Exhibit 75 SUB22-01

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Hearings Examiner
c/o Robert Maul
616 NE 4th Avenue
Camas, WA 98607

> **Re:** **Applicant's Final Legal Argument in Response to Hearings Examiner's Order Reopening the Record**
> **Hood Street Subdivision (SUB22-01)**

Dear Hearings Examiner:

We represent the applicant, Modern Dwellings, LLC in the Hood Street Subdivision (Parcel No. 127415000) and we are responding to the Hearings Examiner's Order Reopening the Record, File No. SUB22-01 (Hood Street).

During the open record for new evidence the applicant submitted a memorandum from Olson Environmental and a memorandum from Olson Engineering to address the wetland issues raised in the Mearings Examiner's Order Reopening the Record.

As explained in those memoranda, avoiding wetland C entirely would require a lot reduction of two lots. Avoiding all impacts to Wetland A is not possible because the main access road impacts Wetland A, so the project could not occur without some impacts to wetland A. The access to the lots fronting 16th Street also impacts wetland A, so eliminating these impacts would require a lot reduction of three lots. There are only 18 lots proposed in the subdivision, so a 5 lot reduction would be a 28% lot reduction. The property is zoned R-7.5, and the planned density per the zoning code (CMC 18.09.040, Table 1) for R-7.5 zoned land is 5.8 units per net acre.

Additionally, the City's Housing Action Plan establishes an overall need for more housing in the City. Page 104 and 109 of the Housing Action Plan and policy 2.3.1 of the Comp Plan specifically establish a goal of 6 units per acre as an average minimum density for new development. Currently, our proposal is for about half that at about 3 units per acre, which is substantially less than the planned density for R-7.5 zoned land and about half of the City's Comprehensive Plan goal for new development.

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The subdivision was designed to meet the development code requirements (which implement the Comprehensive Plan) while striving to meet the City's planned density goals for R-7.5 zoned land and avoiding and minimizing any unnecessary impacts to wetlands. A 5 lot reduction in the number of lots (28% fewer lots) would not be financially feasible to develop given the infrastructure costs involved.

Further, a 5 lot reduction in the number of lots (28% fewer lots) would not meet the City's planned density goal. Based on the memo from Olson Environmental, unmapped wetlands are common and prevalent throughout the City's buildable land supply. Assuming a 28% lot reduction across the board for properties with unmapped wetlands (which seems a reasonable assumption based on our experience developing subdivisions in Camas), an interpretation that the "avoidance" criterion requires a lot reduction would jeopardize the City's ability to meet the planned density goal of an average of 6 units per acre for new development in the City, rendering the project inconsistent with the Comprehensive Plan.

The applicable code is found in CMC 16.53.050.D.1:

> 1. Sequencing. Applicants shall demonstrate that a range of project alternatives have been given substantive consideration with the intent to avoid or minimize impacts to wetlands. Documentation must demonstrate that the following hierarchy of avoidance and minimization has been pursued:
>
> > a. Avoid impacts to wetlands unless the responsible official finds that:
> >
> > i. For Categories I and II wetlands, avoiding all impact is not in the public interest or will deny all reasonable economic use of the site;
> >
> > ii. For Categories III and IV wetlands, avoiding all impact will result in a project that is either:
> >
> > (A) Inconsistent with the city of Camas comprehensive plan;
> >
> > (B) Inconsistent with critical area conservation goals; or
> >
> > (C) Not feasible to construct.
> >
> > b. Minimize impacts to wetlands if complete avoidance is infeasible. The responsible official must find that the applicant has limited the degree or magnitude of impact to wetlands by using appropriate technology and by taking affirmative steps to reduce impact through efforts such as:
> >
> > i. Seeking easements or agreements with adjacent land owners or project proponents where appropriate;
> >
> > ii. Seeking reasonable relief that may be provided through application of other city zoning and design standards;

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> iii. Site design; and

> iv. Construction techniques and timing.

As a starting point in the legal analysis, it is important to understand the so-called "avoidance" in CMC 16.53.050.D.1.a is not absolute. The "avoidance" and "minimization" criteria are modified by the prefatory language in CMC 16.53.050.D.

CMC 16.53.050.D merely required that "a range of project alternatives have been given substantive consideration" with the "intent" of avoiding and minimizing impacts, and applicant must provide "documentation" that the "sequencing" of avoidance and minimization has been "pursued. In this case the applicant has provided such "documentation" in the form of the critical areas report and memoranda submitted by Olson Engineering and Olson Environmental.

CMC 16.53.050.D requires "substantive consideration" be given to a range of project alternatives, but no provision of the code expressly requires that a project be reduced in scope under the avoidance or minimization criteria. Regulation of critical areas under the Growth Management Act is substantially different than regulation of wetlands under the Clean Water Act[1]. There is no binding precedent holding that the scope of a proposed project must be reduced to avoid impacts to wetlands under the Growth Management Act generally, or under Camas's critical areas ordinance specifically.

Based on the express language of the code, the applicant only need to give "substantive consideration" to project alternatives and provide "documentation" of the sequencing of the analysis under the avoidance and minimization criteria. The applicant has done this through critical areas report and memoranda submitted by Olson Engineering and Olson Environmental.

In addition, the wetlands at issue here are of the lowest category, and wetland B is too small, so it is exempt. Wetland C will dry up due to surrounding development, so protection of wetland C is inconsistent with critical area conservation goals. Under CMC 16.53.050.D.1.a.ii.B, avoidance of wetland C is not required.

Under CMC 16.53.050.D.1.a.ii.A, avoidance is not required for any of the wetlands because to do so would render the project inconsistent with the comprehensive plan due to the reduction in density, which would impede the City's ability to meet an average of 6 units per acre for new development. The property is zoned for about 6 units per acre but the proposal is only for about 3 units per acre (in order to meet other code requirements). Further reductions, if required for this project and future projects throughout the City based on the "avoidance" criterion would impede the City's ability to meet the density goals under the comprehensive plan.

Therefore, the application should be approved as submitted for two independent and alternative legal reasons: (1) The impacts to wetlands A and C are not required to be avoided under CMC

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[1] The Army Corps of Engineers has review authority under the Clean Water Act, so compliance with the Clean Water Act is not at issue here. However, the alternatives analysis may be different under federal law.

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16.53.050.D.1.a.ii.A. and B; and (2) the applicant gave "substantive consideration" to project alternatives and provided "documentation" of the sequencing of the analysis under the avoidance and minimization criteria through critical areas report and memoranda submitted by Olson Engineering and Olson Environmental

Sincerely,

LANDERHOLM, P.S.

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SCM/jsr

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