. *Lawsuits were filed by Avis Dunas (with Columbia Riverkeepers) and the Chinidere Mountain Estates Subdivision developers against the City over the City's approval of the preliminary plat for the Chinidere Mountain Estates Subdivision as modified by the Planning Commission recommendations.*
2. *The City entered in to complicated and extensive litigation responding to the two lawsuits.*
3. *The two parties requested the City to consider a list of modifications to the City's approval of the Preliminary Plat.*
4. *Legal Counsel reviewed the proposed list of modifications and recommended approval of the modifications*
5. *Judge Reynolds, Skamania County Superior Court Judge has issued a Stipulated Motion and Order of Remand, essentially ordering the City to amend the preliminary plat as proposed by the parties*
6. *It was in the best interest of the City to move herewith and adopt the remanded changes to the Planning Commission recommendations.*

Adopted by the City Council on September 21, 2006

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EXHIBIT B
9/10/2008 Amendment to Preliminary Plat Approval (2 pages)

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City of Stevenson
Planning Commission Recommendation

As Adopted by City Council 9-10-08

**Chinidere Mountain Estates Amendments
9-08-08**

DISCUSSION OF PARKING LOT AND TRAIL

After considering public testimony and staff recommendations about the applicants request to amend the "Amended Final Planning Commission Recommendations as Adopted by City Council 9/21/06" at the September 8th, 2008 Public Hearing, the Planning Commission makes the following findings of fact about the pedestrian trail and four space parking lot:

1. A 6' wide trail is more conducive to wildlife crossings.
2. Trails which are 6' in width are no more difficult to maintain than trails 10' in width.
3. Using wood chips to surface the trail is more environmentally friendly as they are more permeable than gravel and are "recycled" mainly from trees taken from on the site, thereby reducing the need for transportation and reducing the demand for quarried rock.
4. Using wood chips to surface the trail is less durable than using gravel, and certain measures must be taken to reduce the threat of erosion and ensure continued maintenance.
5. The removal of the four lot parking area reduces the amount of impermeable surfaces within the subdivision, as noted by Brent Foster, Executive Director of Columbia Riverkeeper.
6. Adequate parking is available within the subdivision and the removal of the four space parking lot only results in a net loss of three spaces.
7. The inclusion in this project of an interpretive sign and easement for civic art and beautification will advance the goals and purposes of the Comprehensive Plan and Critical Areas Ordinance.

RECOMMENDATION ON PARKING LOT AND TRAIL

Based on these findings of fact, the City of Stevenson Planning Commission recommends to the City Council that the following changes be made to the "Amended Final Planning Commission Recommendations as Adopted by City Council 9/21/06."

Additions to Page 4:

A.13. On September 8th, 2008 the Planning Commission conducted a public hearing where it considered three amendments proposed by Regal Development LLC, successor in interest to John Feliz, and approved the adoption of the Amended Final Planning Commission Recommendations contained herein.

B.2. The Planning Commission conducted an additional public hearing on September 8th, 2008 to hear testimony and evidence about three requested amendments to the previously approved and amended Preliminary Plat.

Additions to Page 17:

E.12.f. Prior to final plat approval, the applicant shall install an interpretive sign within the eastern critical area along proposed Road "E" (also referred to as Brady Lane). The sign shall be constructed to City standards and speak to the functions of riparian habitats within the environment. In order to maintain the sign in the future, an access and maintenance easement shall be granted to the City and added to the face of the final plat.

E.14.a. The easement for the pedestrian path shall be 10 feet wide, however, the path itself need be only 6 feet wide and shall be designed to include, where necessary, erosion control measure such as water bars, culverts, ditches, wide-benched stairs to reduce erosion-prone slopes, and shallow gravel basing on likely problem areas.

E.14.b. The pedestrian path shall have a natural surface, which includes wood chips but does not include bare earth.

E.14.c. The HOA shall be empowered to assess its member's fees to be reserved and used to maintain the pedestrian pathways

Addition to Page 18:

E.20.a. Prior to final plat approval, the applicant shall grant an easement within this tract to the City for the purposes of civic art and beautification. The easement shall be 30'x25' and located adjacent to the right-of-way.

E.20.b. When such civic art and/or beautification is installed, it shall be done in a manner which is considerate to the views of neighboring properties and at no cost to the applicant. ~~maintaining underground power lines would not be more difficult than maintaining aboveground lines the increased substantially and the benefits to the community derived from undergrounding outweigh the increased cost~~

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EXHIBIT "C"

4/7/2009 Amendment to Preliminary Plat Approval (2 pages)

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City of Stevenson
Planning Commission Recommendation
As Adopted by City Council 4-7-09
Chinidere Mountain Estates Amendments
2-09-09

DISCUSSION

After considering public testimony and staff recommendations at the February 9th, 2009 Public Hearing, the Planning Commission makes the following findings of fact:

1. No documentation of a defined right-of-way has been found for the off-site portion of Lutheran Church Road, though the production of this documentation had previously been required of the project engineer.
2. Due to limited space, a 5' wide sidewalk along the off-site portion of Lutheran Church Road is acceptable by the City Engineer.
3. Relocating the sidewalk to the south and east side of the roadway will require additional pedestrian crossings on Lutheran Church Road. A continuous sidewalk on either the west or east side of Lutheran Church Road, thereby limiting the number of crossings, should be provided.
4. The City Engineer has reviewed the proposal and made certain specific recommendations, which should be addressed prior to construction.

RECOMMENDATION

Based on these findings of fact, the City of Stevenson Planning Commission recommends that the City Council amend Page 20 Discussion #32 of the "Amended Final Planning Commission Recommendations as Adopted by City Council 9/21/06" as follows.

Page 20, #32:

"Lutheran Church off-site shall be improved to a width of 26 ft. plus an overlay of the existing pavement, a curb and abutting 6 ft. sidewalk, no narrower than 5 ft., along either the west and north side of the roadway, and a guardrail at the Vallett Creek crossing. Street lighting shall be installed and No Parking signs shall be installed along both sides.

Prior to installation of the sidewalk, guardrail, and street lighting the applicant shall:

1. Provide evidence that construction of a continuous sidewalk would not be feasible along one side of the road. If a continuous sidewalk is not possible, then pedestrian crossings and guard rail modifications must receive engineering approval prior to installation; and
- 1.2. Provide quit-claims or similar documentation from the three property owners abutting the off-site portion of Lutheran Church Road which establishes the roadway and resolves any potential claims or conflicts of ownership.”

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EXHIBIT "D"
7/11/2016 Variance to Preliminary Plat Approval (2 pages)

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City of Stevenson

Planning Commission Recommendation

**Chinidere Mountain Estates 80% Sales Variance
7-11-16**

DISCUSSION

After considering the application to vary the preliminary plat approval, applicant testimony, and staff recommendations at the July 11th, 2016 regular Planning Commission meeting, the Planning Commission finds that the following circumstances exist:

1. Chinidere Mountain Estates was proposed as a 4-phase land division in 2005.
2. In 2006, attempting to limit neighborhood impacts of the 4-phased proposal, the City added a unique sales requirement to control when work would begin on phases 2-4.
3. The sales requirement was based on market assumptions regarding the ability of the subdividers to develop and sell property, not on any specific provision of the Stevenson Municipal Code.
4. Beginning in 2007, the Great Recession had significant impacts on the development and sale of real property, housing and related development projects, including Chinidere Mountain Estates.
5. Market assumptions relevant when the City added the sales requirement are obsolete in light of the Great Recession.

FINDINGS

Based on the foregoing discussion, the Planning Commission makes the following finds of fact:

1. Extraordinary hardship will result from the strict compliance with Condition #8 of the Chinidere Mountain Estates Preliminary Plat approval which was granted according to the provisions of SMC Title 16, Article II – Subdivision Regulation. [SMC 16.38.010]
2. The sales requirement in Condition #8 is unique to the Chinidere Mountain Estates subdivision, and, in granting relief from the requirements of that condition, the City is not granting a special privilege to Chinidere Mountain Estates. [SMC 16.38.010]
3. Because of the above described special circumstances applicable to subject property, strict compliance with Condition #8 will cause undue hardship and deprive subject property of rights and privileges enjoyed by other properties in the vicinity. [SMC 16.38.010(A)]
4. The granting of the variance from Condition #8 will not be detrimental to the public welfare or injurious to the property or improvements in the vicinity. [SMC16.38.010(B)]

5. The granting of the variance from Condition #8 will not have the effect of nullifying the intent and purpose of the regulations set forth in SMC Title 16 Article II – Subdivision Regulations. [SMC16.38.010(C)]

RECOMMENDATION

Based on these findings of fact, the City of Stevenson Planning Commission recommends that the City Council review the Chinidere Mountain Estates final plat according to a varied preliminary plat Condition #8:

Page 15, #8.

“[Reserved for future use.]”

~~“The applicant shall sell or build on not less than 80% of lots in each phase before commencing soil disturbing activities on the next phase, except that the applicant shall have the right to install the necessary and required infrastructure (i.e. underground utilities), not including roads, provided such installation will be done in a manner that minimizes the ground disturbing activities.”~~

DATED this ____ day of July, 2016

Done in Public Session July ____, 2016

Scott Anderson, Chair

City of Stevenson Planning Commission