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16G.10 GENERAL PROVISIONS

16G.10.010 Purpose.

~~The purpose of this chapter is: to regulate the subdivision of land and to promote the public health, safety, and welfare of the city and its citizens in accordance with state law and the city's comprehensive plan. To carry out this purpose for the subdivision of land for residential uses, this chapter establishes a flexible lot process, which will facilitate the fair and predictable division of land, maintain the current character of the city, and provide for greater flexibility in the division and establishment of residential lots. A further purpose of this chapter is to prevent the overcrowding of land; to lessen congestion in the streets; to provide for adequate light and air; to facilitate adequate provision for water, sewage, storm water drainage, parks and recreation areas, and sites for public facility needs; to provide for proper ingress and egress, including future traffic circulation needs of the immediate and surrounding area; and to provide for a variety of housing opportunities. (1) to establish the legal steps necessary to create new lots, either by subdivision, short plat or binding site plan, and to modify lot lines by boundary line adjustment, consistent with State law and the comprehensive plan; and (2) to ensure that each new lot respects overall community character while promoting positive neighbor to neighbor and neighborhood to neighborhood connections, diversity in population, open space preservation and building style and fiscal, ecological and social sustainability.~~

FA – I like Carol Morris suggestion.

RG – Suggested Change

The purpose of this chapter is:

A. To regulate the subdivision of land and to promote the public health, safety, and welfare, and interest of the city and its citizens in accordance with state law and the city's comprehensive plan. ~~To carry out this purpose for the subdivision of land for residential uses, this chapter establishes a flexible lot process, which will facilitate the fair and predictable division of land, maintain the current character of the city, and provide for greater flexibility in the division and establishment of residential lots. A further purpose of this chapter is~~

B. To prevent the overcrowding of land; to lessen congestion in the streets; to provide for adequate light and air; to facilitate adequate provision for water, sewage, storm water drainage, parks and recreation areas, and sites for public facility needs; to provide for proper ingress and egress, including future traffic circulation needs of the immediate and surrounding area; and to provide for a variety of housing opportunities. (1)

C. To establish the legal steps necessary to create new lots, either by subdivision, short plat or binding site plan, and to modify lot lines by boundary line adjustment, consistent with State law and the comprehensive plan; and (2) to ensure that each new lot respects overall community character while promoting positive neighbor to neighbor and neighborhood to neighborhood connections, diversity in population, open space preservation and building style and fiscal, ecological and social sustainability.

CM – Keep the old language, which is similar to the purpose section of the State Subdivision Act, RCW 58.17.010. No problem if you want to add the new language.

16G.10.020 Guiding Principles.

The following principles derived from the comprehensive plan and in part from the community-shaping precedents set by the 1890 Plat of Langley should be used to guide the division of land in Langley.

- A. Homes and businesses should be served by alleys or common access easements.
- B. Utilities should be located underground.
- C. Lots should face each other across rights-of-way to promote safety and neighbor to neighbor interaction.
- D. Homes should be designed such that front doors and porches are visible from the street.
- E. Garages should be accessible from alleys or common access easements or set back from the front wall of the principal use.
- F. Rights-of-way, serving vehicular and/or non-motorized travel, should connect with existing or planned rights-of-way outside the subdivision.
- G. Depending on scale and location, subdivisions should be served by more than one public way for vehicular and non-motorized travel.

- H. Blocks should be short in length to provide ease of pedestrian mobility. If a block must be long, a non-vehicular mid-block crossing should be provided.
- I. Subdivisions should feature narrow streets, permeable concrete and other techniques to reduce impervious cover.
- J. Subdivisions should be designed to promote the most orderly, interconnected and fiscally sustainable layout of utilities and streets.
- K. Lots should be clustered in proportion to the presence of critical areas, forested areas, visually significant tree lines, scenic corridors, habitat, trails and other parks and open spaces. Where possible, preservation of such features shall connect with similar resources on adjoining properties.
- L. Residential subdivision design should promote diversity in lot size, housing size, housing style and spaces for complementary accessory uses such as local food production.
- M. Developments should balance solar access and the preservation of treed areas. Where possible, subdivisions should be designed to accommodate emerging technologies that promote the use of renewable and/or locally-generated energy sources.
- N. Developments should contain features, such as clustered mailboxes, local amenities, and common areas to promote neighbor to neighbor interaction. (NEW)

FA – (I’ve made many suggests, following, which I’ll leave here, but I very much agree with Carol Morris. Delete entire section.)

A. Homes and businesses should be served by alleys or common access easements. Isn’t this dated? Alleys are great but have gone out of style due to their large consumption of land. Are we looking to bring them back?

B. Lots should face each other across rights of way to promote safety and neighbor to neighbor interaction. I see this as a design issue that depends on sun, shade, trees, solar, views, privacy, and interaction potential in numerous ways. All or none might be dependent on lots facing one another, or not. Neighborhoods can be developed more organically if we don’t try to get too specific with the criteria. Good designers will do this right without the rule; bad designers won’t get it right no matter what the rules. I’d drop it. I also believe the safety argument is specious.

C. Homes should be designed such that front doors and porches are visible from the street. Why? This is unnecessarily restrictive. The safety argument is specious here too. If we truly want a town that is creative, innovative, charming and delightful, we’ll not micromanage the designers.

D. Garages should be accessible from alleys or common access easements or set back from the front wall of the principal use. Now here’s a good, good argument for alleys. Neighborhoods would work much better if we could get the cars out of the front yard and the dominant garage look around back. Then porches, front gardens and neighborhoods could function much more like the neighborhoods we all yearn for including visiting across the front gate (no matter where the door is located).

RG – As both the city attorney and Carol Morris have suggested, this section should be removed from this chapter since it is not regulatory in nature.

CM – Eliminate this. If you want to include it somewhere, put it in the City’s Comprehensive Plan. The Subdivision Code should include regulations, not “guidelines” to be enforceable.

16G.10.030 Scope.

Any division or redivision of land into two or more lots or tracts or any division of land containing a dedication of any part thereof to any public purpose (such as a public street or a highway) shall comply with the provisions of this title. (NEW)

FA – Would this eliminate the concern of getting around the subdivision codes with a short plat?

CM – This needs to be changed. This chapter applies to boundary line adjustments, which is not a “division or redivision of land into two or more tracts.” A short plat is subject to this chapter, and it may or may not have a “dedication of any part thereof to any public purpose.” Take a look at the definition of “short subdivision” in RCW 58.17.020. Doesn’t the City allow short plats with private roads?

Where are the definitions? You can copy them from RCW 58.17.020.

16G.10.040 Residential Zones utility regulations.

Lands platted and/or subdivided within all residential Zones of the city must be served by: (1) water from the city water system; (2) the city sewer system or approved alternative; and (3) underground utilities, including telephone and electric power. (FROM Section 17.04.040)

FA – Per Carol’s question: We do serve the entire city with water, don’t we? Do we have the same “problem” given we can’t serve the entire city with sewer?

RG – What code and/or policy, beyond the comp plan, do we have for alternatives to the city sewer? Is it appropriate to include the offer of alternatives before we have policy and code in place for these alternatives?

CM – Is this consistent with the City’s existing and future water service areas?

16G.10.050 Exemptions.

- A. The provisions of this chapter shall not apply to:
1. Any cemetery or burial plot, while used for that purpose;
 2. The assignment by the Island County Assessor’s Office of new tax parcel numbers and no division of land is occurring;
 3. Any division made by testamentary provision or the laws of descent;
 4. Any division of land into lots or tracts for which a residential condominium and commercial binding site plan has been recorded in accordance with the provisions of the LMC;
 5. A division for the purpose of lease when no residential structures other than manufactured homes are permitted to be placed upon the land and for which a binding site plan for use of the land as a manufactured home park has been approved in accordance with the provisions of this code;
 6. The development, sale, lease, transfer, gift or other conveyance of legally created tracts, lots or parcels acquired by any owner as separate parcels, bearing separate tax identification numbers and having separate and distinct legal descriptions. (FROM 17.08.030)

CM – Take a look at RCW 58.17.040 and see what needs to be added to update this with existing law.

16G.10.060 Authority.

The Langley city council delegates the responsibility for making final decisions on boundary line adjustments and short plats to the Langley planning official subject to the notice requirements in 16I.30.090. The city council also delegates the responsibility for holding hearings and making recommendations on preliminary plats, binding site plans, major plat alterations and plat vacations to the planning advisory board. All final decisions on preliminary plats, final plats, major plat alterations and plat vacations shall be made by the city council. (NEW)

FA – If we planned for a preliminary presentation consisting of a schematic design (showing open space to be set aside, layout of buildings, size of buildings, roads – the big picture) to be presented to the council (or PAB) before the details of a subdivision are worked out in detail with staff, early notification of citizens would be accomplished and residents of Langley would feel like they are in the loop in a timely fashion. Carol Morris suggestions excellent! I like the chart idea.

CM – Take this out. The permit processing procedure (including the identification of the decisionmakers) should be included in the City’s permit processing chapter. I recommend using a graph, which is easier for both the staff to administer and public to read. I will provide you with an example.

16G.10.070 Effect of filing a complete application.

A. A proposed division or subdivision of land, shall be considered under the subdivision or short subdivision ordinance, and zoning or other land use control ordinances, in effect on the land at the time a fully

completed application for preliminary plat approval of the subdivision, or short plat approval of the subdivision, has been submitted to the planning official.

B. The limitations imposed by this section are not intended to limit application by the planning official of substantive authority under the State Environmental Policy Act (SEPA). (NEW. COMPARE WITH 17.04.047)

FA – See concern above. Getting preliminary schematic designs to the council (PAB?), and public, early on, would improve our system of transparency.

16G.20 BOUNDARY LINE ADJUSTMENTS

16G.20.010 Type of application.

A boundary line adjustment is an administrative permit application that does not require a notice of application subject to 16I.30.060(C)(1). Boundary line adjustments shall be processed in accordance with the procedures for such applications as set forth in LMC 16I.30. (NEW)

CM – All you need to say here is: “A boundary line adjustment is a Type I application. Refer to the permit processing procedures in chapter ____ for information regarding processing.” The permit processing chapter should state that Type I applications do not require a notice of application.

16G.20.020 Requirements for a complete application.

Any person or other legal entity seeking a boundary line adjustment must complete the City’s application forms and submit the following information:

- A. The name and address of the owners of the subject lots.
 - B. The boundaries and acreage of the existing lots.
 - C. The boundaries and acreage of the proposed lots.
 - D. The location of any existing streets or easements within and adjacent to the tract.
 - E. The location of any critical areas as defined in 16F.
 - F. The location of any existing structures, wells, septic systems and utilities.
- (NEW. NO PROVISIONS IN CURRENT CODE)

FA – Add G. The existence of heritage trees (or other language in the tree ordinance)

CM – “A complete application for a boundary line adjustment shall consist of the City’s application form, the applicable fee and the following information:” (My point is that who must appear on the application form is an issue for the permit processing chapter. The permit processing chapter should be clear that every application must be submitted by the property owner or the property owner’s authorized agent, not “any person or other legal entity seeking a boundary line adjustment.”

16G.20.030 Criteria for approval.

The planning official shall approve an application for a boundary line adjustment if it is determined that:

- A. No additional lot, tract, parcel, site or division is created by the proposed adjustment.
- B. No lot is modified which contains insufficient area and dimensions to meet the minimum requirements of the zone in which the affected lots are situated. In instances where nonconforming lots exist, the degree of nonconformance with respect to the zoning dimension and area standards, setbacks and floor area ratio is not increased.
- C. No lot is modified to reduce or eliminate the square footage of developable area outside of critical areas and critical area buffers such that development on the lot can only occur through the reasonable use provisions of the Chapter 16F, or which would require primary access through a critical area or critical area buffer
- D. No lot is modified which does not have adequate drainage, water supply, sanitary sewage disposal, and access for vehicles, utilities and fire protection, and no existing easement in favor of the public is rendered impractical to serve its purpose.
- E. No nonconformities are created with respect to the adopted building code, fire code or any other locally administered regulation.

F. The boundary line adjustment is consistent with the applicable provisions of the city's zoning code. (NEW. COMPARE WITH 17.08.040)

CM – Comments for 16G.20.030

- **B. Eliminate any language which would allow the City to approve a boundary line adjustment that does not conform to the City's zoning standards. It doesn't matter if the boundary line adjustment is less nonconforming once approved.**
- **D. Change the language to read "No lot is modified such that the approval will result in a lot(s) which does..."**
- **E. Change the language to read "The boundary line adjustment approval will not render any ~~and~~ ~~no~~ existing easement in favor of the public is ~~rendered~~ impractical to serve its purpose."**

16G.20.040 Requirements for approval of final boundary map.

The approved boundary line adjustment documents shall contain the original as well as the new legal descriptions and shall be effective after being signed by the planning official, filed by the applicant with the county assessor, and recorded with the county auditor. A copy of the recorded boundary line adjustment shall be furnished to the city upon the filing of the document (NEW. SIMILAR TO 17.08.040 BUT WITH ADDED LANGUAGE ABOUT RECORDATION PROCESS).

CM – The City should record the boundary line adjustment at the applicant's cost. Once the boundary line adjustment is recorded, the City can provide the property owner with a copy.

16G.30 SHORT SUBDIVISIONS

16G.30.010 Type of application.

A short subdivision is an administrative permit application that requires notice of application subject to 16I.30.060(B)(2). Short subdivisions shall be processed in accordance with the procedures for such applications as set forth in LMC Section 16I.30. (NEW)

CM – "A short plat is a Type I application. Refer to the permit processing procedures in chapter ___ for processing information."

16G.30.020 Requirements for a complete application.

The following maps, site plans, and studies shall be prepared for proposed preliminary short subdivisions:

A. A base map displaying the existing site characteristics and conditions. The base map shall include:

1. A north arrow and scale (1:40 scale preferred).
2. The name, address and phone number of the owner of the subject property and of the owner's representative.
3. The proposed short subdivision name.
4. Property boundaries.
5. Total project acreage.
6. Topography with a contour interval of no less than five (5) feet sufficient to demonstrate existing drainage characteristics on and adjacent to the property. Slopes which exceed fifteen (15) percent shall be identified.
7. The location of all easements and other encumbrances located on the property or essential to the property's division.
8. The location and names of roads and rights-of-way, easements, trails and walkways on-site or in the immediate vicinity.
9. The location of all utilities (water lines or wells, sewer lines or septic systems, power, cable and/or telephone lines) located on or adjacent to the subject property.
10. The location of all critical areas (as defined in LMC Chapter 16F) located on or within 100 feet of the subject property.

11. Areas of significant trees, vegetation and forests located on the subject property or within 100 feet of the property.

12. Existing land uses on the subject property and adjacent properties.

13. The approximate size and location of existing structures located within 100 feet of the subject property.

14. The owners and parcel numbers of adjacent properties. (NEW)

15. The city comprehensive plan and zoning designations for the subject property, including the shoreline designation if applicable.

B. An aerial photograph to assist the city in orienting the property to adjacent areas.

C. The proposed site design including:

1. The proposed building footprints and lot lines. (CHANGED LANGUAGE)

2. The proposed mix and distribution of uses on the site and the proposed allocation of square footage to each specific lot, where applicable (NEW)

3. The location of all proposed public and private utilities, including public sewer and water, storm drainage, telephone, cable, electricity, etc.

4. Roads and access points. (CHANGED LANGUAGE)

5. Open space locations. (CHANGED LANGUAGE)

6. Reserve areas that may be used for future development if the site is not being developed to its full potential. Reserve areas shall identify, where applicable, the amount square footage and type of uses allocated to the area, and the combination of the reserve areas and all the lots on the site must meet the requirements listed within 16G.60. (NEW)

D. The names and addresses of adjacent landowners and pre-addressed stamped envelopes to enable the city to provide notice for the application.

E. The fee for short plats as provided by resolution of the city council. (SIMILAR TO 17.04.070 WITH SOME ADDITIONS)

FA – Changes to 16G.30.020 Requirements Basis For a Complete Application

Per Carol's suggestion: The following materials must be submitted to the City for a complete boundary line application:

- **A.2. "...and of the owner's representative". How would developer necessarily know this?**
- **A.9. Oil tanks, propane tanks too?**
- **A.11. Use language from proposed tree ordinance**
- **A.15. Per Carol talk about "the City Comprehensive Plan". What do we spell out?**
- **C.3. Add propane, oil tank**

CM – Add "A complete application for a short plat shall consist of the City's application form, the applicable fee and the following information:"

16G.30.030 Criteria for approval.

The planning official shall base their decision on an application for preliminary short subdivision on the following criteria:

A. The proposed short subdivision is in conformance with the Langley comprehensive plan, Langley Municipal Code, and all other city adopted plans and regulations.

B. The preliminary short subdivision is beneficial to the public health, safety and welfare and is in the public interest.

C. Provisions have been made for water, storm drainage, erosion control, and sanitary sewage disposal that are consistent with the current standards adopted in the Langley Municipal Code.

D. Provisions have been made for open space, roads, utilities, street lighting, pedestrian facilities and other improvements that are consistent with the Langley Municipal Code and other adopted standards and plans.

E. The design, shape and orientation of the proposed lots are appropriate for the proposed use for which the lots are intended.

F. Provisions have been made for dedications, easements and reservations.

G. Provisions have been made for the maintenance of commonly owned private facilities.

H. The plat meets the requirements of Chapter 58.17 RCW and other applicable state and local laws that are in effect at the time of preliminary plat approval. (NEW. COMPARE WITH 17.08.110)

FA – Changes to 16G.30.030

- A. “The planning official shall base ~~their~~ the decision...”
- B. Eliminate
(per Carol – appeal fee. Where?)

CM – Comments for 16G.30.030

- Change the first sentence to read: “The planning official shall issue written findings and conclusions to support his/her decision whether to approve, approve with conditions or deny the short plat. The criteria for approval of a short plat are as follows:”
- A. I do not recommend that you require an applicant to comply with the entire Langley comprehensive plan. If there is something in the comprehensive plan that you believe should be included in the subdivision or zoning codes as a regulation, you should amend the codes. The entire comprehensive plan is not meant to be enforced as a development regulation and it would be difficult for an applicant to comply with the entire comprehensive plan. Same goes with “all other city adopted plans,”but you could require compliance with all applicable plans. Under RCW 58.17.195, the applicant has to comply with the City’s zoning regulations. You should also require compliance with all other applicable state laws and any local ordinances adopted under this chapter which were in effect at the time the application was determined complete.
- B. What is a “preliminary short subdivision?” A final decision has to issue on a short plat in 30 days after the application is determined complete. RCW 58.17.140. If it is approved, the short plat approval allows the applicant to submit permits for the necessary infrastructure improvements. Once all conditions of the short plat have been complied with, the City can record the short plat. There isn’t a two step process for short plats.
- D. The City is required to include “provisions for considering sidewalks and other planning features that assure safe walking conditions for students who walk to and from school.” RCW 58.17.060. Also under RCW 58.17.060, the criteria for approval of short plats must include the considerations in RCW 58.17.110, which include making findings that adequate provision has been made for parks and recreation, playgrounds, schools and schoolgrounds.
- H. Is inconsistent with law. Under the above .070, which reflects the vesting rule in RCW 58.17.033, the City must find compliance with the laws in effect at the time the a fully complete application was submitted, not the laws in effect at the time of preliminary plat approval.

BW – In 16G.30.030 What does “in the public interest” mean? Is it necessary?

16G.30.040 Effect of preliminary plat approval.

Preliminary short plat approval authorizes the applicant to proceed with the applications for necessary permits to construct required improvements to the short subdivision and to prepare a final short plat in accordance with the determinations made and conditions imposed by the planning official. The responsibility for providing property improvements including water, sewage, streets, drainage, shall generally be the applicant's, although mechanisms such as latecomer agreements may be utilized. Requirements for property improvements are established in the city’s development construction standards, LMC Title 15. (NEW)

FA – If we’re concerned about the applicant completing the work could we simply require a bond?

CM – Change the section to read: Effect of short plat approval.

Short plat approval authorizes the applicant to proceed with the applications for necessary permits to construct required improvements to the short subdivision. Once these improvements have been installed, the applicant prepares the short plat map in accordance with the determinations made and conditions imposed by the planning official. The City will then have the short plat recorded at the applicant’s expense. The responsibility for providing property improvements including water, sewage, streets, drainage, shall generally be the applicant's, although mechanisms such as latecomer agreements may be utilized.

Requirements for property improvements are established in the city's development construction standards, LMC Title 15.

BW – What is a “latecomer agreement”?

16G.30.050 Plans Subject to Review and Approval

Final water, sewer, storm drainage, street and other physical improvements set forth in the preliminary plat approval must be submitted to the city for approval prior to actual construction of these facilities. Any changes made during the installation must be approved by the city and revised drawings showing the exact location of the facilities must be approved in advance of the installation. All underground utilities and facilities installed in streets shall be constructed prior to the surfacing of the streets. Service connections for all underground utilities and facilities shall be laid to such lengths as will preclude the necessity for disturbing the street improvements, when service connections thereto are made. *(FROM 17.04.137)*

CM – Change the first sentence to read: Final plans for? water, sewer, storm drainage, street and other physical improvements ~~set forth~~ required by in the preliminary short plat approval must be submitted to the city for approval prior to actual construction of these facilities.

16G.30.060 Time Limit for Final Short Plat Approval

The applicant shall complete all requirements of the preliminary short plat approval and the requirements of this chapter within ~~one year~~ five (5) years from the date of approval in order to qualify for submittal for final plat approval. One one-year extension of the requirement may be granted by the planning official, in consultation with city staff, with a showing of good cause by the applicant. *(FROM 17.04.140-CHANGED TIMEFRAME TO MAKE CONSISTENT WITH STATE LAW)*

CM – Change this section to read: The City shall issue a final decision on a short plat application within thirty days after the complete application is submitted to the City.

There is no process in state law for expiration of short plats, as set forth in 16G.30.060. In fact, there is case law holding that short plat approval does not expire. See, Noble Manor Co. v. Pierce County, 133 Wn.2d 269, 282, 943 P.2d 1379 (1997).

16G.30.070 Bonds

A. Performance bond. The city may accept a performance bond or similar assurance in an amount equal to 115% of the value of the improvements guaranteeing that all improvements and requirements will be completed within five years of the date of the preliminary short plat approval. One one-year extension of the requirement may be granted by the city planning official, in consultation with city staff, with a showing of good cause by the applicant. The performance bond or similar assurance shall be drawn in favor of the city based on the amount specified by the planning official and be deposited per instructions from the city clerk-treasurer. All money received shall be held in escrow pending the satisfactory completion of the required work. The city may authorize the release of portions of this money to the applicant in accordance with a prearranged progress schedule. When all improvements have been completed and determined by the city to satisfy required city standards, the bond or balance of money held in escrow shall be released to the applicant.

B. Maintenance Bond. A one year maintenance bond in the amount of ten (10) percent of the value of the improvements shall be provided upon release of the performance bond to warrantee improvements provided in the development of the plat. *(FROM 17.04.140)*

CM – There is no need to have a section relating to bonds in each chapter (short plats, long plats). There should be a separate section re: bonds. I have prepared a paper on bonds and other methods to assure completion of subdivision improvements, and there is a model code chapter at the end. I will send it to you with these comments. Please review what I have sent to you and eliminate this section.

16G.30.080 Revisions to approved preliminary short subdivisions.

A. Modification to an approved preliminary short subdivision which does not change the general plat layout, increase off-site impacts, or modify a provision or condition which was a matter of dispute by any party during the preliminary approval process may be made by the planning official after notice of the modification has been given, the site has been posted notifying individuals of the change, and a fourteen (14) day comment period has been allowed for the applicant and parties of record to comment on the proposal.

B. Other modifications to an approved subdivision must be reviewed in accordance with the process for a type II application and shall be approved consistent with the procedures and requirements of this chapter.

C. The following exemptions shall not constitute changes in the preliminary short subdivision approval and thus do not require further review as provided for above in this section:

1. An engineering detail, unless the proposed detail modifies or eliminates features specifically required as an element of the preliminary subdivision approval.

2. Minor changes in lot lines or lot dimensions. (*FROM 17.04.145*)

CM – Change section to read

~~A. Modification to an approved preliminary short subdivision which does not change the general plat layout, increase off-site impacts, or modify a provision or condition which was a matter of dispute by any party during the preliminary approval process may be made approved by the planning official under the procedures in this section.~~

~~C. The following exemptions shall not constitute changes in the preliminary short subdivision approval and thus do not require further review modification from an approved short subdivision: as provided for above in this section:~~

~~1. Changes to? An engineering detail, unless the proposed detail modifies or eliminates features specifically required as an element of the preliminary subdivision approval.~~

~~2. Minor changes in lot lines or lot dimensions. (*FROM 17.04.145*)~~

~~B. Modifications to short subdivisions is a Type I permit application, and shall be processed according to the procedures in Section _____ of the Langley Municipal Code. after notice of the modification has been given, the site has been posted notifying individuals of the change, and a fourteen (14) day comment period has been allowed for the applicant and parties of record to comment on the proposal. (the procedures for notice, comment, etc. should be in your permit processing chapter.~~

~~-B. Other modifications to an approved subdivision must be reviewed in accordance with the process for a type II application and shall be approved consistent with the procedures and requirements of this chapter. (I don't understand what these "other modifications" could be. It looks like someone might attempt to further divide land in a short plat within the 5 year period after approval using this "other modifications" procedure.)~~

16G.30.090 Prohibition on further division.

Land contained within a short subdivision may not be further divided in any manner within a period of five years from the date of approval without filing a standard plat, provided that when a short plat contains fewer than four lots nothing in this section shall prevent the owner who filed the short plat from filing an alteration within the five-year period to create up to four lots within the original short plat boundaries. (*NEW*)

CM – Change “standard plat” to “preliminary plat”

BW – I don't understand this section. What is the purpose of the 5-year restriction? Is a State law involved here?

16G.30.100 Contiguous short plats.

No application for a short plat shall be approved if the land being divided is held in common ownership with a contiguous parcel that has been divided in a short plat within the preceding five years. (*NEW*)

16G.40 PRELIMINARY SUBDIVISIONS AND BINDING SITE PLANS

CM – Preliminary plats and binding site plans are two different types of procedures. They need to be separated and put in two different chapters. There are no definitions in this code to explain what the differences are, but take a look at RCW 58.17.020(7) and 58.17.020(4).

16G.40.010 Type of application.

Applications for preliminary subdivision and binding site plan approval require action by the planning advisory board and shall be processed subject to the provisions for such applications as set forth in Chapter 16I.30. (NEW)

CM – Rewrite to read “A preliminary plat is a Type III application” (you need to insert the proper number from your code, it is usually a type III application) and is processed according to the procedures set forth in chapter __ of the Langley Municipal Code (refer to permit processing chapter.)

16G.40.020 Requirements for a complete application.

The following maps, site plans, and studies shall be prepared for proposed preliminary subdivisions and binding site plans:

A. A base map displaying the existing site characteristics and conditions. The base map shall include:

1. A north arrow and scale (1:40 scale preferred).

2. The name, address and phone number of the owner of the subject property and of the owner’s representative.

3. The proposed plat name.

4. The property boundaries.

5. The total project acreage.

6. Topography with a contour interval of no less than five (5) feet sufficient to demonstrate existing drainage characteristics on and adjacent to the property. Slopes which exceed fifteen (15) percent shall be identified.

7. The location of all easements and other encumbrances located on the property or essential to the property’s division.

8. The location and names of roads and rights-of-way, easements, trails and walkways on-site or in the immediate vicinity.

9. The location of all utilities (water lines or wells, sewer lines or septic systems, power, cable and/or telephone lines) located on or adjacent to the subject property.

10. The location of all critical areas (as defined in Chapter 16F) located on or within 100 feet of the subject property.

11. Areas of significant trees, vegetation and forests located on the subject property or within 100 feet of the property.

12. Existing land uses on the subject property and adjacent properties. (NEW)

13. The approximate size and location of existing structures located within 100 feet of the subject property.

14. The owners and parcel numbers of adjacent properties. (NEW)

15. The city comprehensive plan and zoning designations for the subject property, including the shoreline designation if applicable.

B. An aerial photograph to assist the city in orienting the property to adjacent areas.

C. The proposed site design including:

1. The proposed building footprints and lot lines. (CHANGED LANGUAGE)

2. The proposed mix and distribution of uses on the site and the proposed allocation of square footage to each specific lot, where applicable (NEW)

3. The location of all proposed public and private utilities, including public sewer and water, storm drainage, telephone, cable, electricity, etc.

4. Roads and access points. (CHANGED LANGUAGE)

5. Open space locations. (CHANGED LANGUAGE)

6. Reserve areas that may be used for future development, if the site is not being developed to its full potential. Reserve areas shall identify, where applicable, the amount square footage and type of uses allocated to

the area, and the combination of the reserve areas and all the lots on the site must meet the requirements listed within 16G.60. (NEW)

D. The names and addresses of landowners within 500 feet of the project site and pre-addressed stamped envelopes to enable the city to provide notice for the application. (NEW)

E. The fee for subdivisions or binding site plans as provided by resolution of the city council. (CHANGED LANGUAGE)

F. The following additional information for binding site plans:

1. All information required on a preliminary long plat.
2. The location of all existing and proposed structures.
3. A detailed landscape plan indicating the location of existing vegetation to be retained, location of vegetation and landscaping structures to be installed, type of vegetation by common horticultural name, and the installed and mature height of all vegetation.
4. Schematic plans and elevations of existing/ proposed buildings with samples of all exterior finish material and colors, the type and location of all exterior lighting, signs and accessory structures.
5. Inscriptions or attachments setting forth the limitations and conditions of development.
6. Provisions insuring the development will be in conformance with the site plan as approved.
7. Demonstrated compliance with the requirements of Chapter 64.34 RCW Condominium Act. (SECTION IS COMBINATION OF 17.04.070 AND 18.22.220 WITH SOME ADDITIONS)

CM – Comments for 16G.40.020

- **First sentence should read: “A complete preliminary plat application shall consist of the following:”**
- **C.6. (What is in 16G.60? My copy of this code only goes up to 16G.50. I don’t understand this requirement – if the property owner isn’t including a portion of the property in the application for subdivision, does this mean that he/she still has to demonstrate how all the lots (that haven’t yet been proposed for division) meet some standards in the code?)**
- **F. All of the binding site plan requirements should be in a separate chapter addressing binding site plans.**

16G.40.030 Criteria for Approval.

A. The planning advisory board’s recommendation and the city council’s decision to approve a preliminary subdivision or binding site plan, or approve a preliminary subdivision or binding site plan with modifications, shall include findings of fact that the application meets all of the following requirements: (MODIFIED LANGUAGE)

1. The preliminary subdivision or binding site plan is in conformance with the Langley comprehensive plan, Langley Municipal Code, Langley standards and all other city adopted plans and regulations.

2. The preliminary subdivision or binding site plan makes appropriate provisions for the public health, safety and general and public use and interest, including:

- a. Roads, streets and transit facilities.
- b. Street names, traffic regulatory signs and mailbox locations.
- c. Pedestrian facilities.

d. Public ways leading to and providing access to and within the subdivision.(MODIFIED LANGUAGE)

e. Open spaces, recreation facilities, and playgrounds.

f. Fire and emergency vehicle access.

g. Drainage and storm water facilities.

h. Water supply, including both domestic and fire flow.

i. Sewage disposal. (MODIFIED LANGUAGE)

j. Critical areas, as defined in LMC Chapter 16F. (MODIFIED NUMBERING AND LANGUAGE)

3. The preliminary subdivision or binding site plan design is compatible with the physical characteristics of the proposed subdivision site.

4. The preliminary plat or binding site plan design includes measures to minimize clearing, maintain existing vegetation, and incorporate re-vegetation into the design where possible.

B. In making a determination of approval, approval with modifications or disapproval using the criteria in subsections A of this section, the following additional factors without limitation shall also be considered:

1. All public and private facilities and improvements on and off the site necessary to provide for the proposed subdivision or binding site plan will be available when needed.

2. Proposed new utilities, facilities and services and the proposed additional use of existing utilities, facilities and services will not degrade the existing level of operation and use of such utilities, facilities and services below accepted standards.

3. Provisions for maintenance of common or public facilities have been incorporated in the subdivision or binding site plan proposal. (NEW. SIMILAR TO MUCH OF THE LANGUAGE FROM 17.04.090 WITH SEVERAL ADDITIONS)

CM – Comments for 16G.40.030

- **A. My recommendation is to change this statement as follows: “Both the recommendation and the final decision on the preliminary plat shall include findings of fact and conclusions. The applicant for a preliminary plat shall demonstrate that the application conforms to all of the following:” (The reason I am recommending this change is that I just reviewed the action of a town that, under the same language in your code and the state law, thought that findings and conclusions are only necessary when the plat is approved. I think that written findings and conclusions are just as important, if not more important, when a plat is denied.**
- **A.1. Again, it is very difficult to demonstrate that an application conforms to the ENTIRE comprehensive plan. Is there a particular provision in the comp plan that you want the applications to conform to? As for the rest of this criterion, it should reflect compliance with all applicable plans and regulations.**
- **A.2.h. Parks and recreation? Sidewalks and other planning features for students who only walk to and from school? Take a look at RCW 58.17.110 – all these criteria should be included.**
- **A.2.j. I think you should eliminate critical areas. If there are no critical areas on the property, the applicant can’t make adequate provision for them. The City has a critical areas ordinance, so if there are critical areas on the property, any development activity would have to comply with the CAO.**
- **B.1. Does the City have a concurrency ordinance?**
- **B.2. This is a determination that is made with a concurrency ordinance. The City is required to have a concurrency ordinance for transportation facilities. RCW 36.70A.070(6)(b). Cities are encouraged to have a concurrency ordinance for water and sewer facilities as well. I recommend that you adopt such ordinances and eliminate this requirement because “utilities, facilities and services” are not defined. This criterion (as written) should not be used to deny the preliminary plat because the school district believes that the development will cause their level of service to be degraded below accepted standards (as an example).**
- **B.3. I'm not sure why this would be important for public facilities. If the facilities are public, there are no provisions for maintenance necessary, are there?**

BW – In 16G.40.30.A.1, what are “Langley Standards”?

16G.40.040 Effect of preliminary approval.

Preliminary subdivision or binding site plan approval authorizes the applicant to proceed with the applications for necessary permits to construct required improvements necessary for the proposal and to prepare a final plat or binding site plan in accordance with the determinations made and conditions imposed by the planning advisory board and city council. The responsibility for providing property improvements including water, sewage, streets, drainage, shall generally be the applicant's, although mechanisms such as latecomer agreements may be utilized. Requirements for property improvements are established in the city’s development construction standards, Title 15 LMC. (NEW. NO CODE PROVISION ADDRESSES ISSUE.)

CM – Could someone interpret this to mean that they could apply for building permits for the homes, prior to final plat approval? Also, you should only identify the final decision maker. If the planning advisory board comes up with something that the city council doesn’t include in the final decision, the applicant won’t have to comply with it.

Remove binding site plan language.

16G.40.050 Plans Subject to Review and Approval

Final water, sewer, storm drainage, street and other physical improvements set forth in the preliminary plat approval must be submitted to the city for approval prior to actual construction of these facilities. Any changes made during the installation must be approved by the city and revised drawings showing the exact location of the facilities must be approved in advance of the installation. All underground utilities and facilities installed in streets shall be constructed prior to the surfacing of such street(s). Service connections for all underground utilities and facilities shall be laid to such lengths as will prevent the necessity for disturbing the street improvements, when service connections thereto are made. (FROM 17.04.137)

CM – Final plans for? water, sewer, storm drainage...

16G.40.060 Time Limit for Final Plat Approval

The applicant shall complete all requirements of the preliminary plat or binding site plan approval and the requirements of this chapter within ~~one year~~ five (5) years from the date of approval in order to qualify for submittal for final plat or binding site plan approval. One one-year extension of the requirement may be granted by the planning official, in consultation with city staff, with a showing of good cause by the applicant. (FROM 17.04.140-CHANGED TIMEFRAME TO MAKE CONSISTENT WITH STATE LAW)

CM – Change section to read: “The applicant shall submit an application for a final plat to the City within seven (7) years from the date of the preliminary plat approval.” (State law has recently been changed to allow 7 years instead of 5. Also, if you are going to allow the applicant the ability to bond for construction of improvements, he/she doesn’t have to complete all of the requirements prior to submitting an application for final plat.)

Given that the applicant has 7 years to submit a final plat (and he is vested to your regulations in place at the time the preliminary plat application was determined complete), I don’t recommend allowing a one year extension. If you do want to allow a one year extension, you should consider (1) requiring that the property owner submit a request for the extension within one month (or any other time frame that allows processing) prior to expiration of the preliminary plat; (2) allowing the City to review all of the conditions of preliminary plat approval again at this time, to determine whether to allow or deny the extension. Too many cities consider the extension automatic. Consider this situation: the City has reserved water for a 200 lot subdivision, which the City knows it must continue to reserve for a period of 14 years (seven years after preliminary plat approval so that the property owner can submit a final plat application, and once that is approved, the applicant has seven years to submit building permits for the homes in the plat. RCW 58.17.170. What if the City has run out of water, and knows it in the 7th year after preliminary plat approval? The City should be able to deny the one year extension, if it has run out of water.

16G.40.070 Bonds

A. Performance bond. The city may accept a performance bond or similar assurance in an amount equal to 115% of the value of the improvements guaranteeing that all improvements and requirements will be completed within five years of the date of the preliminary plat or binding site plan approval. One one-year extension of the requirement may be granted by the city planning official, in consultation with city staff, with a showing of good cause by the applicant. The performance bond or similar assurance shall be drawn in favor of the city based on the amount specified by the planning official and be deposited per instructions from the city clerk-treasurer. All money received shall be held in escrow pending the satisfactory completion of the required work. The city may authorize the release of portions of this money to the applicant in accordance with a prearranged progress schedule. When all improvements have been completed and determined by the city to satisfy required city standards, the bond or balance of money held in escrow shall be released to the applicant.

B. Maintenance Bond. A one year maintenance bond in the amount of ten (10) percent of the value of the improvements shall be provided upon release of the performance bond to warrantee improvements provided in the development of the plat. (FROM 17.04.140)

CM – Again, I will provide you with model code language to review on bonds. You should not repeat the bond procedures over and over in the code.

16G.40.080 Revisions to approved preliminary subdivisions

A. Modification to an approved preliminary subdivision or binding site plan which does not change the general plat layout, increase off-site impacts, or modify a provision or condition which was a matter of dispute by any party during the preliminary approval process may be made by the planning official after notice of the modification has been given, the site has been posted notifying individuals of the change, and a fourteen (14) day comment period has been allowed for the applicant and parties of record to comment on the proposal.

B. Other modifications to an approved subdivision or binding site plan must be reviewed in accordance with the process for a type III application and shall be approved consistent with the procedures and requirements of this chapter.

C. The following exemptions shall not constitute changes in the preliminary subdivision or binding site plan approval and thus do not require further review as provided for above in this section:

1. An engineering detail, unless the proposed detail modifies or eliminates features specifically required as an element of the preliminary subdivision approval.
2. Minor changes in lot lines or lot dimensions. (*FROM 17.04.150 ADDED TYPE OF APPLICATION*)

CM – See my comments on short plat revisions.

Time frame for approval or denial? RCW 58.17.140 (90 days after submission of complete application)

16G.50 FINAL PLATS OR BINDING SITE PLANS

CM – A final plat is different from a binding site plan and should not be included in the same chapter.

16G.50.010 Type of Application

A final short plat is exempt from the provisions of LMC 16I.30. Final short plats nevertheless shall meet the provisions of this chapter. Final long plats and final binding site plans are a Type IV application and shall be processed in accordance with the procedures for such applications as set forth in LMC 16I.30. (NEW TO MAKE CONSISTENT WITH ADMINISTRATIVE CHAPTER)

CM – Take out references to Binding Site Plans

16G.50.020 Requirements for Final Plat or Binding Site Plan Preparation

After approval of a preliminary plat or binding site plan by the city council or planning official, the fulfillment of the approval conditions and the requirements of these regulations, and any other requirement specified by the planning agency, one tracing of the final plat or binding site plan shall be prepared to be filed for record. The final plat or binding site plan shall be drawn on ~~a mylar with dimensions media~~ acceptable for Island County recording and allow one-half inch for border. ~~The ink must be reproducible and of a permanent nature.~~ If more than one sheet is required, each sheet including the index sheet shall be of the required size. The index sheet must show the entire subdivision or binding site plan, with street names, block numbers and lot numbers. (*FROM 17.04.150-17.04.160*)

16G.50.030 Requirements for a Final Plat or Binding Site Plan Application

A final plat or binding site plan shall include the following:

A. Identification and Description.

1. The name of the subdivision or binding site plan, or number of the short subdivision.
2. The location of the project by section, township and range, or by other legal description.
3. The name and seal of the registered land surveyor.
4. The date.

5. A graphically shown scale. The scale of the final plat or binding site plan shall be such that all distances and bearings can be clearly and legibly shown thereon in their proper proportions. Plats or binding site plans unduly cramped and on which essential data cannot be clearly read will not be approved.

5. A north point.

B. Delineation. The following shall be clearly indicated and dimensioned:

1. The boundary of the project, based on an accurate traverse, with angular and lineal dimensions.

2. The exact location, width and name of all streets within and adjoining the plat or binding site plan, and the exact location and width of all alleys, walkways and cross-walkways. The name of a street shall not duplicate that of any existing street in the city, and shall be generally consistent with the practice of Island County.

3. The true courses and distances to the nearest established street lines or official monuments which accurately describe the location of the plat or binding site plan.

4. Municipal, township, county or section lines accurately tied to the lines of the short subdivision, subdivision or binding site plan by distances and courses.

5. Radii, central angles, points of curvature, tangent distances, and lengths of all arcs; bearing and length of all tangents.

6. The location, dimensions, names and auditor's file numbers of all easements and/or streets within or adjoining the plat or binding site plan, and the purpose thereof.

7. All lot and block numbers and lines, with accurate dimensions in feet and hundredths. Blocks in numbered additions to subdivisions or binding site plans bearing the same name may be numbered or lettered consecutively through the several additions.

8. The accurate location of all monuments. Monuments shall be concrete, not less than four inches by four inches at top, six inches by six inches at bottom and twenty-four inches long, with metal marker cast in the center. One such monument shall be placed at each street intersection, and at locations to complete a continuous line of sight and at such other locations as required by the city engineer. Monument cases shall be placed over all monuments in paved streets.

9. All meander lines or reference lines along bodies of water established above the high water line of such water.

10. Accurate outlines and legal description of any areas to be dedicated or reserved for public use, with the purposes indicated thereon and in the dedication, and of any area to be reserved by deed covenant for common uses of all property owners.

11. Building setback lines accurately shown with dimensions in cases where building setback variation has been allowed.

12. The mix and distribution of uses proposed for the site, including any lots devoted to an affordable housing provider, and the amount of building square footage allocated to each lot, where applicable (NEW)

13. Areas reserved for future development and the amount of square footage and type of uses allocated to each reserve tract. (NEW)

13. All lot corners on the property. Lot corners should be marked with a permanent suitable metal marker no less than three-eighths inch in diameter and eighteen inches long and driven flush with the finished grade.

C. Descriptions, Dedication and Certificates.

1. A description of the property subject to the plat or binding site plan, which shall be the same as that recorded in the preceding transfer of the property, or that portion of the transfer covered by plat or binding site plan. Should this description be cumbersome and not technically correct, a true and exact description shall be shown upon the plat or binding site plan together with original description. The correct description shall follow: "The intent of the above description is to embrace all the following described property."

2. Dedication, with notarized acknowledgment, by owner or owners, of the adoption of the plat or binding site plan and the dedication of streets and other public areas. In case of a corporation, proper acknowledgment shall be used.

3. Restrictions.

4. The following certificates and declarations:

a. Surveyor Certificate.

This plat or binding site plan correctly represents a survey made by me or under by direction in conformance with the requirements of the City of Langley and the Washington State Survey Recording Act, in the month of _____, 20____.

signature and seal

certificate number

b. Treasurer's Certificate.

All taxes levied which have become a lien upon the lands herein described have been fully paid and discharged according to the records of my office, including taxes for the current year, 20____.

Island County Treasurer

c. Auditor's Certificate.

Filed for record this _____ day of _____ 20____, at _____ in Vol. _____ of _____, page(s) under Auditor's file No. _____ Records of Island County, at the request of the City of Langley.

d. Acknowledgment.

State of Washington)
Island County)

This is to certify that on this _____ day of _____ 20____ before me, the undersigned, a Notary Public in and for the State of Washington duly commissioned and sworn, appeared _____ to me known to be the individual(s) described in and who executed the foregoing instrument and acknowledged to me that signed and sealed the same as _____ free and voluntary act and deed for the uses and purposes mentioned herein.

Notary Public in and for
the State of Washington residing at _____

e. Owner's Consent.

Know all men by these presents that the undersigned sub-divider(s) hereby certify that this plat is made as _____ free and voluntary act and deed.

Owner's Signature Owner's Signature

Mortgage or Lien Holder's Signature

- 5. Proper signature blocks for the approvals of the Mayor, city planning official and city engineer
- 6. All signatures shall be in India ink or other ink of equal density. No interlineations will be permitted. (COMBINATION OF 17.04.170 and 17.08.070)

CM – Change first sentence to “An application for a final plat or binding site plan shall include the following:”

16G.50.040 Fees

On completion of site improvements to the satisfaction of the city staff, or upon delivery of a performance bond in lieu thereof, a final plat or binding site plan shall be submitted accompanied by the following:

- A. ~~A deposit to cover the cost of final plat or binding site plan review, including the base fee and hourly charges for city consulting review time and overhead. If the final review costs exceed the amount deposited, the~~

applicant shall pay the difference. The final plat or binding site plan review fee in accordance with the current fee schedule.

B. A certificate of title from a reputable title insurance company giving the legal description and showing the title and interest or dedication of all parties to the plat or binding site plan. The certificate shall be dated not to exceed thirty (30) days prior to submission of the final plat or binding site plan.

C. A certificate by the county treasurer, showing that taxes have been paid in accordance with RCW 58.08.030 and 58.08.040, and that deposit has been made to the county treasurer for the taxes for the following year. A certificate by the county treasurer, showing that all taxes and assessments levied and chargeable against the property in the binding site plan, plat, or re-plat have been made in accordance with RCW 58.08.030. (FROM 17.04.190)

16G.50.050 Time frame for approval.

Final plats or binding site plans shall be approved, disapproved or returned to the applicant within thirty (30) calendar days after the filing of a complete application, unless the applicant consents to an extension of such time period. (NEW)

CM – Change first sentence to: “A Final plats application ~~or binding site plans~~ shall be approved...”

16G.50.060 Criteria for approval.

A final plat or binding site plan application shall be approved if the proposal:

A. Meets all criteria for approval for preliminary plat or binding site plans.

B. Substantially conforms to all terms of the preliminary plat or binding site plan approval.

C. Meets the requirements of this title, Chapter 58.17 RCW, other applicable state laws, and any other applicable city ordinances which were in effect at the time of preliminary plat or binding site plan approval. (NEW)

CM – Take out references to Binding Site Plans

16G.50.070 Signing the final plat or binding site plan.

Once the planning official verifies that the criteria for approval have been met and the final plat or binding site plan substantially conforms with the requirements articulated in 16G.50.050, the applicant shall submit two mylar copies and one paper copy for the signature of the planning official, city engineer and mayor. (NEW)

CM – I know that this chapter identifies the procedure as type IV, but this language may make it appear as if the Council is not the entity approving the final plat in a public meeting. You may want to review this.

16G.50.080 Filing the approved final plat or binding site plan

After receiving the necessary approvals from the city, the applicant shall file the final plat or binding site plan with the Island County auditor’s office. The final plat or binding site plan will be considered complete when a copy of the recorded documents is returned to the planning official. (NEW)

CM – I recommend that the City record it at the applicant’s cost.

16G.50.090 Time frame for submission of final plat or binding site plan.

A final plat or binding site plan meeting all requirements of Chapter 58.17 RCW and this title shall be submitted to the city for approval within five (5) years of the date of preliminary plat approval. (NEW)

CM – Change five to seven

16G.50.100 Effect of final plat approval.

A subdivision or binding site plan shall be governed by the terms of approval of the final plat or binding site plan, and the statutes, ordinances and regulations in effect at the time of approval under RCW 58.17.150(1) and

(3) for a period of five years after final plat or binding site approval unless the city council finds that a change in conditions creates a serious threat to the public health or safety in the subdivision. (NEW)

CM – Add the sentence: “Any lots in a final plat filed for record shall be a valid land use notwithstanding any change in zoning laws for a period of seven years from filing.” (See RCW 58.17.170)

Change five to seven

16G.50.110 Final Plat Alterations

Alterations of approved plats or binding site plans shall follow the same procedures as set forth in this title for new subdivision or binding site plan proposals, provided that, the planning official, in consultation with other appropriate city officials, may approve minor alterations, subject to notifying parties of record for the subdivision of the proposed alteration and providing an opportunity to comment. (FROM 17.04.195)

CM – This should be eliminated. The procedure for alteration of approved final plats is in RCW 58.17.215, and this statute should be followed (but you need to add the following sections: (1) type of application; (2) notice; (3) contents of a complete application; (4) criteria for approval. Also, note the difference between a plat alteration and plat vacation in RCW 58.17.212.

CM – Binding Site Plans.

(As stated above, there needs to be definitions so that it is clear when a binding site plan is used instead of a preliminary or short plat.)

Type of application?

Contents of a complete application?

Criteria for approval?

Time frame for City’s action on application?

16G.60 DESIGN AND IMPROVEMENT STANDARDS

RG – Overall comments for 16G.60:

- A. For consistency sake the parts of this section should be numbered according to the same system as the rest of the chapter
- B. Context sensitivity, connectivity, diversity, and sustainability are standards that should apply to all regulation, not categories into which regulations can be divided. I suggest these headings be removed.
- C. I count a total of 73 regulations in 16G.60. Of these 32 (about 44%) apply everywhere (all zones and both short plat and long plat), 18 (about 25%) apply to all residential zones, SP and LP, and 23 (about 32%) are a more complicated mix. Only this last 23 are made particularly clearer by the tabular format. The list could be reorganized into three groups: 1) all of the 32 city-wide regulations (without any associated table of zones), 2) all of the 18 residential-zone regulations (without any associated table of zones), and finally all of the 23 zone-specific or SP/LP-specific cases with a table showing which zones or SP/LP to which each applies.
- D. How, in practice, does "encouraged" work in a regulation?

BW – Comments for 16G.60

- A. I think the concept of using allowable square footage, rather than lot size, is a useful one. However, I have a major concern regarding the amount of open space required:
 - 1. Is it legal to require up to 60%? (see comments of Sue Enger, Planning Consultant). How much open space can/should the city require?
 - 2. Even if legal, I question the concept of creation of an extensive greenbelt around the city limit (i.e., how much open space is appropriate?).
 - 3. Can't this be seen as a "taking"?
 - 4. Doesn't the map of critical areas contained in the Parks and Open Space element (OS7) provide sufficient open space?
- B. Have the comments and suggestions of Charles Crider (Exec Officer, Skagit/Island Counties Builders Assoc.) outlined in a letter dated January 10, 2010 to Larry Cort regarding 16G.60 through 16G.90 been addressed by the PAB?
- C. A minor concern is that, while a table can be very useful in many instances, there is so much redundancy regarding "required" and "elective" that this may make it appear unnecessarily complex to the reader.
- D. What is the legal/assumed meaning of the word "shall"? (as opposed to words like "required" or "must").

CONTEXT SENSITIVITY:

How to design a site to respect the land and surroundings

	<u>VCD</u>	<u>TVD</u>	<u>RVD-</u>	<u>RVD-</u>
	<u>DBD</u>	<u>TVD-MR</u>	<u>6000</u>	<u>4000</u>
	<u>PI</u>	<u>MSD</u>		<u>SED</u>

Whole Langley Code

Standard One: Preservation of Existing Natural Character

CM – Here, it appears that the City is attempting to regulate critical areas through the Subdivision Code, by inserting these standards, which are in addition to the standards in Chapter 16F, Resource Lands and Critical Areas. This creates at least two problems. First, the City must demonstrate that the critical areas regulations in the subdivision code are supported by best available science. Adoption of these critical areas regulations are also subject to appeal to the Growth Board. Second, inserting critical areas regulations in the subdivision code creates confusion about whether these regulations are the only critical areas regulations applicable to subdivisions, or whether they are supplemental to the regulations in Chapter 16F. (I don't know if anyone has reviewed these regulations to ensure that they are consistent with the critical areas regulations in Chapter 16F.)

The City's authority to adopt subdivision regulations derives from chapter 58.17 RCW. The City's authority to adopt critical areas derives from the Growth Management Act (RCW 36.70A.170), which requires that best available science be used (RCW 36.70A.172). Normally, the City's adoption of subdivision code amendments is not subject to an appeal to the Growth Management Board. However, the City's inclusion of these critical area standards in the subdivision code would allow an appeal to the Board, and the Board would have jurisdiction pursuant to RCW 36.70A.280 to determine whether the City has complied with the requirements of RCW 36.70A.171-172(1) (best available science). *Honesty in Environmental Analysis and Legislation (HEAL) v. Central Puget Sound Growth Management Hearings Board*, 96 Wn. App. 522, 528, 979 P.2d 864 (1999).

SP LP SP LP SP LP SP LP

Is there best available science to support (for example) the requirement that every subdivision shall "maintain or create an upland buffer of natural native species vegetation?" (I didn't see any requirement for this type of buffer in Section 16F.70.040.)

I'm also not sure how this requirement would be implemented. Because it is a critical areas regulation, does it become a condition of the critical areas permit? Or is it a condition of the subdivision approval? My recommendation would be to ensure that the process is clear in the code -- if the City's code requires a critical areas permit for a subdivision (because the subdivision has critical areas within its boundaries), then the subdivision should be reviewed under chapter 16F. The critical areas permit should issued or approved if the subdivision meets the requirements of chapter 16F.

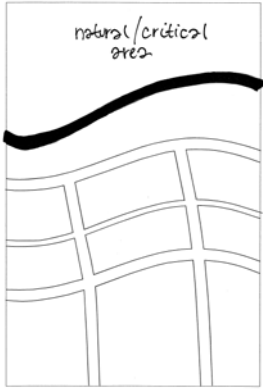
It is difficult to understand what is required by these regulations. For example, in A(1), it states that "subdivisions shall maintain or create an upland buffer of native species vegetation adjacent to wetlands . . ." Is this buffer in addition to any buffer required by chapter 16F for the actual construction of a home in the subdivision? If so, is there best available science that supports the requirement?

A. Critical Area Protection

Whole Langley Code

LEGEND
VCD=Village Center Design D&D=Dispersed Business Design PI=Public/ Institutional TVD=Traditional Village Design TVD-MR=Traditional Village Design-Mixed Residential
MSD=Modern Subdivision Design RVD=Rural Village Design SED= Sensitive Environment Design CD=Conservation Design
SP=Short Plat LP=Long Plat
R =Required E= Encouraged C=Conditional

1. Land divisions shall protect and preserve all critical areas located on the project site from alteration, including ~~including floodplains, wetlands, and steep slopes from~~ clearing, grading, filling, or construction (except as may be approved by the City for essential infrastructure or active or passive recreation amenities). Subdivisions shall also and maintain or create an upland buffer of natural native species vegetation adjacent to wetlands and surface waters, including creeks, streams, springs, and ponds (reference: Chapter 16.20 LMC). From Evaluation Criteria 17.04.135 and 17.08.115 (A)



This example demonstrates how a site can be designed to preserve critical areas and buffers.

R R R R R R R R R

a. Land divisions shall ensure the protection of critical areas in perpetuity through one or more of the following methods: the inclusion of protective language into the Codes, Covenants and Restrictions of the homeowners’ association; deed restriction; or the donation or sale of land, or a conservation easement on the land, to an accredited land trust or relevant public agency. The appropriate long term owner of critical areas shall be determined by the City of Langley.

RG – Why is the Critical Area Ordinance (CAO) not sufficient? Is it appropriate for the city to be the determiner of the long term owner of critical areas?

CM – Here, it states that land divisions shall ensure the protection of critical areas in perpetuity. What does “protection” mean? Does it mean that a fence is installed around a wetland? How is a steep slope protected? I’m not sure what is required here.

R R R R R R R R R

This language also requires that the City ensure the protection of critical areas through “inclusion of protective language in the Codes. I think the word “Codes” should be eliminated. The point of the Codes reference isn’t clear to me.

This section also requires that the City determine “the appropriate long term owner of critical areas.” It appears to allow the City to determine whether the property should be donated (apparently through a conservation easement), sold or deed restricted, without recognition of any limitations on the City’s authority. We should discuss this further, to determine the purpose of the City’s plan to determine the “appropriate long term owner of the critical area.” and why the City wouldn’t instead regulate the critical area through the critical areas ordinance.

<p><u>b. Land divisions shall be accompanied by a long term (at least 10-year) management and funding accountability plan for the management of critical areas and their buffers. The management plan shall include biological objectives consistent with habitat conservation and critical area protection and shall identify:</u></p> <p><u>i) Procedures and personnel for maintaining the critical areas and their buffers;</u></p> <p><u>ii) Estimated implementation costs and funding sources; and</u></p> <p><u>iii) Threats that the project poses for habitat within the critical areas and their buffers (e.g., invasive species, intrusion of residents in habitat areas) and measures to substantially reduce those threats.</u></p> <p>RG – Is it appropriate to require this for subdivisions but not for other property owners? Is it practical for short plats? How will plans be analyzed and approved? What are the standards that will be uniformly applied? What requisite scientific knowledge is required? How will this be managed and enforced? What are the budgetary and staffing implications? Shouldn't this be part of the CAO?</p> <p>CM – Again, I question the inclusion of this requirement, which relates to the “management” of critical areas, in the subdivision code instead of the critical areas regulations.</p> <p>RN – I am very concerned about the cost of this measure. Does this happen now? How costly is it for subdivisions to manage their critical areas? I worry this would be difficult to enforce and take planners time to make sure it was being done. Do we as a small city have the capacity for this? I know for a fact the city is not maintaining their critical areas to the point this asks land owners. I agree, it would be great if we could mandate that invasive species be removed from habitat, but that sounds more like a job the city should work on by hiring outside groups to come in and do this every so often. Maybe a fee could be made at the time of approval of short plat that would be put into a fund for maintaining critical areas throughout the city.</p>	R	R	R	R	R	R	R	R
<p><u>B. Conservation Area Protection</u></p>								
<p><u>1. Land divisions shall minimize impacts on large woodlands, especially in areas containing mature trees, significant wildlife habitat, areas of high ecological and/ or cultural open space value as defined in Figure OS-7 of the Parks, Open Space and Trails Element of the Langley Comprehensive Plan and those with highly erodible soils with slopes greater than 15 percent. From Evaluation Criteria 17.04.135 and 17.08.115 (D)</u></p> <p>RG – What, in practice, does "minimize impacts" mean? How does it apply when an entire parcel has been identified as a Priority Conservation Area? Also, Figure OS-7 was not intended as, and I don't feel is ready to be, a regulatory map.</p> <p>CM – Are conservation areas different from critical areas? (There are no definitions in chapter in Title 16F, so I don't know what a “conservation area” is. I don't have the definitions associated with the critical areas ordinance.) It looks like the two are different, because certain types of conservation areas, or “areas of high ecological and/or cultural open space,” are defined in the comprehensive plan, not the Zoning Code or critical areas ordinance. If these areas are not included in the definition of a critical area, what is the authority for requiring that an applicant minimize impacts on them?</p> <p>BW – I have questions regarding the extent of the Conservation areas indicated on the zoning map</p>	R	R	R	R	R	R	R	R

<p><u>2. Land divisions shall ensure the protection of conservation areas preserved through the subdivision process in perpetuity through the inclusion of protective language into the Codes, Covenants and Restrictions of the homeowners’ association or the donation or sale of land, or a conservation easement on the land, to an accredited land trust or relevant public agency. The appropriate long term owner of the area shall be approved by the City of Langley.</u></p> <p>RG – See Standard One.A.1.a. re: the question of city approval of long-term owner.</p> <p>CM – I do not know the authority for the City to regulate conservation areas. Therefore, I question the City’s plan to require “the protection of conservation areas in perpetuity” as set forth in this section.</p>	R	R	R	R	R	R	R	R
<p><u>C. Ecosystem Restoration</u></p> <p>CM – These regulations are apparently to protect “native species vegetation.” I don’t think “native species vegetation” is protected in the City’s critical areas ordinance. Again, it leads me to wonder about the City’s authority to regulate them Does the City have some environmental documents that support these regulations?</p> <p>RN – I think all of section C is unrealistic. People sell their houses, new folks move in. To ensure this happens by homeowners seems unrealistic to me. Again, maybe fees/taxes should be levied and this could be included as part of Public Works. I think this kind of thing would drive up the cost of owning property in Langley and make it unaffordable to most people. Yes, I agree it is a worthy goal, but I question whether or not it is something that would be enforceable with our limited staff so it feels like added costs and restrictions that would really never be attended to.</p>								
<p><u>1. Land divisions shall create an ongoing monitoring program to ensure the survival of native species vegetation and the control of invasive species on the site.</u></p> <p>RG – See Comment for Standard One.A.1.b.</p>	R	R	R	R	R	R	R	R
<p><u>2. Monitoring programs should consider: the control invasive species on a site; the retention of existing natural vegetation; and the addition of new native species vegetation to mimic undisturbed native plant communities.</u></p> <p>BW – How do sections C.1 and C.2 relate? (i.e., if a monitoring system is required (“shall”), why would C.2 be elective? The words “shall” and “should” also add confusion – at least in my mind.</p>	E	E	E	E	E	E	E	E

	<u>VCD</u> <u>DBD</u> <u>PI</u>		<u>TVD</u> <u>TVD-MR</u> <u>MSD</u>		<u>RVD-</u> <u>6000</u>		<u>RVD-</u> <u>4000</u> <u>SED</u>	
Standard Two: Preservation of Existing Village Character	SP	LP	SP	LP	SP	LP	SP	LP

Whole Langley Code

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A. Land divisions shall maintain the character of the primary public roadways that provide access to the site ~~roadways through the establishment of buffer zones,~~ the minimization of disturbance of roadside vegetation, the maintenance of existing screening vegetation, and the establishment of a planting screen consisting of a variety of indigenous native trees, shrubs, and wildflowers ~~where possible~~. Modified from 17.04.075 Flexible Lot Standards D.4



Subdivisions in certain designs shall preserve vegetation along the roadway to maintain the rural character of the roadway. This example represents how a site could be designed to preserve vegetation along a roadway.

CM – This requires that the land division “maintain the character of the primary public roadways that provide access to the site through the establishment of buffer zones, the minimization of disturbance of roadside vegetation, the maintenance of existing screening vegetation and the establishment of a planting screen consisting of a variety of indigenous native trees, shrubs and wildflowers.” First, I am assuming that this does not relate to the size of the road, because the City’s public works standards should address the type of roads that should be installed, based on the predicted traffic. Second, isn’t the “buffer zone” just another word for a setback? I’m not sure what this requires – how big does the “buffer zone” need to be? Does it continue throughout the entire development, or does it just apply at the entrance to the subdivision? With regard to screening, what is being screened and why (are homes to be screened from the street)? Here is my point. Requiring a “buffer zone” along a roadway, where nothing may be built, will cut into the developer’s bottom line – it will reduce the number of homes that the developer can build in a subdivision. If the City desires to prohibit development in this buffer area, it needs to identify the rationale for such regulations. What is the legitimate public purpose behind a requirement for this buffer zone? (Take a look at the four tests in the Burton analysis on of Morris’ memo or 16G-32)

1. Land divisions that occur on Scenic Corridors, as specified within the Langley Comprehensive Plan, shall meet this standard and be set back a minimum of 50 feet from the roadway for residential use and 35 feet from the roadway for non-residential use.

CM – This states that land divisions shall also be set back a minimum of 50 feet from the roadway for residential use and 35 feet from the roadway for non-residential use. Is this in addition to the setback for the structure? Is this in addition to the buffer mentioned above? For example, does this mean that if a subdivision is located on a Scenic Corridor, that a home constructed in the subdivision has to be constructed 50 feet from the road, and another 12 feet (or whatever is the required front yard set back in the zone) and then setback from the road buffer, for a total of more than 62 feet from the road? What is the legitimate public purpose behind this regulation? (Take a look at the four tests in the Burton analysis on page 4 of Morris’ memo or 16G-32)

R R R R R R

R R R R R R

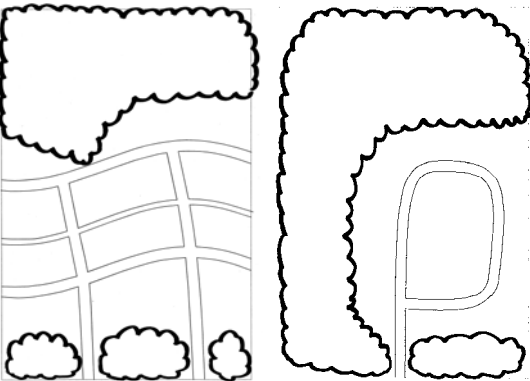
B. Land divisions shall minimize the impact on scenic views, <u>treelines</u> and vistas as seen from public roadways <u>and existing viewing places</u> . From Evaluation Criteria 17.04.135 and 17.08.115 (E)									
RG – How and where are "existing viewing places" defined?	R	R	R	R	R	R	R	R	R
CM – I'm not sure how the City would implement this regulation to "minimize the impact on scenic views, treelines and vistas." Trees can be planted anywhere and trees will block a scenic view or vista. You might consider a carrot instead of a stick, for instance, giving a developer something he or she wants in exchange for preserving a particular scenic view, treeline or vista.									

CONNECTIVITY

How to design a site to link spaces and people.

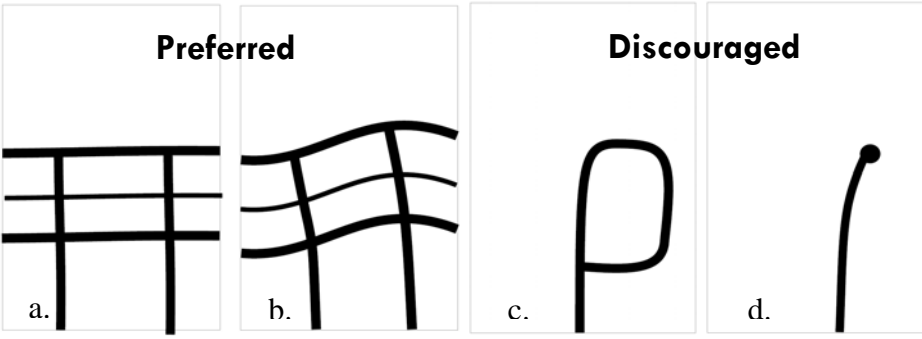
	VCD DBD PI		TVD TVD-MR MSD		RVD- 6000		RVD- 4000 SED	
Standard One: Parks and Open Space Design	SP	LP	SP	LP	SP	LP	SP	LP
<u>A. Parks and Open Space Requirements</u>								
<u>1. Subdivisions shall preserve critical areas and areas of priority conservation land (as defined in Figure OS-7 of the Parks, Open Space and Trails Element of the Langley Comprehensive Plan) on the site as open space based on the following land ratios:</u>								
RG – Section A.1 talks about preserving critical areas and areas of priority conservation land (PCA), but there appears to be no mechanism in sections A.1.a, A.1.b, or A.1.c that connect the required amount of open space to amount of critical area or PCA. Instead each zone type has a fixed required amount of open space. Yet the State Supreme Court in 2002 in <i>Isla Verde Int'l Holdings, Inc. v. City of Camas</i> decided that fixed percentage open space requirements violate RCW 82.02.020 (see both the memo from MRSC's Sue Enger and the memo from Carol Morris). If the approach proposed here can't be reconciled with <i>Isla Verde v. Camas</i> this section should be removed. Since clustering often offers clear financial benefits to a developer, why not simply allow it rather than requiring it?	R	R	R	R	R	R	R	R
CM – Here, it states that subdivisions shall preserve critical areas and priority conservation land as open space, and depending on the zone, there are different percentages of open space that must be preserved. The Washington Supreme Court has invalidated conditions on subdivisions that reflected code requirements that a certain percentage of open space be provided by the developer. <i>Isla Verde International Holdings, Inc. v. City of Camas</i> , 146 Wn.2d 740, 49 P.3d 867 (2002). All of these open space percentages should be eliminated. Instead, the City is required to analyze conditions of development under RCW 82.02.020, to prove that the condition is reasonably necessary as a direct result of the proposed development. <i>Citizens Alliance for Property Rights v. Ron Sims</i> , 145 Wn. App. 649, 657, 187 P.3d 786 (2008).								
<u>a. Subdivisions in the traditional village, traditional village-mixed residential and modern subdivision community design zones shall preserve a total of 10 percent of the site as open space.</u>				R				

Whole Langley Code

<p><u>a. Parks and open space areas inside the subdivision shall be grouped so resource or recreation areas are not divided into numerous small parcels located in various parts of the development.</u></p>  <p><u>Parks and open space areas in subdivisions shall be grouped to preserve large and contiguous tracts of resource and recreation land. Both these examples demonstrate how a site could be designed to preserve resource or recreation areas. In each example, the design preserves the vegetation along the roadway to preserve the scenic corridor resource and the layout preserves the priority natural or critical area at the rear of the site.</u></p>				R	R	R	R	R	R
<p><u>2. Park and open space features inside a subdivision shall be linked to provide an integrated open space system. Consider pedestrian-only trails or walkways along roads as a means to link these areas.</u></p>				R	R	R	R	R	R
<p><u>3. Long thin strips of conservation land shall be avoided, unless the conservation feature is linear or such configuration is necessary to connect with other parks, open space, streams or trails.</u></p>				R	R	R	R	R	R

	VCD DBD PI		TVD TVD-MR MSD		RVD- 6000		RVD- 4000 SED	
Standard Two: Design of Pedestrian Space	SP	LP	SP	LP	SP	LP	SP	LP
A. External Connections								
<p><u>1. Land divisions shall maximize pedestrian ingress and egress points access onto the project site. This may be accommodated through the provision of on-site walkways, trails, paths or sidewalks. (see the city Land Development Standards for appropriateness of sidewalks) which These walkways, trails, paths or sidewalks shall originate at the property's boundary and connect with neighboring parks, open spaces and public access points (see the city Land Development Standards for appropriateness of sidewalks). Modified language from Section 17.04.075 Flexible Lot Standards E.2</u></p> <p>RN – Should include where appropriate and possible.</p>	R	R	R	R	R	R	R	R
<p><u>a. Short plats shall provide at least two pedestrian ingress and egress points and shall connect to neighboring streets, parks and open space areas.</u></p> <p>RN – Should include where possible.</p>	R		R		R		R	
<p><u>b. Long plats shall provide at least one pedestrian ingress and egress to every side of the development not constrained by existing development. These pedestrian paths shall connect to neighboring streets, transit routes, parks and open space areas.</u></p>		R		R		R		R

2. Subdivisions located on current or potential bus routes, as articulated in the <u>Transportation Element of the Langley Comprehensive Plan</u> , shall contain an area for at least one bus stop designed into the neighborhood pedestrian system.		R		R		R		R
B. Internal Connections								
1. <u>Land divisions shall include an internal pedestrian circulation system designed to assure that pedestrians can walk safely and easily on the site between properties, public facilities, and activities or special features within the neighborhood open space system. All roadside footpaths should connect with off road trails, which, in turn, should link with existing or potential open space on adjoining parcels, where applicable.</u> <i>From Evaluation Criteria 17.04.135 (H).</i>	R	R	R	R	R	R	R	R
CM – Here it states that there should be an internal pedestrian circulation system designed to assure that pedestrians can walk safely and easily on the site between properties. I don't understand the need for this requirement.								
2. The <u>internal pedestrian circulation system</u> through shall include appropriately scaled walkways, paths, trails or sidewalks (see the city Land Development Standards for appropriateness of sidewalks). <i>Modified language from Section 17.04.075 Flexible Lot Standards E.3</i>	R	R	R	R	R	R	R	R
RG – What about the role of shared-use streets in the internal pedestrian circulation system?								
3. <u>The internal pedestrian system shall contain midblock pedestrian only walkways wherever a block dimension exceeds 600 feet in length.</u>	R	R	R	R	R	R	R	R

	VCD DBD PI		TVD TVD-MR MSD		RVD- 6000		RVD- 4000 SED	
Standard Three: Street Layout and Design	SP	LP	SP	LP	SP	LP	SP	LP
A. Street Layout								
1. <u>Subdivisions that are developed solely with dead end or single access loop roads are not allowed, except in instances where existing conditions such as developed neighboring parcels or the presence of critical areas or preserved open space areas preclude a different street design.</u>								
 <p>(a.) Grid, (b.) modified grid, or other multiple access street systems are required for subdivisions, unless existing conditions such as critical or developed areas preclude the use of the design. (c.) Single-access loops or (d.) dead end roads are typically not allowed.</p>	R	R	R	R	R	R		
RG – This feels too restrictive and especially impractical for short plats.								

<p>2. Streets inside a subdivision shall connect to existing off-site roads that abut the property, <u>where possible or make provision for future vehicular connection with neighboring undeveloped parcels. No vehicular connections are required in areas where critical areas, protected open space, or existing development preclude future connections.</u></p> <p>CM – “Streets inside a subdivision shall . . . make provision for future vehicular connection with neighboring undeveloped parcels.” This could be a problem if it could be interpreted to require dedication of property for a road connection to a proposed road that doesn’t exist, if there is no evidence to suggest that the proposed road would ever be constructed. See, <i>Burton v. Clark County</i>, 91 Wn. App. 505, 958 P.2d 343 (1998).</p>	R	R	R	R	R	R	R	R
<p>a. <u>When a subdivision is developed adjacent to a neighboring grid or modified grid, the subdivision shall incorporate the existing street connections and grid into the design of the subdivision.</u></p>	R	R	R	R	R	R	R	R
<p>b. <u>When a loop road or cul-de-sac is used, the layout shall be designed to allow for at least one future vehicular connection with a neighboring parcel unless precluded by critical areas, protected open space or existing development.</u></p> <div data-bbox="73 730 649 1113"> <p>The diagram consists of two parts, labeled 'a.' and 'b.'. Part 'a.' shows a loop road configuration where a road enters from the bottom, loops around to the right, and then returns to the bottom. Two black arrows point to the right from the top and bottom horizontal segments of the loop. Part 'b.' shows a cul-de-sac configuration where a road enters from the bottom and curves to the right, ending in a semi-circle. A black arrow points to the right from the top of the cul-de-sac.</p> </div> <p>Sites shall be designed to connect to adjacent parcels where possible. These examples demonstrate potential connection methods for a.) loop roads and b.) cul-de-sacs.</p>	R	R	R	R	R	R	R	R
<p>3. <u>When a subdivision is proposed on an existing parcel within a historic subdivision and the development requires a new road or lane, the development shall provide an access that connects with and is usable by adjacent parcels. New access roads shall provide a vehicular access easement to adjacent parcels.</u></p> <div data-bbox="73 1375 990 1711"> <p>The diagram is divided into two main sections: 'Before Connection' and 'After Connection'. Each section contains two sub-diagrams, 'a.' and 'b.'. In the 'Before Connection' section, 'a.' shows a vertical road with a downward arrow, and 'b.' shows a horizontal road with a rightward arrow. In the 'After Connection' section, 'c.' shows a vertical road with a thick vertical line indicating a connection to an adjacent parcel, and 'd.' shows a horizontal road with a thick horizontal line indicating a connection to an adjacent parcel.</p> </div> <p>Subdivisions shall promote connectivity, even at the smallest scale. Methods to connect to portions of the existing street system include: (a.) the creation of a private lane through the property; (b.) the creation of an individual alley at the rear of the property; or a combination of the two. The continuation of these connections can be seen in (c.) and (d.)</p> <p>BW – Where are the diagrams?</p>	R	R	R	R				

<p>4. <u>Appropriate designs for future connections between on site and off-site streets include half street improvements, dedicated easements or the creation of a temporary stub to be used when neighboring properties are developed.</u></p> <p>CM – “Appropriate designs for future connections between on site and off site streets include half street improvements, dedicated easements or the creation of a temporary stub to be used when neighboring properties are developed.” Same comment as above.</p> <p>The City has some restrictions on its ability to require dedications of property. There are four basic tests used by the courts to determine whether the City can require the dedication or impose a condition on a permit (such as a subdivision). First, the City must identify a public problem or problems that the condition is designed to address. <i>Burton, 91 Wn. App. at 520.</i> If the City can only identify a private problem or no problem at all, then the City lacks a “legitimate public purpose” in regulating the project.</p> <p>Second, the City must show that the development for which the permit is sought will create or exacerbate the identified public problem. <i>Id., 91 Wn. App. at 521.</i> Third, the City must show that the proposed condition or requirement for dedication tends to solve, or at least to alleviate, the identified public problem. <i>Id., 91 Wn. App. at 522.</i> Fourth, the City must show that its proposed solution to the identified public problem is “roughly proportional” to that part of the problem that is created or exacerbated by the landowner’s development.</p> <p>Therefore, if there is no evidence to suggest that there will be a future road on neighboring property, a landowner’s dedication of an easement or property for the future road will not solve the public problem (relating to traffic circulation).</p>	R	R	R	R	R	R	R	R
<u>B. Street Design</u>								
<u>1. Land divisions shall recognize the streets’ role as public space and design streets to balance the needs of all uses and users.</u>	R	R	R	R	R	R	R	R
<u>2. Streets shall be designed to complement the character of the subdivision. This may be accomplished through the reduction of right of way and/or street width (subject to approval of the city engineer), the minimization of curb cuts, and the preservation of streetside vegetation.</u>	R	R	R	R	R	R	R	R

	<u>VCD</u> <u>DBD</u> <u>PI</u>		<u>TVD</u> <u>TVD-MR</u> <u>MSD</u>		<u>RVD-</u> <u>6000</u>		<u>RVD-</u> <u>4000</u> <u>SED</u>	
Standard Four: Lot Design	SP	LP	SP	LP	SP	LP	SP	LP
<u>A. Lots lines shall be generally oriented perpendicular or radial to the street.</u>	R	R	R	R	R	R	R	R

Whole Langley Code

16G-32

LEGEND
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<p>B. Subdivisions should incorporate one or more of the following:</p> <p>1. <u>At least one group of mailboxes.</u></p> <p>2. <u>Benches or casual seating arrangements near designated open space areas or groups of mailboxes.</u></p> <p>3. <u>A common building or designated neighborhood gathering area.</u></p> <p>4. <u>A common play area or structure.</u></p>									

DIVERSITY

How to design the site for social inclusion

BW - I think this section requires discussion regarding the pros and cons of attempting to legislate “social inclusion.”

	<u>VCD</u> <u>DBD</u> <u>PI</u>		<u>TVD</u> <u>TVD-MR</u> <u>MSD</u>		<u>RVD-</u> <u>6000</u>		<u>RVD-</u> <u>4000</u> <u>SED</u>	
Standard One: Design for Diverse Uses	SP	LP	SP	LP	SP	LP	SP	LP
<u>A. Subdivisions shall encourage a mixture of residential and non-residential uses.</u>								
RG – Like Standards Five & Six above, the mixing of non-residential uses with residential uses is best as an option. I suggest removing this from the regulations.	E	E	E	E	E	E	E	E
<u>1. A variety of residential and non-residential uses are allowed within a subdivision, so long as the uses are allowed in the zone subject to Chapter 16C and are consistent with the standards articulated in Chapter 16E.</u>								
CM – Here, it states that the uses allowed in the subdivision are those allowed in the zone subject to Chapter 16C and are consistent with the standards articulated in Chapter 16E. I’m not sure what this means. If the use is allowed in the zone, then there is no problem. If the use is not allowed in the zone, a rezone application has to be submitted to the City with the subdivision application.	E	E	E	E	E	E	E	E

	<u>VCD</u> <u>DBD</u> <u>PI</u>		<u>TVD</u> <u>TVD-MR</u> <u>MSD</u>		<u>RVD-</u> <u>6000</u>		<u>RVD-</u> <u>4000</u> <u>SED</u>	
Standard Two: Design for Diverse Housing Types								
RG – Comments about Standard Two								
A. In practice, if the developer simply sells lots and buildings are built over a long period of time, how is this diversity enforced? Where is this process spelled out? What will be the staffing and budget implications?	SP	LP	SP	LP	SP	LP	SP	LP
B. On what basis was this mix established? What is its justification? Why is the same mix required for all residential zones? How do context-sensitivity and diversity-among-subdivisions fit into this? What is known about the marketability of this mix? Why not simply allow it rather than require it?								
C. Is the "subdivision" the appropriate scale at which to attempt to achieve housing diversity?								
<u>A. Short subdivisions that are three to four units in size shall have multiple housing types, not just detached dwellings.</u>								
RN – I am concerned about this and feel it should not be demanded but strongly suggested. I understand the rationale for having more than one housing type, but I do not agree we should demand it of developers.			R		R		R	

Whole Langley Code

16G-34

1. <u>Short subdivisions with three to four units shall have at least one alternative housing unit, such as a detached small dwelling, semi-detached building, townhouse or other attached building. This requirement shall be met if the subdivision is solely comprised of one type of alternative housing.</u>				R		R		R	
2. <u>Alternative housing units proposed in accordance with the standard listed above must be an allowed use in the underlying zone as listed in Table 16C-1 and meet all standards for the use found in section 16E.20.</u>				R		R		R	
<u>B. Subdivisions with five or more units shall include a mixture of housing types, which may include detached, detached small dwelling, semi-detached, and attached construction.</u>						R		R	
1. <u>Housing types within subdivisions that contain five units or more shall occur in the following range of proportions:</u> <u>-Detached units: 0-40 percent</u> <u>-Detached-Small dwelling units: 30-60 percent</u> <u>-Semi-detached and attached units: 30-60 percent</u>						R		R	
2. <u>Housing types within subdivisions of more than 20 units shall be spread throughout the development site, not concentrated into individual areas that are solely encompassed by one housing type.</u>						R		R	
<u>C. The maximum lot size for detached single-family dwellings within a land division is 9600 square feet.</u> CM – “The maximum lot size . . . is 9600 square feet.” I don’t have the City’s zoning code, but doesn’t the zoning code include dimensional standards such as maximum lot sizes in a zone? Why is the maximum lot size placed in this section, and is it consistent with the Zoning Code?								R	R
<u>D. When a land division does not exhaust its development potential, the development shall create a tract reserved for future development. This reserved tract shall be designed to be consistent with the diversity standards listed above and other standards found within this code. The tract shall specify the type and amount of uses to be used for future development and the amount of square footage that is allocated to each use.</u> CM – Here, there are requirements for the situation where a land division “doesn’t exhaust its development potential.” What does this mean? Next, those divisions that have not exhausted development potentials must create reserve tracts, and the reserve tracts must comply with all the standards in the Subdivision Code. I don’t understand this. So if the property owner chooses not to subdivide a portion of the property, the City forces him to subdivide it anyway?								R	R

	<u>VCD</u> <u>DBD</u> <u>PI</u>		<u>TVD</u> <u>TVD-MR</u> <u>MSD</u>		<u>RVD-</u> <u>6000</u>		<u>RVD-</u> <u>4000</u> <u>SED</u>	
Standard Three: Design for a Diverse Economic Population	SP	LP	SP	LP	SP	LP	SP	LP

Whole Langley Code

LEGEND
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R =Required E= Encouraged C=Conditional

<p><u>A. Subdivisions shall dedicate the following amount of lot square footage, based on the total number of housing units within a subdivision, to an affordable housing provider approved by the City of Langley.</u></p> <p><u>-If a subdivision contains 0-10 units, no donated lots are required.</u></p> <p><u>-If a subdivision contains 11-20 units, one 5,000 or more square foot lot is required to be donated.</u></p> <p><u>-If a subdivision contains 21 or more units, the total amount of donated square feet shall be determined by rounding the total number of units up to the nearest tens digit (ie. 30, 40, 50, etc.) and multiplying the result by 250 square feet.</u></p> <p><u>Lots for affordable housing created in this way shall not count against the total developable area of a site.</u></p> <p>CM – Here, the City has established a percentage of lot square footage that must be dedicated to an affordable housing provider in the City. Again, I believe that this percentage requirement suffers from the same deficiency as the percentage requirement for open space preservation. It could be invalidated by a court under the Isle Verde case and therefore should be eliminated.</p> <p>RN – I appreciate this idea and realize we really need this kind of housing, but I do not think we can mandate it. I would take out shall and insert strongly recommend.</p>								
<p><u>1. The number and type of units to be constructed on the donated lots shall be determined prior to the recordation of the plat and shall not be factored into the proportional requirements for the development, except in instances where the number of attached units exceeds the proportion specified in Diversity Standard Two (B).</u></p>								
<p><u>2. Each lot donated to an affordable housing provider shall contain a deed restriction structured by the affordable housing provider to limit the cost of the unit in perpetuity.</u></p>								
<p><u>3. All units constructed on the donated lots shall meet the exterior design standards specified in the Codes, Covenants and Restrictions of the subdivision.</u></p>								

SUSTAINABILITY

How to design the site for a light imprint.

	<u>VCD</u> <u>DBD</u> <u>PI</u>		<u>TVD</u> <u>TVD-MR</u> <u>MSD</u>		<u>RVD-</u> <u>6000</u>		<u>RVD-</u> <u>4000</u> <u>SED</u>	
Standard One: Low-Impact Development	SP	LP	SP	LP	SP	LP	SP	LP
<p><u>A. Subdivisions shall utilize low-impact development measures except where local conditions do not permit.</u></p> <p>RG – Low-impact development is only desirable where infiltration of water into the ground is desirable. Langley has extensive areas with chronic high ground-water levels where additional water should be kept out of the ground. This whole section needs to be rewritten to make that distinction and indicate how stormwater should be handled in situations where it needs to be kept out of the ground, e.g. through vegetation cover and mechanical stormwater handling.</p> <p>CM – Subdivisions are to utilize low-impact development measures except where local conditions do not permit. Has the City adopted low-impact development measures so the landowner knows what they are?</p>	R	R	R	R	R	R	R	R

Whole Langley Code

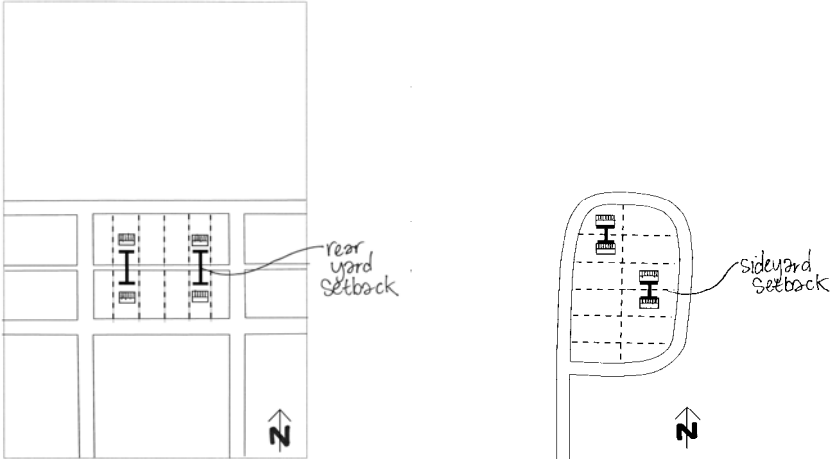
1. Subdivisions shall preserve areas of permeable, native soils and enhance disturbed soils to store and infiltrate storm flows. CM – This requires the landowner to “preserve areas of permeable, native soils and enhance disturbed soils to store and infiltrate storm flows.” I don’t know what this requires – how is the landowner to preserve soils?			R	R	R	R	R	R
2. Subdivisions shall retain and incorporate topographic site features to slow, store and infiltrate stormwater.			R	R	R	R	R	R
3. Subdivisions shall retain and incorporate natural drainage features and patterns.			R	R	R	R	R	R
4. Subdivisions shall encourage drainage at the point where rain falls and discourage impervious cover through the use of various technologies, such as pervious pavement, green roofs, and other means. CM – Does the City have public works standards that allow pervious pavement, green roofs, etc.? What does it mean that the “subdivision shall encourage . . .”? (Does it mean that what must be encouraged is optional?)			R	R	R	R	R	R

	VCD DBD PI		TVD TVD-MR MSD		RVD- 6000		RVD- 4000 SED	
Standard Two: Native Landscaping	SP	LP	SP	LP	SP	LP	SP	LP
A. Subdivisions shall landscape common areas, eul-de-sac islands , and both sides of new streets with native species shade trees and flowering shrubs with high wildlife conservation value. <i>From Evaluation Criteria 17.04.135 and 17.08.115 (F)</i>	R	R	R	R	R	R	R	R

	VCD DBD PI		TVD TVD-MR MSD		RVD- 6000		RVD- 4000 SED	
Standard Three: Promotion of Community Food Production	SP	LP	SP	LP	SP	LP	SP	LP
A. Subdivisions larger than twelve lots in size should designate potential areas for community food production as part of the open space system. All other subdivisions are also encouraged to provide areas for community food production, as practical. RN – Again, this could be a total waste of land if no one keeps up a garden in the community or the land in the subdivision is not suitable for agriculture. You can’t mandate this because people have to be willing to do the gardening. I don’t this section should be in the plan.			E	E	E	E	E	E
1. Where areas are devoted to community agriculture within a subdivision, adequate solar access must be maintained to ensure that the area receives sunlight.				R		R		R
B. Subdivisions shall not establish CC&Rs or other forms of deed restrictions that prohibit areas for growing produce, including greenhouses, on any portion or area of residential rear yards, side yards, balconies, patios or rooftops. Greenhouses, but not gardens, may be prohibited in front yard areas that face the street. CM – “Subdivisions shall not establish CC&r’s or other forms of deed restrictions that prohibit areas for growing produce, including greenhouses on any portion or area of residential rear yards, side yards, balconies, patios or rooftops.” Doesn’t the City’s codes prohibit structures such as greenhouses in side yard setbacks?			R	R	R	R	R	R

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	VCD DBD PI		TVD TVD-MR MSD		RVD- 6000		RVD- 4000 SED	
Standard Four: Solar Orientation	SP	LP	SP	LP	SP	LP	SP	LP
<u>A. Subdivisions should promote daylighting and the solar orientation of buildings, except where the clustering of units or a conservation feature limits the ability to achieve orientation to the sun.</u>	E	E	E	E	E	E	E	E
RN – Add where possible.								
<u>B. Subdivisions shall consider the incorporation of the following design features to promote daylighting and solar orientation:</u>	E	E	E	E	E	E	E	E
<u>1. Roofs or roof elements that generally face south and run west to east.</u>	E	E	E	E	E	E	E	E
<u>2. Streets that generally run north to south or west to east.</u>	E	E	E	E	E	E	E	E
<u>3. Sideyard or rear yard setbacks to encourage solar access for properties located north of other buildings.</u>	E	E	E	E	E	E	E	E
 <p>Side or rear yard setbacks help to provide solar access for buildings that are located north of other buildings. These examples display how these setbacks may be used to promote solar orientation. In the example on the left, solar access to buildings on the south side of the block is generally insured due to the distance across the right-of-way, which acts as a setback from the house across the street.</p>								

	VCD DBD PI		TVD TVD-MR MSD		RVD- 6000		RVD- 4000 SED	
Standard Five: Design for Dark Skies	SP	LP	SP	LP	SP	LP	SP	LP
<u>A. Street, common area, and façade lighting shall be pedestrian scaled, shielded and directed downward, dark sky compliant, and consistent with City of Langley lighting standards</u>	R	R	R	R	R	R	R	R

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1. Subdivisions shall stipulate continued adherence to City of Langley lighting standards through Codes, Covenants and Restrictions or other binding documents that ensure continued adherence to these standards.									
CM – “Subdivisions shall stipulate continued adherence to City of Langley lighting standards through Codes, Covenants and Restrictions or other binding documents that ensure continued adherence to these standards.” Does the City’s lighting standards require compliance even after initial installation of lighting facilities? If so, what is the purpose of requiring that the CC&R’s require that individual property owners comply with the City’s codes?	R	R	R	R	R	R	R	R	R

	<u>VCD</u> <u>DBD</u> <u>PI</u>		<u>TVD</u> <u>TVD-MR</u> <u>MSD</u>		<u>RVD-</u> <u>6000</u>		<u>RVD-</u> <u>4000</u> <u>SED</u>	
Standard Six: Alternative Wastewater Treatment Systems	SP	LP	SP	LP	SP	LP	SP	LP
<u>A. Subdivisions may incorporate on-site biological waste treatment facilities or grey water recycling when such facilities are consistent with the City of Langley wastewater treatment regulations.</u>								
RG – Do we yet have wastewater treatment regulations for on-site biological waste treatment facilities and grey-water recycling that address the conditions under which these could be used in a subdivision? If these don't yet exist, how can we enact a regulation based on them? See 16G.10.040 also.					C	C	C	C
RN – I agree with this but feel if the subdivision is fairly close to the city’s sewer system they should have to hook up. If it is cost effective and doesn’t cost more than putting in a alternative system, they should hook up to sewer.								

	<u>VCD</u> <u>DBD</u> <u>PI</u>		<u>TVD</u> <u>TVD-MR</u> <u>MSD</u>		<u>RVD-</u> <u>6000</u>		<u>RVD-</u> <u>4000</u> <u>SED</u>	
Standard Seven: Clotheslines	SP	LP	SP	LP	SP	LP	SP	LP
<u>A. Subdivisions shall not restrict clotheslines on the side or rear of the house through CC&Rs or other forms of deed restrictions. Clotheslines may be prohibited in front yard areas.</u>			R	R	R	R	R	R

16G.70 VARIATION FROM STANDARDS

16G.70.010 Flexible lot standards.

Subdivisions established pursuant to the that seek to utilize a flexible lot design in the DBD, TVD-MR, TVD and MSD Zones process shall be subject to the following lot development standards. For standards not listed below but contained in Chapter 18-16 LMC, the standards in Chapter 18-16 apply (ex: building height and road and access standards).

A. Minimum lot size requirement: 5,000 square feet. Development densities shall comply with the densities allowed in the underlying zone and any bonus provisions set forth in the this Title or Title 18.

B. Lot setback and dimensional requirements:

1. Yard setbacks:

a. Front: 10 feet

b. Side: 5 feet, except in the case of attached housing where a side lot line can be zero for the common wall housing units.

c. Rear: 25 feet

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C. Minimum lot width at street frontage: twenty-five feet;

~~D. Open space shall be established consistent with the following performance standards:~~

~~1. Open space shall be established to preserve the natural character of the city;~~

~~2. Where practical, open space shall be concentrated in large usable areas.~~

~~3. Where possible, open space shall connect to adjacent off-site open space areas;~~

~~4. Where possible, the city character of the roadways shall be maintained through the minimization of disturbance of roadside vegetation.~~

~~5. Open space areas shall be maintained permanently by the property owner, the property owner's association or the city for properties dedicated to the City, which is to be determined at the time of plat approval.~~

~~E. Roads and access performance standards.~~

~~1. Connections to existing off-site roads which abut the property shall be required where practicable;~~

~~2. Pedestrian access onto the site shall be maximized. This may be accommodated through the provision of on-site walkways, trails, paths or sidewalks (see the city Land Development Standards for appropriateness of sidewalks) which originate at the property's public access;~~

~~3. Internal pedestrian circulation shall be facilitated through appropriately scaled walkways, paths trails or sidewalks (see the city Land Development Standards for appropriateness of sidewalks)~~

~~4. Where practical, existing roadway character shall be maintained. This may be accomplished through the reduction of right of way and/or roadway width (subject to approval of the city engineer), the minimization of curb cuts, and the preservation of roadside vegetation. (FROM Section 17.04.075)~~

(Ord. 820, 2002)

CM – I don't understand this procedure. So everyone who doesn't want to comply with the lot size requirements in the identified zones can submit a subdivision application for a 5,000 square foot lot? What does the City get in return? Normally, in a Planned Unit Development, the developer is allowed to vary from the underlying zone standards, but in exchange, the City gets something back – like the developer is required to provide a certain amount of open space (over and above what is required for a traditional lot by lot development). Usually PUD's allow clustering of development on the site, in order to avoid impacts to natural features or critical areas.

The City can require additional amenities and even use percentages to identify how much must be provided – like open space without violating the law, because the PUD development is optional. The developer can always resort to the traditional lot by lot development if he/she doesn't want to develop to the PUD standards. I recommend that you eliminate this section and consider the adoption of a PUD chapter that would be inserted in the Zoning Code. I can provide you with some examples.

BW – The wording of the current code (crossed out above) seems less restrictive than the proposed wording.

16G.70.010 Variations from standards.

A. Variations and exceptions from the dimensional standards and improvement requirements as set forth in this chapter may be made in those instances where it is deemed that hardship, topography, or other factual deterrent conditions prevail, and in such manner as is considered necessary to maintain the intent and purpose of these regulations and requirements.

(FROM Section 17.04.130)

CM – This section should be eliminated altogether. In order to approve a subdivision, the City is required to make a finding that the subdivision complies with the zoning standards. RCW 58.17.195. If a variance is required from the zoning standards, then the developer submits a variance application under the Zoning Code variance procedure– that's how the developer complies with the zoning standards for purposes of RCW 58.17.195.

16G.80 DEDICATIONS AND RESERVATIONS

16G.80.010 Dedications and reservations.

No ~~short-subdivision~~ land division shall be approved unless adequate provision is made for such drainage ways, streets, and other general purposes as may be required to protect the public health, safety and welfare. Provisions for such uses may be made by dedicating land for public use, by reserving land for future public acquisition and development, or by conveying land or easements therein to nonprofit corporations for use by all or a limited segment of the public. All dedications and reservations shall be recited on the face of the ~~short~~-plat as well as incorporated in such documents as may be needed to reflect the assignment of interest.

(FROM Section 17.08.120)

CM – The City has the authority to require some dedication of property, but the City’s authority to do so is limited by law (such as RCW 82.02.020. This section makes it appear as if the City’s authority is unlimited. I think it may give the decision makers the impression that they are not required to make the necessary analysis and findings under the appropriate legal standard before they require dedications of property.

16G.80.020 Procedure for dedications.

Lands shall be deeded to the public by quitclaim deed. Refusal of the city council to accept a dedication shall not be grounds for disapproval of the ~~short~~ plat submitted for final approval and recording the final plan by the ~~planning advisory board~~, unless the sub-divider will not otherwise provide required dedication or reservation. *(FROM Section 17.08.130 WITH SOME MODIFIED SECTIONS)*

CM – Under RCW 58.17.160, every plat containing a dedication has to be accompanied by a title report confirming that the title of the lands as described and shown on said plat is in the name of the owners signing the certificate or instrument of dedication. This means that the City Attorney should be reviewing the title report to ensure that the owners actually own the property and that they have full authority to convey it. The conveyance of the property should not be done by quitclaim deed, it should be done by warranty deed to the City. A quitclaim deed just conveys whatever interest the person signing it has in the property – however, it doesn’t warrant that the person signing it has any interest at all. The language in this code section has been misinterpreted from the effect of the dedication as stated in state law. The effect of a dedication on the face of the plat is “considered to be a quitclaim to the said donee or donees, grantee or grantees for his, her or their use for the purposes intended.”

I don’t understand the rest of this section. Normally, dedications are shown on the face of the plat. RCW 58.17.160. Sometimes, they appear in a separate instrument. Even if they are in a separate instrument, they usually are still shown on the face of the plat. (For example, a public storm water easement may have its terms included in a separate instrument, but the existence and usually the dimensions of the easement are still shown on the face of the plat.) How can the Council approve a plat that shows an easement that the Council refuses to accept?

As another example, if the Council approves a subdivision with public roads, and the final plat shows that the owners are willing to dedicate the roads to the public, why would the Council refuse to accept the dedication?

If the plat contains a dedication wouldn’t it be the result of a plat condition? If it was required by the City, how can the City refuse the dedication and still approve the plat? In order to approve a final plat, the Council has to find that all of the conditions have been satisfied.

16G.90 ADMINISTRATION OF THE SUBDIVISION ORDINANCE

16G.90.010 Enforcement.

In the enforcement of this chapter, the city attorney may petition the superior court for injunctive relief. An assurance of discontinuance may be accepted by the city attorney of any act or practice deemed in violation of

this act from any person engaging in or who had engaged in such acts or practices. Any such assurance shall be in writing, and shall be filed subject to approval of the Island County Superior Court. The violation of such assurance shall constitute prima facie proof of a violation of this chapter. (FROM Section 17.08.150)

CM – This is insufficient for enforcement. You need an entire enforcement chapter that describes what are violations, who enforces the code, what is in a Notice of Violation, how it is served, how it can be appealed, what are the penalties for a violation, etc. Injunctive relief is not the only remedy available to the City to enforce the subdivision code. I can provide an enforcement chapter for you.

16G.90.020 Withdrawals.

Where there have been no sales, gifts, leases, conveyances or other transfers of ownership or interest of any lots in a ~~short subdivision~~ land division, nothing contained in this chapter shall prohibit a sub-divider from completely withdrawing the entire ~~short~~ plat and thereafter presenting a new application. Such withdrawal shall be approved by the city and filed for record with the county auditor. (FROM Section 17.08.060)

CM – This must be eliminated or clarified. If this relates to a proposed land division – it is acceptable. If a property owner submits a preliminary plat application (as an example), but after the public hearing but before the City Council's final decision, he/she decides to withdraw the application, he/she may do so. However, if this relates to an application that has been processed to a final decision, it must be deleted. If a property owner receives approval of a final plat (as an example), and 21 days have passed, the action is final. It cannot be withdrawn. The property owner can file a new application.

If the City denies the application, then the City cannot accept a new application unless the new application must present a substantial change that is relevant to and resolves the disputed conditions in the previous application. See, Hilltop Terrace Homeowner's Ass'n v. Island County, 126 Wn.2d 22, 891 P.2d 29 (1995) and DeTray v. Olympia, 121 Wn. App. 777, 90 P.3d 1116 (2004).

16G.90.030 Interpretation, conflict and separability.

A. Interpretation. In their interpretation and application, the provisions of these regulations shall be held to be the minimum requirements for the promotion of the public health, safety, and general welfare. These regulations shall be construed broadly to promote the purposes for which they are adopted.

1. Public Provisions. These regulations are not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute or other provision of law except as provided in these regulations. Where any provision of these regulations imposes restrictions different from those imposed by any other provision of these regulations or any other ordinance, rule or regulation, or other provision of law, the provision which is more restrictive or imposes higher standards shall control.

2. Private Provisions. These regulations are not intended to abrogate any easement, covenant or any other private agreement or restriction, provided that where the provisions of these regulations are more restrictive or impose higher standards or regulations than such easement, covenant, or other private agreement or restriction, the requirements of these regulations shall govern. Where the provisions of the easement, covenant, or private agreement or restriction impose duties and obligations more restrictive or standards that are higher than the requirements of these regulations, and the private provisions are not inconsistent with these regulations or the determinations made under these regulations, then the private provisions shall be operative and supplemental to these regulations and the determinations made under the regulations. However, private covenants will not be enforced by the city.

B. Separability. If any part or provision of these regulations or the application of these regulations to any person or circumstances is adjudged invalid by any court of competent jurisdiction, the judgment shall be confined in its operation to the part, provision, or application directly involved in the controversy in which the judgment shall be rendered and it shall not affect or impair the validity of the remainder of these regulations or the applications of them to other persons or circumstances. The city council declares that it would have enacted the remainder of these regulations even without any such part, provision, or application which is judged to be invalid. (NEW)

CM – I don't understand the need for this subsection 2 at all. The City doesn't enforce private covenants so there is no reason to even address how the City will enforce its codes if the codes conflict with a private covenant. I think this might confuse someone and lead to a problem where someone asks the City to interpret the private covenants.

Severability? Instead of Separability

16G.90.040 Saving provision.

A. These regulations shall not be construed as abating any action now pending under, or by virtue of, prior existing subdivision regulations, or as discontinuing, abating, modifying, or altering any penalty accruing or about to accrue, or as affecting the liability of any person, firm, or corporation, or as waiving any right of the municipality under any section or provision existing at the time of adoption of these regulations, or as vacating or annulling any rights obtained by any person, firm, or corporation, by lawful action of the municipality except as shall be expressly provided for in these regulations.

B. In the event that any provision or provisions of the comprehensive plan or its implementing development regulations are held to be invalid by the growth management hearings board, the policies and rules in place prior to those held to be invalid shall be deemed to be in place except for any part of those policies or rules separately held by the board to be invalid. (NEW)

CM – Purpose of A?

16G.90.050 Amendments.

For the purpose of protecting the public health, safety and general welfare, the city council planning advisory board or citizens may from time to time propose amendments to these regulations. An amendment proposal is a type V application subject to LMC 16I.34 (NEW)

RG – Comments on 16G.90.050

A. I couldn't find 16I.34. Where should I look?

B. Might it be helpful to consolidate all of the code relative to amendments in one place (e.g. 16I.34) and drop this section from this chapter?