Exhibit 67 SUB22-01

BEFORE THE LAND USE HEARING EXAMINER
FOR THE CITY OF CAMAS, WASHINGTON

Regarding an application by Modern Dwellings	)	**ORDER REOPENING**
LLC, for approval of a preliminary plat to	)	**THE RECORD**
divide 6.08-acres into 18 lots in the R-7.5 zone	)	**FILE# SUB22-01**
at 1811 NW Hood Street, in the City of Camas	)	**(Hood Street)**

A. SUMMARY

1. The applicant, Modern Dwellings LLC, requests approval to divide the 6.08-acre site into 18 lots and tracts for stormwater, private roads, trails, and open space. The site is located at 1811 NW Hood Street; also known as tax parcels 127415-000 and 127440-00, Section 9, Township 1 North, Range 3 East, Willamette Meridian (WM), Camas Washington (the "site"). The applicant proposed to construct the development in two phases.

   a. The site and abutting properties to the east, northwest, and southeast are zoned R-7.5 (Single Family Residential, 7,500 square foot average lot size). Properties to the north and southeast are zoned R-12 (Single Family Residential, 12,000 square foot average lot size).

   b. The site is currently developed with a single-family residence and accessory structure in the northeast corner. The applicant proposed to retain these existing structures on proposed Lot 18 and construct a new single-family detached dwelling on each of the remaining proposed lots. All proposed lots comply with the minimum dimensional standards for the R-7.5 zone, as modified by the density transfer ordinance and the negotiated flexibility provisions of CMC 18.09.060.D.

   c. The site contains three wetlands: Wetland A is a 0.44-acre Category IV wetland near the center of the site, located primarily in the northern portion of tax parcel 127440-00 with small portions extending onto tax parcel 127415-000 as well as offsite to the west and southeast. Wetland B is a 0.05-acre Category IV wetland located near the east boundary of the site, near the proposed intersection of NW 17th Avenue and NW Hood Street. Wetland C is a 0.15-acre Category IV wetland abutting the north boundary of the site, in the approximate area of proposed Lots 6 and 8. (See Figures 2 and 4 of Exhibit 61).

      i. The applicant proposed 0.39-acres of permanent direct wetland impact (filling wetlands) and 0.19-acres of permanent indirect wetland impact (development in buffers) to accommodate the proposed development, broken down as follows:[1]

         (A) Fill a small area in the northern portion of Wetland A and associated buffer to accommodate the extension of NW 17th Avenue and fill the

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[1] The proposed wetland fills will also impact wetland buffers on proposed Lots 5-9 (Wetland B), 13-16 (Wetland A), and 1-3 and 125-17 (Wetland C).

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south end of Wetland A and associated buffer to accommodate the private road in Tract C, proposed Lot 12, and a portion of proposed Lot 15 for a total of 0.19-acres of direct wetland fill;

(B) Fill all of 0.05-acre Wetland B and associated buffer for the extension of NW 17th Avenue and portions of lots 15-17; and

(C) Fill all of 0.15-acre Wetland C to accommodate Lots 6 and 8.

ii. In addition, the applicant proposed to indirectly impact 0.19 acres within Wetland A for temporary construction impacts from the installation of an underground detention pipe, outfall, and riprap pad for the stormwater facility within the Wetland A buffer.

iii. The applicant will retain the remainder of Wetland A and associated buffer within proposed Tract B. The applicant proposed to mitigate for the permanent wetland impacts by purchasing credits at an off-site wetland mitigation bank. The applicant will mitigate the temporary impacts by replanting the disturbed areas.

d. Domestic water and sanitary sewer service will be supplied by the City of Camas. The applicant will collect stormwater from impervious areas on the site and convey it to stormwater facilities in proposed Tracts A, B, and H for treatment, detention. The applicant will discharge treated stormwater from the facility in Tract B into the onsite wetlands. Stormwater detained in Tract A will discharge to the existing storm sewer in NW 17th Avenue, and stormwater detained in Tract H will discharge to the existing storm sewer in NW 16th Avenue. All stormwater discharges will occur at less than predevelopment rates.

e. The applicant will dedicate right-of-way and construct frontage improvements along the site's NW Hood Street and NW 16th Avenue frontages. The applicant will extend a new private street, proposed NW 17th Avenue within Tract E, into the site from NW Hood Street, terminating in a cul-de-sac turnaround near the northwest corner of the site. The applicant will extend a second private street, proposed Tract C, south from on-site NW 17th Avenue, terminating in a hammerhead turnaround in the southern portion of the site. The applicant will also provide a pedestrian connection between on-site NW 17th Avenue and existing NW 17th Avenue west of the site, a pedestrian connection between the private street in Trat C and NW 16th Avenue, and a pedestrian trail within Tract "B."

2. The City issued a Determination of Nonsignificance ("DNS") for the subdivision pursuant to the State Environmental Policy Act ("SEPA") on May 26, 2022. The SEPA determination was not appealed and is now final.

3. City of Camas Hearing Examiner Joe Turner (the "examiner") conducted a public hearing to receive testimony and evidence about the application. City staff recommended the examiner approve the preliminary plat subject to conditions. See the City of Camas Staff Report to the Hearing Examiner dated June 30, 2022 (the "Staff

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Report"), as modified by Exhibits 52 and 53. Five persons testified orally in opposition to or with questions and concerns about the application. Other persons testified in writing.

4. Wetlands B and C were not discovered until after the hearing, during the open record period, when the Corps of Engineers (the "Corps") visited the site. (Exhibit 61).

5. Because the additional wetlands were not noted until after the hearing, the examiner did not have the opportunity to consider the proposed impacts to these wetlands and note potential deficiencies in the findings. Therefore, the examiner is reopening the record in this case for the limited purpose of allowing all parties an opportunity to provide additional testimony and evidence addressing the examiner's analysis of the Code, based on the discussion below.

B. DISCUSSION

1. As noted above, the applicant proposed to fill all of Wetlands B and C and portions of Wetland A for various purposes. However, the applicant did not fully address the requirements of CMC 16.51 (critical areas generally) and 16.53 (wetlands). Specifically the sequencing requirements of CMC 16.53.050.D(1), which provides, in relevant part:

> 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:
> …
> 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…
> (C) Compensate for wetland impacts that will occur, after efforts to minimize have been exhausted…

2. It appears that the applicant could redesign the plat to avoid some of the proposed wetland impacts by eliminating one or more proposed lots.

a. The applicant could reduce or avoid impacts to Wetland C and its buffer by eliminating proposed lots 6 and 8, and modifying proposed lots 5-7, 9, and 10.

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b. The applicant could reduce impacts to Wetland A and its buffer by eliminating proposed lot 12 and modifying lots 13-17. The applicant may be able to further reduce impacts to Wetland A by modifying or eliminating Tract C, extending a road into the site from NW 16th Avenue to provide access to lots in the upland area in the southern portion of the site.

c. Impacts to Wetland B may unavoidable, given its location near the center of the east boundary of the site, where the applicant proposed to construct NW 17th Avenue. As discussed in the traffic analyses, this is the safest location for this intersection, located halfway between the NW Hood Street/NW 16th Avenue and NW Hood Street/ NW 18th Avenue intersections. However, the applicant should be required to demonstrate that such impacts are truly unavoidable.

d. In addition, CMC 16.53.010.C(2)(a) provides an exemption for "[i]solated Category IV wetlands less than four thousand three hundred fifty square feet in area." Wetland B is 2,057 square feet, meeting the size requirement for exemption. However, there is no evidence that this wetland is "isolated."

e. The examiner recognizes that some of the above changes may be impractical, making the proposed development unfeasible if all wetland impacts are avoided. However, there is currently insufficient evidence in the record to support such a finding, as the applicant did not address the sequencing requirements of CMC 16.53.050.D(1).

3. The applicant argues that "Some impacts were avoided for Wetland A but were unavoidable for the entirety of Wetlands B and C, in order to provide reasonable use." (Exhibit 63). CMC 16.51.110.A provides an exception from the critical area protection requirements where compliance with the critical area protection requirements "[w]ould deny all reasonable use of the subject property…" CMC 16.53.010.B(3)(b) provides an exception from the wetland protection requirements where:

  i. The application of this chapter would deny all reasonable economic use of the property,
  ii. No other reasonable economic use of the property has less impact on the wetland and buffer area,
  iii. Any wetland or buffer alteration is the minimum necessary to allow for reasonable economic use of the property, and
  iv. The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant after the date of adoption of the ordinance codified in this chapter;

The applicant failed to provide any support for a finding that these criteria are met in this case. Eliminating a few lots from this site would not "[d]eny all reasonable economic use of the property." Therefore, the applicant must demonstrate that the proposed development complies with the sequencing requirements of CMC 16.53.050.D(1) and/or the exemption provided by CMC 16.53.010.C(2)(a).

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4. The examiner finds that reopening the record to allow all parties an opportunity to submit additional testimony and evidence on this issue is warranted to serve the interests of a full and fair understanding of the relevant law, provided the process affords the public a meaningful opportunity to respond to that new evidence. Therefore, the examiner will reopen the record solely for the purpose of accepting additional testimony and evidence on the issue of whether the Code allows the proposed wetland and buffer impacts. No other issues may be raised or addressed during the open record period.

C. <u>ORDER</u>

1. The examiner orders the public record to be held reopened in the matter of SUB22-01 (Hood Street Subdivision), subject to the following schedule:

    a. For one week, until Tuesday August 16, 2022, for all parties to submit new argument regarding whether the Code allows the proposed wetland and buffer impacts;
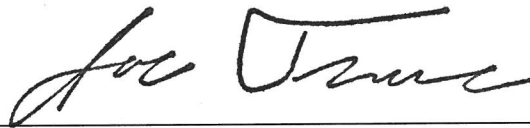
    b. For a second week, until Tuesday August 23, 2022, for all parties to respond to whatever was submitted during the prior week; and.

    c. For a third week, until Tuesday August 30, 2022, for the applicant to submit a final written argument, without any new evidence.

2. All submittals must be in writing, directed to Ms. Sutherland, and must be received by the City by 5:00 p.m. on the relevant closing date.

3. The hearings officer will issue a written final order within a maximum two weeks after the close of the record (i.e., by September 13, 2022).

DATED this 9th day of August 2022.

Joe Turner

Joe Turner, AICP
City of Camas Land Use Hearing Examiner