

SULTAN CITY COUNCIL
AGENDA ITEM COVER SHEET

ITEM NO: A-5
Annual Comprehensive Plan Docket

DATE: September 27, 2007

SUBJECT: 2007 Comprehensive Plan Amendment Docket

CONTACT PERSON: Rick Cisar, Director of Community Development

ISSUE:

The issue before the Council is to review the applications for annual Comprehensive Plan Amendments. The City Council may either "docket" the applications for review by the Planning Board or deny the applications. The Council may also defer some applications for review in a subsequent year.

STAFF RECOMMENDATION:

City Staff recommends the City Council Docket the following Comprehensive Plan Amendments for 2006-2007 as described on Exhibit 6 which include:

1. Redocket the 2005 Petitions Submitted by Bart Dalmasso and City Staff; and
2. Defer docketing the 2007 Petitions by City Staff and Rusty Drivstuen until 2008.

BACKGROUND:

In 2002, the City adopted Comprehensive Plan Amendment Review and Public Hearing Procedures as required by RCW 36.70A.130 (Exhibit 8) Comprehensive Plans-Review Procedures and Schedules – Amendments to provide for a process to amend the various elements of the Comprehensive Plan. Amendments to the Plan are typically initiated by property owners, City Council, Planning Board, or City Staff.

This year the City received 2 applications for Comprehensive Plan Amendments. The first Application was prepared by City Staff and proposes Comprehensive Plan Amendments to evaluate the growth strategies in the Comprehensive Plan (Exhibit 4). This petition was reviewed with the Planning Board on June 26, 2007. The second petition was received from Rusty Drivstuen and also requests an evaluation of the growth strategies and removal of the Police Level-of-Service. The petition further requests completion of the Transportation Improvement Plan, Capital Facilities Plan, Police Services, and all other issues

related to the Comprehensive Plan under review by Consultants be complete this year. (Exhibit 5).

In 2005, the City received two applications for amendments to the 2004 Comprehensive Plan. One application from Bart Dalmasso (Exhibit 1) to review the zoning designations along US 2 and a second application from City Staff (Exhibit 2) to consider the following:

1. Incorporate the Water, Wastewater and Stormwater plans into the appendix of the Comprehensive Plan as a reference.
2. Update the Urban Growth Area (UGA) based on the final recommendation of the Snohomish County Council and include required plan, regulation, map and policy changes.
3. Review Appendix B: Level of Service (LOS) for Transportation, Parks, Police, water and wastewater etc. to determine if our current standards are adequate and reasonable.
4. Incorporate Sultan School District CFP.
5. Refine Park Element
6. Incorporate 2006 Capital Facility Plan update.
7. Update Map Folio

The two applications were docketed by the City Council on November 9, 2005 and referred to the Planning Commission for review. The cost of amending the Comprehensive Plan, in consideration of the two applications, was estimated at that time to be \$35,000.00. A pending grant application with the Department of Community Trade and Economic Development, unfortunately, was not approved. Therefore, review and consideration of the two petitions has been delayed pending additional funding. Several items in the 2005 Petition have been completed or are near completion, including or are pending discussion later this year.

1. The Water, Sewer and Storm Sewer Plan Updates. **Complete**
2. The Urban Growth area map has been updated to reflected the actions of Snohomish County in 2005 and 2006. **Complete**
3. The Level of Service Standards for Transportation, Parks, Police, Water and Sewer will be considered after adoption of our current Comprehensive Plan update later this year.
4. The Sultan School District Plan has been approved by the Snohomish County Council and has been reviewed by the Planning Board with City Council Action scheduled for Second Reading on September 27, 2007.
5. Updating of the Park Element is under review as part of our current Comprehensive Plan Update.
6. The 2007 Capital Facilities Plan has been approved and will be included as part of our Comprehensive Plan Update.

7. The map folio will be updated to include mapping revisions from the current Comprehensive Plan Update, the Shorelines Program, and Utility and Transportation Plan revisions.

In March of 2006, the Mayor and City Council received a petition (Exhibit 3) from residents of the Dyer Road and Skywall Drive neighborhoods to delete:

1. The proposed roadway connection of Dyer Road and Skywall Drive as identified as Proposed Roadway Number 28 on the Transportation Plan Map; and
2. The proposed sewer pipeline extension on both Dyer Road and Skywall Drive, including the proposed pump station (Number 4) as shown on the Sewer Utility Map.

The Dyer/Skywall Roadway connection is currently under review as part of the City's Transportation Plan Update by Pertec Inc. Therefore docketing the request is not necessary. City Staff is recommending an emergency vehical connection only, which will be considered when final approval of the Transportation plan is under consideration by the Council.

City Staff is also recommending the proposed sewer lines remain in both Dyer Road and Skywall Drive in order to comply with the Growth Management Act and regional planning policies. The existing septic systems may be required to be eliminated in the future due to potential health problems from septic system failure.

These issues will be discussed and a final decision made during final approval of the current Comprehensive Plan Update which is scheduled to be presented to the City Council in November by the Council.

DEFER DOCKETING 2007 PETITION:

City Staff recommends deferring the Staff proposed docket items following the Growth Management Hearings Board decision and order in Fallgatter IX (Exhibit 9).

The Hearings Board has found the City's Capital Facilities Plan inconsistent and invalid. In reviewing the Board's decision, it appears that the City's Capital Facilities Plan is lacking adequate needs assessments (analysis). Specifically, the Board identified the following insufficiencies:

Sewer— must contain adequate needs assessment that identifies the unsewered population and the City must ensure capacity will be available and adequate.

Parks and Stormwater – needs a forecast of future needs that is tied to the City's adopted level of service standards.

If probable funding for facilities falls short, the City must review its land use and other assumptions to ensure that the City can serve its Urban Growth Area.

City Staff and Consultants are meeting with the Board on September 27, 2007 to review the Board's decision and to gain a better understanding of the level of effort needed to meet the Board's standard.

The Capital Facilities Plan Update in the 45-day Supplemental Environmental Impact Statement (SEIS) review does not include the level of needs assessment that the Board appears to require under its Decision and Order in Fallgatter IX. Which means that the City will not be able to move the Comprehensive Plan Update forward to Council for approval before the end of 2007.

It appears likely that the needs analysis for the City's Capital Facilities (e.g. water, sewer, stormwater, parks, and public facilities including police), as described by the Board, will take much of 2008 to complete.

Given this set of circumstances, it seems unlikely the City will be able to review its growth strategies as originally envisioned in July when the City's annual docket application was submitted for consideration.

PROPOSED 2007 ANNUAL DOCKET

For these reasons, City Staff is recommending the City Council defer action of the Staff proposed 2007 Annual Docket Application and Redocket the 2005 Petition Items that have not been completed:

1. Review Appendix B: Level of Service (LOS) for Transportation, Parks, Police, water and wastewater etc. to determine if our current standards are adequate and reasonable.
2. Incorporate Sultan School District CFP.
3. Refine Park Element.
4. Incorporate 2006 Capital Facility Plan Update.
5. Update Map Folio.
6. Review of the State Route 2 zoning designations requested by Mr. Dalmasso will be considered upon completion of our current Comprehensive Plan Update effort.

FISCAL IMPACT:

\$50,000.00 to complete the proposed Amendments. Financial assistance may be available to the City to complete the Amendments.

RECOMMENDED ACTION:

City Staff is recommending the City Council Docket the following Comprehensive Plan Amendments for 2006-2007 as described on Exhibit 6 which include:

1. Redocket of the 2005 Petitions Submitted by Bart Dalmasso and City Staff as described in Exhibit 6; and
2. Defer docketing of the 2007 Petitions by City Staff and Rusty Drivstuen until next year.

RECOMMENDED MOTION:

Move to Approve the 2006-2007 Comprehensive Plan Docket for the Amendments described in Exhibit 6 and defer docketing of the 2007 Petitions by City Staff and Rusty Drivstuen (Exhibit 7).

Attachments:

- Exhibit 1 - 2005 Amendment Petition by Dalmasso
 - Exhibit 2 - 2005 Amendment Petition by City Staff
 - Exhibit 3 - Dyer Road and Skywall Drive Amendment Petition March 7, 2006
 - Exhibit 4 - 2006 Amendment Petition by City Staff
 - Exhibit 5 - 2006 Amendment Petition by Rusty Drivstuen
 - Exhibit 6 - 2005 Comprehensive Plan Docketing Requests
 - Exhibit 7 - 2007 Comprehensive Plan Docketing Requests
 - Exhibit 8 - RCW 36.70A.130 Comprehensive Plans - Review Procedures
 - Exhibit 9 - Growth Management Hearings Board Decision & Order in Fallgatter IX
-

CITY COUNCIL ACTION:

DATE:

City of Sultan, Planning Department
P.O. Box 1199 - 319 Main Street
Sultan, WA 98294-1199
(360) 793-2231 FAX (360) 793-3344

Comprehensive
Plan Amendment
Petition

Date Received: 6/29/05 *R*

Type of Amendment – Please Check Rezone Application Required: _____

Policy
 Map
 Regulation
 Plan
 Other (Please specify) _____

Proponent Information:

Name: Bart Palmasso

Address: 413 Main P.O. Box 1762

Phone/Fax: 360 799-1222 E-Mail: _____

Amendment Information: The merits of a proposed amendment shall be measured against the petition submittal requirements listed below to ensure consistency in the review and decision making. Please provide the following information (attach additional pages if necessary):

1. A detailed statement of what is proposed to be changed and why.

SR 2 is an extremely busy Highway and there needs to be a buffer between the Highway, the downtown business and residential communities. Every property on SR 2 should be able to be developed as a highway oriented property

Exhibit 1-1

2. A statement of anticipated impacts to be caused by the change, including geographic area affected and issues presented and why.

I don't see any immediate impacts that would be caused by this action

3. A demonstration of why an existing comprehensive plan policy, plan or recommendation should not continue to be in effect or why an existing, plan or recommendation no longer applies.

This was an oversight at the time I proposed the overlay between the Sultan River & the Exxon station

4. A statement of how the amendment complies with the comprehensive plan's community vision statements, goals, objectives, and policy directives.

We want this community to be successful & to thrive as well as to protect human life

5. A statement of how facility plans and capital improvement plans support the change.

N/A

6. A statement of how the change affects land use regulations (i.e. zoning, subdivision, etc.) and the necessary text changes to bring that land use regulations into compliance with the plan.

Zoning change by way of an overlay on any & all property on SR12

7. A demonstration of public review of the recommended change.

See 8 below

8. A statement of how the public should participate in your proposed amendment.

Public hearing

9. An estimated time frame or schedule necessary to complete the amendment.

15 minutes

10. An estimate cost to complete the amendment in consideration of staff time, consultant services, printing, mapping, public notices and information, etc.

None

11. Will a Citizen's Advisory Committee or Technical Advisory Committee acting as a subcommittee of the Planning Commission be necessary to evaluate the amendment?

Yes: _____

No: _____

If Yes:

A. What are your recommendations for a membership on the committee?

11. Continued.

B. How and when will the meetings be conducted?

At City Hall during Council meetings

C. How will the City Council and Planning Commission be advised of the Committee's Progress?

See "B" above

D. How will the public participate in the Committee meetings?

See "B" above

12. A detailed statement describing how the map amendment complies with the Comprehensive Plan Land Use Element (for map amendment only).

City of Sultan, Planning Department
P.O. Box 1199 - 319 Main Street
Sultan, WA 98294-1199
(360) 793-2231 FAX (360) 793-3344

Comprehensive Plan Amendment Petition

RECEIVED
JUN 30 2005

Date Received: 6/30/05 *ke*

Type of Amendment - Please Check

Policy
 Map
 Regulation
 Plan
 Other (Please specify) LOS Transportation, Facility & Parks

Rezone Application Required: _____

BY: _____

Proponent Information:

Name: City of Sultan Planning Dept

Address: PO BOX 1199

Phone/Fax: (360) 793-2231 E-Mail: nick.cisak@ci.sultan.wa.us
(360) 793-3344

Amendment Information: The merits of a proposed amendment shall be measured against the petition submittal requirements listed below to ensure consistency in the review and decision making. Please provide the following information (attach additional pages if necessary):

1. A detailed statement of what is proposed to be changed and why.
1. Incorporate WASTE WATER, WATER AND Stormwater
Comprehensive PLANS into appendix of Comp Plans as reference
2. UPDATE UGA BASED ON RECOMMENDATION OF Snohomish County
Council AND requires plan, regulation, map and policy changes.
3. REVIEW APPENDIX B: LEVEL OF SERVICE (LOS) to determine if
STANDARDS ARE ADEQUATE AND REASONABLE.
4. Incorporate Sultan School District CFP, Financials
5. Refine Park Element
6. Incorporate 2006 CFP updates
7. Update Map to loc. Page 1 of 4

Exhibit 2-1

2. A statement of anticipated impacts to be caused by the change, including geographic area affected and issues presented and why.

PROPOSED CHANGES WILL IMPACT THE CITY LIMITS
AND UGA

3. A demonstration of why an existing comprehensive plan policy, plan or recommendation should not continue to be in effect or why an existing, plan or recommendation no longer applies.

PLAN UPDATES CAUSED ON CHANGE IN CONDITIONS

4. A statement of how the amendment complies with the comprehensive plan's community vision statements, goals, objectives, and policy directives.

5. A statement of how facility plans and capital improvement plans support the change.

NA - PLAN UPDATE WILL PROVIDE FOR
CIP PROJECTS

6. A statement of how the change affects land use regulations (i.e. zoning, subdivision, etc.) and the necessary text changes to bring that land use regulations into compliance with the plan.

SPECIAL PLANS MAY REQUIRE AMENDMENTS TO REGULATIONS
IE SUBDIVISION, ACCESSORY, WATER E PAILS
PARKS ETC

7. A demonstration of public review of the recommended change.

Proposed amendments to Comp Plan have been discussed over last year.

8. A statement of how the public should participate in your proposed amendment.

Through another public participation process

9. An estimated time frame or schedule necessary to complete the amendment.

8-12 months

10. An estimate cost to complete the amendment in consideration of staff time, consultant services, printing, mapping, public notices and information, etc.

\$5,000.00 in mapping & printing costs
1,000 in mapping

11. Will a Citizen's Advisory Committee or Technical Advisory Committee acting as a subcommittee of the Planning Commission be necessary to evaluate the amendment?

Yes:

No:

If Yes:

A. What are your recommendations for a membership on the committee?

11. Continued.

B. How and when will the meetings be conducted?

C. How will the City Council and Planning Commission be advised of the Committee's Progress?

D. How will the public participate in the Committee meetings?

12. A detailed statement describing how the map amendment complies with the Comprehensive Plan Land Use Element (for map amendment only).

March 7, 2006

Mayor Tolson and City Council Members
City of Sultan
319 Main Street
Sultan, Washington 98294

RE: Petition for Comprehensive Plan, Traffic and Sewer Utility Plan Amendments

On behalf of the Dyer Road and Skywall Drive neighborhoods, I am submitting the enclosed petition to have the city's Comprehensive Plan amended. The petitioned amendments are to delete

1. the proposed roadway connection of Dyer Road and Skywall Drive as identified as Proposed Roadway Number 28 on the Transportation Plan Map, and
2. the proposed sewer pipeline extensions in both Dyer Road and Skywall Drive, including the proposed pump station (number 4) as shown on the Sewer Utility Map

BACKGROUND

The Dyer and Skywall neighborhoods submitted a Public Comment letter in respect to the pending application for the Twin Rivers Estates development. The city responded to our letter and offered a meeting to answer questions. Mr. Cisar and Ms. Dunn met with 65 members of these neighborhoods. As the above two proposals in the city's Comprehensive Plan seem to have some relationship to the Twin Rivers development, there were many questions. Mr. Cisar recommended to the group that issues involving the Comprehensive Plan may be resolved by submitting a petition. He was nice enough to prepare these petitions for the group.

DISCUSSION

We were able to make contact with almost all of the residents of these communities. Only two people did not wish to sign the petition. There are over 120 signatures on the petition. Thus, over 99% of these residents do not want the Dyer Road and Skywall Drive to be connected nor do they want a sewer line at this time and as proposed in the city's Comprehensive Plan. The proposed sewer pump station at the intersection of 10th Street and Dyer Road is not wanted by the residents as well. Further comments are as follows:

Dyer/Skywall Connection:

- There is no through traffic for either street. The one way in and one way out is preferred and is a reason the residents live here.

Exhibit 3-1

- It is believed that the limited access has contributed to a very low crime rate.
- It is safe to walk on the road without fear of getting run over. Our children and grandchildren are safe to ride their bicycles and tricycles on the roads. Our cats and dogs are not getting run over.
- There is not a litter problem from passing motorists.
- Because of the limited traffic, it is quiet.
- There was no input by the communities involved in respect to this proposal. While there may have been public meetings concerning the Comprehensive Plan in general, not one person in these two neighborhoods were aware of the specific proposal to connect the two roads. Had there been adequate notice, all would have opposed such a proposal.
- Ms. Dunn has commented that the road connection would facilitate emergency vehicle access during flooding where Wagleys Creek crosses Dyer Road. We feel that this flooding is so infrequent it does not warrant a significant risk. Further, this flooding is very shallow – two feet deep at a maximum, even in the most severe floods. This is the lowest point on Dyer Road. We feel this is more efficient and certainly less costly to fix than what the proposed road connection entails — that is purchasing property and building a road.
- We are fearful that such a connection would create a bypass for backed up east-bound traffic and completely destroy our current way of life and safety.
- The rationale for the proposed connection has no sound basis:
 - The Comprehensive Plan states the goal of the Transportation Plan section is to “in general, develop a local street grid – that provides flexible north-south and east-west access routes between the Sultan river valley, the plateau, and across SR-2”. The Dyer/Skywall connection really has nothing to do with this general statement and would not contribute in any meaningful way to accomplishing this goal.
 - The Plan further states in respect to the connection, “Complete an east-west connection of Dyer to Skywall Drive – to provide access for properties between BNSF tracks and the Skykomish River”. There is such access.

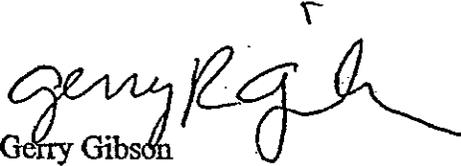
Sewer Connection to Dyer and Skywall Neighborhoods:

- While we all know that sewer lines are inevitable at some point, only two of the residents (same house) are in favor of sewers at this time.
- We all have working septic systems.
- All are concerned with the high costs of the connections and service.
- No one wants the pump station at 10th Street and Dyer Road.

- The current sewage treatment facilities are at near capacity and may not be able to accommodate projected development which mandates sewer systems.
- While there may have been notice and public meetings concerning the city's sewer system in general, not one person in these two neighborhoods was aware of this specific proposal. Had there been adequate notice, all would have not only opposed, but inquired as to other options and routes, especially with the location of the pump station.

Neither of these proposals is planned for immediate implementation and there has been no funding or budget implication. Nonetheless, we petition to have these deleted from the Plan. As our representatives, we ask that our wishes be considered.

Sincerely,



Gerry Gibson
1102 Dyer Road
Sultan, WA. 98294

PETITION FOR COMPREHENSIVE PLAN TRAFFIC AND SEWER UTILITY PLAN AMENDMENTS

Dear Mayor Tolson and City Council Members Seehuus, Champeaux, Blair, Slawson; Wiediger, Boyd, and Flower:

We the undersigned, residents of the Dyer and Skywall Neighborhoods, hereby petition the Mayor and City Council to Amend the current Transportation Plan (attached as Exhibit A) and Sewer Utility Map (attached as Exhibit B) of the ²⁰⁰⁴1994 Comprehensive Plan to:

1. Delete the Proposed Roadway Connection of Dyer Road and Skywall Drive as identified as Proposed Roadway Number 28 on the Transportation Plan Map; and
2. Delete the Proposed Sewer Pipeline Extensions in both Dyer Road and Skywall Drive and the Proposed Pump Station (Number 4) as shown on the Sewer Utility Map.

<u>NAME</u>	<u>ADDRESS</u>	<u>PHONE</u>
1. Ron Gibson	1100 Dyer	793-1175
2. Bruce Gibson	1100 Dyer	793-1175
3. Gerry Gibson	1102 Dyer Rd	799-1736
4. Bonnie Gibson	1102 Dyer Rd	799-1736
5. Stephen Spaulding	1104 Dyer Rd	793-1650
6. Cecil E. Spaulding	1104 Dyer Rd.	793-1650
7. Sybil Yates	1106 Dyer Rd	793-0649
9. John Porth	1108 Dyer Rd	799-0532
10. Linda Porth	1108 Dyer Rd	799-0532
11. Randy Yates	1106 DYER RD	7930649
12. Julie Menech	1112 Dyer Rd	793-9520
13. Craig Menech	"	"

14. Pat Heenstad 1114 Dyer Rd 793-0772
15. 1114 Dyer Rd 793-0772
16. A. L. Heenstad 1114 Dyer Rd 793-0772
17. Patricia M. Cooper 1116 Dyer Rd. 793-0773
18. Laura J. Cooper 1116 Dyer Rd 793-0773
19. Franky W. Gage 1118 Dyer 793-0941
20. Michelle D'Brax 1122 Dyer Rd 799-2013
21. Paul J. Parr 1125 Dyer Rd. 799-1324
22. Paul T. SA 1128 Dyer Rd. 793-3878
23. Levi Cushing 1121 Dyer Rd. 793 8646
24. Elaine Effenburger 1015 Dyer Rd 793-8552
25. Peggy E. Effenburger 1015 Dyer Rd 793-8552
26. Alissa Effenburger 1015 Dyer Rd 793-8552
27. Brian Smith 1015 Dyer Rd 793-8552
28. R. A. Smith 1017 Dyer Rd. 793-0315
29. Diana Tennison 1011 Dyer Rd ⁴²⁵ 508-8771
30. CHARLES SMITH 1011 DYER RD 425-508-8771
31. Joe Wagner 108 10th 360 793-1571
32. Deanna Wagner 108 10th St. 360 793 1571
33. Jamara Goodman 940 Stevens Ave 425 244-1297
34. Mark C. Lucas 940 Stevens Ave #5 (360) 793-4914
35. Arta Rose Lucas 940 Stevens Ave #5 (360) 793-4914
36. Efley Dingle 202-10th Str. (360) 793-0415
37. Steven L. Casad 205 10th St 360-794-5032
38. Yebra L. Casad 205 10th St 425-931-6817
39. Sharon L. Hubbell 1012 Dyer Rd. 360 793 4302
40. Marcy A. Bonds 1018 Dyer Rd 360-793-1188

PO Box 332 South

41. Richard J. Bender 1018 Dyer Road 793-1188
42. Joe Chomth 1101 Dyer 793 1905
43. George Chan 1019 Dyer 793-3280
44. John Chan 1019 Dyer 11
45. April R. Lubman 1017 Dyer 793-8865
46. Michael A. Mauer 1105 DYER RD. 793-9584
47. Shaver O. STOWER 1105 DYER 11 01
48. Eugene C. Humstad 1120 Dyer 793-1046
49. ^{Litsey} 1000 Dyer 793 1998
50. ROBERT A. BECK 1000 Dyer 793 1998
51. Steve Humstad 916 Dyer 793 2779
52. Michelle Grooms 915 Dyer 793-2779
53. Patryk Humstad 916 Dyer 793-2048
54. Robert D. Carpenter 914 Dyer 793-7811
55. James E. Martin 912 Dyer 793-3868
56. Carlene M. Martin 912 Dyer Rd. 793-3868
57. Camp Harry 908 Dyer Rd 794 0590
58. Royce Day 908 Dyer Rd 794 0590
59. James F. McNamee 902 Dyer Rd 793-3438
60. Kathy McNamee 902 Dyer Rd 793-3438

PETITION FOR COMPREHENSIVE PLAN TRAFFIC AND SEWER UTILITY PLAN AMENDMENTS

Dear Mayor Tolson and City Council Members Seehuus, Champeaux, Blair, Slawson; Wiediger, Boyd, and Flower:

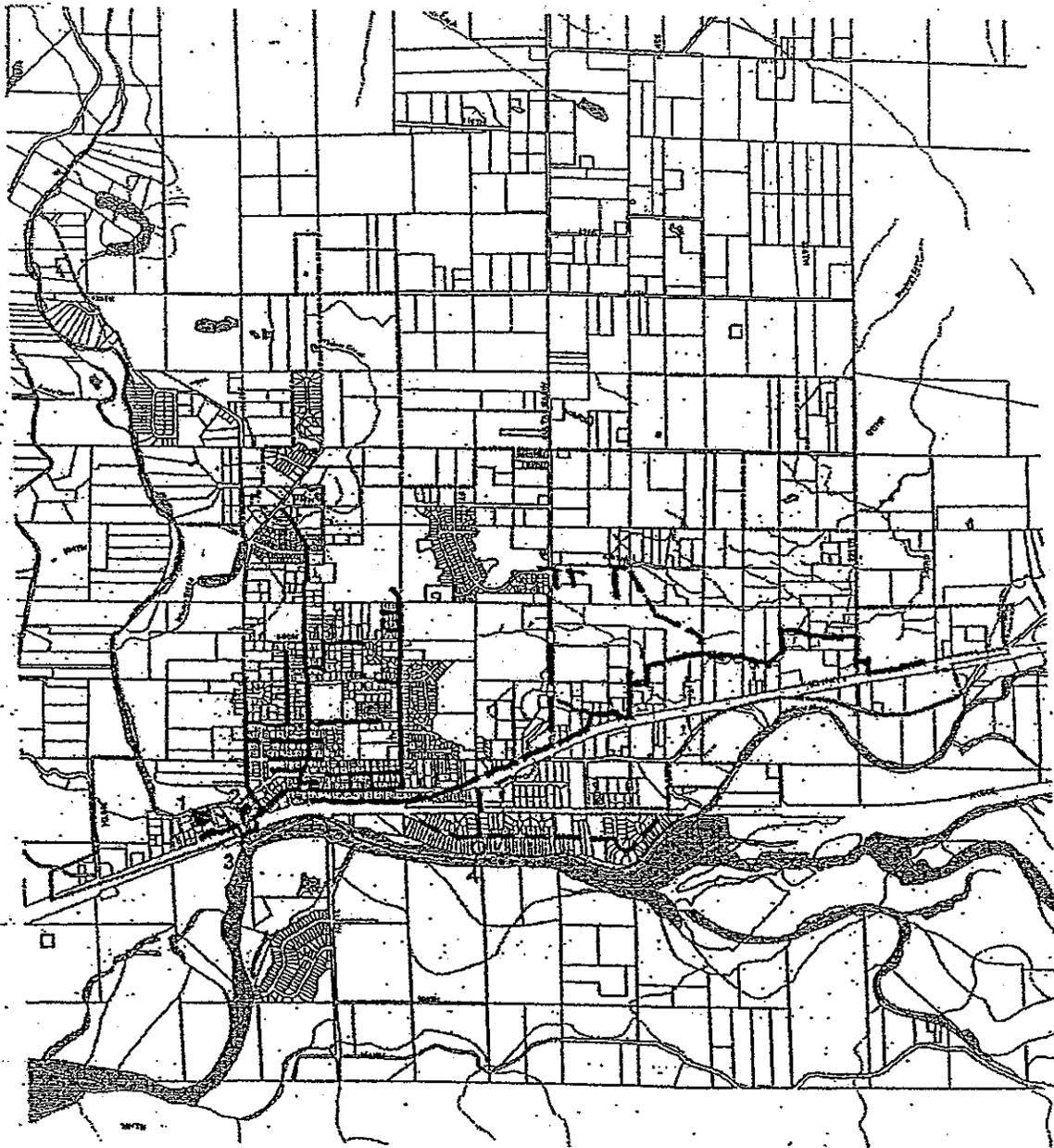
We the undersigned, residents of the Dyer and Skywall Neighborhoods, hereby petition the Mayor and City Council to Amend the current Transportation Plan (attached as Exhibit A) and Sewer Utility Map (attached as Exhibit B) of the ~~1994~~ ²⁰⁰⁴ Comprehensive Plan to:

1. Delete the Proposed Roadway Connection of Dyer Road and Skywall Drive as identified as Proposed Roadway Number 28 on the Transportation Plan Map; and
2. Delete the Proposed Sewer Pipeline Extensions in both Dyer Road and Skywall Drive and the Proposed Pump Station (Number 4) as shown on the Sewer Utility Map.

NAME	ADDRESS	PHONE
1. Kathy Wilson	900 Dyer Rd.	360-793-8823
2. Jeff Wilson	900 Dyer Rd.	360-793-8823
3. Frank Giese	812 Dyer Rd	360-793-3968
4. Cindy Giese	812 Dyer Rd	360-793-3968
5. Derek Murphy	811 Dyer Rd	360-793-3781
6. Dick Kerkley	907 Dyer Rd	360-793-1961
7. Kurt Kerkley	907 Dyer Rd	360-793-1901
9. Jim McFarland	913 Dyer	793-2011
10. Linda G. Werth	917 Dyer	360-793-2941
11. Jim A. Fulcher	204 10 th	360-793-1542
12. X. Paul Fulcher	204 10 th	360-793-1542
13. Jerome Shaw	1016 Dyer	360-799-1603

- 14. Robin Shaw 1016 Dyer Rd. 360-799-1603
- 15. Jimmy O'neal 1107 Dyer Road 360-793-8590
- 16. Jacob Hanstine 1107 Dyer Road 360-793-8590

- 17. _____
- 18. _____
- 19. _____
- 20. _____
- 21. _____
- 22. _____
- 23. _____
- 24. _____
- 25. _____
- 26. _____
- 27. _____
- 28. _____
- 29. _____
- 30. _____
- 31. _____
- 32. _____
- 33. _____
- 34. _____
- 35. _____
- 36. _____
- 37. _____
- 38. _____
- 39. _____
- 40. _____



Sewer utility

- Existing facilities
- 1 Sewage treatment plant
 - 2 Pump station
 - 3 Skykomish River outfall

- Proposed facilities
- 4 Pump station

- Sewer pipeline — existing
- - - Sewer pipeline — proposed

PETITION FOR COMPREHENSIVE PLAN TRAFFIC AND SEWER UTILITY PLAN AMENDMENTS

Dear Mayor Tolson and City Council Members Seehuus, Champeaux, Blair, Slawson; Wiediger, Boyd, and Flower:

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2. Delete the Proposed Sewer Pipeline Extensions in both Dyer Road and Skywall Drive and the Proposed Pump Station (Number 4) as shown on the Sewer Utility Map.

NAME	ADDRESS	PHONE
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1. <u>Al & Holdt</u>	<u>215 Skywall Dr</u>	<u>793-0127</u>
2. <u>Beverly Holdt</u>	<u>Same as above</u>	
3. <u>Christy Bunge</u>	<u>211 Skywall</u>	<u>793-3631</u>
4. <u>[Signature]</u>	<u>208 Skywall Dr.</u>	<u>425-374078</u>
5. <u>Charnie Olson</u>	<u>202 Skywall</u>	<u>793-8883</u>
6. <u>John Olson</u>	<u>202 Skywall</u>	<u>" "</u>
7. <u>Shirley Jackson</u>	<u>1306 SKYWALL DR.</u>	<u>" "</u>
8. <u>[Signature]</u>	<u>1303 SKYWALL DR</u>	<u>425-232-9697</u>
10. <u>Joni Deming</u>	<u>1305 Skywall Dr - na.</u>	
11. <u>R ZEE Zimmerman</u>	<u>1318 SKYWALL DR</u>	<u>0476</u>
12. <u>Paul Engler</u>	<u>1305 Skywall Dr</u>	
13. <u>[Signature]</u>	<u>1309 Skywall Dr</u>	

14. Jaime Geary 1309 Skywall Dr.
15. GORDON RIEMLAND 1309 SKYWALL DR
16. Kim Kenner 1315 Skywall Dr
17. Tim Kennedy 1315 Skywall Dr
18. Diana A. Lucas 1317 Skywall Dr
19. Jim Lucas 1317 skywall Dr
20. J. W. Petersen 1319 " "
21. Christi Darke-Mallow 1322 Skywall Dr
22. Ray Mallow 1322 SKYWALL DR
23. Marnie Martin 209 Skywall Dr
24. Harry Marshall 209 Skywall Dr
25. Kathryn Anderson 212 Skywall Dr
26. Val Anderson 212 Skywall Dr.
27. Greg Udey 210 SKYWALL DR.
28. Andi Cross 1306 Skywall Dr.
29. Michael Cross 1300 Skywall Dr.
30. Lindsey Wideman 1330 Skywall dr.
31. ~~William~~ ~~Booth~~ 204 Skywall Dr.
32. James G. Stiles 205 Skywall Dr.
33. Wendy R. Stiles 205 Skywall Dr.
34. ~~Hall~~ 203 Skywall Dr.
35. Ray George 1304 Skywall Dr.
36. ~~Ray~~ ~~George~~ 1304 Skywall Dr.
37. Paul Kirkman 200 Skywall Dr
38. Terri Hendley 1312 SKY DR.
39. Melony George 203 Skywall
40. Scott George 203 Skywall

- | | | |
|-----|--------------------|--------------|
| 41. | Paul George | 203 Skywall |
| 42. | Phil L. Smith | 219 Skywall |
| 43. | Nelson B Everett | 219 Skywall |
| 44. | Ron Jackson | 1306 Skywall |
| 45. | Joanne Neuwenthuis | 1310 Skywall |
| 46. | Dorah Neuwenthuis | 1312 Skywall |
| 47. | Charles Binge | 1310 Skywall |
| 48. | Charlene Binge | 211 Skywall |
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RECEIVED
JUL 02 2007

BY: [Signature]

City of Sultan, Planning Department
P.O. Box 1199 - 319 Main Street
Sultan, WA 98294-1199
(360) 793-2231 FAX (360) 793-3344

Comprehensive Plan Amendment Petition

Date Received: _____

Type of Amendment – Please Check

Rezoning Application Required: _____

_____ Policy

_____ Map

_____ Regulation

Plan

_____ Other (Please specify) _____

Proponent Information:

Name: City of Sultan

Address: 319 Main Street, Sultan WA 98294

Phone/Fax: 360-793-2231 E-Mail: _____

Amendment Information: The merits of a proposed amendment shall be measured against the petition submittal requirements listed below to ensure consistency in the review and decision making. Please provide the following information (attach additional pages if necessary):

1. A detailed statement of what is proposed to be changed and why. landuse
Land Use Element: Review the goals and policies, land use map, and future zoning map. Determine if the Land Use Element adequately expresses and supports the community's vision for the future of Sultan
Economic (Development) Element: Review the goals and policies, desired levels of job growth, commercial and industrial expansion, integrated strategy, local economy, identification of policies, programs and projects. Determine if the Economic (Development) Element adequately expresses and supports the community's vision for the future of Sultan.
Amend other Comprehensive Plan Elements as necessary to be consistent with changes to the Land Use Element and Economic (Development) Element.

Exhibit 4-1

2. A statement of anticipated impacts to be caused by the change, including geographic area affected and issues presented and why.

The proposed review of the Land Use and Economic Elements of the Comprehensive Plan may change the physical location, density, and timing of commercial, industrial and residential growth within the City limits of Sultan. This may in turn affect the timing and size of capital improvements including water, waste water, stormwater, transportation and other infrastructure investments.

3. A demonstration of why an existing comprehensive plan policy, plan or recommendation should not continue to be in effect or why an existing, plan or recommendation no longer applies.

The City's 2004 Comprehensive Plan is built on a "phased growth" strategy and specific implementation actions such as: 1) Coordinate overall growth policies so that residential development follows rather than precedes economic development and Sultan's ability to pay for increased and improved school, fire, aid, police and other urban services; 2) Phased delivery of utility services so that Sultan public services and facilities can be coordinated in advance of each area's development needs; 3) Do not over expand the City limits or allow major additional residential development within the Urban Growth Area; 4) Limit potential population growth that could occur from development or annexation within City boundaries; 5) Complete development of the available lands that are within present City limits; 6) Prioritize planning unit development phasing sequence and phase the approval of land use changes and utility capacities to avoid overloading or over extending sewage collection and wastewater treatment plant capacities.

The "phased growth" strategy appears to be contrary to current market conditions. The primary focus in Sultan is residential development rather than commercial development. Commercial developers have reported that Sultan needs additional residential development ("rooftops") in order to attract commercial development. The City should evaluate whether the "phased growth" strategy is an economically feasible and realistic strategy both in the short-term (2-5 years) and in the long-term (10-20 years).

4. A statement of how the amendment complies with the comprehensive plan's community vision statements, goals, objectives, and policy directives.

The proposed amendment seeks to implement the underlying community vision to maintain a small town feeling, emphasize recreation opportunities, improve the visual image of the City, diversity services so the shopping needs of Sultan residents can be met within the city, encourage small business, and accommodate clean industry.

The proposed amendment requests consideration to amend the goals, objectives, and policy directives to achieve the community vision while being mindful of the larger regional economy and market forces outside the control of the City of Sultan.

5. A statement of how facility plans and capital improvement plans support the change.

The current facility plans and capital improvement plans support the current growth strategy. Changing the growth strategy will require a review and possible amendment of the Capital Facilities Element and Capital Improvement Plan. Fiscal impacts will be evaluated.

The proposed amendment will use information derived from traffic modeling to describe the effects of proposed roadway and transit changes, reflecting the growth levels and distribution patterns on vehicular traffic and congestion. It may include an analysis of the City's ability to meet level of service standards given the proposed distribution and land uses under consideration.

The proposed amendment may require evaluating the relative effects of different growth strategies on the City's and other provider's ability to ensure adequate services to meet demand generated not only by the amount of residential and commercial growth, but also by the distribution of that growth. In particular, impacts on sewer, water, recreation facilities, school, police and fire services.

6. A statement of how the change affects land use regulations (i.e. zoning, subdivision, etc.) and the necessary text changes to bring the land use regulations into compliance with the plan.

The proposed amendment will evaluate the impacts caused by changes to the Comprehensive Plan and zoning maps, including the effects on development capacity – the theoretical number of housing units and jobs allowed by the zoning. The amendment may require describing the number and types of jobs and housing units that could be available under different growth strategies, and how the strategies meet the City's housing and economic development goals.

The amendment may address the overall visual effects that could result from urban design components such as transition zones and the use of open space. Chapter 16 of the Sultan Municipal Code may be amended to implement changes in the growth strategies.

7. A demonstration of public review of the recommended change.

The Planning Board discussed the annual Comprehensive Plan docket, including the proposed amendment to the Comprehensive Plan growth strategies, at its June 5, and June 26, 2007 meetings. Public comment at the June 5, 2007 meeting was generally favorable toward revising the growth strategies. At its June 26, 2007 meeting, the Planning Board recommended moving the proposed amendment forward to the City Council for its consideration. There was no public present at the Planning Board's June 26 meeting.

The City Council discussed Comprehensive Plan amendment applications at its June 11, 2007 meeting. There was no public comment regarding the proposal at the time.

In private discussions, public comment is generally in support of the proposed amendment.

8. A statement of how the public should participate in your proposed amendment.

City staff propose using a variety of tools to encourage public participation including: forming a citizens advisory panel representing community stakeholders to make recommendations to the Planning Board; holding open housing and Town Meetings to gather community input early in the process to guide the Advisory Panel; establishing a regular reporting schedule back to the Planning Board, City Council and community to ensure two-way communication. The City will send flyers, mailers and other direct mail communication to solicit input and keep the community informed at key milestones.

9. An estimated time frame or schedule necessary to complete the amendment.

4th Quarter 2007: Visioning – strategic interviews, growth options, public involvement and City Council direction.

1st Quarter 2008: Project scoping

1st Quarter – 4th Quarter 2008: Environmental Impact Statement – Review Comprehensive Plan elements, Draft EIS, public comments, Final EIS, Issue EIS

2nd Quarter 2008-2nd Quarter 2009: Comprehensive Plan amendments, public notice, public meetings, Planning Board and City Council updates, final adoption

10. An estimate cost to complete the amendment in consideration of staff time, consultant services, printing, mapping, public notices and information, etc.

2008 - \$75,000 to \$100,000

2009 - \$25,000 to \$30,000

11. Will a Citizen's Advisory Committee or Technical Advisory Committee acting as a subcommittee of the Planning Commission be necessary to evaluate the amendment?

Yes: X

No:

If Yes:

A. What are your recommendations for a membership on the committee?

Cross-section of community stakeholders including Planning Board, citizen group representation (e.g. Jeff Kirkman, Gerry Gibson, Loretta Storm, Kerry Ourada, etc.), chamber of commerce, home owners association president, school board, fire district, Sno-isle library.

11. Continued.

B. How and when will the meetings be conducted?

After regular business hours – Monday through Friday. City staff will provide support and liaison functions.

C. How will the City Council and Planning Commission be advised of the Committee's Progress?

City staff will develop a meeting schedule with regular milestones and check-in opportunities with the City Council and Planning Board. Planning Board and Council liaison positions on the Citizen Advisory Panel will also create communication opportunities.

D. How will the public participate in the Committee meetings?

The meetings will be open to the public and advertised on the City's website and utility billing statements.

12. A detailed statement describing how the map amendment complies with the Comprehensive Plan Land Use Element (for map amendment only).

N/A

RECEIVED
JUL 02 2007

BY: *[Signature]*
City of Sultan, Planning Department
P.O. Box 1199 - 319 Main Street
Sultan, WA 98294-1199
(360) 793-2231 FAX (360) 793-3344

**Comprehensive
Plan Amendment
Petition**

Date Received: _____

Type of Amendment – Please Check

Rezone Application Required: _____

- Policy
- Map
- Regulation
- Plan
- Other (Please specify) _____

Proponent Information:

Name: RUSTY DRIVSTUEN

Address: 33902 SE 2 Sultan WA 98297

Phone/Fax: 425 330 4117 E-Mail: _____

Amendment Information: The merits of a proposed amendment shall be measured against the petition submittal requirements listed below to ensure consistency in the review and decision making. Please provide the following information (attach additional pages if necessary):

1. A detailed statement of what is proposed to be changed and why.

SEE ATTACHED.

2. A statement of anticipated impacts to be caused by the change, including geographic area affected and issues presented and why.

SEE ATTACHED

3. A demonstration of why an existing comprehensive plan policy, plan or recommendation should not continue to be in effect or why an existing, plan or recommendation no longer applies.

SEE ATTACHED

4. A statement of how the amendment complies with the comprehensive plan's community vision statements, goals, objectives, and policy directives.

SEE ATTACHED

5. A statement of how facility plans and capital improvement plans support the change.

SEE ATTACHED

6. A statement of how the change affects land use regulations (i.e. zoning, subdivision, etc.) and the necessary text changes to bring that land use regulations into compliance with the plan.

SEE ATTACHED

7. A demonstration of public review of the recommended change.

SEE ATTACHED

8. A statement of how the public should participate in your proposed amendment.

SEE ATTACHED

9. An estimated time frame or schedule necessary to complete the amendment.

SEE ATTACHED

10. An estimate cost to complete the amendment in consideration of staff time, consultant services, printing, mapping, public notices and information, etc.

SEE ATTACHED

11. Will a Citizen's Advisory Committee or Technical Advisory Committee acting as a subcommittee of the Planning Commission be necessary to evaluate the amendment?

Yes: _____

No: _____

If Yes:

A. What are your recommendations for a membership on the committee?

NA

11. Continued.

B. How and when will the meetings be conducted?

NA

C. How will the City Council and Planning Commission be advised of the Committee's Progress?

NA

D. How will the public participate in the Committee meetings?

NA

12. A detailed statement describing how the map amendment complies with the Comprehensive Plan Land Use Element (for map amendment only).

NA

1.

Remove the implementation action which states, 'Do not expand city limits or allow major additional residential development within the urban growth area boundaries – until or unless the economic/fiscal strategies produce public tax revenues sufficient to support additional urban populations and services'. *The fact is that residential growth provides for economic growth, additional tax revenues, jobs, new business's, and increased spending. Without expanding the city limits and allowing major additional residential development, our town will remain in a 'stall' position. Why make business' suffer? The action plan should be to grow residential development at a solid pace.*

Remove the implementation action which states, 'Limit potential population growth that could occur from development or annexation within city boundaries – until or unless an employment and tax base has been created'. *The word 'limit' is not defined, and can only create confusion. Population growth creates employment and tax base. Starbucks, Rite Aid, and the like are not coming to Sultan until the demographics show a strong enough population base to serve. The more rooftops, the happier they and others are to come to our town. I don't believe the true goal of Sultan is to limit population growth until an employment and tax base is here. That goal is unrealistic and backwards.*

Remove the implementation action which states, 'Complete development – of the available lands that are within present city limits'. *A great amount of the land in the city limits is very poor development ground due to critical areas, wetlands, streams, and poor soils. And, many older residents do not wish to develop their land at all. There is no definition of 'available', so we can only guess at its meaning. The City of Sultan needs more good quality ground to be brought in from the UGA, into the City.*

Remove the following from the Public Services section; Goal: Quality and Availability – '2 Growth Management: Coordinate overall growth policies so that residential development follows rather than precedes economic development and Sultan's ability to provide tax revenues sufficient to pay for increased and improved school, fire, aid, police, and other urban services.' *I believe residential growth is critical to the success of economic development in Sultan. Residential development does not follow economic development, rather it is the opposite: economic development follows residential growth.*

Remove the following from the Public Services section: Goal: Quality and Availability – '3 Phasing: Phase delivery of utility services to planning units with major population growth potential so that Sultan public services and facilities can be coordinated in advance of each area's development needs.' *This is an unrealistic planning goal, since City Planners can only guess as to which areas of the City might grow. Each property owner/ developer has there own plans and timeframe. The City should react in a positive way to those property owners that wish to develop their lands, problem solving to provide utility services to them in as practical and efficient way as possible.*

EXHIBIT 6
2005 COMPREHENSIVE PLAN DOCKETING REQUESTS

1. Review Appendix B: Level of Service (LOS) for Transportation, Parks, Police, water and wastewater etc. to determine if our current standards are adequate and reasonable.
2. Incorporate Sultan School District CFP.
3. Refine Park Element.
4. Incorporate 2006 Capital Facility Plan Update.
5. Update Map Folio.
6. Review of the State Route 2 zoning designations requested by Mr. Dalmasso will be considered upon completion of our current Comprehensive Plan Update effort.

EXHIBIT 7
2007 COMPREHENSIVE PLAN DOCKETING REQUESTS

1. Remove the implementation actions which state: "Do not expand city limits or allow major additional residential development within the urban growth area boundaries until or unless the economic fiscal strategies produce public tax revenues sufficient to support additional urban population and services.
2. Limit potential population growth that could occur from development or annexation within city boundaries until or unless an employment and tax base has been created.
3. Complete development of the available lands that within the present city limits.
4. Remove the following from the Public Services Section: Goal: "Quality and Availability-Growth Management: Coordinate overall growth policies so that residential development follows rather than precedes economic development and Sultan's ability to provide tax revenues sufficient to pay for increased and improved school, fire, aid, police, and other urban services.
5. Remove the following from the Public Services Section: "Goal: Quality and Availability 3 Phasing: Phase delivery of utility services to planning units with major population growth potential so that Sultan public services and facilities can be coordinated in advance of each area's development needs."
6. Revise Section 5 Growth Management Policies 6, Growth Management Priorities and 7 Infrastructure service policies to assure that these goals are consistent with growing residential presence in Sultan.
7. Remove the Police Level-of-Service from the Comprehensive Plan.
8. Address the Transportation Improvement Plan (TIP) and Capital Facility Plan (CFP).

RCW 36.70A.130**Comprehensive plans -- Review procedures and schedules -- Amendments.**

(1)(a) Each comprehensive land use plan and development regulations shall be subject to continuing review and evaluation by the county or city that adopted them. Except as otherwise provided, a county or city shall take legislative action to review and, if needed, revise its comprehensive land use plan and development regulations to ensure the plan and regulations comply with the requirements of this chapter according to the time periods specified in subsection (4) of this section.

(b) Except as otherwise provided, a county or city not planning under RCW 36.70A.040 shall take action to review and, if needed, revise its policies and development regulations regarding critical areas and natural resource lands adopted according to this chapter to ensure these policies and regulations comply with the requirements of this chapter according to the time periods specified in subsection (4) of this section. Legislative action means the adoption of a resolution or ordinance following notice and a public hearing indicating at a minimum, a finding that a review and evaluation has occurred and identifying the revisions made, or that a revision was not needed and the reasons therefor.

(c) The review and evaluation required by this subsection may be combined with the review required by subsection (3) of this section. The review and evaluation required by this subsection shall include, but is not limited to, consideration of critical area ordinances and, if planning under RCW 36.70A.040, an analysis of the population allocated to a city or county from the most recent ten-year population forecast by the office of financial management.

(d) Any amendment of or revision to a comprehensive land use plan shall conform to this chapter. Any amendment of or revision to development regulations shall be consistent with and implement the comprehensive plan.

(2)(a) Each county and city shall establish and broadly disseminate to the public a public participation program consistent with RCW 36.70A.035 and 36.70A.140 that identifies procedures and schedules whereby updates, proposed amendments, or revisions of the comprehensive plan are considered by the governing body of the county or city no more frequently than once every year. "Updates" means to review and revise, if needed, according to subsection (1) of this section, and the time periods specified in subsection (4) of this section or in accordance with the provisions of subsections (5) and (8) of this section. Amendments may be considered more frequently than once per year under the following circumstances:

(i) The initial adoption of a subarea plan that does not modify the comprehensive plan policies and designations applicable to the subarea;

(ii) The adoption or amendment of a shoreline master program under the procedures set forth in chapter 90.58 RCW;

(iii) The amendment of the capital facilities element of a comprehensive plan that occurs concurrently with the adoption or amendment of a county or city budget;

(iv) Until June 30, 2006, the designation of recreational lands under *RCW 36.70A.1701. A county amending its comprehensive plan pursuant to this subsection (2)(a)(iv) may not do so more frequently than every eighteen months; and

(v) The adoption of comprehensive plan amendments necessary to enact a planned action under RCW 43.21C.031(2), provided that amendments are considered in accordance with the public

Exhibit B-1

participation program established by the county or city under this subsection (2)(a) and all persons who have requested notice of a comprehensive plan update are given notice of the amendments and an opportunity to comment.

(b) Except as otherwise provided in (a) of this subsection, all proposals shall be considered by the governing body concurrently so the cumulative effect of the various proposals can be ascertained. However, after appropriate public participation a county or city may adopt amendments or revisions to its comprehensive plan that conform with this chapter whenever an emergency exists or to resolve an appeal of a comprehensive plan filed with a growth management hearings board or with the court.

(3)(a) Each county that designates urban growth areas under RCW 36.70A.110 shall review, at least every ten years, its designated urban growth area or areas, and the densities permitted within both the incorporated and unincorporated portions of each urban growth area. In conjunction with this review by the county, each city located within an urban growth area shall review the densities permitted within its boundaries, and the extent to which the urban growth occurring within the county has located within each city and the unincorporated portions of the urban growth areas.

(b) The county comprehensive plan designating urban growth areas, and the densities permitted in the urban growth areas by the comprehensive plans of the county and each city located within the urban growth areas, shall be revised to accommodate the urban growth projected to occur in the county for the succeeding twenty-year period. The review required by this subsection may be combined with the review and evaluation required by RCW 36.70A.215.

(4) The department shall establish a schedule for counties and cities to take action to review and, if needed, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of this chapter. Except as provided in subsections (5) and (8) of this section, the schedule established by the department shall provide for the reviews and evaluations to be completed as follows:

(a) On or before December 1, 2004, and every seven years thereafter, for Clallam, Clark, Jefferson, King, Kitsap, Pierce, Snohomish, Thurston, and Whatcom counties and the cities within those counties;

(b) On or before December 1, 2005, and every seven years thereafter, for Cowlitz, Island, Lewis, Mason, San Juan, Skagit, and Skamania counties and the cities within those counties;

(c) On or before December 1, 2006, and every seven years thereafter, for Benton, Chelan, Douglas, Grant, Kittitas, Spokane, and Yakima counties and the cities within those counties; and

(d) On or before December 1, 2007, and every seven years thereafter, for Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman counties and the cities within those counties.

(5)(a) Nothing in this section precludes a county or city from conducting the review and evaluation required by this section before the time limits established in subsection (4) of this section. Counties and cities may begin this process early and may be eligible for grants from the department, subject to available funding, if they elect to do so.

(b) A county that is subject to a schedule established by the department under subsection (4)(b) through (d) of this section and meets the following criteria may comply with the requirements of this section at any time within the thirty-six months following the date established in the applicable schedule: The county has a population of less than fifty thousand and has had its population increase by

no more than seventeen percent in the ten years preceding the date established in the applicable schedule as of that date.

(c) A city that is subject to a schedule established by the department under subsection (4)(b) through (d) of this section and meets the following criteria may comply with the requirements of this section at any time within the thirty-six months following the date established in the applicable schedule: The city has a population of no more than five thousand and has had its population increase by the greater of either no more than one hundred persons or no more than seventeen percent in the ten years preceding the date established in the applicable schedule as of that date.

(d) State agencies are encouraged to provide technical assistance to the counties and cities in the review of critical area ordinances, comprehensive plans, and development regulations.

(6) A county or city subject to the time periods in subsection (4)(a) of this section that, pursuant to an ordinance adopted by the county or city establishing a schedule for periodic review of its comprehensive plan and development regulations, has conducted a review and evaluation of its comprehensive plan and development regulations and, on or after January 1, 2001, has taken action in response to that review and evaluation shall be deemed to have conducted the first review required by subsection (4)(a) of this section. Subsequent review and evaluation by the county or city of its comprehensive plan and development regulations shall be conducted in accordance with the time periods established under subsection (4)(a) of this section.

(7) The requirements imposed on counties and cities under this section shall be considered "requirements of this chapter" under the terms of RCW 36.70A.040(1). Only those counties and cities: (a) Complying with the schedules in this section; (b) demonstrating substantial progress towards compliance with the schedules in this section for development regulations that protect critical areas; or (c) complying with the extension provisions of subsection (5)(b) or (c) of this section may receive grants, loans, pledges, or financial guarantees from those accounts established in RCW 43.155.050 and 70.146.030. A county or city that is fewer than twelve months out of compliance with the schedules in this section for development regulations that protect critical areas is making substantial progress towards compliance. Only those counties and cities in compliance with the schedules in this section may receive preference for grants or loans subject to the provisions of RCW 43.17.250.

(8) Except as provided in subsection (5)(b) and (c) of this section:

(a) Counties and cities required to satisfy the requirements of this section according to the schedule established by subsection (4)(b) through (d) of this section may comply with the requirements of this section for development regulations that protect critical areas one year after the dates established in subsection (4)(b) through (d) of this section;

(b) Counties and cities complying with the requirements of this section one year after the dates established in subsection (4)(b) through (d) of this section for development regulations that protect critical areas shall be deemed in compliance with the requirements of this section; and

(c) This subsection (8) applies only to the counties and cities specified in subsection (4)(b) through (d) of this section, and only to the requirements of this section for development regulations that protect critical areas that must be satisfied by December 1, 2005, December 1, 2006, and December 1, 2007.

(9) Notwithstanding subsection (8) of this section and the substantial progress provisions of subsections (7) and (10) of this section, only those counties and cities complying with the schedule in subsection (4) of this section, or the extension provisions of subsection (5)(b) or (c) of this section, may

5-3

receive preferences for grants, loans, pledges, or financial guarantees from those accounts established in RCW 43.155.050 and 70.146.030.

(10) Until December 1, 2005, and notwithstanding subsection (7) of this section, a county or city subject to the time periods in subsection (4)(a) of this section demonstrating substantial progress towards compliance with the schedules in this section for its comprehensive land use plan and development regulations may receive grants, loans, pledges, or financial guarantees from those accounts established in RCW 43.155.050 and 70.146.030. A county or city that is fewer than twelve months out of compliance with the schedules in this section for its comprehensive land use plan and development regulations is deemed to be making substantial progress towards compliance.

[2006 c 285 § 2. Prior: 2005 c 423 § 6; 2005 c 294 § 2; 2002 c 320 § 1; 1997 c 429 § 10; 1995 c 347 § 106; 1990 1st ex.s. c 17 § 13.]

NOTES:

***Reviser's note:** RCW 36.70A.1701 expired June 30, 2006.

Intent -- 2006 c 285: "There is a statewide interest in maintaining coordinated planning as called for in the legislative findings of the growth management act, RCW 36.70A.010. It is the intent of the legislature that smaller, slower-growing counties and cities be provided with flexibility in meeting the requirements to review local plans and development regulations in RCW 36.70A.130, while ensuring coordination and consistency with the plans of neighboring cities and counties." [2006 c 285 § 1.]

Intent -- Effective date -- 2005 c 423: See notes following RCW 36.70A.030.

Intent -- 2005 c 294: "The legislature recognizes the importance of appropriate and meaningful land use measures and that such measures are critical to preserving and fostering the quality of life enjoyed by Washingtonians. The legislature recognizes also that the growth management act requires counties and cities to review and, if needed, revise their comprehensive plans and development regulations on a cyclical basis. These requirements, which often require significant compliance efforts by local governments are, in part, an acknowledgment of the continual changes that occur within the state, and the need to ensure that land use measures reflect the collective wishes of its citizenry.

The legislature acknowledges that only those jurisdictions in compliance with the review and revision schedules of the growth management act are eligible to receive funds from the public works assistance and water quality accounts in the state treasury. The legislature further recognizes that some jurisdictions that are not yet in compliance with these review and revision schedules have demonstrated substantial progress towards compliance.

The legislature, therefore, intends to grant jurisdictions that are not in compliance with requirements for development regulations that protect critical areas, but are demonstrating substantial progress towards compliance with these requirements, twelve months of additional eligibility to receive grants, loans, pledges, or financial guarantees from the public works assistance and water quality accounts in the state treasury. The legislature intends to specify, however, that only counties and cities in compliance with the review and revision schedules of the growth management act may receive preference for financial assistance from these accounts." [2005 c 294 § 1.]

Effective date -- 2005 c 294: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 5, 2005]." [2005 c 294 § 3.]

8-4

Prospective application -- 1997 c 429 §§ 1-21: See note following RCW 36.70A.3201.

Severability -- 1997 c 429: See note following RCW 36.70A.3201.

Finding -- Severability -- Part headings and table of contents not law -- 1995 c 347: See notes following RCW 36.70A.470.

RCW 36.70A.130(2) does not apply to master planned locations in industrial land banks: RCW 36.70A.367(5).

8-5

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**CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD**
State of Washington

RECEIVED

SEP 06 2007

WGB, INC., P.S.

JOCELYNNE FALLGATTER,)
)
Petitioner)
)
v.)
)
CITY OF SULTAN,)
)
Respondent)

CPSGMHB Case No. 07-3-0017
(Fallgatter IX)

FINAL DECISION and ORDER

SYNOPSIS

In December 2006, the City of Sultan adopted Ordinance No. 942-06, which put in place the updated Capital Facilities Element of the City's Comprehensive Plan, concurrently with the adoption of the City's Budget for Fiscal year 2007. Petitioner's challenge alleges that the ordinance did not satisfy the Growth Management Act's (GMA) requirements for the Capital Facility Elements (CFE) - RCW 36.70A.070(3), and several Goals of the GMA, specifically RCW 36.70A.020(1), (3), (7), and (12).

*The Board found that the Petitioner had carried the burden of proof in demonstrating that the City of Sultan's CFE did not comply with GMA requirements since it did not include LOS standards to support the needs assessment; it did not demonstrate that there would be adequate public facilities and services, most notably sanitary sewer, available to serve the urban growth area during the planning period; and that the City, admitting a funding shortfall, did not reassess its land use element or take other measures to maintain consistency. The Board found that the City's action was **clearly erroneous** and that Ordinance 942-06 substantially interfered with the fulfillment of Goal 12; thus the Board invalidated Ordinance 942-06. The Ordinance was remanded to the City, and a compliance schedule was established within which the City was directed to achieve compliance with the Act.*

I. BACKGROUND¹

On February 12, 2007, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Jocelynn Fallgatter (**Petitioner** or

¹ See Appendix A for a full procedural background.

² 07317 Fallgatter IX v. City of Sultan (September 5, 2007)

³ 07-3-0017 Final Decision and Order

Exhibit 9-1

1 **Fallgatter**). The matter was assigned Case No. 07-3-0017, and is hereafter referred to as
2 *Fallgatter IX v. City of Sultan*. Board member David O. Earling is the Presiding Officer (**PO**)
3 for this matter. Petitioner challenges the City of Sultan's (**Respondent** or **the City**) adoption of
4 Ordinance 942-06. The basis for the challenge is noncompliance with various provisions of the
5 Growth Management Act (**GMA** or **Act**).
6

7 No dispositive motion was filed in this matter.
8

9 In June and July, the Board received prehearing briefing and exhibits from the parties. The
10 following references are used throughout this Final Decision and Order:
11

- 12 ▪ Petitioner Fallgatter's Prehearing Brief – **Petitioner's PHB**
- 13 ▪ Respondent City of Sultan's Prehearing Response Brief – **City's Response**
- 14 ▪ Petitioner Fallgatter's Reply Brief – **Petitioner's Reply**

15
16 Subsequent to the granting of a settlement extension, on July 26, 2007, the Board convened the
17 Hearing on the Merits at the Board offices. Board member David Earling presided, with Board
18 members Ed McGuire and Margaret Pageler in attendance. Board Law Clerk Julie Taylor, was
19 also in attendance. Petitioner Jocelynn Fallgatter appeared pro se. Respondent City of Sultan
20 was represented by its attorney, Thom Graafstra, accompanied by City Administrator Deborah
21 Knight. Court reporting services were provided by Barbara Castrow of Byers and Anderson.
22 The hearing was adjourned at 11:44 a.m.
23
24

25
26 **II. PRESUMPTION OF VALIDITY, BURDEN OF PROOF, STANDARD OF**
27 **REVIEW and DEFERENCE TO LOCAL JURISDICTIONS**
28

29
30 Comprehensive plans and development regulations, and amendments thereto, adopted by a City
31 pursuant to the GMA, are presumed valid upon adoption. RCW 36.70A.320(1). The burden is
32 on the Petitioner to demonstrate that the action taken by the City is not in compliance with the
33 Act. RCW 36.70A.320(2).
34

35 Pursuant to RCW 36.70A.320(3), the Board "shall find compliance unless it determines that the
36 action taken by the City is clearly erroneous in view of the entire record before the board and in
37 light of the goals and requirements of [the GMA]." For the Board to find the City's actions
38 clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake
39 has been made." *Dep't of Ecology v. PUD 1*, 121 Wn.2d 179, 201 (1993).
40

41 The GMA affirms that local jurisdictions have discretion in adapting the requirements of the
42 GMA to local circumstances and that the Board shall grant deference to local decisions that
43 comply with the goals and requirements of the Act. RCW 36.70A.3201. Pursuant to RCW
44 36.70A.3201, the Board will grant deference to the City in how it plans for growth, provided that
45 its policy choices are consistent with the goals and requirements of the GMA. The State
46 Supreme Court's most recent delineation of this required deference states: "We hold that
47
48

9.2

1 deference to [county] planning actions that are consistent with the goals and requirements of the
2 GMA . . . cedes only when it is shown that a county's planning action is in fact a 'clearly
3 erroneous' application of the GMA." *Quadrant Corporation, et al., v. State of Washington*
4 *Growth Management Hearings Board*, 154 Wn.2d 224, 248, 110 P.3d 1132 (2005).

5
6 The *Quadrant* decision is in accord with prior rulings that "Local discretion is bounded . . . by
7 the goals and requirements of the GMA." *King County v. Central Puget Sound Growth*
8 *Management Hearing Board (King County)*, 142 Wn.2d 543, 561, 14 P.3d 133, 142 (2000). As
9 the Court of Appeals explained, "Consistent with *King County*, and notwithstanding the
10 'deference' language of RCW 36.70A.3201, the Board acts properly when it foregoes deference
11 to a . . . plan that is not 'consistent' with the requirements and goals of the GMA." *Cooper*
12 *Point Association v. Thurston County*, 108 Wn. App. 429, 444, 31 P.3d 28 (2001); *affirmed*
13 *Thurston County v. Western Washington Growth Management Hearings Board*, 148 Wn2d 1, 15,
14 57 P.3rd 1156 (2002); *Quadrant*, 154 Wn.2d 224, 240.

15
16
17 The scope of the Board's review is limited to determining whether a jurisdiction has achieved
18 compliance with the GMA with respect to those issues presented in a timely petition for review.

19
20 **III. BOARD JURISDICTION and PREFATORY NOTE**

21
22 **A. BOARD JURISDICTION**

23
24 The Board finds that the PFR was timely filed, pursuant to RCW 36.70A.290(2). The Petitioner
25 has standing to appear before the Board, pursuant to RCW 36.70A.280(2), and the Board has
26 subject matter jurisdiction over the challenged action - Ordinance 942-06, adopting an amended
27 and updated capital facilities element of the City's comprehensive plan, pursuant to RCW
28 36.70A.020(1), (3), (7) and (12) and RCW 36.70A.070.

29
30
31 **B. PREFATORY NOTE**

32
33 Preliminary Matters

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35
36 At the Hearing on the Merits, the Board reaffirmed its ruling on the Petitioner's Motion to
37 Supplement in regard to the City Hearing Examiner's opining on level-of-service issues, HOM
38 Transcript, at 4. In addition, with her Reply Brief, the Petitioner moved to supplement the
39 Record with an *Everett Herald* newspaper article regarding funding shortfalls for the City.
40 Petitioner's Reply, at 18. The Board denied admission of this item. *Id.*

41
42 Challenged Action

43
44
45 In response to this Board's Order in *Fallgatter v. Sultan*, CPSGMHB Case No. 06-3-0003 (June
46 29, 2006), on December 14, 2006, the City amended its Capital Facilities Element by adopting
47 an updated 6-year Capital Facilities Plan (CFP) and incorporating that document as the Capital
48

49 07317 *Fallgatter LX v. City of Sultan* (September 5, 2007)

50 07-3-0017 Final Decision and Order

Page 3 of 21

9.3

1 Facilities Element of the City's Comprehensive Plan.² Core Document, Sultan Comprehensive
2 Plan, Appendix D. The CFP notes that its purpose is to determine the availability of existing
3 capital facilities, forecast future needs for such facilities based upon land use and population
4 growth statistics and to determine how such facilities will be financed over the next six years
5 and focuses on facilities owned and operated by the City (water, sewer, streets, and stormwater)
6 with separate facility plans prepared and incorporated by reference for some of these facilities
7 (i.e. General Water Plan, General Sewer Plan). The CFP defines a:

9
10 "Capital facility is any publicly-owned structure or physical facility. It could be a
11 park, waste treatment facility, waterline, road, public building or similar structure.
12 Services are not considered a capital facility, nor is the maintenance and operation
13 of the facilities described above. Usually it does not include city vehicles. In
14 Sultan, a *capital facility improvement* represents a major capital investment in a
15 city asset which is not a repair or maintenance item with a value of at least
16 \$10,000 that has a useful life of 5 or more years."

17
18 Core Document, Appendix D, CFP at VIII-1 (Emphasis added).
19

20 The Petitioner alleges that the CFP fails to comply with the GMA in several ways, including
21 adequate identification of necessary facilities and services and of levels of service and the
22 exclusion of maintenance. In addition, Petitioner asserts that the City failed to reassess the
23 Land Use Element in light of funding shortfalls identified by the CFP.
24

25 IV. LEGAL ISSUES and DISCUSSION

26
27
28 The Board's March 22, 2007 Prehearing Order and the Petitioner's PFR state Legal Issue No. 1
29 as follows:

30
31 1. *Did the City of Sultan substantially interfere with the goals of the Growth*
32 *Management Act, specifically, RCW 36.70.020 (1), (3), (7), and (12) by*
33 *adopting a Capital Facilities Plan which is inconsistent with the adopted*
34 *Comprehensive Plan and which fails to meet the statutory requirements of*
35 *RCW 36.70.070 by:*

36 A) *Failing to identify necessary facilities and services and their estimated*
37 *costs?*

38 B) *Excluding maintenance items from the definition of a capital facility?*

39 C) *Failing to incorporate adopted levels of service in the CFP?*

40 D) *Failing to concurrently reassess the land use assumptions, funding*
41 *strategies and/or level of services, triggered by the funding shortfalls?*
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46
47 ² The City has adopted its CFP as its CFE. Hereinafter, the acronym CFP will denote the entire capital facilities
48 document.

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Applicable Law

The Petitioner alleges that the City has not been guided by four goals of the GMA:

- 1) Urban Growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.

- 3) Transportation. Encourage efficient multi-modal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.

- 7) Permits. Applications for both state and local government permits should be processed in a timely manner to ensure predictability.

- 12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use, without decreasing service levels below locally-established minimum standards.

RCW 36.70A.020(1), .020(3), .020(7), .020(12).

The Board notes that the Petitioner focuses her arguments on Goal 12 with only cursory reference to the other cited goals on the next-to-the-last page of the PHB, essentially asserting that if adequate public facilities and services are not provided, then the City has also failed in regard to urban growth, transportation, and a timely permitting process. Petitioner's PHB, at 17. These single statements do not satisfy the burden of proof Petitioner must carry in demonstrating that the City's actions were clearly erroneous and therefore, Petitioner's claims under Goals 1, 3, and 7 are deemed abandoned.

Petitioner asserts that the City's CFP does not meet the mandatory requirements of RCW 36.70A.070(3), which provides:

A capital facilities plan element consisting of: (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the proposed locations and capacities of expanded or new capital facilities; (d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and (e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent. Park and recreation facilities shall be included in the capital facilities plan element.

1 Lastly, Petitioner argues that, with the adoption of the CFP, the City has created internal
2 inconsistencies within its Comprehensive Plan in violation of the preamble for RCW 36.70A.070
3 which reads:

4
5 The comprehensive plan of a county or city that is required or chooses to plan
6 under RCW 36.70A.040 shall consist of a map or maps, and descriptive text
7 covering objectives, principles, and standards used to develop the comprehensive
8 plan. The plan shall be an internally-consistent document and all elements shall be
9 consistent with the future land use map. A comprehensive plan shall be adopted
10 and amended with public participation as provided in RCW 36.70A.140.
11

12 In addition, the Board notes that the GMA does not define "capital facilities" but this Board has
13 previously held that "public facilities," as defined by RCW 36.70A.030(12), are synonymous
14 with "capital facilities owned by public entities."³ *West Seattle Defense Fund v. Seattle (WSDF*
15 *I)*, CPSGMHB Case No. 94-3-0016 (Final Decision and Order, April 4, 1995). RCW
16 36.70A.030(12) provides:
17

18
19 "Public Facilities" include streets, roads, highways, sidewalks, street and road
20 lighting systems, traffic signals, domestic water systems, storm and sanitary sewer
21 systems, parks and recreational facilities, and schools."
22

23 Discussion

24
25 The Petitioner contends the City's CFP, although improved over the 2004 version, still falls short
26 of meeting the statutory requirements of RCW 36.70A.070(3) and related goals of the GMA, as
27 it has done in the past. Petitioner's PHB, at 2-3. In essence, Petitioner asks just how the City is
28 going to provide services to the citizens of Sultan and how these services are to be funded.
29 Petitioner's PHB, at 5; HOM Transcript, at 6. Each of the Petitioner's allegations is addressed
30 separately below.
31
32

33 Issue A – Failing to identify necessary facilities and services and their estimated costs.

34
35 The Petitioner contends that the CFP falls short in identifying the necessary capital facilities and
36 costs in all categories of infrastructure for the City - whether the infrastructure is water, sewer,
37 surface water management, transportation, parks and recreation, general governmental facilities,
38 schools, or solid waste. Petitioner's PHB, at 7-11. Petitioner asserts that all are deficient in
39 providing the needed information and analysis to meet the requirements of the GMA.
40
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47 ³ As the City correctly notes, this Board has never held that "public services," as defined by RCW 36.70A.030(13),
48 are synonymous with "capital facilities."

9-6

1 Although the Petitioner cites deficiencies in each of the areas mentioned above, for purposes of
2 illustration, the Board has chosen two examples to demonstrate Petitioner's perceived GMA
3 Capital Facilities shortfall:
4

5 1. Sewer:⁴
6

7 Petitioner contends that the General Sewer Plan (GSP) shows several large portions of the City
8 which are currently un-served by sewers with the CFP's stated policy being: "[S]ewer
9 extensions are required to fully serve new development within the UGA and will be funded by
10 new development sponsors." Petitioner's PHB, at 9. Petitioner notes that the City has no plan
11 for extending service to areas of the City that are already developed, but lack sewer service. *Id.*
12 Petitioner further contends that while some proposed locations of sewer line extensions exist,
13 these extensions have not been incorporated into the CFP. Petitioner's PHB, at 5.
14
15

16 The City argues that contrary to Petitioner's assertions, the CFP does identify existing and
17 proposed sewer facilities such as a treatment plant, pump stations, the outfall, a proposed pump
18 station, and existing and proposed sewer pipelines. City's Response, at 5 (citing Index 2c,
19 Figure CF-2). The City points out that estimated project costs and revenue sources are also
20 provided. *Id.* (citing Index 2F, Table CF-4). The City also argues future sewer improvements
21 (local distribution lines) will be paid for by developers as development occurs. *Id.* at 5. The
22 City further contends that while Petitioner's assertion that the City should provide a mechanism
23 to serve existing un-sewered development might be laudable, the GMA establishes no
24 requirement that existing properties be connected to the City's sewer system. *Id.* at 5-6.
25
26

27 In reply, Petitioner points to the *Kitsap Citizens for Responsible Planning VI v. Kitsap County*
28 (*KCRV VI*), CPSGMHB Case No. 06-3-0007, Order (March 16, 2007), [Legal Issue No. 4, Part
29 B – Capital Facilities element at 9-14], in support of her argument regarding long-term sewer
30 needs for the City. Petitioner asserts, as the Board found in the Kitsap County matter, that:
31

32 Sultan has no plan to provide sewer service to undeveloped areas of the UGA
33 apart from whatever developers provide. And, *no plan, whatsoever, for*
34 *developed areas within the city limits apart from the requirement that septic*
35 *systems will be replaced over time, if they are within proximity to existing sewer*
36 *lines ... which guarantees service will not be provided in an efficient manner and*
37 *perhaps not at all.*
38

39
40 Petitioner's Reply, at 12 (Emphasis added).
41

42 2. Parks and Recreation:
43
44

45 ⁴ Petitioner presents a similar argument in regard to domestic water service – extensions required to serve new
46 development will be funded by developers and that large portions of the UGA (including properties within the city
47 limits) are not served by domestic water service with no indication that these properties will be served within the
48 planning period. Petitioner's PHB, at 8.
49

50 07317 *Fallgatter IX v. City of Sultan* (September 5, 2007)

07-3-0017 Final Decision and Order

9-7

1
2 Petitioner contends that the CFP does not provide needed analysis of existing park capacity and
3 recreation facilities, what future facilities will be needed to accommodate future growth, and
4 what the capacity of those proposed facilities will be. *Id.* at 10. In addition, Petitioner asserts
5 that the CFP does not provide an estimate of a 10-year demand or an evaluation of facilities and
6 services needs as required by RCW 36.70A.080(a)-(b). *Id.*
7

8 The City maintains that its Parks and Recreation Element (**PRE**) consists of the requirements set
9 forth in .070(3): a) an inventory with locations and capacities, b) the proposed locations and
10 capacities of expanded or new facilities, c) a forecast for future needs, d) a six-year plan for
11 funding, with funding sources and e) a reassessment strategy. *Id.* at 8 (citing Index 2e, Figure
12 CF-5). The City does concede that the PRE fails to contain LOS information but that this
13 information will be included during the upcoming Comprehensive Plan update. *Id.* at 8-9.
14

15
16 In reply, Petitioner argues that the City's defense – LOS information will be reviewed and
17 analyzed at a later date – does not satisfy the GMA's requirement as this information is to be
18 included within the current CFP and PRE. Petitioner's Reply, at 14.
19

20
21 Board Discussion
22

23 While the City has made considerable progress in its work on various elements in the
24 Comprehensive Plan in response to repeated challenges brought by the Petitioner and others over
25 the past few years, the City's effort still falls short of the GMA's expectation in regard to its
26 Capital Facilities Plan. Failure to identify necessary facilities and services and their estimated
27 costs makes clear some of the challenges and shortcomings the City still must face.
28

29
30 As noted *supra*, the GMA requires that a CFP provide an inventory of existing capital facilities
31 owned by public entities, a forecast of future needs, and a plan to finance needed facilities.
32 RCW 36.70A.070(3)(a), .070(3)(d). The question for the Board on this portion of this Legal
33 Issue is whether the City's CFP satisfies these requirements. Using the issues identified above,
34 the Board makes the following findings:
35

36 Sewer – As the Board sees it, the City has provided an inventory of existing sewer facilities
37 within its CFP (*see* CFP, Figure CF-2, at VIII-5; CFP, Sewer Facilities, at VIII-4 to VIII-8). It is
38 the City's ability to address future needs that is at question. The Board finds that solely relying
39 on future development to provide for major infrastructure, such as sewer, and not planning to
40 have the capacity to provide service to existing development, fails to meet the requirements of
41 the GMA. As the Board stated in *KCRP VI*, Order of Non-Compliance [Re: Kingston Sub-Area
42 Plan], CPSGMHB Case No. 06-03-0007:
43
44

45 *Kitsap's comprehensive plan requires developers to pay for the construction of*
46 *local sewer connections as new projects are built. However, as Petitioners*
47 *contend, this does not address the currently un-sewered residential areas within*
48

1 the Kingston UGA. Kitsap's Capital Facilities Plan Population Allocation
2 indicates that the Kingston Sewer Service Area in 2003 had 1,530 sewered and
3 1,105 unsewered In reviewing the record, the Board finds that the County
4 has no strategy to ensure that population of the existing UGA is brought up to an
5 urban level of sanitary service.
6

7 Order, at 11 (Emphasis added). The Board recently affirmed the conclusion that a jurisdiction
8 must ensure that within urban areas there will be adequate and available sewer capacity to serve
9 the existing, un-sewered urban population within the 20-year planning period. *See Suquamish*
10 *Tribe, et al v. Kitsap County*, CPSGMHB Case No. 07-3-0019c, at 26 (Final Decision and Order,
11 Aug. 15, 2007).
12

13 The similarities here with the City of Sultan are evident. Although the Board recognizes the fact
14 that developers are responsible for infrastructure to serve individual units within their proposed
15 development, the City is responsible to provide facilities which adequately serve those units (i.e.
16 treatment plants, trunk lines, pump stations). It is unclear from the language of the CFP that the
17 City has planned for these types of facilities. The CFP notes that sanitary sewer service within
18 the UGA currently serves approximately 1,600 customers with approximately 27 percent of
19 properties located within the city limits on septic systems. Core Document, Comprehensive Plan
20 – CFP, at VIII-4-6. Except for a requirement that all buildings within 120 feet of a city sewer
21 system connect *new* plumbing fixtures to the system (SMC 13.08.020), the City has made no
22 provision for service to the un-sewered population. Nor has the City identified the un-sewered
23 areas or the extent of the needs to make sure capacity will be available and adequate to serve the
24 existing population.
25
26

27 Therefore, the Board finds that, in regard to sanitary sewers, the City has not complied with
28 RCW 36.70A.020(12) and 36.70A.070(3)'s mandate to provide adequate and necessary facilities
29 to support *existing and new* development within the UGAs within the 20-year planning period.
30 The CFP fails to provide an adequate needs assessment (i.e. current needs, future needs, and
31 expected level of service) so as to properly document the needed funding to supply these
32 services, both in regard to the funds required as well as the source of the needed funds.
33
34

35 Parks and Recreation – As was the case for sewer systems, the City's CFP contains an inventory
36 of Park, Recreation, and Open Space Facilities (*see* CFP, Figure CF-5, at VIII-17) but no true
37 analysis in regard to future needs. The City has acknowledged its current work on the PRE for
38 the Comprehensive Plan, in regard to LOS standards, is still being finalized and will be included
39 in the next Comprehensive Plan update. However, as the City correctly notes, the Petitioner's
40 challenge in this matter is to the CFP and not the PRE itself. Therefore, the Board's review
41 must focus on whether the City has properly included park and recreation facilities within its
42 CFP as required by 36.70A.070(3), not the requirements set forth in .070(8).
43
44

45 The CFP does provide the location of existing and proposed parks and recreational facilities
46 (Figure CF-5, at VIII-17) and estimated project costs and funding sources (Table CF-4, at VIII-
47 23), but it fails to provide an analysis of the forecast of future needs – an analysis that is
48
49

50 07317 *Fallgatter IX v. City of Sultan* (September 5, 2007)

07-3-0017 Final Decision and Order

Page 9 of 21

1 undoubtedly linked to the LOS standards the City has acknowledged are not yet established.
2 Without this information, the CFP, in regard to parks and recreation facilities, does not fulfill the
3 analysis requirements of .070(3).
4

5 As was the case for the provision of sanitary sewers, with parks and recreation, the CFP also fails
6 to provide an adequate needs assessment (i.e. current needs, future needs, and expected level of
7 service) so as to properly document the needed funding to supply these services, both in regard
8 to the funds required as well as the source of the needed funds.
9

10 Conclusion

11
12 As exhibited in the above examples, the City is lacking in the detail needed for identifying
13 necessary facilities and services and their estimated costs for the CFP. The Board finds and
14 concludes that the City of Sultan's adoption of Ordinance 942-06, adopting an amended and
15 updated CFP, **fails to comply** with RCW 36.70A.070(3) and **was not guided** by RCW
16 36.70A.020(12).
17
18

19 Issue B -- Excluding maintenance items from the definition of a capital facility.

20
21 The Petitioner argues that a capital facilities needs analysis requires more than a review for
22 expansion of existing facilities or the construction of new facilities, but also the maintenance of
23 existing capital facilities as well. Petitioner's PHB, at 12. Petitioner asserts that while the CFP
24 provides that "the maintenance and operation of the facilities described above [is not considered
25 a capital facility]," many of the projects in the CFP are maintenance projects. *Id.* (citing CFP at
26 VIII-1; Table CF-4). Petitioner further contends that the City's policy makes it impossible to
27 ascertain which projects accommodate new growth or address the maintenance of existing
28 facilities and that the City must distinguish in its CFP between projects that are "maintenance-
29 related" and those projects "necessary to accommodate growth." *Id.*
30
31

32 The City agrees with the Petitioner in regard to the definition provided within the CFP.
33 However, the City contends that the "maintenance" required to be included in a capital facilities
34 element (as held by the Board in *WSDFI*, CPSGMHB Case No. 94-3-0016, FDO at 45) is not
35 every day routine maintenance but the replacement or rehabilitation of existing but failing
36 facilities.⁵ City Response, at 10-11.
37
38

39 Petitioner counters in her reply brief that the City misses the point and contends that the
40 definition of "ordinary maintenance" which the City provides is irrelevant to the issue at hand.
41 The Petitioner asserts that routine daily maintenance is not part of her argument but that the plain
42 language of the CFP, which excludes maintenance, is inconsistent with the listed projects which
43
44

45 ⁵ The City uses the example of a culvert cleaning. The City contends simple maintenance would include the
46 cleaning of the culvert, whereas replacing the culvert – if the culvert were collapsing or cracked – would be
47 identified by the City as "replacement" or "rehabilitation." City Response, at 11.
48
49

9-10

1 are clearly maintenance as opposed to capacity-related issues. Petitioner's Reply, at 16-17.
2 Petitioner further argues that the language utilized by the City creates an ambiguity and an
3 inconsistency, in that one can infer from the exclusion of maintenance that all projects in the
4 CFP must, therefore, be new or expanded facilities, which they are not. *Id.* The Petitioner
5 concludes the reader should not be left to decipher that, in spite of the exclusion of maintenance
6 in the definition of capital facilities; some projects are to maintain existing facilities. *Id.*
7
8

9
10 Board Discussion

11 The crux of Petitioner's argument is that the CFP must distinguish between maintenance projects
12 (rehabilitation/replacement) and those necessary to accommodate growth (new or expanded
13 facilities).⁶ In *WSDF I*, the Board concluded that a CFP must not only address the construction
14 of new or expanded facilities but also, as a sound planning principle, the maintenance of existing
15 capital facilities.⁷ *WSDF I*, CPSGMHB Case 94-3-0016, FDO at 32. Although the City has the
16 discretion to separate maintenance projects from new capital facilities projects within its CFP, at
17 no time has the Board held that a CFP must distinguish between maintenance projects and new
18 projects, as both are "necessary to support development" of the community.
19
20

21 Here, the parties argue about the meaning of the word "maintenance" within the City's CFP --
22 with Petitioner asserting that it effectively precludes the maintenance of existing facilities and
23 the City arguing that it is limited to routine, daily maintenance but not replacement or
24 rehabilitation maintenance. This Board has never held, nor will it now hold, that minor, routine
25 maintenance be included within the CFP and, from the Board's review, it does not appear from
26 the project list (see Table CF-4) that the stated projects are minor or routine maintenance.
27
28

29 However, the language cited by the Petitioner does create an ambiguity in regard to exactly what
30 types of projects are addressed by the CFP. In fact, the project list contained in Table CF-4,
31 which lists projects solely by various street names (i.e. Date Avenue or Cascade View Drive)
32 without any descriptive verbiage (i.e. widening, resurfacing, etc.), leaves the Board and any
33 reader of the CFP wondering what type of project the City is planning on funding.
34
35

36 Conclusion

37 The Board finds and concludes that RCW 36.70A.070(3) does not mandate that *major*
38 *maintenance* projects be distinguished from *new/expanded* facilities projects. Rather, the CFP
39 must incorporate both, and the City has done so. Although the language used by the City in
40
41

42 ⁶ The Board notes that often a CFE will distinguish between "capacity" projects -- those improvement projects that
43 are needed to meet new growth pressure, and "non-capacity" projects -- those improvements that are needed to
44 maintain service to meet existing needs. This is a distinction the City should consider to clarify its funded projects,
45 so as to inform the public of the City's intentions.

46 ⁷ The Board's conclusion in *WSDF I* that the maintenance of existing capital facilities should be included within a
47 CFP stems from the phrase "existing needs" found in .070(3)(e), which provides that a jurisdiction must reassess its
48 land use element if funding falls short of meeting existing needs.
49

1 defining capital facilities creates some confusion, the City appears to understand that the
2 maintenance of existing capital facilities is a required element of a CFP and has demonstrated
3 this through both the project listing of the CFP and the City's argument set forth in briefing and
4 at the HOM. The Board finds no violation of RCW 36.70A.070(3).
5

6 **Issue C – Failing to incorporate adopted levels of service for the CFP.**
7

8 Petitioner asserts the GMA requires the City's CFP to include "locally-established minimum
9 standards"⁸ and the City, contrary to this requirement and despite repeated requests, has chosen
10 to separate these required standards from the CFP. Petitioner's PHB, at 13-14 (citing to *McVittie*
11 *v. Snohomish County (McVittie I)*, CPSGMHB Case No. 99-3-0016c, at 25 (Final Decision and
12 Order, Feb 9, 2000).
13

14 In contrast, the City argues that *McVittie* stands for the proposition that a Level of Service (LOS)
15 must be set only for transportation and that other public facilities require a "locally-established
16 minimum standard." City's Response at 12. The City contends that its urban design standards⁹,
17 the Water System Plan, the General Sewer Plan, and the Surface Water Quality Management
18 Plan provide for the required "locally-established minimum standards." *Id.* at 12-13. At the
19 HOM, the City further argues this point stating that the GMA did not require an LOS
20 requirement for each capital facility in the Capital Facility Element. HOM Transcript, at 57.
21

22 In reply, the Petitioner simply stated that cited authority was provided in the PHB that supports
23 her assertion that a CFP must contain LOS standards. Petitioner's Reply, at 17.
24

25
26
27 Board Discussion
28

29 This Board has previously held that the GMA's Goal 12 requires a jurisdiction to establish
30 minimum standards so as to provide the basis for an objective measurement of needs and system
31 performance for those facilities which the jurisdiction has identified as necessary and, read in
32 conjunction with 36.70A.070(3), ***directs that that these standards be contained within the CFP.***
33 *McVittie v. Snohomish County (McVittie VI)*, CPSGMHB Case No. 01-3-0002, at 11-12 (Final
34 Decision and Order, July 25, 2001); *McVittie I*, CPSGMHB Case No. 99-3-0016c, FDO at 25.
35

36 However, the City is correct in that the GMA explicitly requires LOS standards to be included
37 for transportation facilities in the Transportation Element, RCW 36.70A.070(6)(iii)(B), while no
38 such explicit language appears in the requirements for the Capital Facilities Element. *See* RCW
39 36.70A.070(3).
40

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43
44 ⁸ From her briefing, Petitioner appears to use "locally-established minimum standards" and "level of service"
45 standards interchangeably.

46 ⁹ The City cites to Attachment 4 of its briefing which is excerpts from SMC, Chapter 16.28, and includes 16.28.180
47 - .240. The Board is unclear if all of these sections represent the urban design standards the City references or if a
48 single section, i.e. 16.28.230 – Minimum requirements and improvement standards – is the standard referenced.
49

9-12

1 Nonetheless, the parallels between these two GMA requirements are significant and striking, as
2 illustrated in the following chart:

3
4 Comparison of CFE and TE Requirements

5
6

Requirement	Capital Facilities Element RCW 36.70A.070(3)	Transportation Element RCW 36.70A.070(6)
Inventory	.070(3)(a)	.070(6)(iii)(A)
LOS standards	Implied, but not called out	.070(6)(3)(B)
Future needs assessment	.070(3)(b)	.070(6)(iii)(F)
Financing plan – 6 years	.070(3)(d)	.070(6)(iv)(A) and (B)
Reassessment	.070(3)(ea)	.070(6)(iv)(C)

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15 The LOS standards are the basis for the needs analysis, which identifies future needed facilities
16 and capacity. Absent an LOS standard, the future projects become a “wish list” with no needs
17 assessment to support them. This is why the Board required, in the *McVittie* series of cases, that
18 “locally-established minimum” standards of Goal 12 – or “LOS standards” – must be contained
19 in the CFE.
20

21 And it is from these standards - whether they be termed “locally established minimum” standards
22 or “LOS” standards - that a jurisdiction is able to analyze whether or not the capital facilities it
23 has identified as “necessary to support development” are, in fact, adequate. Additionally, the
24 inclusion of LOS standards in the CFE means that they are formally adopted by the City (as part
25 of the Comprehensive Plan) and may not be revised without direct approval of the elected
26 officials of the City. These LOS standards have meaning and impact upon what the City intends
27 for its future.
28
29

30 Within its CFP, the City has identified the following “capital” facilities:

- 31
- 32 • Water Facilities
 - 33 • Sewer Facilities
 - 34 • Surface Water Management Facilities
 - 35 • Transportation Facilities
 - 36 • Parks and Recreation Facilities
 - 37 • General Government Facilities (which include the following buildings – City Hall, Public
38 Works, Police Department, Community Center, Post Office, Museum, Tourist Center)
- 39
40
41

42 Review of the CFE reveals that only an LOS standard for the City’s transportation facilities is
43 identified.¹⁰ CFP, at VIII-13. Reference is made to LOS levels for Parks and Recreation, but this
44 reference simply states that the LOS for parks will be reviewed as part of the Comprehensive
45 Plan update; a specific LOS standard is not identified. CFP, VIII-16. No other LOS standards
46

47
48 ¹⁰ The CFE assigns a LOS “B” for its arterial and local access streets.

1 are identified in the CFE. Further, there is no reference made to where, either within the
2 Comprehensive Plan or related documents (i.e. General Water Plan), a reader could find this
3 information.¹¹ Without the standards being clearly provided, the Board questions just how the
4 City could have conducted the required future needs analysis so as to satisfy the requirement of
5 .070(3)(b) and Goal 12's requirement not to decrease current levels of service below minimum
6 standards.
7

8 The Board finds and concludes that the City's CFP does not furnish adequate information
9 identifying its established and adopted minimum standards – LOS standards. As became clear in
10 the Hearing on the Merits, the City needs to specify its LOS standards in the CFE and furnish
11 more analysis, or the location of such analysis of how its future needs were determined. See
12 HOM Transcript, pgs. 44-67.
13

14
15 One of the most important audiences for reading a local GMA plan is an average citizen who
16 may desire additional information on the City's future intentions and the quality of life it is
17 committing to provide. A reading of the City's CFP does not provide adequate information to
18 allow the reader to determine whether the City intends to improve upon its current levels of
19 service, merely maintain them, or allow them to decline. Each jurisdiction owes this type of
20 explicit honesty to its citizenry.
21

22 Conclusion

23
24
25 The Board finds and concludes that the City of Sultan's adoption of Ordinance 942-06 **fails to**
26 **comply** with RCW 36.70A.070(3)(b) and **was not guided** by RCW 36.70A.020(12).
27

28 29 Issue D – Failing to concurrently reassess the land use assumptions, funding strategies, 30 and/or level of services, triggered by funding shortfalls.

31
32 Petitioner argues the City has failed to take action to address funding shortfalls related to capital
33 facilities. In particular, Petitioner notes that transportation, parks and recreation, and police have
34 clear financial shortfalls and the City fails to provide a strategy to meet the current level of
35 service requirements. Petitioner's PHB, at 14.
36

37
38 Petitioner notes that while the CFP mentions the LOS failures, no attempt has been made to
39 reassess land use assumptions, find additional funding, or lower the established LOS to reach a
40 more attainable standard. Petitioner's PHB, at 15. Petitioner asserts that the current LOS for
41 parks is 42.6 acres per 1,000 people and the LOS for police is 12 police officers, with the
42
43
44

45 ¹¹ While the City claims it has LOS standards established in other documents, they need to be included in the CFE.
46 However, the needs analysis may be referenced in a Technical Appendix or another document that is incorporated
47 by reference into the CFE. If the needs analysis is contained in another document, it must be specifically located to
48 guide the reader to its location.
49

9-14

1 minimum standard, as established by the Sultan City Council, not being met, violating Goal 12.
2 *Id.*

3
4 The City argues that while the Petitioner asserts the City has existing shortfalls, the issue
5 presented by the Petitioner questions whether the City's CFE contains a reassessment strategy
6 that satisfies the GMA, which it does.¹² City's Response, at 14.
7

8 In reply, the Petitioner argues that the City misreads the issues in this case. Petitioner's Reply, at
9 17. According to the Petitioner, the issue does not question whether or not the City has an
10 assessment strategy, but rather that the City has not performed the reassessment in light of clear
11 and indisputable funding shortfalls. *Id.* at 17-18.
12

13 Board Discussion

14
15
16 The City contends that it has satisfied the requirements of RCW 36.70A.070(3) because its CFP
17 provides a reassessment strategy. The Board acknowledges that the City has made great strides
18 in updating its CPF, and its Comprehensive Plan in general. The Board notes that the City has
19 adopted a reassessment strategy (CFP, at VIII-26) and has developed goals and policies to
20 address land use and financing issues (CFP, at VIII-27 through VIII-33).
21

22 However, as the Petitioner correctly notes, the issue presented for resolution by the Board asked
23 if the City failed "to concurrently reassess the land use assumptions, funding strategies and/or
24 level or services, triggered by funding shortfalls." PFR, at 3. The phrasing used by Petitioner in
25 her issue statement clearly questions, and her argument supports, whether the City has performed
26 the act of "reassessment," not whether it has adopted a strategy for such reassessment.
27

28
29 The Board has consistently held that land use assumptions, capital facilities, and funding are
30 interrelated and must move together. (See *McVittie I*, CPSGMHB Case No. 99-3-0016c). The
31 GMA is clear in RCW 36.70A.070(3) that reassessment of the land use element is required "if
32 probable funding falls short of meeting existing needs to ensure that land use element, capital
33 facilities element, and financing plan within the capital facilities element are coordinated and
34 consistent." The reason that the GMA has included a requirement for a reassessment strategy is
35 for cities and counties to implement that strategy upon identification of funding shortfalls which
36 may create inconsistencies within a comprehensive plan. Its inclusion is not simply to fill space
37 within the CFE. The City does not deny that these shortfalls exist especially in regard to
38 transportation and parks facilities. But, no where does the City demonstrate that it has performed
39 one of the three actions set forth in its Reassessment Strategy to address the funding shortfall
40 issue.
41

42
43 The Board finds that Petitioner has carried the burden of proof that the City has not complied
44 with its obligation to implement its reassessment strategy, once it has determined that a funding
45

46
47 ¹² While the City does not provide a citation for where in its CFE the reassessment strategy is located, the Board
48 located it at Page VIII-26 of the CFP.

9-15

1 shortfall has occurred. The GMA requires more than simply the adoption of a strategy. It
2 requires that a jurisdiction actually use the strategy it has adopted.

3
4 Conclusion

5
6 The Board finds and concludes that the City of Sultan's adoption of Ordinance 942-06 **fails to**
7 **comply** with RCW 36.70A.070(3)(e) and **was not guided** by RCW 36.70A.020(12).
8

9
10 Conclusion

11
12 Pursuant to RCW 36.70A.320(3), the Board finds that the Petitioner has carried the burden of
13 proof in demonstrating that the City of Sultan's adoption of Ordinance 942-06, in regard to Legal
14 Issues 1(A), 1(C), and 1(D), was **clearly erroneous** in view of the entire record before the Board
15 and does not comply with the requirements of RCW 36.70A.070(3) nor has the City's action
16 been guided by Goal 12 – RCW 36.70A.020(12).
17

18
19 V. INVALIDITY

20
21 The Board has previously held that a request for an order of invalidity is a prayer for relief and,
22 as such, does not need to be framed in the PFR as a legal issue. *See King County v. Snohomish*
23 *County*, CPSGMHB Case No. 03-3-0011, Final Decision and Order, (Oct. 13, 2003) at 18.
24 Petitioner here has requested that the Board find Ordinance 942-06 – City of Sultan Capital
25 Facilities Plan – invalid and that the Board request the Governor to apply appropriate sanctions,
26 either now, or if compliance is not achieved during the allotted compliance period. PFR, at 3.
27

28
29 Applicable Law

30
31 The GMA's Invalidity Provision, RCW 36.70A.302, provides:

- 32
33 (1) A board may determine that part or all of a comprehensive plan or development
34 regulation are invalid if the board:
35 (a) Makes a finding of noncompliance and issues an order of remand under RCW
36 36.70A.300;
37 (b) Includes in the final order a determination, supported by findings of fact and
38 conclusions of law, that the continued validity of part or parts of the plan or
39 regulation would substantially interfere with the fulfillment of the goals of this
40 chapter; and
41 (c) Specifies in the final order the particular part or parts of the plan or regulation that
42 are determined to be invalid, and the reasons for their invalidity.
43 (2) A determination of invalidity is prospective in effect and does not extinguish rights that
44 vested under state or local law before receipt of the board's order by the city or county.
45 The determination of invalidity does not apply to a completed development permit.
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1 application for a project that vested under state or local law before receipt of the board's
2 order by the county or city or to related construction permits for that project.

3
4 Discussion and Analysis

5
6 This is the ninth PFR filed by Jocelynn Fallgatter since 2004. Four of the petitions have
7 alleged inadequacies in the City of Sultan's CFP/CFE and transportation plans. Petitioner
8 asserts that:
9

10 "[T]he City's CFP does not manage future growth; it perpetuates the deficient
11 planning scheme in place since the first PFR was filed ... [it is a] paradoxical
12 planning scheme whereby one plan precludes another part of the plan from
13 meeting the statutory requirements of the [GMA], the contradicting policies and
14 statements and the as yet un-reconciled UGA mapping, guarantees that the City's
15 CFP not only fails to meet the specific requirements of the GMA, but that it
16 substantially thwarts fulfillment of the goals of the Act."
17
18

19 Petitioner's Reply at 18.

20
21 In the discussion of the Legal Issue in this case, the Board found and concluded that the City of
22 Sultan's adoption of Ordinance 942-06, City of Sultan Capital Facilities Plan, was **clearly**
23 **erroneous** and **non-compliant** with the requirements of RCW 36.70A.070(3). The Board further
24 found and concluded that the City's action was **not guided by the goals** of the Act, specifically
25 Goal 12 – regarding available and adequate public facilities.¹³ Further, the Board is **remanding**
26 the Capital Facilities Plan with direction to the City to take legislative action to comply with the
27 goals and requirements of the GMA as set forth in this Order.
28

29
30 In light of these deficiencies, the Board further finds and concludes that the continued validity of
31 the CFP [Ordinance 942-06] substantially interferes with Goal 12 – RCW 36.70A.020(12),
32 because the CFP does not demonstrate that adequate public facilities and services, in particular
33 domestic water and sanitary sewer, will be available within the planning period for the
34 population with the UGA. Therefore, the Board enters a **determination of invalidity** with
35 respect to the CFP – Ordinance 942-06, as discussed *supra*.
36

37
38 Accordingly, the Board enters a **determination of invalidity and remands Ordinance 942-06**
39 to the City of Sultan to take legislative action consistent with this Order.
40
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45
46 ¹³Although Petitioner's Legal Issue relied on Goals 1, 3, 7, and 12, as noted *supra*, argument presented was
47 supported by Goal 12 and therefore any allegation that the City violated the other cited goals was deemed
48 abandoned.

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VI. ORDER

Based upon review of the Petition for Review, the briefs and exhibits submitted by the parties, prior decisions of the Board and the courts, having considered the arguments of the parties, and having deliberated on the matter, the Board ORDERS:

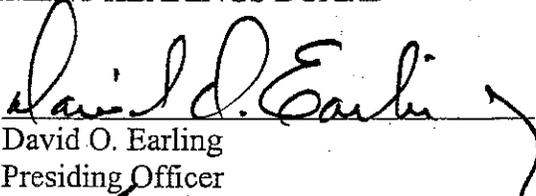
1. As discussed *supra*, the City of Sultan's adoption of Ordinance 942-06 [Capital Facilities Element/Plan] was **clearly erroneous**.
2. As discussed *supra*, Ordinance 942-06 does not comply with the requirements of RCW 36.70A.070(3) and .020(12), since it does not demonstrate that adequate public facilities and services [i.e. sanitary sewer, domestic water, parks and recreation] will be available within the planning period for the population within the urban growth area.
3. As discussed *supra*, Ordinance 942-06 does not comply with the requirements of RCW 36.70A.070(3) and .020(12), because it fails to incorporate adopted locally-established minimum service standards or "Levels of Services" within the Capital Facilities Plan.
4. As discussed *supra*, Ordinance 942-06 does not comply with the requirements of RCW 36.70A.070(3) and .020(12), because based on identified funding shortfalls, the City failed to implement reassessment strategies set forth in its Capital Facilities Plan to address such shortfalls.
5. Additionally, as discussed *supra*, the Board has found that the continued validity of the Capital Facilities Plan substantially interferes with the fulfillment of Goal 12 – RCW 36.70A.020(12). Consequently, the Board has entered a determination of invalidity with respect to Ordinance 942-06.
6. The Board **remands** Ordinance 942-06 to the City of Sultan with direction to take the necessary legislative actions to comply with the requirements of RCW 36.70A.070(3) and RCW 36.70A.020(12), as set forth and interpreted in this Order.
 - **The Board establishes January 31, 2008, as the deadline for the City of Sultan to take appropriate legislative action to comply with the GMA as interpreted and set forth in this Order.**
 - By no later than **February 14, 2008**, the City of Sultan shall file with the Board an original and four copies of the legislative enactment described above, along with a statement of how the enactment complies with the GMA and this Order (**Statement of Actions Taken to Comply – SATC**). The City shall simultaneously serve a copy of the legislative enactment(s) and compliance statement, with attachments, on the Petitioner. By this same date, the City shall also file a **Compliance Index** listing the procedures (meetings, hearings, etc.) occurring during the compliance period and materials (documents, reports,

analysis, testimony, etc.) considered during the compliance period in taking the compliance action.

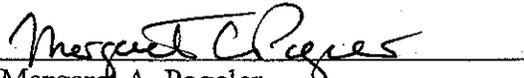
- By no later than **February 28, 2008**, the Petitioner may file with the Board an original and four copies of a **Response to the City's SATC**. The Petitioner shall simultaneously serve a copy of her Response to the City's SATC on the City.
- By no later than **March 6, 2008**, the City may file with the Board an original and four copies of the City's **Reply to Petitioner's Response**. The City shall simultaneously serve a copy of its Reply on the Petitioner.
- Pursuant to RCW 36.70A.330(1), the Board hereby schedules the **Compliance Hearing** in this matter for **10:00 a.m. on March 13, 2008**, at the Board's offices. If the parties so stipulate, the Board will consider conducting the Compliance Hearing telephonically. If the City takes the required legislative action prior to the January 31, 2008, deadline set forth in this Order, the City may file a motion with the Board requesting an adjustment to this compliance schedule.

So ORDERED this 5th day of September, 2007.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD


David O. Earling
Presiding Officer


Edward G. McGuire, AICP
Board Member


Margaret A. Pageler
Board Member

Note: This order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration pursuant to WAC 242-02-832.¹⁴

¹⁴ Pursuant to RCW 36.70A.300 this is a final order of the Board.

Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the date of mailing of this Order to file a motion for reconsideration. The original and three copies of a motion for reconsideration, together with any argument in support thereof, should be filed with the Board by mailing, faxing or otherwise delivering the original and three copies of the motion for reconsideration directly to the Board, with a copy served on all other parties of record. Filing means actual receipt of the document at the Board office. RCW 34.05.010(6), WAC 242-02-240, WAC 242-020-330. The filing of a motion for reconsideration is not a prerequisite for filing a petition for judicial review.

07317 *Fallgatter LX v. City of Sultan* (September 5, 2007)

07-3-0017 Final Decision and Order

Page 19 of 21

9-19

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APPENDIX A

On February 22, 2007, the Board issued a Notice of Hearing (**NOH**) which scheduled a Prehearing Conference (**PHC**) for March 12, 2007, identified August 6, 2007 as the deadline for a Final Decision and Order (**FDO**), and proposed a tentative schedule for the conduct of the case that included a Hearing on the Merits of the Petition (**HOM**) on June 25, 2007.

On March 12, 2007, the Board received the City of Sultan's Index of Record (**Index**).

On March 12, 2007, a Prehearing Conference was held. The Petitioner and Respondent agreed to try to reach an agreement for a Settlement Extension and report back to the Board.

On March 21, 2007, the Board received a Joint Motion for Extension of Case Schedule (**Request for Settlement Extension**) from Petitioner and Respondent requesting a 30-day settlement extension, and a revised tentative case schedule.

On March 22, 2007, the Board issued its Prehearing Order and Granting of Settlement Extension.

On April 30, 2007, the Board received correspondence from the Petitioner requesting that the briefing schedule in this matter be resumed.

On May 2, 2007, the Board received Petitioner's Motion to Supplement the Index of Record and/or Take Office Notice with eight attachments (**Motion to Supplement**).

On May 4, 2007, the Board received the City's Supplemental Index of Record (**Amended Index**).

On May 8, 2007, the Board received the City's Response and Objection to the Petitioner's Motion to Supplement (**City's Response to Motion to Supplement**).

On May 22, 2007, the Board received the Petitioner's Rebuttal to the City's Response to Motion to Supplement (**Petitioner's Rebuttal to Motion**).

On June 5, 2007, the Board issued its Order on Motion to Supplement the Record (**Order on Motion**).

Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior Court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior Court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate Court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person or by mail, but service on the Board means actual receipt of the document at the Board office within thirty days after service of the final order. A petition for judicial review may not be served on the Board by fax or by electronic mail.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19)

07317 Fallgatter IX v. City of Sultan (September 5, 2007)

07-3-0017 Final Decision and Order

Page 20 of 21

Central Puget Sound
Growth Management Hearings Board
800 Fifth Avenue, Suite 2356, Seattle, WA 98104
Tel. (206) 389-2625 Fax (206) 389-2588

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On June 25, 2007, the Board received the Petitioner's Prehearing Brief with seven exhibits (Petitioner's PHB).

On July 10, 2007, the Board received the City's Prehearing Brief with 18 exhibits (City's Response).

On July 16, 2007, the Board received the Petitioner's Reply to the City's Response (Petitioner's Reply).

On July 26, 2007, the Board held the Hearing on the Merits in the matter of *Fallgatter IX v. City of Sultan*, CPSGMHB Case No. 07-3-0017.

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CPSGMHB Case No. 07-3-0017
Fallgatter IX v. City of Sultan

DECLARATION OF SERVICE:

I certify that I mailed a copy of the **Final Decision and Order** to the persons and addresses listed hereon, postage prepaid, in a receptacle for United States mail at Seattle, Washington, on **September 5, 2007**.

Signed *W. Daffner Stone*

<i>Pr 360/7793-2919 phone 206/240-5320 cell</i> <i><u>rose62@juno.com</u></i>	<i>Rt 360/568-3119 phone 360/568-4437 fax</i> <i>City of Sultan</i> <i><u>thomg@snohomishlaw.com</u></i>
Jocelyne Fallgatter 13231 Trout Farm Road Sultan, WA 98294	Thomas H. Graafstra Weed, Graafstra and Benson, Inc., P.S. 21 Avenue A Snohomish, WA 98290-2962

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