

**BEFORE the HEARING EXAMINER of the
CITY of SULTAN**

RECOMMENDATION

FILE NUMBER: FPCUP05-003

APPLICANT: Cascade Breeze, Inc.

TYPE OF CASE: Concurrent: 1) Preliminary subdivision (*Steen Park*); 2) Plat Modification to allow a longer-than-standard cul-de-sac; and 3) Conditional Use Permit to cluster the lots

STAFF RECOMMENDATION: Approve subject to conditions

SUMMARY OF RECOMMENDATION: RETURN to the Applicant for compliance with Concurrency Standards

DATE OF RECOMMENDATION: April 18, 2006

INTRODUCTION

Cascade Breeze, Inc., C/o Garth York (York), P.O. Box 12, Startup, Washington 98291, seeks preliminary cluster subdivision approval for *Steen Park*, an 18 lot cluster subdivision for single-family residential development. Included in the subdivision application is a plat modification request to allow a cul-de-sac longer than allowed by the Design Standards. Cluster subdivisions require issuance of a Conditional Use Permit (CUP). York filed the preliminary cluster subdivision application on October 7, 2005. (Exhibit 1.A.1¹) The Sultan Department of Community Development (DCD) deemed the application complete as of December 12, 2005. (Exhibit 1.H)

The subject property is located at 13911 Sultan Basin Road, just south of 138th Street SE. (Exhibits 1 and 1.A.1)

The Sultan Hearing Examiner (Examiner) viewed the subject property on April 12, 2006.

¹ Exhibit citations are provided for the reader's benefit and indicate: 1) The source of a quote or specific fact; and/or 2) The major document(s) upon which a stated fact is based. While the Examiner considers all relevant documents in the record, typically only major documents are cited. The Examiner's Recommendation is based upon all documents in the record.

Exhibit numbers in Part XIII of the Staff Report (Exhibit 1) do not match the exhibit numbers in the Examiner's exhibit binder prepared by DCD. Exhibit numbers used in this Recommendation follow the binder numbering, not the Staff Report numbering.

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The Examiner held a consolidated open record hearing on April 12, 2006, to consider *Steen Park* and *Cascade Breeze Estates*.² DCD and York gave notice of the hearing as required by the Sultan Municipal Code (SMC). (Exhibit 6³)

The action taken herein and the requirements, limitations and/or conditions recommended for imposition by this recommendation are, to the best of the Examiner's knowledge or belief, only such as are lawful and within the authority of the Examiner to take and recommend pursuant to applicable law and policy.

ISSUES

Does the application meet applicable criteria for preliminary cluster subdivision approval?

The only issue standing in the way of application approval is failure to comply with Chapter 16.108 SMC, Concurrency Management System.⁴ Therefore, the Examiner has structured this Recommendation to enable a clear exposition and understanding of the concurrency situation which prevents approval. The Findings of Fact, Principles of Law, and Conclusions in the body of this Recommendation discuss only concurrency. The Appendix contains the Findings of Fact, Principles of Law, and Conclusions applicable to the merits of the proposal.

FINDINGS OF FACT

² *Cascade Breeze Estates*, FPCUP05-002, an application also filed by Cascade Breeze, Inc., was also deemed complete as of December 12, 2005. The Examiner consolidated the two hearings because the applicant is the same, the applicant's consultant is the same, the contracted City staffer is the same, both are served by Sultan Basin Road, and both were deemed complete on December 12, 2005. The Examiner's Recommendation in *Cascade Breeze Estates* has been issued concurrently with this recommendation.

³ The Examiner inadvertently failed to announce the exhibit number of the hearing notice documentation during the hearing. The Examiner apologizes for that oversight.

⁴ This is largely a matter of first impression. *Steen Park* and *Cascade Breeze Estates* are the first subdivision applications since adoption of the 2004 Comprehensive Plan in which a concurrency challenge has been raised. No concurrency challenge was raised in either *Denali Ridge* or *Timber Ridge Estates*, the only other subdivisions heard which vested subsequent to adoption of the 2004 Comprehensive Plan.

A challenge to concurrency was raised in *Stratford Place*. (See Examiner Recommendation in PUD04-001, dated February 1, 2005, p. 7, Finding 15.) *Stratford Place* differs significantly from *Steen Park* and *Cascade Breeze Estates* in a major respect: It was vested to regulations as of September 29, 2004, prior to the adoption of the 2004 Comprehensive Plan. The concurrency standards in the 2004 Comprehensive Plan were not applicable to *Stratford Place*.

The outcome of the *Steen Park* and *Cascade Breeze Estates* applications will likely affect every future residential development which has a vested rights date subsequent to adoption of the 2004 Comprehensive Plan until actions are taken to resolve the identified concurrency shortfalls.

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1. *Steen Park* is a proposed 18 lot, single-family residential development of a 5.0 acre site which is zoned Moderate Density (MD). (Exhibits 1 and 1.A.3) The merits of *Steen Park* are presented in the Appendix.
2. Two hearing participants (Fallgatter and Storm) challenged the application's compliance with Chapter 16.108 SMC, Concurrency Management System. Specifically, they argued that adopted Level of Service (LOS) standards for police services and parks, recreation, and open space would be violated by development of *Steen Park*. (Testimony)

Police Services

3. The currently adopted LOS standard is 2.6 uniformed officers per 1,000 population. (Exhibit 4; See also 2004 Comprehensive Plan, Appendix B, p. 2.74) (The LOS standard in the prior 1994 Comprehensive Plan was two police vehicles per 1,000 population. (2004 Comprehensive Plan, Appendix B, pp. 2.74 and 2.75))
4. The City's estimated population was 3,814 in 2003 when the inventory which formed the basis of the LOS standard was conducted. (2004 Comprehensive Plan, Appendix B, p. 2.75) The City had 10 full-time uniformed officers in 2003. (2004 Comprehensive Plan, Appendix F, pp. 214 – 215) The ratio of uniformed officers to population in 2003 when the LOS inventory was conducted was 2.6 officers per 1,000 population. (2004 Comprehensive Plan, Appendix B, p. 2.74)
5. The City's current estimated population is 4,235. (Exhibit 4, p. 2) The City presently has seven (7) full-time uniformed officers. (*Id.*) The current police services LOS is thus 1.65 uniformed officers per 1,000 population.
6. DCD issued a Certificate of Concurrency (the Certificate) on April 7, 2006, for *Steen Park*. The Certificate acknowledges that the Police "Department is currently operating with a deficit of 4 Officers". (Exhibit 4, p. 2) The Certificate notes that the "deficit is not caused by the proposed development." (*Id.*)

Moreover, the City Council as part of a City wide reorganization plan is developing a financial plan to address deficits, affecting all City Departments including the Police Department.

Police services are funded through the City's General Fund and other sources. Increased tax revenue associated with the development will work towards offsetting incremental increases of Police Services as needed to accommodate the City's population. Police services improvements, financial plans and strategies are in place and under development to maintain or attain the City's adopted LOS, or an adjusted

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LOS as determined by the City Council planning efforts. The development is therefore, based on the financial plans and strategies, concurrent.

(*Id.*, emphasis added)

7. The latest Capital Facilities Plan (CFP) available to the Examiner (none was entered into the hearing record) is Appendix D to the 2004 Comprehensive Plan, dated November 22, 2004. The discussion of the Police Department mentions a new station, but does not address staffing (not unexpected since staffing is not a capital facility). (2004 Comprehensive Plan, Appendix D, p. VIII-19)

Parks, Recreation, and Open Space

8. The currently adopted LOS standard is 42.6 acres of parks, recreation, and open space facilities per 1,000 population.⁵ (2004 Comprehensive Plan, Appendix B, p. 2.75) (The LOS standard in the prior 1994 Comprehensive Plan was 5.0 acres of City park land per 1,000 population. (2004 Comprehensive Plan, Appendix B, p. 2.75))
9. The City's estimated population was 3,814 in 2003 when the inventory which formed the basis of the LOS standard was conducted. (2004 Comprehensive Plan, Appendix B, p. 2.75) The City had 162.4 acres of qualifying "[a]cres devoted to recreational or open space activities within the urban growth area" in 2003. (2004 Comprehensive Plan, Appendix F, pp. 248) That acreage was composed of City-owned property, Sultan School District-owned property, and Washington State Department of Fish and Wildlife-owned property.⁶ The ratio of park, recreation, and open space land to population in 2003 when the LOS inventory was conducted was 42.6 acres per 1,000 population. (2004 Comprehensive Plan, Appendix B, p. 2.75)
10. The City's current estimated population is 4,235. (Exhibit 4, p. 2) The record contains no evidence of additional parks, recreation, or open space acreage having been added to the inventory since 2003. Therefore, the current ratio of parks, recreation, and open space lands to population (based upon the record in this hearing stands at 38.35.
11. The Certificate states that "[p]arks and recreation improvements scheduled to maintain the City's adopted LOS concurrent with development are planned under the adopted 6-year Capital Facilities Plan." (Exhibit 4, p.3)

⁵ DCD's Certificate of Concurrency incorrectly states that the current LOS standard for parks, recreation, and open space "is 5 acres per 1,000 residents." (Exhibit 4, p. 3) The DCD Director acknowledged this error during the hearing. (Testimony)

⁶ DCD seemed to suggest during the hearing that privately owned open space areas within residential developments had been included in the parks, recreation, and open space inventory. (Testimony) The inventory itself refutes any such notion. (2004 Comprehensive Plan, Appendix F, pp. 244 – 251)

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The latest Capital Facilities Plan (CFP) available to the Examiner (none was entered into the hearing record) is Appendix D to the 2004 Comprehensive Plan, dated November 22, 2004. Table CF-5: Parks & Recreation Capital Facilities Plan lists five projects: Reese Park Improvements, Plateau Neighborhood Park #1 Acquire Property & Development, Sportsman's Park Improvements, Skate Board Park, and Expand Trail System. Rees Park and Sportsman's Park improvements presumably would not improve LOS as they would not increase acreage. The CFP does not indicate acreage for the other projects. (2004 Comprehensive Plan, Appendix D, p. VIII-16)

General

12. *Steen Park* is not categorically exempt from the procedural requirements of the State Environmental Policy Act (SEPA). A Determination of Nonsignificance (DNS) was issued for the application. (Exhibit 1.C)

13. Any Conclusion deemed to be a Finding of Fact is hereby adopted as such.

PRINCIPLES OF LAW

The Local Project Review Act [Chapter 36.70B RCW] bars challenges to legislatively adopted plans and regulations during project review proceedings:

- (1) Fundamental land use planning choices made in adopted comprehensive plans and development regulations shall serve as the foundation for project review. The review of a proposed project's consistency with applicable development regulations or, in the absence of applicable regulations the adopted comprehensive plan, under RCW 36.70B.040 shall incorporate the determinations under this section.

- (2) During project review, a local government or any subsequent reviewing body shall determine whether the items listed in this subsection are defined in the development regulations applicable to the proposed project or, in the absence of applicable regulations the adopted comprehensive plan. At a minimum, such applicable regulations or plans shall be determinative of the:
 - (a) Type of land use permitted at the site, including uses that may be allowed under certain circumstances, such as planned unit developments and conditional and special uses, if the criteria for their approval have been satisfied;
 - (b) Density of residential development in urban growth areas; and
 - (c) Availability and adequacy of public facilities identified in the comprehensive plan, if the plan or development regulations provide for funding of these facilities as required by [the Growth Management Act].

[RCW 36.70B.030]

Chapter 16.108 SMC, Concurrency Management System

Chapter 16.108 SMC was adopted by Ordinance No. 630 in 1995. It has not been amended since its adoption. The following sections within Chapter 16.108 SMC are particularly relevant to the present case:

16.108.010 Purpose.

The purpose and intent of this chapter of the unified development code is to provide a regulatory mechanism to ensure that a property owner meets the concurrency provisions of the comprehensive plan for development purposes as required in RCW 36.70A.070. This regulatory mechanism will ensure that adequate public facilities at acceptable levels of service are available to support the development's impact.

16.108.020 Exemptions.

Any development categorically exempt from threshold determination and EIS requirements as stated in the State Environmental Policy Act (SEPA), Chapter 197-11 WAC.

16.108.040 Nonbinding determinations.

A. A nonbinding concurrency determination shall be made at the time of a request for a land use amendment or rezone. Any nonbinding concurrency determination, whether requested as part of an application for development, is a determination of what public facilities and services are available at the date of inquiry, but does not reserve capacity for that development.

B. An applicant requesting a development action by the city shall provide all information required by the city in order for a nonbinding concurrency determination to be made on the proposed project. Such required information shall include any additional information required by the building and zoning official in order to make a concurrency determination. The concurrency determination shall become a part of the staff recommendation regarding the requested development action.

C. A nonbinding concurrency determination may be received prior to a request for development action or approval by submitting a request and any applicable fee to the building and zoning official. Information required to make this determination is the same as that cited in SMC 16.108.030(B).

16.108.050 Certificate of concurrency.

A. A certificate of concurrency shall be issued for a development approval, and remain in effect for the same period of time as the development approval with which it is issued. If the development approval does not have an expiration date, the certificate of concurrency shall be valid for 12 months.

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B. A certificate of concurrency may be accorded the same terms and conditions as the underlying development approval. If a development approval shall be extended, the certificate of concurrency shall also be extended.

C. A certificate of concurrency may be extended to remain in effect for the life of each subsequent development approval for the same parcel, as long as the applicant obtains a subsequent development approval prior to the expiration of the earlier development approval.

D. A certificate of concurrency runs with the land, is valid only for the subsequent development approvals for the same parcel, and is transferable to new owners of the original parcel for which it was issued.

E. A certificate of concurrency shall expire if the underlying development approval expires or is revoked by the city.

16.108.060 Standards for concurrency.

The city of Sultan shall review applications for development, and a development approval will be issued only if the proposed development does not lower the existing level of service (LOS) of public facilities and services below the adopted LOS in the comprehensive plan. A project shall be deemed concurrent if one of the following standards is met:

A. The necessary public facilities and services are in place at the time the development approval is issued; or

B. The development permit is issued subject to the condition that the necessary public facilities and services will be in place concurrent with the impacts of development; or

C. The necessary public facilities and services are guaranteed in an enforceable development agreement to be in place concurrent with the development.

“Concurrent with the development” shall mean that improvements or strategy are in place at the time of the development or that a financial commitment is in place to complete the improvements or strategies within six years of the time of the development.

16.108.070 Facilities and services subject to concurrency.

A concurrency test shall be made of the following public facilities and services for which level of service standards have been established in the comprehensive plan:

- A. Roadways;
- B. Potable water;
- C. Wastewater;
- D. Police protection;
- E. Parks and recreation.

16.108.120 Concurrency determination – Police protection.

A. The city of Sultan will provide level of service (LOS) information as set forth in the city of Sultan comprehensive plan.

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B. If the LOS information indicates that the proposed project would not result in a LOS failure, the concurrency determination would be that adequate facility capacity at acceptable LOSs was available at the date of application or inquiry.

C. If the LOS information indicates that the proposed project would result in a LOS failure, the concurrency determination would be that adequate facility capacity at acceptable levels of service was not available at the date of application or inquiry.

16.108.130 Concurrency determination – Parks and recreation.

A. The city of Sultan will provide level of service (LOS) information as set forth in the city of Sultan comprehensive plan.

B. If the LOS information indicates that the proposed project would not result in a LOS failure, the concurrency determination would be that adequate facility capacity at acceptable LOSs was available at the date of application or inquiry.

C. If the LOS information indicates that the proposed project would result in a LOS failure, the concurrency determination would be that adequate facility capacity at acceptable levels of service was not available at the date of application or inquiry.

Vested Rights

Subdivision and short subdivision applications are governed by a statutory vesting rule: such applications “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 ... has been submitted” [RCW 58.17.033; see also SMC 16.28.480]

The vested rights doctrine applies to CUP applications:

Washington does adhere to the minority rule that a landowner obtains a vested right to develop land when he or she makes a timely and complete building permit application that complies with the applicable zoning and building ordinances in effect on the date of the application. Our vested rights rule also has been applied to building permits, conditional use permits, a grading permit, and a [shoreline management] substantial development permit.

[*Norco Construction v. King County*, 97 Wn.2d 680, 684, 649 P.2d 103 (1982), citations omitted, emphasis added]

Therefore, this consolidated preliminary subdivision and CUP application is vested to the regulations as they existed on December 12, 2005.

Standard of Review

The standard of review is preponderance of the evidence. The applicant has the burden of proof.

Scope of Consideration

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The Examiner has considered: all of the evidence and testimony; applicable adopted laws, ordinances, plans, and policies; and the pleadings, positions, and arguments of the parties of record.

CONCLUSIONS

General

1. Subdivision and Conditional Use Permit applications are development permits. [SMC 16.120.050] *Steen Park* is not categorically exempt from SEPA threshold determination requirements. (Exhibit 1.C) Therefore, *Steen Park* is subject to the concurrency requirements of Chapter 16.108 SMC. [SMC 16.108.020]
2. DCD's concurrency determination is to be considered part of its recommendation to the Examiner. [SMC 16.108.040(B)] The Examiner can not recommend and the Council can not approve a development application which does not demonstrate compliance with the concurrency requirements of Chapter 16.108 SMC. [SMC 16.108.060]
3. Section 16.108.060 SMC states that development approval is to be granted "only if the proposed development does not lower the existing level of service (LOS) of public facilities and services below the adopted LOS in the comprehensive plan." But what happens where the existing LOS is already below the established standard? May a development be approved because it is not the one which "broke" the LOS standard?

Common sense must be applied in interpreting the quoted code language. One could argue that the section holds that only the one project which would "break" the standard could not be approved, but that all subsequent proposals could be approved since they were not the project which lowered the LOS below the established standard – they simply made it even lower.

Such an interpretation makes no sense. The only reasonable interpretation of the quoted language is that developments may not be approved either if they would themselves cause the LOS to fall below the established standard or if the LOS is already below that standard.

4. York suggested that payment of impact fees should fulfill a developer's responsibility towards public facilities. That view is not embodied in the structure of the SMC. The concurrency process of Chapter 16.108 SMC is wholly separate from and independent of the impact fee process of Chapter 16.112 SMC. The former seeks to assure that established LOSs are maintained; the latter requires developers to pay a share of the costs of facilities required by new development.
5. Section 16.108.060 SMC provides three alternative mechanisms by which a development may be found to be concurrent. Subsection (A) addresses the situation where the LOS will still be above the established standard even after the population associated with the proposal is added to the City's

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population. For example, if the police services LOS is 2.6 uniformed officers per 1,000 population, the current LOS were 8.2 uniformed officers per 1,000 population, and the LOS after addition of the residents in a proposed development were 8.1 uniformed officers per 1,000 population, then the proposal would be concurrent: The resultant LOS would still be greater than the adopted standard. In such a case, nothing is required.

Subsection (B) addresses the situation where the LOS standard would not be met but a firm commitment/funded plan is already in place which will raise the LOS to above the standard within six years. In that case, approval is to be conditioned on the LOS meeting the standard within six years. The key code requirement here is that the commitment/plan must be funded and in place.

Subsection (C) addresses the situation where the LOS standard would not be met but the development applicant enters into a binding agreement with the City to provide the necessary resources to raise the LOS to meet or exceed the established LOS within six years.

6. According to SMC 16.108.070, .120, and .130, the LOS standards for police services and parks, recreation, and open space are the standards as set in the 2004 Comprehensive Plan: 2.6 uniformed officers per 1,000 population and 42.6 acres per 1,000 population, respectively.

The Council in adopting the LOS standards in the 2004 Comprehensive Plan without exception used the 2003 actual LOS ratios/levels as the standards that have to be met in the future. The text in Appendix B of the 2004 Comprehensive Plan does not explain why the 2003 actual levels were chosen as the standards for the future. As adopted, those standards effectively mean that any reduction in police staffing below that in place in 2003 would drop (actually has dropped) the City below its established LOS. As the City has grown, additional officers would have of necessity been needed to maintain the LOS above the standard: Even 1 additional resident would have lowered the LOS below the standard. The same holds true for park, recreation, and open space lands.

Whether that was the Council's intent when it adopted the 2004 Comprehensive Plan is unknown. (Legislative intent is not relevant where the enactment is clear and unambiguous on its face.) Whether the Council even realized the effect of the standards it was adopting is equally unknown. Even if the Council were to change the standards now, new standards could not legally be applied in the review of *Steen Park* because of the requirements of RCW 58.17.033: The application must be reviewed against the regulations which existed on December 12, 2005, the date the application was deemed complete.

7. A concurrency recommendation or certificate must be based upon facts. Those facts must include the (estimated) population of the City at the time of the application for which concurrency is sought, the number of residents expected to be added by the proposed development, and the amount of the affected service then available in the community (For example, the number of uniformed officers in the police department; the total acreage of parks, recreation, and open space using the same

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methodology as used in the 2003 inventory.) Given those facts, LOS for each required service area may be calculated. Without those facts, LOS cannot be calculated. If the LOS cannot be calculated, then no favorable conclusion is possible regarding concurrency.

Police Services

8. The present LOS for police services is far below the standard established within the 2004 Comprehensive Plan. Additional residential development within the City will only serve to further lower the LOS.
9. The Council's discussion about increasing police staffing is not a "strategy [which is] in place" to increase police staffing.
10. York has offered no binding development agreement by which the necessary police officers would be funded. (In fairness, York had no idea this problem was going to arise until the hearing was underway, so he cannot be faulted for not offering an agreement.)
11. DCD erred in concluding that *Steen Park* meets the concurrency standard for police services.

Parks, Recreation, and Open Space

12. In the absence of any evidence that parks, recreation, and open space acreage has been added since the 2003 inventory, the Examiner must conclude that parks, recreation, and open space provisions are measurably below the standard established within the 2004 Comprehensive Plan. Additional residential development within the City will only serve to further lower the LOS.
13. The record contains no evidence of a "strategy [] in place" to increase parks, recreation, and open space acreage.
14. York has offered no binding development agreement by which the necessary additional parks, recreation, and open space land would be acquired. (In fairness, York had no idea this problem was going to arise until the hearing was underway, so he cannot be faulted for not offering an agreement.)
15. DCD erred in concluding that *Steen Park* meets the concurrency standard for parks, recreation, and open space.
16. Open space tracts within residential subdivisions, even if available to the public, were not included in the 2003 inventory of parks, recreation, and open space lands. Therefore, such lands cannot be counted against the shortfall.

Summary

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17. Police services and parks, recreation, and open space lands are below the LOS standards established within the 2004 Comprehensive Plan as incorporated into Chapter 16.108 SMC. Approval and development of *Steen Park* will only lower the LOSs even further. The evidence does not demonstrate compliance with either SMC 16.108.060(B) or (C). Therefore, in accordance with the mandate in SMC 16.108.060, *Steen Park* may not be approved.
18. The City may take one of three actions on a preliminary subdivision application: Approve it with or without conditions; return it to the applicant for modification to correct identified shortcomings; or deny it. [SMC 16.28.330(C)] Since this problem arose unexpectedly during the open record hearing, the fairest solution is to return the application to York for modification.
19. Any Finding of Fact deemed to be a Conclusion is hereby adopted as such.

RECOMMENDATION

Based upon the preceding Findings of Fact and Conclusions, the testimony and evidence submitted at the open record hearing, and the Examiner's site view, the Examiner **RECOMMENDS** that *Steen Park* be **RETURNED TO THE APPLICANT FOR MODIFICATION** as necessary to demonstrate compliance with Chapter 16.108 SMC, Concurrency Management System, regarding police services and parks, recreation, and open space.

Recommendation issued April 18, 2006.

\s\ John E. Galt (Signed original in official file)

John E. Galt,
Hearing Examiner

NOTICE OF RIGHT OF RECONSIDERATION

This Recommendation, dated April 18, 2006,, is subject to the right of reconsideration pursuant to SMC 2.26.120(D). Reconsideration may be requested by the applicant, a party of record, or the City. Reconsideration requests must be filed in writing with the City Clerk/Treasurer not later than 5:00 p.m., local time, on April 28, 2006 (which is the tenth calendar day after the date of mailing of this Recommendation). Any reconsideration request shall specify the error of law or fact, procedural error, or new evidence which could not have been reasonably available at the time of the hearing conducted by the Examiner which forms the basis of the request. Any reconsideration request shall also specify the relief requested. See SMC 2.26.120(D) and 16.120.110 for additional information and requirements regarding reconsideration.

NOTICE OF COUNCIL CONSIDERATION

This Recommendation becomes final as of the eleventh calendar day after the date of mailing of the Recommendation unless reconsideration is timely requested. If reconsideration is timely requested, the Examiner's order granting or denying reconsideration becomes the Examiner's final recommendation. The Examiner's final recommendation will be considered by the Sultan City Council in accordance with the procedures of SMC 2.26.120(D) and Title 16 SMC. Please contact the Department of Community Development for information regarding the scheduling of Council consideration of this Recommendation. Please have the applicant's name and City file number available when you contact the city.

<p>The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation."</p>

APPENDIX

Were it not for the currently fatal failure to meet the requirements of Chapter 16.108 SMC, the following would be the Examiner's Recommendation:

FINDINGS OF FACT

1. *Steen Park* is a proposed 18 lot, single-family residential development of a 5.0 acre site which is zoned Moderate Density (MD). (Exhibits 1 and 1.A.3)
2. The site is a rectangle which has 330 feet of frontage on the east side of Sultan Basin Road (SBR) and an east-west depth of about 657 feet. The property is currently vacant. The parcel is mostly flat, except for the southwest quarter where the north side of a ravine associated with a creek slopes down to the south at a grade of approximately 26%. The top edge of the ravine slope crosses the south property line approximately 200 feet west of the southeast parcel corner. The flat portion of the site is covered with wild grass and sparse low bushes with some trees, while the slopes along the creek are heavily vegetated. Single-family residential lots located within the *Sky Harbor* subdivision border the north and east edges of the site; no opportunity for street access to the *Sky Harbor* street system is available. The parcel to the south is vacant. (Exhibits 1 and 1A)
3. The site is designated Moderate density (4 – 6 dwelling units per acre) on the 2004 Comprehensive Plan. (Exhibit 1) The 2004 Comprehensive Plan encourages high density urban development on stable lands “including the periphery of the upper plateau.” (Plan, p. 9, Environment Policy 18) The Plan also calls for enforcement of “exacting performance standards” for sites with “natural views or vistas or interesting scenic assets or features.” (Plan, p. 37, Design Resources Policy 4)
4. York proposes to construct a 525 foot long public cul-de-sac to serve the 18 proposed lots. A drainage ditch carrying discharge from an open space tract in *Sky Harbor* will be preserved and protected through commonly owned tracts. The ravine slope will be protected by a Native Growth Protection Area (NGPA). Two small, unregulated wetlands are proposed to be filled. Street trees are proposed along the cul-de-sac. (Exhibits 1.A.3, 1.A.8, and 1.A.10)

The smallest proposed lot size is 5,775 SF (19.7% reduction from MD zone standard); 5,760 (20% reduction) is the minimum allowed. Front yard setbacks for living spaces have been reduced to 16 feet (20% reduction); front yard setbacks for garages are 20 feet (no reduction from MD standard). Rear yard setbacks have been reduced per code to 16 feet minimum (20% reduction). (Exhibits 1 and 1.A.3) The proposed density of 3.6 du/acre is slightly more than half of the allowed density (6 du/acre) for the subject MD zone. (Exhibit 1)

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5. The maximum cul-de-sac length allowed under the adopted Design Standards is 300 feet. [Design Standards, § 1.09] Design Standards § 1.06 allows the Council to grant modifications to the adopted standards. Streets within subdivisions must conform to the adopted Design Standards. [SMC 16.28.230(B)(4)] Section 16.28.240 also allows the Council to approve modification of subdivision standards.⁷

York's application includes a request to modify the 300 foot maximum cul-de-sac length standard based on the fact that the site is effectively "boxed in" by the *Sky Harbor* lots to the north and east and by the ravine to the south. *Sky Harbor* provides a road stub to the property south of both *Sky Harbor* and *Steen Park* approximately 125 feet east of the southeast corner of *Steen Park*. (Exhibit 1.A.3)

6. A crest vertical curve in SBR just to the south of the site limits sight distance in that direction. For the posted speed limit of 35 miles per hour (mph), adequate entering and stopping sight distance will be available from the proposed cul-de-sac intersection with SBR. (Exhibit 1.A.9) However, at a design speed of five to eight mph greater than the posted speed, adequate entering and stopping sight distance would not be available. (Exhibit 1.B) The City uses design speed, not posted speed, to determine sight distance adequacy. (Testimony)

Approval of the *Timber Ridge Estates* preliminary subdivision, located one parcel removed to the south of *Steen Park*, was conditioned upon "flattening" of the vertical crest curve. (Exhibit 1.B)

7. The record contains evidence that appropriate provisions have been made for open space (Exhibit 1.A.3); drainage (Exhibit 1.A.7); streets and roads (Exhibit 1.A.3); potable water supply (Exhibit 1.A.11); sanitary wastes (Exhibit 1.A.12); parks and recreation (Exhibits 1.A.13 and 15); playgrounds (Exhibits 1 and 1.A.3); schools and schoolgrounds (Exhibit 1.A.15); and safe walking conditions for children who walk to school (Exhibit 1). The evidence does not indicate a need for alleys or transit stops.
8. The Sultan State Environmental Policy Act (SEPA) Responsible Official issued a Determination of Nonsignificance (DNS) on December 28, 2005. (Exhibit 1.C) The DNS was not appealed. (Exhibit 1)

⁷ Sections 16.28.230 and .240 are located within Article I of Chapter 16.28 SMC. Article I establishes requirements and standards for short subdivisions. Article II establishes requirements and standards for subdivisions. However, Article II contains no street standards whatsoever. The wording within the Article I standards makes it clear that the intent is that they apply to both short subdivisions and subdivisions. Their location within the short subdivision section is the result of inartful code drafting.

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9. DCD finds that *Steen Park* meets all applicable criteria for approval. (Exhibits 1, 2, and 3) DCD recommends approval subject to a series of conditions. (Exhibit 1) DCD asked during the hearing that Recommended Conditions 5.b – d be relocated so as to apply to the entire subdivision at the time of construction plan preparation rather to each lot at the time of building permit application. (Testimony)
10. York has no objection to the Recommended Conditions as verbally revised by DCD. (Testimony)
11. Loretta Storm (Storm) objects to the fact that the submitted landscape plan does not indicate the size of the street trees which will be planted. (Testimony) The Preliminary Landscape Plan states that all street trees will have a 1.5” caliper and “shall be branched approximately 5’ off the ground”. (Exhibit 1.A.3, Sheet L1, Plant List and Landscape Note 5)
12. Josie Fallgatter (Fallgatter) believes that the proposal does not meet CUP criterion SMC 21.04.052(D). She argues that the DCD’s conclusion that the variety of lot sizes proposed “will provide housing opportunities to various segments of the market” (Exhibit 1, p. 5) does not demonstrate compliance with the requirement that “the availability of housing to all economic segments of the population is increased”. While Fallgatter would like to see more high-end housing in Sultan, she is particularly concerned with “affordable” housing for low income persons. She argues that “all” requires inclusion of low income housing in any clustered subdivision. (Testimony)
13. Storm and Fallgatter challenge compliance with Chapter 16.108 SMC, Concurrency Management System, with respect to police services and parks, recreation, and open space. (Testimony) Those challenges are addressed in the main body of this Recommendation.
14. Any Conclusion deemed to be a Finding of Fact is hereby adopted as such.

PRINCIPLES OF LAW

Authority

Preliminary cluster subdivision applications require a pre-decision open record hearing before the Examiner who forwards a recommendation to the Sultan City Council (Council) for final action. [SMC 16.28.320 - .340 and 16.120.050]

Review Criteria

The review criteria for preliminary subdivisions are set forth within SMC 16.28.330(A):

- A. The Hearing Examiner shall ... consider and review the proposed plat with regard to:

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1. Its conformance to the general purposes of the Comprehensive Plan and Planning Standards and Specifications as adopted by the laws of the State of Washington and the City of Sultan;
2. Whether appropriate provisions are made ... for: drainage ways, streets, alleys, other public ways, water supplies and sanitary wastes, transit stops, parks and recreation, playgrounds, schools and schoolgrounds;
3. The physical characteristics of the subdivision site and may disapprove because of flood, inundation or swamp conditions. It may require construction of protective improvements as a Condition of Approval; and
4. all other relevant facts to determine whether the public use and interest will be served by the ... subdivision.

The plat modification review criteria are set forth at SMC 16.28.240(B):

The hearing examiner shall make his or her findings on the basis of criteria defined as follows:

1. That there are special circumstances applicable to the particular lot such as shape, topography, location or surroundings, that do not apply generally to other property in the same vicinity and zone;
2. That such modification is necessary for the preservation and enjoyment of a substantial property right or use possessed by or available to other property in the same vicinity and zone but which, because of special circumstances, is denied to the particular lot;
3. That the granting of such modification will not be materially detrimental to the public welfare or injurious to property in the vicinity of the particular lot; and
4. No such modification may be granted if it would have the effect of nullifying the intent and purpose of the unified development code, the comprehensive plan, or this subsection.

The review criteria for a CUP for a clustered subdivision are set forth at SMC 21.04.050 and .052:

21.04.050 Criteria.

The following criteria shall apply in granting a conditional use permit:

- A. The proposed conditional use will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity of the proposed conditional use or in the district in which the subject property is situated;
- B. The proposed conditional use shall meet or exceed the performance standards that are required in the district it will occupy;

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C. The proposed conditional use shall be compatible generally with the surrounding land uses in terms of traffic and pedestrian circulation, building and site design as approved by the Design Review Committee;⁸

D. The proposed conditional use shall be consistent with the goals and policies of the Comprehensive Land Use Policy Plan;

E. All measures have been taken to minimize possible adverse impacts, which the proposed use may have on the area in which it is located.

21.04.052 Additional criteria for single-family detached dwelling (clustered).

The following additional criteria shall apply to allow single-family detached dwelling(s) (clustered):

A. The density on the property may not be greater than but should match the density for single-family detached dwellings;

B. Where urban density goals are to be achieved, but critical areas can be adequately protected, dimensional requirements for lot size, lot width, front and rear yard setbacks may be decreased by no more than 20 percent;

C. As a result of the design of the subdivision, a minimum of 20 percent of the net land area of continuous, publicly accessible open space such as stream or wetland and associated buffers, a ravine, bluff or other unique topographic feature, or conservation area is preserved;

D. As a result of the dwellings and any subdivision, the availability of housing to all economic segments of the population is increased, and housing density variety is preserved throughout the community.

⁸ As the Examiner has noted in prior Recommendations, the SMC contains an apparent conflict between Chapters 21.04 and 2.20 SMC. Chapter 21.04 SMC, "Conditional Use Permits," was adopted by Ordinance No. 690-98, effective August 10, 1998. Section 21.04.050(C) requires "building and site design as approved by the design review committee" for all CUP applications. Chapter 2.20 SMC, "Design Review Board and Process," was adopted by Ordinance No. 727-00, effective March 22, 2000, as a replacement for former Ordinance No. 686-98. Section 2.20.060 SMC establishes the DRB's scope of authority: "The design review board shall review all development in urban center (UC), highway-oriented development (HOD), economic development (ED) zoning districts, multifamily developments and neighborhood commercial developments in residential zones." (Section 2.20.060 SMC was last amended by Ordinance No. 895-05, effective November 24, 2005. The quoted provision was not affected by that amendment.) Ordinance No. 727-00 contains a "Repealer" section: "Any and all other ordinances or parts of ordinances of the City of Sultan inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency." Since Ordinance No. 727-00 is more recent than Ordinance No. 690-98, any provisions in the latter which are inconsistent with the provisions of the former have been repealed.

Section 21.04.050(C) SMC is partly inconsistent with SMC 2.20.060: It purports to require DRB review of any CUP anywhere in the City. Section 2.20.060 SMC does not authorize DRB review of developments in residential zones with but two exceptions: multifamily and neighborhood commercial developments.

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The Local Project Review Act [Chapter 36.70B RCW] establishes a mandatory “consistency” review for “project permits”, a term defined by the Act to include “building permits, subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, site plan review, permits or approvals required by critical area ordinances, site-specific rezones authorized by a comprehensive plan or subarea plan”. [RCW 36.70B.020(4)]

(1) Fundamental land use planning choices made in adopted comprehensive plans and development regulations shall serve as the foundation for project review. The review of a proposed project’s consistency with applicable development regulations or, in the absence of applicable regulations the adopted comprehensive plan, under RCW 36.70B.040 shall incorporate the determinations under this section.

(2) During project review, a local government or any subsequent reviewing body shall determine whether the items listed in this subsection are defined in the development regulations applicable to the proposed project or, in the absence of applicable regulations the adopted comprehensive plan. At a minimum, such applicable regulations or plans shall be determinative of the:

- (a) Type of land use permitted at the site, including uses that may be allowed under certain circumstances, such as planned unit developments and conditional and special uses, if the criteria for their approval have been satisfied;
- (b) Density of residential development in urban growth areas; and
- (c) Availability and adequacy of public facilities identified in the comprehensive plan, if the plan or development regulations provide for funding of these facilities as required by [the Growth Management Act].

[RCW 36.70B.030]

Vested Rights

Subdivision and short subdivision applications are governed by a statutory vesting rule: such applications “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 ... has been submitted ...”

[RCW 58.17.033; see also SMC 16.28.480]

The vested rights doctrine applies to CUP applications:

Washington does adhere to the minority rule that a landowner obtains a vested right to develop land when he or she makes a timely and complete building permit application that complies with the applicable zoning and building ordinances in effect on the date of the application. Our vested rights rule also has been applied to building permits, conditional use permits, a grading permit, and a [shoreline management] substantial development permit.

[*Norco Construction v. King County*, 97 Wn.2d 680, 684, 649 P.2d 103 (1982), citations omitted, emphasis added]

Therefore, this consolidated preliminary subdivision and CUP application is vested to the regulations as they existed on December 12, 2005.

Standard of Review

The standard of review is preponderance of the evidence. The applicant has the burden of proof.

Scope of Consideration

The Examiner has considered: all of the evidence and testimony; applicable adopted laws, ordinances, plans, and policies; and the pleadings, positions, and arguments of the parties of record.

CONCLUSIONS

1. A Recommendation on *Steen Park* must address a preliminary subdivision request, a plat modification request, and a CUP application. While all three are highly interrelated, they have separate review criteria. Separate review of each component will facilitate clarity. Review should start with the CUP since it is the independent variable.
2. The Conclusions in this Recommendation Appendix are grouped by topic only for the reader's convenience. Such groupings do not indicate any limitation of applicability to the Recommendation as a whole.

Conditional Use Permit Conclusions

3. Evaluation of the criteria must recognize the nature of the request. This application is not about a building to house some specially allowed use. Rather, it is about reducing some bulk regulations to allow "clustering" of the lots in a proposed subdivision.
4. The clustering proposal meets CUP Criterion A. Clustering the 18 proposed lots will most certainly not harm public welfare since it will eliminate any steep slope impacts. It will not place an excessive traffic burden on the Sultan Basin Road or SR-2. Development of *Steen Park* will change the character of the site to suburban residential. But that change: Is consistent with the Comprehensive Plan which envisions a much higher density for the area; is consistent with the MD zoning which allows a much higher density for the area; and is but a logical extension of the established *Sky Harbor* development abutting on the north and east. The "clustering" CUP does not affect those factors.

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5. The clustering proposal meets CUP Criterion B. Except for some bulk regulations (which the CUP expressly relaxes), the proposal complies with all subdivision requirements.
6. The clustering proposal meets CUP Criterion C. Traffic and pedestrian circulation patterns are unchanged by the CUP. "Clustering" of the 18 proposed lots does not alter the amount or direction of the traffic associated with those lots.
7. The clustering proposal meets CUP Criterion D. The "clustering" CUP is consistent with the Plan in that it allows for reduced impacts to sensitive areas while preserving a minimal density for the property.
8. The clustering proposal meets CUP Criterion E. The question here, again, relates to the "clustering," not to the absolute number of lots (since the number of lots is unaffected by the CUP). Impact mitigation has been imposed to the extent allowed by the policies and regulations under which the subdivision is vested.
9. The clustering proposal meets additional CUP Criterion A. The proposed clustering does not increase the potential density at all. The proposed density is already measurably below the upper limit set by both the 2004 Comprehensive Plan and the MD zone. In fact, without the clustering, the potential density would likely be lower because of the extensive slope in the southwest quarter of the site. A further reduced density would be inconsistent with the 2004 Comprehensive Plan.
10. The clustering proposal meets additional CUP Criterion B. Critical areas are being protected as required under applicable regulations. Therefore, *Steen Park* is eligible for up to a 20% reduction in lot area, lot width, front setback, and rear setback. The proposed plat demonstrates compliance or (with respect to setbacks) the ability to comply with that limitation.
11. The clustering proposal meets additional CUP Criterion C. The proposal preserves nearly one-third of the "net land area" as open space, well more than the required 20%.
12. The clustering proposal meets additional CUP Criterion D. The variety of lot sizes, including some small lots, will allow for the construction of a variety of housing sizes.

Consideration of Fallgatter's argument regarding housing diversity falls under this criterion. Criterion D is one which must be read with a modicum of common sense. If it were read to require every clustered subdivision to include housing for every economic segment of the community, from the poorest to the richest, it would make no sense. Such a reading would require every clustered subdivision to include subsidized apartment and single-family housing, moderate income housing, and exclusive, high-priced housing. Expecting all of that to be included in one single residential subdivision begs credulity. A more reasonable interpretation is that clustered subdivisions should, taken as a whole, further housing diversity through a mix of lot sizes. *Steen Park* fulfills that

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interpretation of the criterion. Lots range from 5,775 SF to 9,400 SF with a nice variety within that range. Diversity of lot sizes and thus housing opportunities will exist in *Steen Park*.

13. The “clustering” proposal complies with all applicable CUP criteria. The requested CUP should issue were it not for the concurrency problem.

Plat Modification Conclusions

14. The proposal meets modification Criterion (B)(1). The configuration of the *Sky Harbor* lots combined with the extent of the sloping ravine render extension of a public street through *Steen Park* infeasible.
15. The proposal meets modification Criterion (B)(2). Without a cul-de-sac length modification, only the west half of the site could be realistically developed.
16. The proposal meets modification Criterion (B)(3). The proposed street design provides adequate street width and cul-de-sac radius for emergency vehicle use.
17. The proposal meets modification Criterion (B)(4). Without approval of the requested modification, the achievable yield would be only about a quarter of the density desired under both the 2004 Comprehensive Plan and the MD zone.
18. The modification request complies with all applicable criteria. The requested plat modification should issue were it not for the concurrency problem.

Preliminary Subdivision Conclusions

19. Extensive, detailed conclusions regarding conformance with the criteria for approval are unnecessary since *Steen Park* is largely an uncontested case.
20. The preponderance of the evidence shows that the proposed subdivision, conditioned as set forth herein, would conform with the general purposes of the comprehensive plan and with the applicable regulations of the zoning code and other land use controls (assuming the concurrency problem were solved). The proposal develops the subject property in the fashion and within the density envisioned by the Plan.

Storm’s concern regarding the Landscape Plan lacks substantial merit. The Landscape Plan indicates that all street trees will have a diameter of 1.5” and will branch at five feet above ground. Thus, all street trees will have to be taller than five feet, probably several feet taller given that the lowest branches will be five feet above ground. The adopted Design Standards do not contain any size specifications for street trees. [Design Standards, § 4.01, Landscaping] The proposed sizes seem to the Examiner to be comparable to what is commonly seen in new developments around the County, both in incorporated cities and in unincorporated areas.

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21. The preponderance of the evidence shows that the proposed subdivision, conditioned as set forth herein, makes appropriate provisions for those items enumerated within SMC 16.28.330(A); and serves the public use and interest (assuming the concurrency problem were resolved). The proposed subdivision does not generate a requirement for transit stops or alleys.

This Conclusion presumes that adequate entering and stopping sight distance are available when the subdivision is recorded. The record indicates that the developer of *Timber Ridge Estates* is responsible for correcting the vertical curve which causes a sight distance problem for both developments. It will be sufficient to restrict development of *Steen Park* upon the elimination of the sight distance problem.

22. The site does not lie within a designated flood plain; the on-site slopes have been avoided by the proposed design. Compliance with adopted critical areas regulations will adequately protect those areas.
23. *Steen Park* meets the criteria for preliminary subdivision approval; approval should issue (assuming the concurrency problem were solved).

Consistency

24. *Steen Park* meets the consistency test: Single family residential is the type desired for this area; the proposed density is consistent with both the 2004 Comprehensive Plan and applicable zoning; and adequate utilities are available.

Recommended Conditions

25. The recommended conditions of approval as set forth in Exhibit 1 are reasonable, supported by the evidence, and capable of accomplishment with the following exceptions:
- A. Both a preliminary subdivision and a CUP embody the concept of approval of a specific development proposal. Both preliminary subdivision and CUP evaluation are based upon the specific development plans submitted by the applicant. It is appropriate, therefore, that the conditions of approval clearly identify the plans which are being approved. The staff Recommendation does not do so. An appropriately worded condition needs to be added.
 - B. Several items in Recommended Condition 6 are misplaced. However, items b, c, and d do not embody actions which have to be completed prior to construction plan approval as suggested during the hearing. Rather, they are actions to be taken during subdivision construction.

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- C. Since the proposal includes extensive commonly owned open space/recreation areas, a homeowners association needs to be created to own and be responsible for those areas. That reality is not reflected in the DCD Recommended Conditions.
 - D. A notation that mitigation fees are required at time of building permit issuance should be included on the face of the final plat as a notice to purchasers of that obligation.
 - E. A sight distance restriction needs to be added as discussed on Conclusion 21, above.
 - F. Non-substantive structure, grammar, and/or punctuation revisions to the Recommended Conditions will improve parallel construction, clarity, and flow within the conditions. Such changes will be made.
26. Any Finding of Fact deemed to be a Conclusion is hereby adopted as such.

RECOMMENDATION

Based upon the preceding Findings of Fact and Conclusions, the testimony and evidence submitted at the open record hearing, and the Examiner's site view, the Examiner would **RECOMMEND APPROVAL** of: 1) the proposed preliminary subdivision of *Steen Park*; 2) the plat modification for cul-de-sac length; and 3) the requested Conditional Use Permit to allow clustering within *Steen Park*, all **SUBJECT TO THE ATTACHED CONDITIONS**, if the concurrency problems identified in the body of this Recommendation could be solved.

RECOMMENDED CONDITIONS OF APPROVAL
FPCUP05-003
Steen Park

If the concurrency problems could be solved, this Preliminary Subdivision/Conditional Use Permit should be subject to compliance with all applicable provisions, requirements, and standards of the Sultan Municipal Code, standards adopted pursuant thereto, and the following special conditions:

A. General Conditions:

1. Exhibit 1.A.3 shall be the approved preliminary plat and Conditional Use Permit site development plans. Where any condition herein conflicts with those exhibits, the condition shall prevail.
2. All recommendations found in the Geotechnical Assessment (Exhibit 1.A.10) shall be implemented before, during, and after the development of this subdivision.
3. All critical areas on-site and in the vicinity of the site shall be protected from erosion in accordance with the Department of Ecology Stormwater Management Manual for Puget Sound Basin before, during, and after the development of this subdivision.
4. All surface water runoff from impervious surfaces shall be managed in accordance with the Puget Sound Stormwater Management Manual. All surface water runoff from impervious surfaces shall be infiltrated, conveyed to an approved detention facility, or otherwise treated to protect water quality before, during, and after the development of this subdivision.
5. The plattor shall obtain Hydraulic Project Approval from the Washington Department of Fish and Wildlife prior to extending the Type 4 stream culvert in the southwest portion of the site.

B. Prior to initiation of any site development work:

1. In accordance with SMC 16.28.340, the developer/plattor shall prepare a developer agreement subject to approval by the City. The agreement shall specify the requirements for construction of all infrastructure improvements, including plan submittals, inspections, bonding, private improvements, right-of-way improvements and facilities associated with the subdivision, including improvements to all common areas. Site construction drawings shall be prepared consistent with the conditions of approval.

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2. Construction Plans must be approved by the City of Sultan. The plans shall include, but not be limited to, designs for storm drainage, potable water, sanitary sewer, roads, street lighting, signage, landscaping, and other utilities. Said designs shall comply with the requirements of the Unified Development Code, City of Sultan Design Standards and Specifications, and Water/Sewer Design Standards.
- C. The following special requirements shall be included on the face of the final plat:
1. The development restrictions of SMC 16.80.080(D) shall apply to the Type 4 50-foot stream buffer. NGPA signs shall be posted on the buffer line in Tract 999 and along the boundaries of Tract 998, at the discretion of the Public Works Director. NGPA signs are available at the City of Sultan. An informative sign shall be placed at the northern boundary of Tract 996 to inform residents that their stormwater flows to a fish stream.
 2. "Mitigation fees are required for park, traffic, and school impacts. The amount of those fees will be determined and collected prior to individual building permit issuance."
 3. The following additional restrictions shall be indicated on the face of the final plat:
 - a. All Critical Areas shall be designated Native Growth Protection Areas (NGPA).
 - b. "All NATIVE GROWTH PROTECTION AREAS shall be left permanently undisturbed in a substantially natural state, and utilized for passive recreation only. No clearing, grading, filling, building construction or placement, or road construction of any kind, except removal of hazardous trees, shall be allowed."
- D. Prior to approval and recordation of the final plat:
1. The developer/plattor shall demonstrate that each lot conforms to all requirements of the Sultan Municipal Code and other standards and specifications that apply.
 2. Homeowners Association articles of incorporation shall have been submitted to and approved by the City. The articles shall provide for ownership and responsibility for all commonly owned tracts. The articles may provide that the Association may divest its interest in open space tracts to a willing municipality or land conservation trust provided that the tract must remain subject to all appropriate restrictions for such areas as set forth in the SMC. The Association shall be created contemporaneous with final plat recordation.
 3. Sight distance meeting City standards shall be available at the plat cul-de-sac's intersection with Sultan Basin Road.

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- E. Prior to Building Permit Issuance, the applicant must demonstrate on their building permit site plan that the subject lot can and will accommodate at least two off-street parking stalls (may be located in private driveway and/or within garage).