Exhibit S-12
Notice and Order of City of Sultan Code Violation Order Number 01001, October 15, 2001

CITY OF SULTAN BUILDING DEPARTMENT
319 Main Street
Sultan, WA 98294
(360)793-2231

NOTICE AND ORDER

CITY OF SULTAN
BUILDING DEPARTMENT

vs.

)NOTICE OF CITY SULTAN CODE VIOLATION:
)CIVIL PENALTY ORDER: NO 01001
)FINAL ORDER: -----Tax Numbers 28083200101100
28083200100600

GRANDVIEW, INC.

)Address of Violation: 32205 Bryant Rd. and
3316 – 135th Street S.E.
Sultan, WA 98294
)ZONING: Moderate Density

YOU ARE HEREBY NOTIFIED PURSUANT TO CHAPTER 16.136 SMC THAT THE BUILDING OFFICIAL FOR THE CITY OF SULTAN HAS FOUND YOU IN VIOLATION OF THE CITY'S CODE AS FOLLOWS:

1. Altering wetlands and buffers prior to project approval. Per SMC 16.80.070
2. Removing vegetation without permit. Per SMC 16.76.030
3. Working in City Of Sultan right-of-way without permission in violation of the City's Urban Design Standards Section 7.02.13
4. Clearing/excavating without Stormwater Permit. Per SMC 16.92
5. Clearing/excavating without Stormwater Erosion Controls. Per SMC 16.92. These violations occurred on or before September 15, 2001.

LOCATION OF VIOLATION

Addresses:

32205 Bryant Rd. and 3316 – 135th Street S.E.
Sultan, WA 98294

Tax Account Numbers:

28083200101100 and 28083200100600

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REQUIRED CORRECTIONS

You have the duty to notify Building Official of any actions you have taken to correct the above code violation(s) since you were served with this Notice and Order. (Telephone (360) 793-2231)

YOU ARE HEREBY ORDERED to cease any ongoing activities and to take corrective action, including obtaining required permits as follows:

1. Altering wetlands and buffers prior to project approval contrary to SMC 16.80.070. Cease current activities, obtain necessary permits and provide restoration.

2. Removing vegetation without permit contrary to SMC 16.76.030. Cease current activities, obtain necessary permits and replace vegetation and provide vegetation protection.

3. Working in City Of Sultan right-of-way without permission contrary to the City's Design Standards, in particular 7.02.13, as adopted by SMC 16.06.180

4. Clearing/excavating without Stormwater permit and providing erosion controls contrary to SMC 16.92. Cease current activities; obtain necessary permits and thereafter install where appropriate erosion control measures pursuant to the Department of Ecology Stormwater Management Manual and best management practices.

REQUIRED CORRECTION DATE

48-Hours Upon Receipt of this Notice, you shall implement erosion control measures,
Within 5-days you shall apply for all required permits,
and Within 30-days you shall restore the wetlands and their buffers.

You shall correct all violations by the above schedule.

FAILURE TO CORRECT THE VIOLATION (S) SHALL SUBJECT YOU TO THE FOLLOWING CONSEQUENCES:

CIVIL PENALTY/NOTICE OF LIEN

Civil penalties in the amount of **$100.00** per day, per violation, shall be assessed against you and the property until the required corrections have been completed to the satisfaction of Building Official. The civil penalties are charged as a personal obligation of all persons cited by this Notice and Order, and as a lien against the property.

ABATEMENT/NOTICE OF LIEN

If you fail to correct all violations by the above schedule, the Building Official will abate the above code violation by causing the necessary corrective action to be taken.

The cost of abatement work will be charged as the personal obligation of all persons cited by this Notice and Order, and as a lien against the property.

MISDEMEANOR

IF YOU FAIL TO COMPLY WITH THE NOTICE AND ORDER, YOU MAY BE CHARGED WITH A MISDEMEANOR.

ADMINISTRATIVE CONFERENCE

You may request an administrative conference with the Building Official for the purpose of discussing necessary corrective action. Neither the request for an administrative conference, nor the conference itself, constitutes an appeal of this Notice and Order.

APPEAL OF THIS ORDER

Any person aggrieved by the order of the Building and Zoning Official, as noted in Chapter 23.12.060 Appeals, (A), may, upon payment of a $100.00 filing fee, request in writing within ten (10) days of the service of the Notice and Order an appeal hearing before the Technical Review Committee. The request shall cite the Notice and Order appealed from and contain a detailed statement of the reasons for seeking the appeal hearing. (B) The Technical Review Committee shall conduct a hearing and submit a recommendation to the City Council within 15 days of the written receipt of the request for an appeal. The City Council shall take action at the next regular council meeting. (C) Any person aggrieved by the decision of the City Council may, upon payment of a $500.00 filing fee, request in writing within ten (10) days of the Council decision an appeal hearing before the City Hearing Examiner as established in Chapter 2.26 SMC. Such hearing shall be conducted in accordance with Chapter 2.26 SMC.

The Hearing Examiner shall receive and examine available information, conduct a public hearing, prepare a record thereof, and enter findings of fact and conclusions based upon those facts, which conclusions shall represent the final action.

Each party shall have the following rights, among others;

1. To call and examine witnesses on any matter relevant to the issues of the hearing.
2. To introduce documentary and physical evidence.
3. To impeach any witnesses regardless of which party first called them to testify.
4. To rebut evidence against them.
5. To represent themselves or to be represented by anyone of their choice who is lawfully permitted to do so.

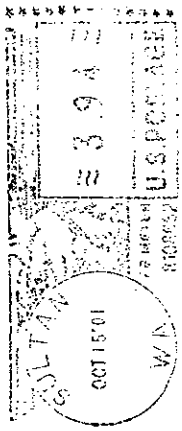
IF YOU FAIL TO APPEAL THIS NOTICE AND ORDER IT BECOMES FINAL FIFTEEN (15) DAYS AFTER YOU ARE SERVED.

FAILURE TO TAKE THE NECESSARY CORRECTIVE ACTION REQUIRED BY THIS NOTICE AND ORDER, OR APPEAL OF THE NOTICE AND ORDER WILL SUBJECT YOU TO CIVIL PENALTIES, ABATEMENT, AND MISDEMEANOR ACTIONS.

DATED this 15th day of October, 2001.

Craig Bruner
Building Official

SULTAN WA
OCT 15 '01
U.S. POSTAGE
$3.94



159

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

Postage	$ .34
Certified Fee	2.10
Return Receipt Fee (Endorsement Required)	1.50
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$3.94

Postmark Here

Recipient's Name (Please Print Clearly) (to be completed by mailer)
Grandview Inc
Street, Apt. No.; or PO Box No.
P.O. Box 159
City, State, ZIP+4
Arlington WA 98223-0159

PS Form 3800, February 2 See Reverse for Instructions

CERTIFIED MAIL

7000 0600 0024 1065 6061
7000 0600 0024 1065 6061

City of Sultan
319 Main Street, Suite 200
PO Box 1199
Sultan, WA. 98294-1199

235

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PLACE STICKER AT TOP OF ENVELOPE
TO THE RIGHT OF RETURN ADDRESS.
FOLD AT DOTTED LINE

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Scott Womack
Grandview Inc.
P.O. Box 159
Arlington WA
98223-0159

COMPLETE THIS SECTION ON DELIVERY

A. Received by *(Please Print Clearly)*

B. Date of Delivery

C. Signature

X

☐ Agent
☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail ☐ Express Mail
☒ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number *(Copy from service label)*

7000 0600 0024 1065 6061

PS Form 3811, July 1999 Domestic Return Receipt 102595-00-M-0952

Certified Mail
- A mailing receip
- A unique identif
- A signature upo
- A record of deli

Important Remin
- Certified Mail is
- Certified Mail is
- NO INSURANC valuables, pleas
- For an additiona delivery, to obtai Receipt (PS Form fee. Endorse ma a duplicate return requests.
- For an additior addressee's auth endorsement "R
- If a postmark on cle at the post receipt is not re

IMPORTANT: Save

PS Form 3800, Februa

Certified Mail Provides:

- A mailing receipt
- A unique identifier for your mailpiece
- A signature upon delivery
- A record of delivery kept by the Postal Service for two years

Important Reminders:

- Certified Mail may ONLY be combined with First-Class Mail or Priority Mail.
- Certified Mail is *not* available for any class of international mail.
- NO INSURANCE COVERAGE IS PROVIDED with Certified Mail. For valuables, please consider Insured or Registered Mail.
- For an additional fee, a *Return Receipt* may be requested to provide proof of delivery. To obtain Return Receipt service, please complete and attach a Return Receipt (PS Form 3811) to the article and add applicable postage to cover the fee. Endorse mailpiece "Return Receipt Requested". To receive a fee waiver for a duplicate return receipt, a USPS postmark on your Certified Mail receipt is required.
- For an additional fee, delivery may be restricted to the addressee or addressee's authorized agent. Advise the clerk or mark the mailpiece with the endorsement *"Restricted Delivery"*.
- If a postmark on the Certified Mail receipt is desired, please present the article at the post office for postmarking. If a postmark on the Certified Mail receipt is not needed, detach and affix label with postage and mail.

IMPORTANT: Save this receipt and present it when making an inquiry.

PS Form 3800, February 2000 *(Reverse)* 102595-99-M-2087

City of Sultan
319 Main Street, Suite 200
PO Box 1199
Sultan, WA. 98294-1199

MR. SCOTT WOMACK
GRANDVIEW, INC.
P.O. BOX 159
ARLINGTON, WA 98223-0159

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CITY OF SULTAN BUILDING DEPARTMENT
319 Main Street
Sultan, Washington 98294

RECEIVED
OCT 26 2001
CITY OF SULTAN
BUILDING DEPT.

CITY OF SULTAN BUILDING DEPARTMENT, vs., **GRANDVIEW INC., a Washington corporation,**	**CIVIL PENALTY ORDER NO. 01001** **NOTICE OF APPEAL OF CODE VIOLATION AND CIVIL PENALTY ORDER**

COME NOW GRANDVIEW, INC., a Washington corporation (hereinafter "Appellant"), by and through its attorney, William B. Foster of Hutchison & Foster, and hereby submits the following Notice of Appeal of Code Violation and Civil Penalty Order issued by CITY OF SULTAN BUILDING DEPARTMENT under Civil Penalty Order No. 01001.

1. ***Identification of Order Being Appealed***. Appellant hereby appeals that certain Notice of City of Sultan Code Violation Civil Penalty Order (hereinafter the "Notice") dated the 15th day of October, 2001, a copy of which Notice is attached hereto as Exhibit "A", and is incorporated herein by reference as if fully set forth.

2. ***Authority for Appeal***. This appeal is authorized pursuant to the provisions of City of Sultan Ordinance No. 23.12.060.

3. ***Factual Basis of Appeal***. The Appellant is the owner of the real property located at 32205 Bryant Road and 13516 Sultan Basin Road, Sultan, Washington. The Appellant has submitted an application for the development of the property. However, during the processing of the application the Appellant desires to continue with the agricultural use of the property until such time as the development application is completed. A portion of the property, that located at 32205 Bryant Road, has been

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historically used for agricultural purposes, being commonly known in the area as the "Anderson Farm". It has historically existed as pasture, and as such, has held horses and other livestock.

All of the work done by the Appellant to date has been done pursuant to a farm plan, a copy of which is attached hereto as Exhibit "A".

The Appellant further disputes the factual allegations of the Notice and Order, in that there is no evidence in the record that there are any jurisdictional wetlands upon the subject property.

4. ***Legal Authority in Support of Appeal***. The legal Authority in support of this appeal will be separated in the several subcategories, one for each alleged violation.

4.1 *SMC 18.80.070*. This provision of the Sultan Municipal Code permits certain types of ***development*** activities within wetlands. First and foremost, the Appellant disagrees that the area within which the work on the property was being performed is a wetland as defined in the Sultan Municipal Code. The evidence that will be presented in consideration of this appeal will establish that the subject property is not a wetland. Furthermore, the activity undertaken at this time by the Appellant is not development activity, but instead is agricultural in nature. Agricultural activity is not regulated by the Code, and therefore cannot be a basis for a violation under this Section.

4.2 *SMC 18.76.030*. By the clear and unambiguous language of the ordinance, the Vegetation Protection Standards apply to "any new property development or to the expansion of existing development". *SMC 16.76.020*. Although the property is the subject of a development application, the work being performed upon the property is not in conjunction with the development of the property, but instead is for agricultural purposes. Therefore, the activity is exempt from the provisions of this ordinance.

Furthermore, the Appellant submits that the vegetation protection ordinance is unconstitutionally vague. *Anderson v. Issaquah*, 70 Wn. App. 64, 851 P.2d 744 (1993).

4.3 *SMC 7.02.13*. The only work being performed by the Appellant that was remotely near the City right-of-way was to maintain an existing drainage ditch surrounding the Appellant's property. The Appellant denies that any such work is in violation of any provision of the Sultan Municipal Code.

4.4 *SMC 16.92*. All of the Appellants activities upon the property are exempt from the provisions of Sultan Municipal Code Section 16.92, as it constitutes:

(a) maintenance work on an existing utility (drainage ditch), which work

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does not alter the purpose and intent of the system. *SMC 16.92.020(A)(1).*

(b) Maintenance work performed on an existing drainage channel. *SMC 16.92.020(A)(2).*

Even though the Appellant denies that a permit was required, the Appellant performed all work using erosion control as required.

3. ***Identification of Appellants***. The name, address and daytime telephone number of the Appellant is:

Grandview, Inc.
c/o Scott Wammack
P.O. Box 159
Arlington, Washington 98223
(425) 435-7171

4. ***Identification of Appellants' Agent***. The duly appointed representative of the Appellants is:

William B. Foster, Esq.
Hutchison & Foster
4300 - 198th Street S.W.
Suite 100
P.O. Box 69
Lynnwood, Washington 98046-0069
Telephone: (425) 776-2147
Facsimile: (425) 776-2140

DATED THIS 26th day of October, 2001.

William B. Foster, WSBA #8270
of HUTCHISON & FOSTER
Attorneys for Appellants

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AGRICULTURAL MANAGEMENT PLAN

Property:

4 acres in
SE corner of the NE corner of the NE corner of the NE corner
of Section 32, T. 28 N., R. 8 E of the
Willemette Meridian

Prepared for:

Anderson Farm
Scott Wammack
P.O. Box 159
Arlington, WA 98223

Prepared by:

A.J. Bredberg, Agonomist
Certified Professional Soil Scientist
B & A Inc.
3303 43rd St. NW
Gig Harbor, WA 98335
253/858-7055
fax 253/858-2534

September 14, 2001
#3166B

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AGRICULTURAL MANAGEMENT PLAN

PURPOSE

The Anderson Farm is four acres located in the SE corner of the NE corner of the NE corner of the NE corner of Section 32, T. 28 N., R. 8 E W. M. and has been maintained as pasture in the past. The following agricultural plan sets forth management practices to maximize the usability of the Anderson Farm for pasture and/or forage production. The historic pasture on the Anderson Farm has degraded to the point where it is dominated by weeds providing a carrying capacity unsuitable for grazing or hay production. This will be remedied through the use of best management practices to restore the Anderson Farm to viable grazing and/or hay production.

FARM HISTORY

The Anderson Farm is located on the NW corner of Sultan Basin Road and Bryant Road (Figures 1 and 2), excluding the approximate half acre parcel at the immediate NW corner of Sultan Basin Road and Bryant Road. The property has been cleared for some time and maintained as open pasture/hay field. The site has been routinely mown.

The Anderson Farm contains an existing residence, a foundation for a proposed residence and a driveway accessing the property. Drainage ditches surround the property on all sides.

SOILS

The soils of the site (Figure 3) are mapped on the Soil Survey of Snohomish County Area Washington as the Pastik silt loam, 0-8% slopes (Map Unit 47). Whereas the site is mapped as Pastik silt loam an onsite investigation I by a Certified Professional Soil Scientist found the soils variable and being of outwash parent material. Textures of surface of subsurface horizons varied from a silt loam to a sandy gravelly loam.

DRAINAGE

The dominant drainage features of the site are the constructed ditches on all sides. The high point in elevation of the property is in the northwest corner.

Water in the drainage ditches in the northwest corner flow either straight east or south and west along the south property line.

Drainage in the center of the property has been altered through construction of the driveway. The natural flow of the water is in south easterly direction to the center of the parcel. The driveway has created a berm inhibiting the natural surface flow.

Maintenance of existing drainage ditches is part of recommended management plan practices. Existing historical ditches can be maintained to their original and historic depths. Normal farming practice involves digging the sediments out of the ditches and spreading them evenly on the nearby field or tilling into the field. The ditch spoils are not to be piled adjacent to the ditch as they create a dam that blocks water flow into the ditch.

Surface water of the fields is to be managed following standard agricultural practices. This may include but not limited to the shaping of the field through tillage and the installation of minor agricultural drainage features. Maintenance on the surface water can be accomplished with the installation of small V ditches with a tractor.

VEGETATION CONTROL

Existing vegetation of the fields needs to be controlled through the application of Roundup herbicide. After application of the herbicide, at least three days needs to pass to allow the herbicide to be effective. Once the herbicide is effective the fields will be clean tilled incorporating the plant residue.

The fields are to be tilled in the month of September. The tillage should be approximately 6-10 inches deep providing a suitable seed bed. On installation of all surface water management features a final seed bed will be prepared and seeded. A mowing in the spring will be needed to control annual weeds. The established seeding with proper management will control weeds.

TILLAGE

The fields should be tilled after the Roundup has been effective. Tillage should be done with a large, 30 inch or larger, offset disc. It will take a minimum of 4 passes with the disc to incorporate the sod. The fields should not be moldboard plowed as the sod needs to be torn up. Tillage should occur before October 1st.

FERTILITY

It is anticipated that the soils will have a low pH. Lime will be applied at 2 ton/acre. Lime should be applied prior to the final seedbed preparation and incorporated.

Three hundred pounds of 10-20-20 will be applied and incorporated prior to seeding.

SEEDING

The field will be seeded with a pasture seeding mix per Table 1. The pasture mix should be seeded by October 1st to ensure establishment prior to the onset of the cool winter season. The seed mix containing perennial rye grass, annual rye grass, chewing fescue, orchard grass, and red clover is recommended. This combination has good longevity, competes well and has high palatability for pasture. It also makes a good forage providing high yield.

LONG TERM MANAGEMENT

Long term management of the fields will require routine drainage maintenance. Ditches should be maintained to manage surface water. Standing water should be managed during the winter months through hand drainage as standing water will kill the seeding.

Any manure application should be done when the ground is firm and moisture content low so as not to compact or rut the fields. Manure should be evenly applied so as not to suffocate the pasture.

SCHEDULE

2001	
September	Till fields
September	Fertilize fields
September	Plant seeding
December through February	Monitor surface water and control through hand ditching
2002	
April	Sidedress with nitrogen (optional)
May/June	Mow to control annual weeds

TABLE 1: PASTURE SEEDING MIXTURE

Pasture seeding will be applied at 40 lbs./acre

Pasture Seed Mixture	Proportions By Weight	Percent Purity	Percent Germination
Annual ryegrass	10%	96	90
Perennial ryegrass	30%	96	90
Orchard grass	30%	96	90
Chewing fescue	25%	96	90
Red clover	5%	96	90

* Time of Planting - During the time period between April 1 through June 30 and September 1 through October 31.

* Site Preparation - Before seeding, install needed surface runoff control measures such as gradient terraces, interceptor dike/swales, level spreaders and sediment basins.

* Seedbed Preparation - The seedbed should be firm, but not compact

* Fertilization – 300lbs of 10-20-20 and 2 ton of lime, all incorporated.

* Seeding - Apply the following mixture to the prepared seed bed at a rate of 40 lbs/acre.

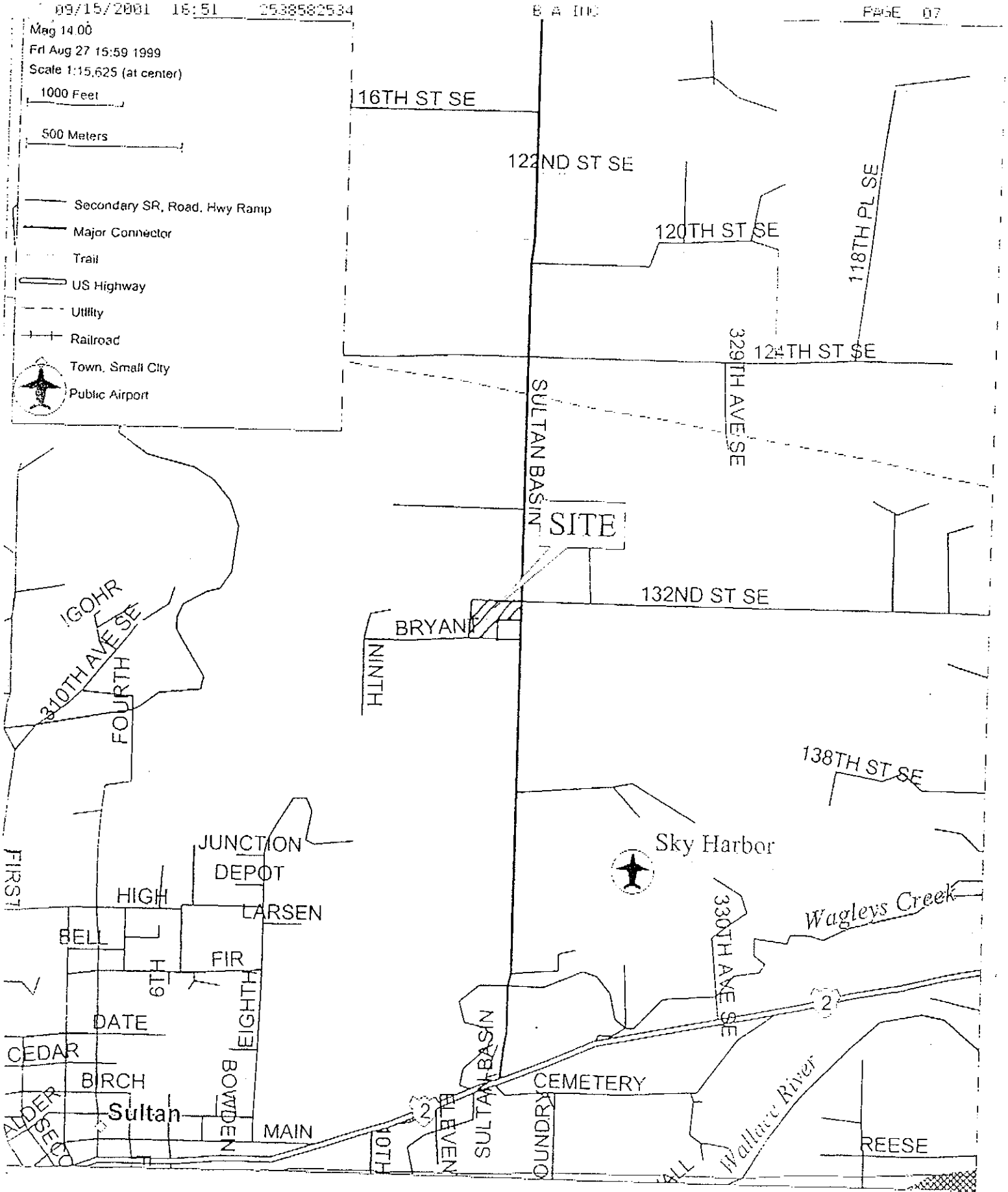

FIGURE 1: SITE LOCATION

©95 DeLorme

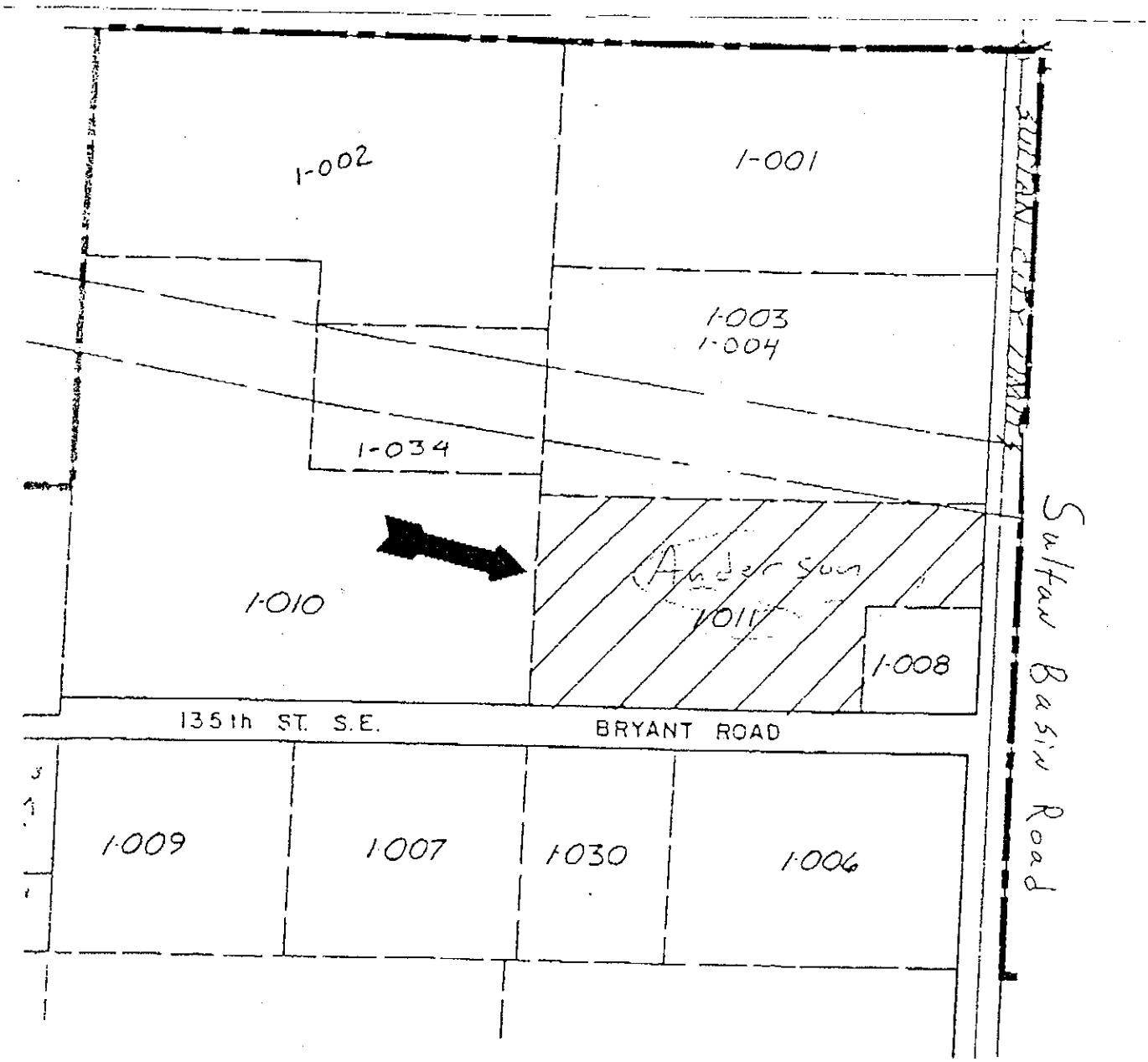

FIGURE 2 : TAX MAP
ANDERSON FARM
B & A, INC.
GIG HARBOR, WA 98335 BA#3166B

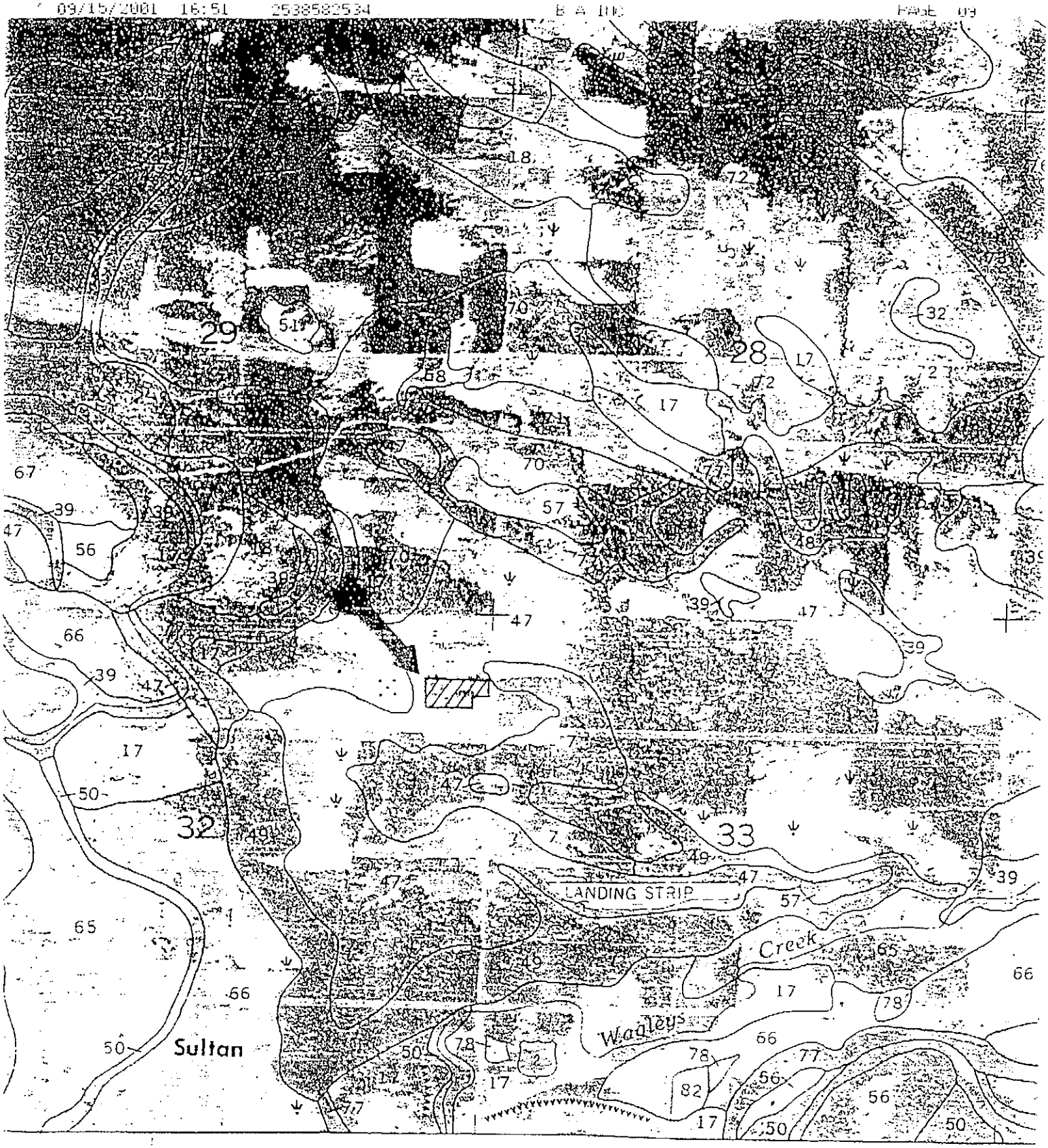

FIGURE 3 : SOIL MAP
ANDERSON FARM
B & A, INC.
GIG HARBOR, WA 98335 BA#3166B

Exhibit S-14

Hearing Examiner Decision on Appeal of Notice and Order, June 3, 2002

BEFORE the HEARING EXAMINER of the
CITY of SULTAN

DECISION

FILE NUMBER:	NO01001
APPELLANT:	Grandview, Inc.
TYPE OF CASE:	Appeal from a Notice and Order to Correct and/or Abate
SUMMARY OF DECISION:	GRANT in part; DENY in part; Corrective actions revised
DATE OF DECISION:	June 3, 2002

INTRODUCTION

Grandview, Inc. (Grandview), P.O. Box 159, Arlington, Washington 98223, appeals from the issuance by the Sultan Building Official of a Notice and Order to Correct and/or Abate violation of Sultan Municipal Code (SMC) 16.80.070, 16.76.030, and 16.92 and Design Standards and Specifications (Standards) 7.02.13.

The subject properties are located at 32205 Bryant Road (the "Anderson property") and 3316 135th Street SE (the "Wilkes" property).

The Sultan Hearing Examiner (Examiner) held an open record hearing on May 21, 2002. The City gave notice of the hearing as required by the SMC. Grandview and the City stipulated to the timeliness of the appeal and to use of appeal procedures as enacted by the City Council in November, 2001 (Ordinance 769-01).

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

ISSUES

Did the Building Official err in issuing the Notice and Order to Correct and/or Abate?

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FINDINGS OF FACT

1. On October 15, 2001, the Building Official issued a Notice and Order (the Notice) to Grandview charging it with five violations of City code/Standards: Altering wetlands and buffers prior to project approval in violation of SMC 16.80.070; removing vegetation without a permit in violation of SMC 16.76.030; working within City right-of-way without permission in violation of Standards 7.02.13; clearing/excavating without a stormwater permit in violation of Chapter 16.92 SMC; and clearing/excavating without stormwater erosion controls in violation of Chapter 16.92 SMC. Grandview was ordered to cease the alleged illegal activities within 48 hours, apply for required permits within five days, and provide restoration within 30 days. Failure to comply with the Notice would result in a civil penalty of $100.00 per day per violation ($500.00 per day total). (Exhibit R11)

2. Grandview appealed on October 26, 2001. Grandview's appeal alleges that: no work was undertaken within a wetland or its buffer; the activities were agricultural, not development; maintenance of a ditch within City right-of-way does not require a City permit; and all activities are exempt from City permit requirements. (Exhibit R15[1]) At hearing, Grandview also argued that no evidence had been presented that any work actually occurred within a City right-of-way.

3. Grandview purchased the Anderson property in October, 1999, and the Wilkes property in December, 1999. (Testimony)

4. The Anderson property occupies the northwest quadrant of the Sultan Basin Road/135th Street SE intersection. It is a rectangle minus a rectangular "exception" parcel in its southeast corner which is owned by others and which is not involved in this proceeding. (Exhibit R5, Fig. 3, and testimony)

   A. The Anderson property encompasses approximately 4 acres and is taxed as single family residential property. (Exhibit R12)

   B. The Anderson property slopes gently towards the south and east. A single family residence, accessed via a driveway from 135th Street SE, is situated in the north central portion of the property. A sign hanging over the driveway says "Anderson Farm" or "Anderson Ranch."[2] (Exhibits R5, R9-1, R9-5, and R9-8--10 and testimony)

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1 The appeal also asserts that the City's vegetation retention provisions are unconstitutional. (Exhibit R15, ¶4.2) The appeal contains no elaboration of that assertion. That assertion was not briefed or argued. The Examiner necessarily concludes that Grandview has abandoned that assertion. An abandoned assertion need not be addressed.

2 The writing on the sign over the driveway is in no way dispositive of or even necessarily indicative of the use of the property.

C. Prior to the activities which form the basis for the Notice and this appeal, the Anderson property:

i. was covered with mown grass. (Exhibit R5 and testimony)

ii. was surrounded on all sides (except the perimeter of the exception) by drainage ditches. (Exhibit R5 and testimony)

D. The Anderson property has not been cropped in decades, if ever. Cattle may have grazed on the site at some time in the past, but the preponderance of the evidence indicates that no grazing has occurred for several years: No manure was encountered when the site was walked extensively in June, 2000; the prior owner was observed over a period of years mowing the entire property on a riding lawn mower. (Testimony)

E. The Anderson property contains wetlands both west and east of the driveway. The parties dispute the areal extent and classification of the wetlands, but not the existence of the wetlands. (Exhibits R5 and R7 and testimony[3])

F. In 2001 Grandview contracted to have the Anderson property (except the area immediately around the residence) spayed with the herbicide "Round Up", limed, disced, plowed, and seeded. The discing occurred in or around the third or fourth week of September, 2001. (Exhibits R9-1, R9-5—16, and R9-20 and testimony)

G. Grandview simultaneously contracted to have the perimeter ditches cleaned out. That work also occurred in or around the third or fourth week of September, 2001. Among the ditches worked in is one parallel and adjacent to the Sultan Basin Road, lying between the field's fence line and the edge of the road's pavement. (Exhibits R9-1, R9-20—23, and R9-28 and testimony)

H. The result was elimination of all vegetative cover over the vast majority of the site. Erosion control measures were not employed, resulting in heavy sediment runoff during a rain storm on or about September 26, 2001. (Exhibit R9 and testimony)

5. The Wilkes property is a rectangle which occupies the southwest quadrant of the Sultan Basin Road/135th Street SE intersection. (The Wilkes property is Parcel 1-006 on Figure 2 in Exhibit R6. It is not the property highlighted on that figure; it is the property depicted on Figure 3 of that same

[3] The appeal itself (Exhibit R15) asserts that the Anderson property contains no wetlands. The studies and testimony of the parties' experts are accorded greater credibility than the assertion in the appeal.

exhibit. This confusing reference led the City's consultant to visit the wrong property. (Testimony; See Exhibit 8.))

A. The Wilkes property encompasses approximately 2.85 acres and is taxed as a manufactured home residential property. (Exhibit R13) It also slopes gently towards the south and east. A mobile home, located in the northeast corner of the property, burned to the ground prior to Grandview's purchase of the property. (Exhibits R6 and R13 and testimony) No wetlands have been identified on the Wilkes property. (Exhibit R6. It must be remembered that the City's consultant inadvertently reviewed the wrong property, so the consultant's conclusions in Exhibit R8 are irrelevant.)

B. Prior to the activities which form the basis for the Notice and this appeal, the Wilkes property:

i. was largely covered with scrub deciduous overstory and brushy understory vegetation. (Exhibit R6)

ii. was bisected by a drainage ditch flowing from north to southeast. (Exhibit R6)

C. At the time that Grandview contracted for the work on the Anderson property, it also contracted to have the ditch through the Wilkes property cleaned and some of the brushy understory vegetation removed. That work was also done in the Fall of 2001. (Testimony)

6. In 1999 a developer (Milne) filed an application with the City to develop the Anderson and Wilkes properties as a planned unit development. That application has lapsed. Grandview has not filed any applications to develop either of the properties. (Grandview has developed other properties in the general vicinity of the Anderson and Wilkes properties.) (Testimony[4])

7. The City's adopted 2002 Fee Schedule provides that the filing fee and "hearing examiner fees" are "to be returned if Hearing Examiner finds for the appellant". (Official notice)

PRINCIPLES OF LAW

Authority

The Examiner has authority to hear appeals from Notices and Orders to Correct and/or Abate issued by the Building and Zoning Official. [SMC 16.132.065 and 16.136.060] The Examiner

[4] The appeal itself (Exhibit R15) asserts that Grandview has a pending development application before the City. The sworn testimony by Grandview's president and primary shareholder is accorded greater credibility than the assertion in the appeal.

> may reverse, affirm or modify the decision, determination or interpretation appealed, and in so modifying shall be deemed to have all of the powers of the building and zoning official, from whichever the appeal is taken, including the power to impose reasonable conditions to be complied with by the applicant.

[SMC 16.120.100(C)]

Review Criteria
The Examiner must determine whether the Building and Zoning Official erred as alleged in the appeal and, if so, whether such error is cause for reversal of the Notice and Order to Correct and/or Abate or whether revision of the Notice and Order would properly correct the error.

The Local Project Review Act [Chapter 36.70B RCW] establishes a mandatory "consistency" review for "project permits", a term defined by the Act to include "building permits, subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, site plan review, permits or approvals required by critical area ordinances, site-specific rezones authorized by a comprehensive plan or subarea plan". [RCW 36.70B.020(4)] A Notice and Order to Correct and/or Abate is not a project permit application and is not, therefore, subject to the Chapter 36.70B RCW consistency requirements.

Vested Rights
Vested rights are not a consideration in this appeal.

Standard of Review
The appropriate test to apply in this appeal is the clearly erroneous standard: the action of the decision maker is not disturbed unless, after reviewing all the evidence in the record, the appellate decision maker is left with the definite conviction that a mistake has been made. [*Leavitt v. Jefferson Cy.*, 74 Wn. App. 668, 680, 875 P.2d 681 (1994)] The appellant has the burden of proof.

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

DISCUSSION

The City is required to base its land use decisions upon duly adopted laws and ordinances, and may not consider equitable defenses. [*Chaussee v. Snohomish County*, 38 Wn. App. 630, 638, 689 P.2d 1084 (1984)]

Thus, the provisions of adopted code and standards must be applied as written and govern the outcome of this appeal.

The City uses a "Unified Development Code" (UDC) in which the vast majority of its regulations regarding land use and development are contained in one title (Title 16 SMC). The definitions within the UDC are contained in Chapter 16.150 SMC. Those definitions apply throughout the UDC.

A key issue in this case is whether removal of vegetation constitutes "development." It may under the unambiguous language of SMC 16.150.040(12):

> "Development" means ... the removal or harvesting of vegetation. Development shall not be defined or interpreted to include activities related to or undertaken in conjunction with the cultivation, use, or subdivision of land for agricultural purposes ....

Unless vegetation removal is associated with agriculture, it is development. "Agriculture" is defined as

> the tilling of soil, the raising of crops, horticulture, viticulture, small livestock farming, pasturing, grazing, poultry, dairying and/or animal husbandry, including all uses customarily incidental thereto except small animal husbandry.

[SMC 16.150.010(20)] A factual finding must, therefore, be made as to whether the activities which led to the Notice were associated with agriculture.

The conclusions which must be reached in this appeal are dependent upon the meaning of the applicable provisions of the SMC and the Standards.

Charge 1
Chapter 16.80 SMC ("Streams and Wetlands") was enacted to regulate "development activity" within and adjacent to streams and wetlands. [SMC 16.80.010] A few development activities are allowed within wetlands and their required buffers, but a Critical Area Study and a Mitigation Plan must first be prepared, submitted to the City, and approved by the City. [SMC 16.80.080] Required wetland buffers may be altered, but only in conjunction with an application to the City under SMC 16.80.100 for approval of an Innovative Development Design. A single family residence may be developed "on an existing legal lot" even if it is within a wetland or its buffer, but only if "consistent with a site development plan approved by the" City. [SMC 16.80.050(E); see also SMC 16.80.080(D)(8)]

Charge 2
The vegetation protection standards within Chapter 16.76 "apply to any new property development or to the expansion of existing development." [SMC 16.76.020] Among the objectives of Chapter 16.76 SMC is "To

control the removal of existing vegetation in advance of the approval of land development plans." [SMC 16.76.030(A)(1)(b)] Chapter 16.76 SMC is, thus, intended to apply even in the absence of an active development permit application. Chapter 16.76 SMC requires a permit to remove vegetation except removal associated with single family or duplex residences "proposed to be built on their own individual lots". [SMC 16.76.020, 16.76.030(A)(3), and 16.76.030(B)(1)]

The word "vegetation" is not defined within the UDC. [SMC 16.150.220] In the absence of a code definition, the word must be given its common, ordinary meaning. A standard dictionary of the English language may be used to ascertain that meaning. *Webster's Encyclopedic Unabridged Dictionary of the English Language*, 1989 Edition, provides four definitions for the word, only one of which fits the context of Chapter 16.76 SMC: "**1.** all the plants or plant life of a place, taken as a whole". [Bold in original] The word is thus generally not limited to only some class or type of plant life. Unless the SMC contains a limitation, one cannot be inferred. The SMC does not limit its use of the word "vegetation." Thus, grass, brush, and trees are equally covered by the provisions of Chapter 16.76 SMC. Unless and until the City Council limits the scope of Chapter 16.76 SMC by amendment, the code must be applied as expansively as it is written.

Charge 3

The City Council has adopted the Standards "to standardize road design elements".[5] [§1.00] The Standards "shall govern all construction required within City right-of-way". [§1.01]

Section 7.02 of the Standards begins: "Restoration of City roads and facilities subsequent to utility construction activity shall be done in accordance with the requirements for utility work within rights-of-way outlined as follows". Twenty-one subsections follow, one of which (13) is the basis of the third charge. That preamble indicates that the 21 subsections are "requirements for utility work within rights-of-way" which are also to apply to restoration of City property after utility construction. The idea that they only apply to utility restoration as suggested by Grandview is not supported by either the language of the preamble or the content of the subsections themselves.

Nothing in the Standards expressly requires issuance of a City permit before work is undertaken within City right-of-way. Section 7.02.13 requires: existing drainage ditches and culverts to be kept clean; prior permission from the City for diversion of any drainage system; replacement of disturbed facilities as may be directed by the City; and use of temporary erosion and sediment control measures "using Best Management Practices from the Puget Sound Stormwater Manual." Violation of any of those requirements would be a violation of the Standards, but failure to acquire a permit (which isn't required) would not be a violation of the Standards.

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5 The excerpt from the Standards entered into the record as Exhibit R1 is not current. The Standards were amended effective February 21, 2001. That date precedes the dates on which the alleged code violations occurred. Therefore, the current Standards apply. All quotations within this Decision are from the current Standards.

Charges 4 and 5
Clearing is "the destruction and removal of vegetation". [SMC 16.150.030(14)] The SMC does not define "excavation." *Webster's, supra,* defines the noun "excavation" as "the act of excavating" and the verb "excavate" as "to dig or scoop out (earth, sand, etc.)".

A "stormwater management permit" is required under Chapter 16.92 SMC "prior to commencement of development or redevelopment activity" unless the activity is exempt under SMC 16.92.020 or the permit requirement is waived under SMC 16.92.030. [SMC 16.92.040, ¶1] However, SMC 16.92.040(A) ("Applicability") limits the scope of the permit requirement to "the development or redevelopment on land with more than 3,000 square feet of impervious area (roof, parking, etc.)."

Section 16.92.040(B), ¶1, states that "Anyone desiring to develop land shall apply for a stormwater management permit." That expansive language does not control in light of the limiting language of the "Applicability" language of SMC 16.92.040(A). The more restrictive language must control.

The unambiguous language of SMC 16.92.040(C) limits the applicability of its performance standards to those "parcels for which a stormwater management permit is required". Nothing could be clearer: The performance standards do not apply unless a stormwater management permit is required; and a stormwater management permit is not required unless more than 3,000 square feet of impervious area is involved. Unless and until the City Council broadens the scope of Chapter 16.92 SMC by amendment, the code must be applied as restrictively as it is written.

CONCLUSIONS

1. With respect to Charge 1 (altering wetlands):

   A. Grandview is guilty as charged with respect to the Anderson property. Grandview never submitted a Critical Areas Study under SMC 16.80.060, a Mitigation Plan under SMC 16.80.070, a site development plan under SMC 16.80.050(E), or an application for Innovative Development Design under SMC 16.80.100. Therefore, any development within the wetlands on the site violates many provisions of Chapter 16.80 SMC, not just SMC 16.80.070. Land clearing is development as defined. It matters not that the consultants disagree on the amount of wetland area on the Anderson property: The uncontroverted fact is that wetlands were altered.

   The exemptions for a proposed single family residence cannot excuse Grandview's actions. A single family residence already exists on the Anderson property. The exemption is to allow

construction of such a residence where one does not now exist. The exemption does not excuse wholesale alteration of wetlands on other portions of the site.

B. Grandview is not guilty with respect to the Wilkes property: No evidence exists that any wetlands exist on the Wilkes property. If no wetlands exist, there can be no violation of wetland restrictions.

2. With respect to Charge 2 (vegetation removal):

A. Grandview is guilty as charged with respect to the Anderson property. The wholesale removal of vegetation cannot be an agricultural activity given the facts of this case. Agriculture is not a permitted use within the City. [SMC 16.16.020] Agriculture includes tilling of the soil, pasturage, and grazing. [SMC 16.150.010(20)] Unless one or more of those uses enjoyed a nonconforming use right, they would be prohibited. Discontinuance of a nonconforming use for a period of 180 days results in loss of the nonconforming use right. [SMC 16.18.090(A)]

The preponderance of the evidence strongly supports the absence of a nonconforming right to agricultural use of the Anderson property. One eye witness had not seen cropping or grazing in over five years. A scientist who walked the property in June, 2000, encountered no manure. Anderson routinely mowed the entire property on a riding lawn mower. None of those items are even remotely supportive of agricultural use.

One of the purposes of Chapter 16.76 SMC is to control vegetation removal by property owners before project permit plans have been approved. That purpose does not work if the chapter applies only after a project permit application has been filed. The language and structure clearly make the chapter applicable to any vegetation removal on any property.

B. Grandview is guilty as charged with respect to the Wilkes property. Vegetation was removed. No agricultural exception argument was even made for that property.

3. With respect to Charge 3 (work in the City right-of-way):

A. Grandview is guilty only of failing to employ erosion and sediment control measures with respect to the Anderson property. The Standards do not expressly require a permit or even any express form of permission. One can clean and maintain ditches within the right-of-way so long as one complies with the requirements of §7.02.13. The first requirement is that the ditches be kept clean. The City failed to show that they were not kept clean. (Sediment laden water is not equivalent to failing to keep the ditches clean.)

The second requirement relates to diversion of drainage systems. The City failed to show that any drainage system was diverted.

The third requirement relates to replacement of disturbed facilities. The City failed to show that any drainage facilities were disturbed. Absent disturbance, replacement is not required.

Finally, the last requirement calls for erosion control measures in accordance with a specific set of standards. The evidence is rather overwhelming that Grandview initially failed to employ any erosion control and that scattering some hay on part of the site does not constitute erosion control within the ditch in the right-of-way.

Grandview argues that the City has failed to prove that the ditch along the Sultan Basin Road is within the right-of-way. This argument is not persuasive. The ditch is outside the fence line, thus creating a *prima facie* case for it being within the right-of-way. Even if it were partially outside of a deeded or dedicated right-of-way, the City would have adverse possession to it as an integral part of a long-established public road.

B. Grandview is not guilty with respect to the Wilkes property. The record contains no evidence of any road-side ditch maintenance adjacent to the Wilkes property. Absent any activity, there can be no violation.

4. With respect to Charges 4 and 5 (clearing/excavating without stormwater erosion controls), Grandview is not guilty with respect to either the Anderson or the Wilkes property. The reality of the SMC is that it requires compliance with stormwater management standards only where a stormwater management permit is required, and it requires a stormwater management permit only where more than 3,000 square feet of impervious surface area exists or will result from the development activity. The record contains no evidence that either site contains more than 3,000 square feet of impervious area. Removal of vegetation is clearing, but it does not create an impervious surface.

Removal of vegetation is not excavation. The record contains no evidence that any earth was excavated from either site.

5. The Building Official has apparently somewhat changed his mind regarding necessary corrective actions. (Cf. Exhibit R11, p. 2, with Exhibit R20, pp. 5 and 6) The corrective actions which apply, unless revised through this appeal process, are those as set forth in the Notice, Exhibit R11. The Notice logically groups the corrective actions into four items, combining required corrections for Charges 4 and 5 since they both deal with stormwater control issues.

A. The required action to correct the Charge 1 violation is appropriate for the Anderson property. Restoration is required under SMC 16.80.070(A)(1) because wetlands on the Anderson property were altered without benefit of any approval and clearly "prior to project approval". [SMC 16.80.070(A)(1)] No correction is required for the Wilkes property since no evidence of the existence of wetlands on that property has been presented.

B. The required action to correct the Charge 2 violation is appropriate for both of the properties. Had a vegetation removal permit been sought for the Anderson and Wilkes properties, Grandview would likely have been required to replace removed vegetation under SMC 16.76.030(C)(5)(b). That replacement on the Anderson property will have to recognize the existence of wetlands on that property. This proceeding is not the proper forum to address the disagreement over the extent of wetlands on the Anderson property since that is not an issue in the Notice.

C. The Notice fails to actually state any required correction for Charge 3. The Notice essentially repeats the statement of the violation. Since the evidence does not show the need to obtain a special permit to work within City right-of-way, and since the evidence supports a conclusion of only limited violation of the conditions under which one may work within the right-of-way, the only corrective action supported by the evidence is to employ appropriate erosion and sediment control measures within the roadside ditch. Given that the violation occurred over six months ago, the ditch has likely stabilized – any damage that might have been done probably has long since happened. If Grandview's failure to employ proper erosion and sediment control measures caused downstream problems within the roadside ditch system, then Grandview should reimburse the City for actual expenses, if any, incurred in correcting those problems.

D. No violation of Chapter 16.92 SMC has been proven by the evidence in the record. Therefore, Charges 4 and 5 cannot be sustained. Any corrective actions associated with them must be eliminated from the Notice.

E. The timeline within the Notice for completion of the corrective actions is appropriate with one exception. It is not appropriate to impose a time limit on Grandview over which it has no control. Grandview can control the amount of time it takes to prepare and submit required applications, but it cannot control how long the City will take to review and approve any applications which it files. Therefore, the requirement to restore wetlands and buffers within 30 days needs to be revised to require restoration within 30 days of receipt of necessary permit approvals from the City.

6. The "revised" correction list contained in Exhibit R20 goes well beyond what is necessary and appropriate. Specification of filing fees and distribution requirements for permit applications are administrative maters not within the purview of the Examiner. The request that a civil penalty be imposed effective as of January 1, 2002, conflicts directly with SMC 16.120.100(B) which holds that an appeal stays the action being appealed. Penalties cannot accumulate during the pendency of an appeal, since the appeal stays the Notice being appealed. (In addition, the notion that the Notice required correction by January 1, 2002, is without any substantiation within the record. The Notice was issued October 15, 2001. The longest compliance period set in the Notice was 30 days. Therefore, under the plain language of the Notice, the final compliance date, had the appeal not been filed, would have been November 14, 2001, not January 1, 2002.)

7. Grandview has prevailed only in part. The refund of appeal filing fees called for by the Council's 2002 Fee Schedule is analogous to court requirements for payment of attorneys' fees. Unless the language clearly calls for something else, which it does not here, attorneys' fees are not awarded for a partial victory. Therefore, no refund is required.

DECISION

Based upon the preceding Findings of Fact, Discussion, and Conclusions, the testimony and evidence submitted at the open record hearing, and the Examiner's site view, the Examiner **DENIES in Part** and **GRANTS in Part** the Grandview, Inc. appeal:

A. Charge 1 is SUSTAINED as to the Anderson property and VACATED as to the Wilkes property. The required correction is to cease current activities, apply for required permits/approvals within five days, and complete restoration within 30 days of issuance of required permits (unless the permits contain a different, more specialized completion schedule based upon environmental considerations).

B. Charge 2 is SUSTAINED as to both the Anderson and the Wilkes properties. The required correction is to cease current activities, apply for required permits/approvals within five days, and complete restoration within 30 days of issuance of required permits (unless the permits contain a different, more specialized completion schedule based upon environmental considerations).

C. Charge 3 is SUSTAINED in PART as to the Anderson property and VACATED as to the Wilkes property. The required correction is to employ proper erosion and sediment control measures within the ditch within 48 hours and, if the lack of such measures when the cleaning actually occurred caused downstream problems within the roadside ditch system, reimburse the City for actual expenses, if any, incurred in correcting those problems.

D. Charges 4 and 5 and any and all corrective actions associated therewith are VACATED as to both the Anderson and the Wilkes properties.

Decision issued June 3, 2002.

John E. Galt,
Hearing Examiner

NOTICE OF RIGHT OF RECONSIDERATION

This Decision is subject to the right of reconsideration pursuant to SMC 2.26.120(D). Reconsideration may be requested by the appellant, a party of record, or the City. Reconsideration requests must be filed in writing with the City Clerk within seven (7) calendar days of the date of mailing of this Decision. Any reconsideration request shall specify the error of law or fact, procedural error, or new evidence which could not have been reasonably available at the time of the hearing conducted by the Examiner which forms the basis of the request. Any reconsideration request shall also specify the relief requested. See SMC 2.26.120(D) for additional information and requirements regarding reconsideration.

NOTICE OF RIGHT OF APPEAL

This Decision becomes final and conclusive as of the eighth calendar day after the date of mailing of the Decision unless reconsideration is timely requested. If reconsideration is timely requested, the Examiner's order granting or denying reconsideration becomes the final and conclusive action for the City. The final action may be reviewed in Superior Court pursuant to the procedures established by Chapter 36.70C RCW, the Land Use Petition Act. Section 36.70C.040 RCW requires that any appeal be properly filed with the Court within 21 days of the issuance of the final action. Please refer to SMC 2.26.120(D) and Chapter 36.70C RCW for further guidance regarding judicial appeal procedures.

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

SETTLEMENT AGREEMENT

This Settlement Agreement is made this _____day of January, 2005 between GRANDVIEW, INC., a Washington corporation (hereinafter "Grandview") and the City of Sultan, Washington (hereinafter "City").

Whereas Grandview is the owner or contract purchaser of certain real property legally described in attachment A to this Settlement Agreement;

Whereas wetlands and buffers are located on the real property;

Whereas the City issued a notice and order concerning activities conducted or caused by Grandview on the real property;

Whereas Grandview appealed the notice and order to the City's Hearing Examiner;

Whereas the Hearing Examiner sustained the notice and order in part and dismissed the notice and order in part;

Whereas the decision of the Hearing Examiner was not appealed;

Whereas Grandview did not take action as required by the decision of the Hearing Examiner;

Whereas the City commenced an action under Snohomish County Superior Court Cause No. 03-2-07181-0 to enforce the decision of the Hearing Examiner and to recover various civil penalties and costs;

Whereas the parties wish to provide for the disposition of the pending action and to set out a plan of action for the real property;

Now, therefore, Grandview and City agree as follows:

1. **Trial Date.** The parties shall jointly strike the trial date in Snohomish County Superior Court Cause No. 03-2-07181-0. No new trial date shall be set pending performance under the terms of this Settlement Agreement.

2. **JARPA.** Grandview has submitted or will submit within sixty (60) days of this Settlement Agreement a Joint Aquatic Resources Permit Application to the US Army Corp of Engineers and the Department of Ecology for activities in the wetlands and buffers in conjunction with residential development of the real property. Grandview shall process that application in good faith and with all appropriate speed.

3. **Development Application.** Grandview will submit within one hundred and twenty (120) days to the City an application for preliminary plat approval and such

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other approvals required or allowed under City Code for residential development of the real property. Grandview shall process the application in good faith and with all appropriate speed. In conjunction with said application, Grandview shall submit and obtain approval for a mitigation plan to address the wetlands and buffers on the real property.

4. **Development Activity**. Upon receipt of all required development approvals, Grandview shall develop the real property with all appropriate speed in accordance with the approvals received.

5. **Sultan Basin Road Street Improvements.** Development of the real property will require the construction of certain road improvements along Sultan Basin Road and will require the payment of certain traffic impact fees. The construction of improvements will provide Grandview with an Impact fee credit under SMC 16.112.080. Based upon approval of a 33 lot subdivision, a sample calculation of the credit follows:

a. Estimated Cost of Right of Way/Construction on Sultan Basin Road	$96,114.00
b. Traffic Impact Fees	$61,809.00
c. Credit	$34,331.00

The actual credit shall be calculated based upon the actual cost of right of way acquisition and the cost of construction of improvements on Sultan Basin Road reduced by the amount of the City's actual Traffic Impact Fees.

6. **Sultan Basin Road Street Improvements/Coon Property**. Grandview also agrees to exercise its best efforts to obtain and dedicate right of way as required (if any) from the Mabel Coon property, which property is located at the intersection of Sultan Basin Road and Bryant Road. In the event Grandview is able to obtain the agreement of Mabel Coon for the dedication of additional right of way, and construction of improvements, Grandview shall be entitled to additional Impact fee credits under SMC 16.112.080 to the extent of improvements on Sultan Basin Road.. The actual credit shall be calculated based upon the actual cost of right of way acquisition and the cost of construction of improvements on Sultan Basin Road reduced by the amount of the City's actual Traffic Impact Fees.

7. **Bryant Road Street Improvements**. Grandview's development of its property will necessitate road improvements on Bryant Road. The nature of those improvements, the costs of those improvements, and credit given, if any, for those improvements by the City are not addressed in this agreement, and are reserved for later resolution in the processing of Grandview's development application.

8. **Reduction of Credit**. In consideration of this Settlement Agreement, and in full satisfaction of all obligations Grandview may have for civil penalties or to

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reimburse the City for fees or costs incurred, Grandview agrees that upon calculation of its actual traffic impact fee credit referenced in the preceding paragraphs 5 and 6, that the credit shall be reduced by $10,000, which $10,000 of credit shall be deemed transferred to the City. The credit as reduced may be applied toward impact fees imposed on other developments within the city as permitted by SMC 16.112.080. City and Grandview shall exchange a written acknowledgement of the amount of the credit as reduced. In the event the parties cannot agree upon the amount of the credit as reduced, the City's determination shall be deemed and administrative determination which may be appealed to the City's hearing examiner.

9. **Other Fees and Charges.** Grandview shall pay all other fees and charges required by City Code, Resolution, LID assessment, Cost Recovery Contract or otherwise as required by law in conjunction with the development application.

10. **Final Plat Approval.** Upon Grandview receiving final plat approval for the real property, the parties agree to entry of a stipulation and order of dismissal dismissing this matter with prejudice. Entry of a stipulation and order of dismissal shall be deemed a release of all claims associated with Grandview's activities that gave rise to the issuance of a Notice and Order by the City concerning the real property.

11. **Failure to Obtain Final Plat Approval.** Should Grandview not obtain final plat approval by December 31, 2006, unless said deadline is mutually agreed to be extended, this Settlement Agreement shall become null and void. City may then renote Snohomish County Superior Court Cause No. 03-2-07181-0 for trial.

12. **Complete Agreement.** This is a complete and final agreement between the parties. There are no other agreements between the City and Grandview concerning the subject matter of this Settlement Agreement.

13. **Counterparts; Facsimile.** This agreement may be executed in counterparts. This agreement shall become fully effective when both parties sign a counterpart to this agreement. Signature on facsimile copies shall be deemed signature on the original of the agreement.

GRANDVIEW, INC., a Washington corporation

By: _____
Name: Scott T. Wammack
Title: President

Date Executed: _____

THE CITY OF SULTAN, a Washington municipal corporation

By: _____
Name:
Title: Mayor

Date Executed: _____

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ATTACHMENT "A"

PARCEL A:

Beginning at the Southeast corner of the North half of the Northeast quarter of Section 32, Township 28 North, Range 8 East, W.M., in Snohomish County, Washington;
Thence North 330 feet;
Thence West 660 feet;
Thence South 330 feet;
Thence East 660 feet to the point of Beginning;
EXCEPT the West 207.43 feet thereof;
EXCEPT the North 30 feet conveyed to Snohomish County, by Deeds recorded under Auditor's File Numbers 2255856 and 2404625;
AND EXCEPT any portion lying within Sultan Basin Road;

(Also known as Lot B of Short Plat 113 (5-75) as recorded under Auditor's File No. 2405151).

Situate in the County of Snohomish, State of Washington.

PARCEL B:

The North half of the Southeast quarter of the Northeast quarter of the Northeast quarter of Section 32, Township 28 North, Range 8 East, W.M.;

EXCEPT County Road on East known as Sultan Basin Road;
EXCEPT that portion deed to Snohomish County for road under Auditor's File Number 2255856;
AND EXCEPT the following:

Beginning at a point 980 feet South of the Northeast corner of said Section 32;
Thence West 180.75 feet;
Thence North 180.75 feet;
Thence East 180.75 feet to the Section line;
Thence South along the Section line for 180.75 feet to the True Point of Beginning.

Situate in the City of Sultan, County of Snohomish, State of Washington.

Wetland Resources, Inc.

Delineation / Mitigation / Restoration / Habitat Creation / Permit Assistance

9505 19th Avenue S.E.
Suite 106
Everett, Washington 98208
(425) 337-3174
Fax (425) 337-3045

CRITICAL AREA STUDY AND MITIGATION PLAN

FOR

ANDERSON FARM

Wetland Resources, Inc. Project #03145

Prepared By:

Wetland Resources, Inc.
9505 19th Ave. SE
Suite 106
Everett, WA 98208
(425) 337-3174

For:

Scott Wammack
P.O. Box 159
Arlington, WA 98223

Revision: December 4, 2006

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SITE DESCRIPTION

Wetland Resources, Inc. conducted a wetland delineation to identify jurisdictional wetlands in July of 2003. The site covers approximately 6 acres and is located at the intersection of Bryant Road and Sultan Basin Road in the city of Sultan, Washington. The property lies in a portion of Section 32, Township 28N, Range 8E, W.M.

The site encompasses two legal lots. Bryant Road runs east and west between the two lots. The properties are generally flat with slight undulations. The northern property currently has a single-family residence. The southern property currently has the foundation of a pre-existing single-family residence. Surrounding land use is comprised of mixed single-family residences and undeveloped pasture/forest land.

The northern property is mainly pasture with some areas of maintained lawn and patches of invasive Himalayan blackberry. Typical vegetation in the southern property is mixed pioneer red alder with Himalayan blackberry and pasture areas. Grazing cattle has historically disturbed the vegetation and underlying soils throughout the site.

There are three wetlands (Wetlands A through C) located on the northern property, and five wetlands (Wetlands D through H) in the southern property. All of the wetlands on this site are classified as Category 3 wetlands. Category 3 wetlands are typically dedicated 50-foot protective buffers in the city of Sultan.

Wetlands A and B are entirely contained within the northern parcel, while Wetland C extends off-site to the north. Wetlands A, B, and C are degraded wetlands dominated by pasture grasses and patches of Himalayan blackberry with no native canopy cover. Wetlands H and E are also historically degraded wetlands consisting of immature red alder and Himalayan blackberry. Wetland H extends off-site to the south.

Wetlands D, F, and G are isolated wetlands less than 5,000 square feet in size. According to the City of Sultan Municipal Code (SMC) Chapter 16.80.030, non-riparian category 3 wetlands less than 5,000 square feet in size are not subject to regulation.

The southern part of the site contains several non-regulated ditches. These ditches are non-regulated because, with the exception of the ditch running through wetland E, they were created out of non-wetland areas. This is based on the presence of non-hydric soils on either side of the ditches throughout the site. During our site investigation, it was noted that the ditches did not appear to convey water, as the water in these ditches was stagnant. The main source of hydrology appears to be from ground water. Based on these existing conditions, it appears that these man-made ditches are non-regulated.

Wetland Classifications - Cowardin System

According to the Cowardin System, as described in Classification of Wetlands and Deepwater Habitats of the United States, the classification for the on-site wetlands are as follows:

Wetlands A, B, & C
Palustrine, Emergent, Seasonally Saturated

Wetlands D, F, G
Palustrine, Scrub/Shrub, Broad-leaved Deciduous, Seasonally Saturated

Wetlands E and H
Palustrine, Forested, Broad-Leaved Deciduous, Seasonally Saturated

Wetland Classifications - City of Sultan

Under the City of Sultan Municipal Code Title 16.80, the on-site wetlands are classified as follows:

Wetlands A, B, C, D, E, F, G, & H
All of the wetlands on this site are classified as Category 3 wetlands because they are less than five acres in size and contain more than one wetland class. Category 3 wetlands are typically designated 50-foot buffers.

Wetlands D, F, and G are isolated wetlands less than 5,000 square feet in size. According to the City of Sultan Municipal Code (SMC) chapter 16.80.030, non-riparian category 3 wetlands less than 5,000 square feet in size are not subject to regulation.

Wetland Determination Report

Methodology

On-site, the routine methodology described in the Washington State Wetlands Identification and Delineation Manual (Washington State Department of Ecology Publication #96-94, March 1997) was used to make a determination, as required by the City of Sultan. Under this method, the process for making a wetland determination is based on three sequential steps:

1.) Examination of the site for hydrophytic vegetation (species present and percent cover);

2.) If hydrophytic vegetation is found, then the presence of hydric soils is determined.

3.) The final step is determining if wetland hydrology exists in the area examined under the first two steps.

The following criteria descriptions were used in the boundary determination:

Wetland Vegetation Criteria
The 1997 edition of the Washington State Wetlands Identification and Delineation Manual defines hydrophytic vegetation as "the sum total of macrophytic plant life that occurs in areas where the frequency and duration of inundation or soil saturation produce permanently or periodically saturated soils of sufficient duration to exert a controlling influence on the plant species present." Field indicators were used to determine whether the vegetation meets the definition for hydrophytic vegetation.

Wetland Soils Criteria and Mapped Description
The 1997 edition of the Washington State Wetlands Identification and Delineation Manual defines hydric soils as "soils that formed under conditions of saturation, flooding, or ponding long enough during the growing season to develop anaerobic conditions in the upper part." Field indicators were used to determine whether a given soil meets the definition for hydric soils.

The Soil Conservation Service mapped the subject property as having the following soil types: Pastik silt loam with 0 to 8 percent slopes and Bellingham silt clay loam. Soils sampled on-site are similar to the description for these soil series.

The Pastik silt loam with 0 to 8 percent slopes are found throughout the subject property except the extreme northern portion. These soils are very deep and moderately well drained. This soil unit is found on terraces and was formed in lake sediment and volcanic ash. The native vegetation present in these soils is mainly conifer trees. Typically, the surface layer is dark brown silt loam, while the subsoil is dark brown and yellowish brown silt loam. Included in this unit are areas of Bellingham, Nargar, Ragnar and Tokul soils. This soil unit is used mainly as woodland, but is also used for pasture land and urban development.

The Bellingham silt clay loam can be found in the extreme northern portion of the subject property. These soils are very deep and poorly drained. This soil unit is found in depressional areas and was formed in alluvium and lacustrine sediment. The native vegetation present in these soils is mainly grasses and sedges. Typically, the surface layer is very dark gray silty clay loam, while the subsoil is mottled gray and olive silty clay. Included in this unit are areas of Terric Medisaprists, Norma, Kitsap and Pastik soils. This soil unit is used mainly for pasture, woodland, urban development and wildlife habitat.

Bellingham silt clay loam soils are listed on the Snohomish County hydric soils list.

Wetland Hydrology Criteria
The 1997 edition of the Washington State Wetlands Identification and Delineation Manual states that the "term wetland hydrology encompasses all hydrologic characteristics of areas that are periodically inundated or have soils saturated to the surface for a sufficient duration during the growing season." It also explains that "areas with evident characteristics of wetland hydrology are those where the

presence of water has an overriding influence on characteristics of vegetation and soils due to anaerobic and chemically reducing conditions, respectively."

Additionally, the manual states that "areas which are seasonally inundated and/or saturated to the surface for a consecutive number of days ≥12.5 percent of the growing season are wetlands, provided the soil and vegetation parameters are met. Areas inundated or saturated between 5 and 12.5 percent of the growing season in most years may or may not be wetlands. Areas saturated to the surface for less than 5 percent of the growing season are non-wetlands." Field indicators were used to determine whether wetland hydrology parameters were met on this site.

WETLAND BOUNDARY DETERMINATION

Wetland Areas

Vegetation

Wetlands A, B, C, and D are dominated by emergent species. These wetlands contain velvet grass (*Holcus lanatus*, Fac), creeping bentgrass (*Agrostis alba*, Fac) and creeping buttercup (*Ranunculus repens*, FacW). Water foxtail (*Alopecurus geniculatus*, Obl) and soft rush (*Juncus effusus*, FacW) are also present but to a lesser extent. Trace amounts of reed canarygrass (*Phalaris arundinacea*, FacW), dagger leafed rush (*Juncus ensofolius*, FacW), and American speedwell (*Veronica scutellata*, Obl) were present.

Wetlands E, F, G and H are dominated by a mix of tree and shrub species. These wetlands generally contain immature red alder (*Alnus rubra*, Fac) in the overstory with Himalayan blackberry (*Rubus discolor*, FacU) dominating the shrub layer. The herbaceous layer contains reed canarygrass (*Phalaris arundinacea*, FacW), horsetail (*Equisetum arvense*, Fac), creeping buttercup (*Ranunculus repens*, FacW), perennial ryegrass (*Lolium perenne* FacU), and lesser amounts of skunk cabbage (*Lysichiton americanum* Obl) and lady fern (*Athyrium filix-femina* Fac).

Soils

The soils vary slightly throughout all the wetlands on this site. The soils generally have Munsell colors of very dark grayish brown (10YR 3/2) with redoximorphic features near the surface, and very dark gray (10YR 3/1) in the sub-surface layer. The soils have a texture of silt loam. They were slightly moist at the time of our investigation.

The dominance of species rated "Facultative" and wetter meets the criteria for hydrophytic vegetation in areas mapped as wetland. The presence of low chroma, saturated soils suggest that reducing conditions are present long enough during the growing season to develop anaerobic conditions in the upper part of the soil horizon. These characteristics meet the criteria for wetland soils. Based on these conditions, the areas mapped as wetland appear to be seasonally inundated and/or saturated to the surface for a consecutive number of days ≥12.5 percent of the growing season, thereby fulfilling wetland hydrology criteria.

Non-wetland Areas

Vegetation

The areas mapped as non-wetland in the south half of the site are dominated by a mix of red alder (*Alnus rubra*, Fac), Himalayan blackberry (*Rubus discolor*, FacU), reed canarygrass (*Phalaris arundinacea*, FacW), and creeping bentgrass (*Agrostis alba*, Fac).

The vegetation of the non-wetland areas in the northern portion of the site contains velvet grass (*Holcus lanatus*, Fac), creeping bentgrass (*Agrostis alba*, Fac), perennial rye grass (*Lolium perenne*, FacU), red clover (*Trifolium pratense*, FacU), common dandelion (*Taraxacum officinale*, FacU), and orchard grass (*Dactylis glomerata*, FacU).

Soils

The non-wetland soils in the northern portion of the property generally have a Munsell color dark yellowish brown (10YR 4/4). These soils have a texture of gravelly sandy loam. They were dry throughout the upland portions of the site at the time of investigation.

Based on the lack of field indicators, it appears that the non-wetland areas of the site are saturated to the surface for less than 12.5 percent of the growing season, thereby not fulfilling wetland hydrology criteria.

FUNCTIONS AND VALUES ASSESSMENT

Methodology

The methodology for this functions and values assessment is based on professional opinion developed through past field analyses and interpretations. This assessment pertains specifically to the on-site wetland system, but is typical for assessments of similar systems throughout western Washington.

Analysis

All of the wetlands and their associated buffers on this site have been historically disturbed and provide varying levels of wetland functions. Generally, wetlands and associated buffer areas that have been cleared of forested vegetation or are relatively small and isolated have severely limited potential in providing typical wetland functions and values.

Wetlands A, B, and C are depressional wetlands that have potential to function as a natural water storage areas during periods of high precipitation. However, because the wetlands are not forested, they do not retain as much stormwater as forested wetlands. These conditions also result in only moderate water quality improvement functions. An increase in density by native trees and shrubs would improve the functions within these wetlands.

Because Wetlands E and H contain more trees and shrubs than the other wetlands on this site, they have slightly higher potential to offer hydrologic and water quality

improvement functions. However, these wetlands would also benefit from the removal of invasive weeds and planting of a native shrub-shrub understory and mixed conifer and deciduous overstory.

Wetlands D, F, and G are severely limited by their small size and isolation. Their potential to offer typical wetland functions and values is low.

Wildlife habitat functions are limited by the lack of vegetation diversity and vertical structure throughout the site. The following avian species were detected during our on-site investigations in July 2003: American crow (*Corvus brachyrhynchos*), American robin (*Turdus migratorius*), black-capped chickadee (*Poecile atricapillus*), common raven (*Corvus corax*), northern flicker (*Colaptes auratus*), golden crowned kinglet (*Regulus satrapa*), dark eyed junco (*Junco hyemalis*), red-winged blackbird (*Agelaius phoeniceus*), rufous-sided towhee (*Pipilo erythrophthalmus*), song sparrow (*Melospiza melodia*), and winter wren (*Troglodytes troglodytes*).

Many other wildlife species are expected to use the site, but were not observed during site investigations. The wetlands and associated edges provide movement corridors, which become extremely important as areas become more populated. Wetlands often contain resources such as food, water, thermal cover, and hiding cover in close proximity. Another common avian species that would utilize this habitat is the bushtit (*Psaltriparus minimus*). Other mammalian species that may utilize this site include species that easily adapt to similar environments such as: Eastern cottontail rabbit (*Sylvilagus floridanus*), black-tailed deer (*Odocoileus hemionus*), shrews (*Sorex spp.*), moles (*Scapanus spp.*), bats (*Myotis spp.*), raccoons (*Procyon lotor*), skunks (*Mephitis spp*), squirrels (*Sciuris carolinensis, Tamiasciurus douglasii*), deer mice (*Peromyscus maniculatus*), and Virginia opossums (*Didelphis virginiana*). Many amphibian species were noted during the field survey, however identification was not possible. The expected amphibian species include: the pacific tree frog (*Hyla regilla*), the bullfrog (*Rana catesbeiana*), and the northwestern salamander (*Ambystoma gracile*). These lists are not intended to be all-inclusive, and may omit some bird, mammal, fish, or amphibian species that do utilize the site.

Project Description

The applicant is proposing to place 26 single-family residences with related access and utilities within this site. Small dwelling units will limit impacts to the site and reduce impervious surfaces. Several of the on-site wetlands and associated buffers are proposed to be designated as usable open space. This development design will necessitate filling the non-regulated wetlands on this site. It will also call for filling several small areas within wetlands A and B for creation of two low berms for proposed stormwater retention. Because available building space on the site is highly constricted by the numerous wetlands and associated buffers, the applicant will propose to reduce the standard wetland buffers below the minimum allowed buffer widths, and then dedicate wetland areas as buffers in order to achieve minimum allowed buffer widths. Mitigation for the aforementioned impacts shall be proposed through an Innovative Development Design to accommodate the proposed

development plan, minimize wetland impacts, and improve wetland functions and values on this site.

Proposed Trails and Boardwalk

As part of the usable open space requirements for this site, the applicant proposes to install several bark trails and two elevated boardwalks within the on-site wetlands and associated buffers. The placement of the trails and boardwalk will require some minimal vegetation removal. Vegetation to be removed will consist primarily of young red alder, Himalayan blackberry, and grasses. No significant trees or native shrubs are expected to be disturbed.

The elevated boardwalks are proposed within Wetlands A and E. No impacts to wetland hydrology, wildlife habitat, or other wetland functions and values are anticipated.

The remaining wetlands and buffers on this site shall be enhanced as part of the proposed Innovative Development Design Plan described below. These enhancement measures will provide more than enough compensation for impacts associated with these required trails (please refer to *Post Mitigation Functions and Values* in this report).

Non-Regulated Wetland Fill

The development plan proposes permanent fill within Wetland F (893 SF), Wetland G (380 SF), and a portion of Wetland D (1,202 SF). Pursuant to SMC 16.80.030.C., Wetlands D, F, and G are not wetlands subject to regulation because they are non-riparian wetlands less than 5,000 square feet in size. Based on their disturbed and isolated conditions, the loss of wetland functions and values is expected to be minimal on this site. The proposed stormwater detention facilities will compensate for lost hydrologic control functions.

Proposed Stormwater Retention Berms within Wetlands

As part of this development plan, stormwater retention/detention will be accomplished in the northern part of the site by placing berms along portions of Wetlands A and B and inputting clean stormwater runoff from the site to these areas. As part of this stormwar retention/detention design, topographic depressions will be graded into each of the wetlands. Stormwater will be treated within bioswales prior to entering the wetlands. During most of the year, water will infiltrate or evapotranspirate within the wetlands. However, standing water is expected to occur during heavy storm events. The newly constructed berms are designed to contain the inundated waters within the wetlands. The depth of water in Wetlands A and B will fluctuate depending on the season from 0 to 2 feet.

Due to the lack of available area on this site, this proposal is a necessary and unavoidable measure for stormwater retention on this site. The berms will be placed within the outer parts of the wetlands. They will cover 654 square feet within

Wetland A and 772 square feet within Wetland B for a total of 1,426 square feet of permanent wetland impact.

To mitigate for the aforementioned impacts, additional wetland areas will be created within Wetlands A and B. The creation of additional wetlands will occur as part of the project engineer's proposed grading design for a stormwater retention/detention facility. The design will result in a total of 4,843 square feet of additional wetland areas to be created. This is a greater than 3:1 wetland replacement to wetland impact ratio. The grading activities will be a temporary impact within the wetland areas. Following completion of the desired grade, Wetlands A and B will be planted with a variety of native trees, shrubs, and herbs.

This proposal will result in increased wetland area, increased stormwater capacity, and increased native vegetation cover and vertical structure. When compared to existing conditions within both Wetlands A and B, this proposal is expected to significantly improve hydrologic control, water quality improvement, and wildlife habitat functions on this site.

Reduced Wetland Buffers and Wetland "Paper Fill"

The standard buffer widths along the wetlands on this site are 50 feet. Buffer widths may be reduced down to a minimum 25 feet through buffer averaging or buffer enhancement. However, due to restricted building space, the applicant is proposing to reduce the standard wetland buffers below the minimum allowed widths. To accommodate this, several wetland areas will be dedicated as buffers (i.e. "paper fills"). In some areas, the applicant proposes a 5-foot swath of upland buffer with a 20-foot width of wetland to achieve minimum 25-foot buffer widths, while in other areas the applicant proposes to completely eliminate the upland buffer and designate a 25-foot width of wetland as buffer.

Buffer reductions below 25 feet are proposed along Wetlands A, B, C, E, and H. This will result in a total of 29,785 square feet of wetland areas to be paper filled. The applicant is proposing these measures through Innovative Development Design, SMC 16.80.080. Through this proposal, all remaining buffers and wetlands dedicated as buffers will be enhanced with native vegetation to compensate for proposed 25-foot buffers. Additionally, to compensate for impacts associated with dedicating wetland as buffer, all remaining wetlands will be enhanced with native vegetation. The plan will result in 40,440 square feet of buffer enhancement, 29,785 square feet of wetland paper fill enhancement, and 89,421 square feet of remaining wetland enhancement. An explanation of mitigation sequencing and a detailed description of the Innovative Development Design Plan are provided below.

MITIGATION SEQUENCING

Mitigation is typically applied in a descending hierarchy, so that avoidance takes precedence, followed by minimizing the impact, then restoration, replacement, and enhancement. Avoidance of wetlands that offer high functions and values is particularly important because it is often difficult to mitigate for the loss of functions and values. In cases when the resource offers minimal functions and values, or contains several disturbed areas, alternative mitigation measures may be applied that will provide a creative solution for replacing and improving the functions and values offered.

This site contains several degraded wetlands and upland areas that were historically grazed by cattle. Vegetation is primarily comprised of pasture grasses and patches of invasive blackberry, with pioneer red alder in some areas. Underlying soils have also been previously disturbed as part of historical land use practices.

Reducing the previously degraded and low functioning buffer areas on the proposed development site will result in minimal overall risk to the resource, especially when the buffer reduction would be mitigated through wetland and buffer enhancement. Proper installation of the proposed mitigation measures will benefit the resource by removing the degraded buffer area and providing substantial wetland and buffer enhancement in the appropriate areas. In addition to wetland and buffer enhancement, the applicant will install a split-rail fence and NGPA signs along the proposed boundary of the NGPA to provide added protection to the resources. Therefore, under this creative design, an exception of demonstrating strict avoidance of the wetland and buffer areas can be applied.

The following describes the avoidance and minimization measures included in the proposal:

1) Complete avoidance of regulated wetlands and their buffers under strict application of the code results in virtually no available building space on this site, and ultimately causes a significant economic loss for the applicant.
2) Because it is impossible to completely avoid wetland and buffer impacts, the proposed impacts will need to be minimized to the greatest extent possible.
3) The proposed development plan will necessitate critical area impacts and mitigation within the regulated wetlands on this site, as allowed in SMC 16.80.080.
4) In lieu of physically filling wetlands on this site, the applicant proposes to reduce the wetland buffers below minimum allowed widths and then dedicate wetlands areas as buffers in order to achieve minimum allowed buffer widths. The wetlands will not be physically filled, but will be mitigated as such. The designated wetland as buffer areas will retain their existing wetland functions in addition to taking on buffer functions. These measures will result in minimized impacts to the greatest extent possible because they avoid physically filling any wetlands on this site.
5) The applicant will propose an Innovative Development Design plan that will provide an overall net improvement in functions and values on this site.

Probable Impacts After Mitigation Sequencing

The wetlands and their associated buffers are generally degraded, and currently offer limited functions and values. The proposed impacts cannot be avoided because of the need for adequate building spaces, infrastructure and stormwater detention (see discussion above for the measures taken to avoid and minimize impacts). After avoidance and minimization, several buffer areas will be eliminated. Areas along Wetlands A, B, C, E, and H would be treated as "paper fill", meaning mitigation would be provided for the affected buffer areas as if the areas were wetland fill, although the areas would not actually be filled. This proposal will not reduce hydrologic control, water quality improvements or wildlife habitat functions within the wetlands.

In addition to providing wetland protection, to a certain extent high quality forested buffers also offer hydrologic control, water quality improvements, and wildlife habitat functions. Eliminating high quality buffers along wetlands reduces these functions. Although the buffers on this site are currently degraded, lack significant vegetation cover, and offer limited buffer functions, permanently removing them would likely have some minimal impacts on functions and values on this site. For that reason, several areas of wetland will be designated as buffer to take on the role that the eliminated buffers had.

Other impacts associated with reducing buffers along wetlands and dedicating wetlands as buffers may include, but are limited to: increased sunlight penetration, exposure to wind, noise, trash, and human and domestic animal intrusion. However, the wetlands and buffers on this site are already currently at risk of these impacts because of their lack of significant tree and shrub cover.

Overall impacts will be minimized to the greatest extent possible through: (1) avoidance and minimization (discussed above); (2) conservation of approximately 3.2 acres, where nearly all of the critical areas on the property are located; (3) stormwater management (described in the applicant's drainage plans on the proposed project); and (3) enhancement of existing wetlands and buffer on the site (the proposed Innovative Development Design measures described below).

Proposed Innovative Development Design

Typically in the city of Sultan, reduction of Category 3 wetland buffers below 25 feet is not allowed. However, the applicant would like to propose an alternative wetland management plan that will reduce the wetland buffers below 25 feet and then convert wetland areas as buffers. In some areas, the standard buffer is proposed to be eliminated. This proposal includes an extensive wetland and buffer enhancement plan, intended to mitigate the proposed impacts and increase functions and values offered by the wetlands over those currently offered.

Pursuant to 16.80.080, up to one acre of non-riparian Category 3 wetlands can be filled per site if loss of wetland functions is mitigated at an areal replacement ratio of 1.5:1 for on-site mitigation, or a ratio of 2:1 for off-site mitigation. For this site, the

applicant is proposing "paper fill" of 29,785 square feet (.68 acres) of Category 3 wetlands. In lieu of the standard areal replacement measures, the applicant is proposing to enhance all remaining wetland areas on the site, resulting in a greater than 2:1 wetland enhancement to wetland impact ratio.

Pursuant to 16.80.080, buffer widths may be reduced through buffer enhancement if the resulting buffer is not less than 25 feet in width, and if it increases functional values associated with wetlands and buffers on this site. Through this proposal, minimum 25-foot buffers will be provided along all wetlands by proposing to paper fill existing wetlands. Therefore, to compensate for the proposed buffer reduction of 25 feet along all wetlands, the applicant proposes to enhance all remaining buffer areas and designated wetland as buffer areas.

The proposed mitigation measures will be in the form of wetland and buffer enhancement, and will occur throughout the remaining on-site portions of Wetland A, B, C, E, and H and their associated buffers. These measures will result in 29,785 square feet of paper filled wetlands, 89,421 square feet of remaining wetlands and 40,440 square feet of buffer to be enhanced. These proposed measures provide a greater opportunity to replace unattractive, degraded pasture areas with highly valued and diverse native plant communities. Wetland and buffer enhancement will include removal of invasive species, and planting of native trees and shrubs. Proper enhancement of the wetlands and buffers, even with the buffer eliminations and on-site development, would provide a net increase in functions and values, when compared to current conditions (see Post Mitigation Functions and Values below).

The goals of the mitigation design are to allow a reasonable development plan to occur on the site while sufficiently replacing and improving the functions and values of the sensitive areas following the criteria under SMC 16.80.070. The proposed mitigation plan will result in significant enhancement throughout the existing wetland and buffer areas. The proposed plan will not adversely affect water quality; destroy damage, or disrupt fish and wildlife habitat areas; adversely affect drainage or stormwater detention capabilities; or lead to unstable earth conditions or erosion. The applicant has adequately demonstrated that proposed impacts have been minimized to greatest extent possible.

This mitigation plan is allowed pursuant to Innovative Development Design (IDD), SMC 16.80.100 because proper implementation of the plan will result in a net improvement of functions and values over those existing on this site. Since there are no state resource agencies with jurisdiction over the concept of wetland and buffer enhancement as compensation for on-site impacts versus the standard mitigation measures, no review by a state resource agency will be required for approval of Innovative Development Design.

This Innovative Development Design will help to protect and improve fragile and important elements of the natural environment while allowing a balance between individual property rights and environmental preservation. This Innovative

Development Design both promotes the goals and objectives of SMC 16.80 and is not detrimental to public welfare.

Post Mitigation Functions and Values

This mitigation plan proposes wetland and buffer enhancement to offset proposed impacts and provide an overall net improvement of functions and values. The goals of the proposed enhancement plan are to retain and improve the existing functions and values and to increase the structural and species diversity of the wetland and buffer areas. As already described several times in this report, the on-site wetlands and buffers are degraded and currently offer limited functions and values. Proper enhancement of the wetlands and buffers will result in a net increase in functions and values, when compared to current conditions.

Increasing the density of woody species creates resistance and slows the flow of hydrology through the wetland and buffer areas. This replaces lost hydrologic control and water quality functions. Placing a small berm on Wetlands A and B and planting the wetlands with native trees and shrubs greatly increases their stormwater storage.

The new plantings will also: reduce glare from car headlights, provide shade, cover, and protection for wildlife, reduce wind control, and provide a protective barrier that will deter human and domestic animal intrusion and will reduce the amount of trash and debris.

The wildlife habitat characteristics on-site would be greatly improved by the proposed mitigation. Planted trees and shrubs will grow and mature under existing developed conditions to eventually create a forest canopy with a dense native scrub-shrub understory. The native trees and shrubs proposed will provide habitat for birds and mammals to thrive, because the density of vegetation will provide cover and greater foraging opportunities. Overtime, tall trees will die and become snags or nurse logs on the forest floor, further enhancing wildlife habitat on this site.

The other functions that would greatly improve with the proposed mitigation involve aesthetic appeal. The areas proposed for wetland and buffer enhancement are immediately adjacent to the proposed development. Increasing the vegetative diversity with native trees and shrubs would increase the aesthetic appeal for residents.

Based on these anticipated conditions, proper implementation of the proposed enhancement plan will result in an overall net increase in functions and values on this site.

PROJECT GOAL

The goal of the proposed project is to establish a native plant community within the designated wetland and buffer areas that will replace and improve the functions and values offered by this site. This will be achieved if the enhanced areas support a minimum 80 percent of the planted species and contain no more than 10 percent areal cover by invasive species by the end of three years.

TEMPORARY EROSION CONTROL AND SEDIMENTATION CONTROL

Prior to beginning any development or mitigation activities, construction or siltation fencing shall be installed as described in the grading plan construction drawings. A pre-construction meeting between the City's biologist, the consulting wetland professional, the contractor and equipment operator(s) will be held prior to any mitigation activities to inspect the location of siltation fencing.

All sedimentation control facilities shall be kept in place and functioning until vegetation is firmly established. Refer to site engineer's TESC plan for all erosion and sedimentation control details.

INVASIVE SPECIES REMOVAL PLAN

Following installation of erosion control measures, invasive/non-native species will be removed within the designated areas. Invasive species to be removed include, but are not limited to, Himalayan blackberry. The removal program will commence in the late fall to early winter, during the plants' dormant period. The undesirable species will be identified, removed, and exported off-site. Removal method will include the use of hand-held tools and/or light machinery through the wetland and buffer areas. Plants will be cut to the ground. If possible, a shovel or other appropriate tool will be used to dig out the root balls of each invasive plant. Blackberry canes that are left on the site should be no taller than 6 inches above the ground.

Ongoing removal of the invasive species will continue through at least the following two growing seasons. The plan will include cutting and removing the invasive plants periodically during the spring and summer of each year for the three-year monitoring period. Following the cutting of the blackberry, a licensed applicator shall spot spray or paint the new growth with an appropriate product, such as Round Up.

BUFFER ENHANCEMENT PLANTING PLAN

The applicant proposes to enhance 40,440 square feet of wetland buffers on this site. Prior to planting, invasive plants will be removed. Pioneer red alder shall be thinned to approximately 10 feet on center. Enhancement within the buffers of Wetlands E and H will mainly focus on replacing invasive understory species (i.e. Himalayan blackberry) with native conifer trees and shrubs. Plantings will be in groups of 2-3 like species, however, the actual placement of individual plants shall mimic natural, asymmetric vegetation patterns. The following species shall be planted within the buffer enhancement area:

Buffer Enhancement Plantings - 40,440 square feet total

Common Name	Latin Name	Size	Spacing	Quantity
1. Douglas fir	*Pseudotsuga menziesii*	1 gal	10'	90
2. Western red cedar	*Thuja plicata*	1 gal	10'	90
3. Big leaf maple	*Acer macrophyllum*	1 gal	10'	30
4. Red alder	*Alnus rubra*	1 gal	10'	30
5. Snowberry	*Symphoricarpos albus*	1 gal	5'	165
6. Vine maple	*Acer circinatum*	1 gal	5'	165
7. Salmonberry	*Rubus spectabilis*	1 gal	5'	165
8. Sword fern	*Polystichum munitum*	1 gal	5'	165

Wetland Enhancement Planting Plan

The applicant proposes to enhance the 29,785 square feet of wetland paper fill areas and the 89,421 square feet of remaining wetland areas. This will result in a total of 116,206 square feet (2.6 acres) of wetland enhancement on this site. Prior to planting, invasive plants will be removed and any pioneer red alders in the southern part of the site will be thinned to 10 feet on center. Enhancement within Wetlands E and H will mainly focus on replacing invasive understory species (i.e. Himalayan blackberry) with native conifer trees and shrubs. Plantings will be in groups of 2-3 like species, however, the actual placement of individual plants shall mimic natural, asymmetric vegetation patterns. The following species shall be planted within the wetland enhancement area:

Proposed Wetland Enhancement Plantings - 116,206 square feet (2.6 acres)

Common Name	Latin Name	Size	Spacing	Quantity
1. Western red cedar	*Thuja plicata*	1 gal	10'	298
2. Sitka spruce	*Picea sitchensis*	1 gal	10'	298
3. Black cottonwood	*Populus balsamifera*	1 gal	10'	100
4. Black twinberry	*Lonicera involucrata*	1 gal	5'	375
5. Salmonberry	*Rubus spectabilis*	1 gal	5'	375
6. Swamp rose	*Rosa pisocarpa*	1 gal	5'	375
7. Red-osier dogwood	*Cornus sericea*	1 gal	5'	375
8. Pacific willow	*Salix lucida*	1 gal	5'	375

Planting Notes

A meeting will take place between the consulting biologist and the contracted landscaper prior to commencement of enhancement activities. This will provide an opportunity to clarify any questions that may arise and ensure success of the enhancement project in a timely manner. Siltation fencing shall be placed as shown on the TESC design and be inspected prior to any mitigation site disturbance.

Planting shall take place in the early spring or late fall. Potted plants should be obtained from a reputable nursery. All plant materials recommended in this plan are typically available from local and regional sources, depending on seasonal demand. Some limited species substitution may be allowed, only with the agreement of the

consulting biologist or city representative. Care and handling of plant materials is extremely important to the overall success of the project.

Lath stakes, or similar approved marking system, should be placed next to each tree and shrub to assist in locating the plants while removing the competing non-native vegetation. This will be done for all installed plants.
Plants will be arranged in a pattern with the appropriate numbers, sizes, species, and distribution to achieve the desired vegetation coverage. The actual placement of individual plants shall mimic natural, asymmetric vegetation patterns found on similar undisturbed sites in the area.

Irrigation / Watering

To insure the success of this project, a temporary above ground irrigation system will be installed. Water should be provided to the site during the dry season (late June/early July to late September) for at least the first two growing seasons to insure proper establishment of the planted species. Irrigation may result in increased plant growth rate and a reduced risk for future plant mortality and necessary replacement. We recommend irrigating the site at least once per week during the driest part of the growing season. Water should be applied at a rate of 1 inch of water per week during the next two years. After two years, the consulting biologist or city biologist will determine if further watering is needed or if the irrigation piping should be removed.

NGPA Language

In the city of Sultan, environmentally sensitive areas shall be recorded as open space. Environmentally sensitive areas shall be marked with native growth protection signs. At least 75 percent of the gross required open space area shall be open space free of structures or other improvements, whether public or private. In the event that it is deemed necessary to set aside any portion of the site for public buildings, an agreement shall be entered into between the applicant and the city of Sultan.

Project Monitoring Program

Requirements for monitoring project

1. Initial compliance report
2. Semi-annual site inspections (twice yearly, in the spring and fall) for three years
3. Annual reports (One report submitted in the fall of each monitored year)

Purpose of Monitoring

The purpose of monitoring this project is to evaluate the success of the enhancement plantings. Success will be determined if monitoring shows that at the end of three years the performance standards are being met and that habitat values in the enhancement areas are equivalent to similar ecosystems in the immediate area.

Inspection Schedule

Upon completion of the mitigation project, an inspection by a qualified wetland biologist will be made to determine plan compliance. A compliance report will be supplied to the City of Sultan regarding the completeness of the project. Condition

monitoring of the plantings will be done by a qualified wetland biologist in the spring and fall annually for the three-year monitoring period. A written report describing the monitoring results will be submitted to the City of Sultan shortly after the fall inspection of each monitored year. Final inspection will occur three years after completion of planting. The contracted wetland professional will prepare a final report as to the success of the project. Vegetation monitoring transects and photo points will be established in the compliance report.

Definition of Success / Performance Standards

The enhancement areas shall support at least 80% survivorship, and at least 80% areal coverage of the native plants set forth in this plan by the end of three years. The species mix should resemble that proposed by the planting plans, but strict adherence to obtaining all of the species shall not be a criterion for success. Reproduction of volunteer native species may be used to establish areal coverage requirements. If a given area contains more than 10% areal coverage of invasive, non-native species within the planting areas, the enhancement shall not be considered successful for that area.

MAINTENANCE

The enhancement areas will require periodic maintenance during the monitoring period. The buffer and wetland enhancement will be maintained at least two times during the spring and once in the fall for each of the three monitored years, or as needed to assure the success of the mitigation project. Maintenance may include, but will not be limited to, removal of invasive vegetation (by hand or chemical means as necessary), thinning of volunteer red alder to 10-foot centers, replacement of plant mortality, and/or the replacement of mulch for each maintenance period. Chemical control, if necessary, shall be applied by a licensed applicator following all label instructions. The temporary irrigation system will be maintained for at least two years or as necessary to achieve firm establishment of the planted species.

CONTINGENCY PLAN

If more than 20% of the plants are severely stressed during any of the inspections, or it appears more than 20% may not survive, additional plantings of the same species or, if necessary, alternative species may be added to the enhancement areas. If this situation persists into the next inspection, a meeting with a representative for the city of Sultan, the consulting wetland biologist and the property owner will be scheduled to decide upon contingency plans. Elements of the contingency plan may include, but will not be limited to more aggressive weed control, expansion of the irrigation system, plant mortality replacement, species substitution, fertilization, and/or soil amendments.

PERFORMANCE BOND

A performance bond shall be provided to the city of Sultan for the period of three years from the completion of the project, in the amount of 120% of the estimated cost for plant material and labor. Annual monitoring reports and seasonal maintenance will be required to assure the success of this enhancement plan. The

city of Sultan shall release this bond at the end of the three years, upon successful determination for all portions of this mitigation project. The following is an estimate of plant materials and labor only. This does not represent a bid to install:

Estimated Project Cost	
Quantity of one-gallon plants (at $8.25 per plant)	3,615
Estimated Cost of Plant Material and Installation Labor	$29,824.00
Estimated Cost of Monitoring for three years	$4,500.00
Estimated Cost of Maintenance for three year	$3,000.00
Estimated Cost of Irrigation ($2,000.00/Ac)	6,500.00
Total Estimated Project Cost	$43,824.00
TOTAL ESTIMATED BOND AMOUNT (120%)	**$54,780.00**

USE OF THIS REPORT

This Critical Area Study and Mitigation Plan is supplied to Scott Wammack as a means of determining on-site wetland conditions, as required by The City of Sultan during the permitting process. This report is based largely on readily observable conditions and, to a lesser extent, on readily ascertainable conditions. No attempt has been made to determine hidden or concealed conditions.

The laws applicable to wetlands are subject to varying interpretations and may be changed at any time by the courts or legislative bodies. This report is intended to provide information deemed relevant in the applicant's attempt to comply with the laws now in effect.

The work for this report has conformed to the standard of care employed by wetland ecologists. No other representation or warranty is made concerning the work or this report and any implied representation or warranty is disclaimed.

Wetland Resources, Inc.

Andrea Bachman

Andrea Bachman
Senior Wetland Ecologist

REFERENCES

Cowardin, et al., 1979. Classification of Wetlands and Deepwater Habitats of the United States. U.S.D.I. Fish and Wildlife Service. FWS/OBS-79/31. December 1979.

National List of Plant Species that Occur in Wetlands, Northwest Region. 1996. U.S. Department of the Interior, Fish and Wildlife Service. Washington, D.C.

Soil Survey of Snohomish County Area Washington. U.S.D.A. Soil Conservation Service. July 1983.

City of Sultan Municipal Code: Unified Development Code. Title 16, Division IV. January 2004.

Washington State Wetlands Identification and Delineation Manual. Washington State Department of Ecology. Publication #96-94. March 1997.

290

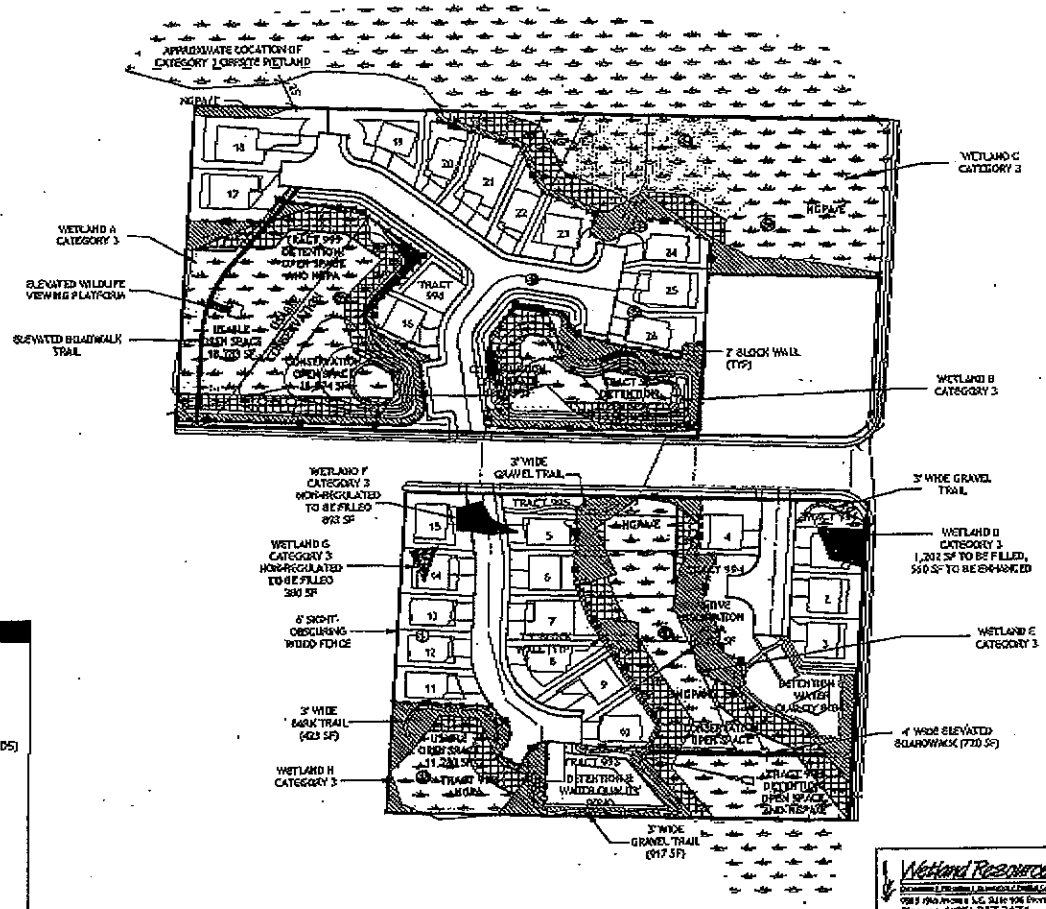
CRITICAL AREA STUDY AND MITIGATION PLAN MAP

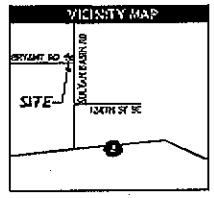
ANDERSON FARM

A PORTION OF SECTION 12, TWP 28 NORTH, RGE 6 EAST, W.M.

Scale 1" = 100'

0 50 100 150 200





LEGEND

- WETLANDS
- BUFFER ENHANCEMENT (40,440 SF TOTAL)
- WETLAND IMPACT (2,476 SF TOTAL FOR NON-REGULATED WETLANDS) (1,426 SF TOTAL FOR BERM PLACEMENT)
- WETLAND DESIGNATED AS BUFFER / PAPER FILL (29,783 SF TOTAL - .79 AC)
- WETLAND ENHANCEMENT (116,206 SF TOTAL)
- DATA SITES S1-S6
- TYPE 1 NGPA SIGN
- PROPOSED NGPA/E BOUNDARY WITH SPLIT-RAIL FENCE

Wetland Resources, Inc.
Phone: (425) 337-3174
Fax: (425) 337-3045
Email: mailbox@wetlandresources.com

CRITICAL AREA STUDY & MITIGATION PLAN MAP
ANDERSON FARM
City of Sultan, Washington

Sheet 1/1
WRI Job # 03145
Drawn by: AB
Rev: December 4, 2006

Scott Wasmack
P.O. Box 159
Arlington, WA 98223

Exhibit S-17
Preliminary Plans, submitted January 26, 2007

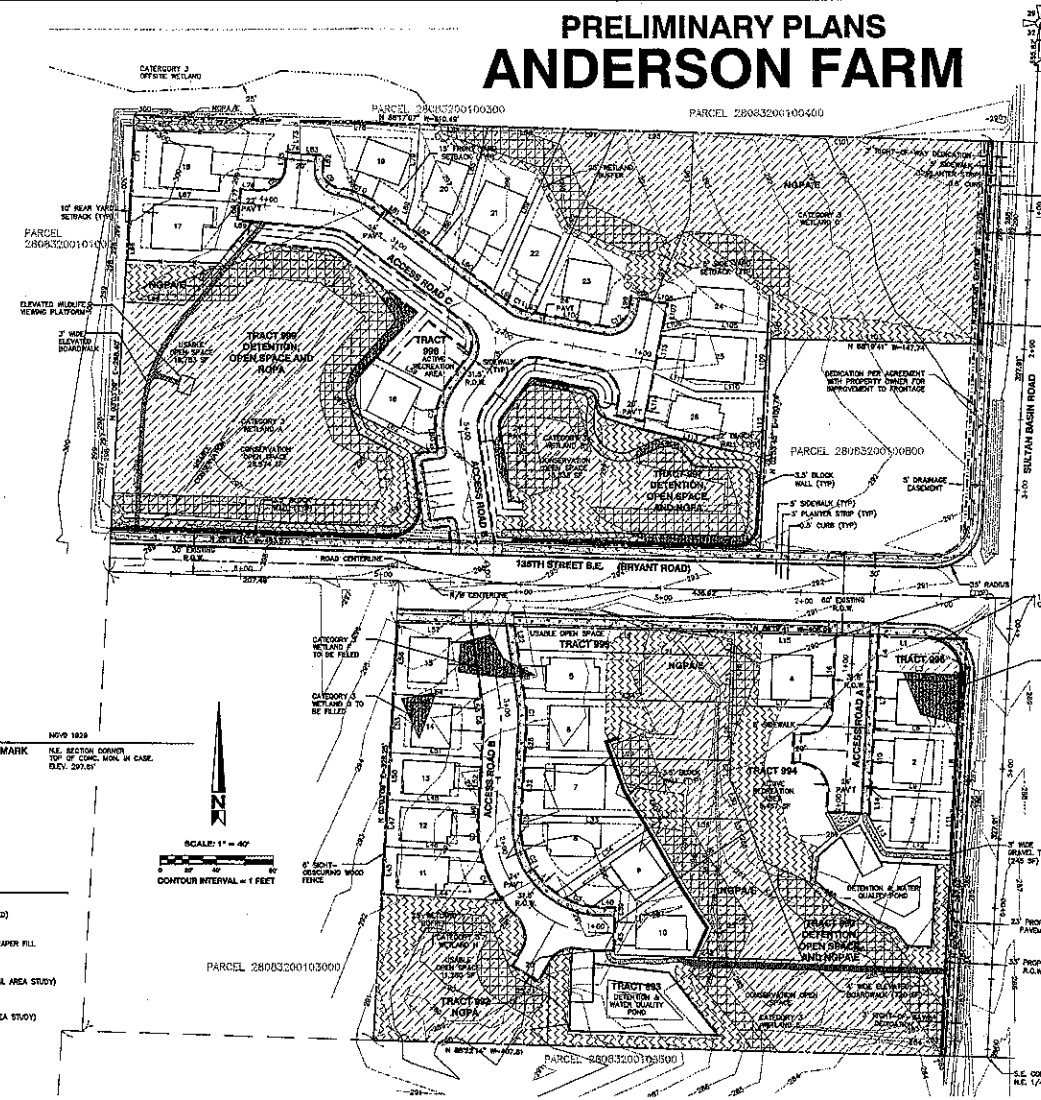
a) Site Plan
b) Drainage and Grading Plan
c) Existing Conditions
d) Landscape Plan

PORTION OF NE 1/4 OF SECTION 32, TOWNSHIP 28 NORTH, RANGE 8 EAST, W.M.

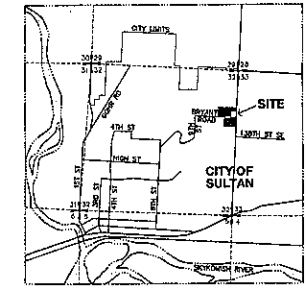
PRELIMINARY PLANS
ANDERSON FARM

LINE TABLE			
LINE	LENGTH	LINE	LENGTH
L1	33.98	L58	82.94
L2	6.94	L60	9.36
L3	59.50	L61	5.09
L4	24.71	L62	81.75
L5	42.00	L63	13.28
L6	59.50	L64	32.28
L7	42.00	L65	42.67
L8	42.00	L66	76.74
L9	59.50	L67	76.04
L10	42.00	L68	13.83
L11	42.00	L69	11.66
L12	48.89	L70	77.73
L13	23.73	L71	56.34
L14	31.96	L72	115.77
L15	72.08	L73	32.51
L16	51.97	L74	9.79
L17	70.97	L75	11.00
L18	51.96	L76	11.00
L19	136.43	L77	10.35
L20	19.98	L78	65.47
L21	153.44	L79	50.32
L22	17.24	L80	23.05
L23	33.64	L81	33.18
L24	147.40	L82	9.11
L25	34.74	L83	17.71
L26	42.00	L84	48.56
L27	144.12	L85	83.82
L28	14.89	L86	32.59
L29	13.36	L87	26.92
L30	31.27	L88	54.51
L31	159.77	L89	127.49
L32	42.12	L90	52.06
L33	101.12	L91	34.61
L34	93.43	L92	143.66
L35	8.18	L93	7.56
L36	58.65	L94	18.47
L37	7.37	L95	68.13
L38	117.42	L96	63.07
L39	11.58	L97	65.91
L40	11.45	L98	16.72
L41	101.14	L99	11.00
L42	134.79	L100	50.67
L43	22.13	L101	209.84
L44	96.37	L102	167.19
L45	34.00	L103	147.74
L46	68.40	L104	4.23
L47	34.00	L105	58.45
L48	85.50	L106	18.38
L49	10.96	L107	20.31
L50	33.97	L108	10.76
L51	85.50	L109	41.72
L52	33.97	L110	51.72
L53	42.00	L111	32.28
L54	53.54	L112	47.42
L55	4.10	L113	68.07
L56	51.28	L114	38.81
L57	02.48	L115	30.99
L58	83.50		

CURVE TABLE		
CURVE	LENGTH	RADIUS
C1	23.14	118.50
C2	56.90	57.50
C3	32.63	57.00
C4	38.98	93.38
C5	23.37	105.88
C6	18.58	54.00
C7	33.43	38.00
C8	28.86	19.00
C9	20.45	13.50
C10	30.09	60.50
C11	8.77	19.00
C12	21.21	13.50



LOT AREAS	
LOT NO	AREA IN SF
1	2,469
2	2,469
3	2,592
4	3,716
5	5,030
6	6,154
7	6,354
8	3,141
9	4,460
10	7,255
11	3,579
12	2,250
13	2,225
14	2,734
15	3,001
16	2,884
17	3,233
18	6,390
19	4,075
20	3,292
21	3,242
22	4,673
23	10,003
24	31,810
25	3,347
26	3,385
AVERAGE LOT AREA	5,931
SMALLEST LOT	2,225
LARGEST LOT	31,810



VICINITY MAP
SCALE: 1" = 2000' (APPROX.)

WETLAND BIOLOGIST:
WETLAND RESOURCES
9505 19TH AVE SE, STE 106
EVERETT, WA 98208
(425) 337-3174

PROJECT ENGINEER/PLANNER:
HGA DESIGN GROUP
1721 HEWITT AVENUE
EVERETT, WASHINGTON 98201
(425) 252-2526

PROJECT GEOTECH:
ASSOCIATED EARTH SCIENCES
2911 1/2 HEWITT AVE, STE 2
EVERETT, WA 98201
(425) 259-0522

PROJECT SURVEYOR:
CASCADE SURVEYING AND ENGINEERING INC
P.O. BOX 326
ARLINGTON, WASHINGTON 98223
(360) 435-5501

TAX ACCOUNT NUMBERS:
28083200100100
28083200100600

PROPERTY OWNER/APPLICANT:
GRANDVIEW INC
P O BOX 159
ARLINGTON, WA 98223
(360) 435-3171

LEGAL DESCRIPTION

PARCEL A: BEGINNING AT THE SOUTHEAST CORNER OF THE NORTH HALF OF THE NORTHEAST QUARTER OF SECTION 32, TOWNSHIP 28 NORTH, RANGE 8 EAST, W.M. IN SNOHOMISH COUNTY, WASHINGTON; THENCE NORTH 330 FEET; THENCE WEST 660 FEET; THENCE SOUTH 330 FEET; THENCE EAST 660 FEET TO THE POINT OF BEGINNING EXCEPT THE WEST 207.43 FEET THEREOF, EXCEPT THE NORTH 30 FEET CONVEYED TO SNOHOMISH COUNTY BY DEEDS RECORDED UNDER AUDITOR'S FILE NUMBERS 2355856 AND 2400625; AND EXCEPT ANY PORTION LYING WITHIN SULTAN BASIN ROAD.

(ALSO KNOWN AS LOT B OF SHORT PLAT 113 (3-73) AS RECORDED UNDER AUDITOR'S FILE NO. 2405151).

SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.

PARCEL B: THE NORTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 32, TOWNSHIP 28 NORTH, RANGE 8 EAST, W.M.; EXCEPT COUNTY ROAD ON EAST KNOWN AS SULTAN BASIN ROAD, EXCEPT THAT PORTION DEEDED TO SNOHOMISH COUNTY FOR ROAD UNDER AUDITOR'S FILE NUMBER 2355856; AND EXCEPT THE FOLLOWING: BEGINNING AT A POINT 660 FEET SOUTH OF THE NORTHEAST CORNER OF SAID SECTION 32; THENCE WEST 160.75 FEET; THENCE NORTH 160.75 FEET; THENCE EAST 160.75 FEET TO THE SECTION LINE FOR 160.75 FEET TO THE TRUE POINT OF BEGINNING.

SITUATE IN THE CITY OF SULTAN, COUNTY OF SNOHOMISH, STATE OF WASHINGTON.

SITE INFORMATION

EXISTING ZONING: MD

PROPOSED ZONING: MD / PUD-SF

NUMBER OF LOTS PROPOSED: 26

SEWER AND WATER SUPPLY: CITY OF SULTAN

TOTAL SITE AREA: 281,687 S.F. (6.47 AC.)
NORTH SITE: 160,278 S.F. (3.68 AC.)
SOUTH SITE: 121,409 S.F. (2.79 AC.)

PARKING STALLS: 57

MAXIMUM PROPOSED BUILDING HEIGHT: 30 FEET

GROSS DENSITY: 4 LOTS / ACRE

RECREATION AREAS

REQUIRED RECREATION SPACE:
75 SQ. FT. PER RESIDENT X 104 RESIDENTS (4 RESIDENTS/DU) = 7,800 SQ. FT.

RECREATION AREA PROVIDED (TRACTS 994 & 995): 7,803 SQ. FT.

RECREATION FACILITIES PROPOSED:

TRACT 994 – MULTI-PURPOSE COURT AND THREE PICNIC BENCHES, THREE BARBECUES, AND THREE SECURED IN-PLACE TRASH CONTAINERS

TRACT 995 – PICNIC AREA, CONSISTING OF TWO PICNIC TABLES WITH BENCHES, TWO BARBECUES, AND TWO SECURED IN-PLACE TRASH CONTAINERS.

NOTES

1. ALL PORTIONS OF ONSITE WETLANDS AND BUFFERS WITHIN PROPOSED LOT BOUNDARIES SHALL BE DESIGNATED AS NATIVE GROWTH PROTECTION AREA EASEMENTS (NGPA/E).
2. SURVEYOR'S SIGNATURE IS FOR VERIFICATION OF EXISTING TOPOGRAPHY, WETLAND BOUNDARIES AS FLAGGED BY WETLAND RESOURCES, EXISTING PROPERTY & ROW LINES, AND LEGAL DESCRIPTION ONLY. REFER TO DELINEATED CRITICAL AREAS REPORT FOR WETLAND DIMENSIONS.
3. ALL PLAT ACCESS ROADS TO BE DEDICATED TO CITY OF SULTAN AS RIGHT-OF-WAY

OPEN SPACE

REQUIRED OPEN SPACE QUANTITIES:
TOTAL REQUIRED: 56,247 SQ. FT. (20% OF GROSS AREA)
USABLE: 42,275 SQ. FT. (15% OF GROSS AREA)
CONSERVATION: NO LIMIT

PROPOSED OPEN SPACE: 98,618 SQ. FT. TOTAL (34% OF GROSS AREA)
USABLE: 43,601 SQ. FT. (15% OF GROSS AREA)
CONSERVATION: 53,016 SQ. FT.

USABLE OPEN SPACE CONSISTS OF:
–ALL PROPOSED TRAILS
–TRACTS 993, 994, 995, 996, AND 999
–A PORTION OF TRACT 999

LEGEND

- EXISTING WETLAND (TO BE ENHANCED)
- WETLAND DESIGNATED AS BUFFER/PAPER FILL (PER CRITICAL AREA STUDY)
- BUFFER ENHANCEMENT (PER CRITICAL AREA STUDY)
- WETLAND IMPACT (PER CRITICAL AREA STUDY)
- PROPOSED RIGHT-OF-WAY
- PROPOSED EASEMENT
- EXISTING WETLAND BOUNDARY

HIGA-BURKHOLDER ASSOCIATES, LLC
LAND USE PLANNING / CIVIL ENGINEERING
1721 Hewitt Avenue S Suite 401
Everett, Washington 98201
(425) 252-2526 Telephone
(425) 252-9061 Fax
1100 North Seventh Street
Springfield, Oregon 97477
Telephone (541) 988-1662
Fax (541) 988-1663

WILLIAM J. HIGA STATE OF WASHINGTON 18621 REGISTERED PROFESSIONAL ENGINEER
EXPIRES: MARCH 1, 2008

RECEIVED
OCT - 8 2007
BY:

DATE	REVISIONS	BY
5/1/06	PER CITY COMMENTS	JRP
1/19/07	PER CITY COMMENTS	JRP

ISSUE DATE: 09/14/2005
DESIGNED BY: JHL, LDR
DRAWN BY: LDR, JRP
PLAN CHECK BY: JHL
FIRST SUBMITTAL: 09/14/2005
SECOND SUBMITTAL: 01/19/2007

PRELIMINARY PLANS
ANDERSON FARM
PUD-SF
SITE PLAN

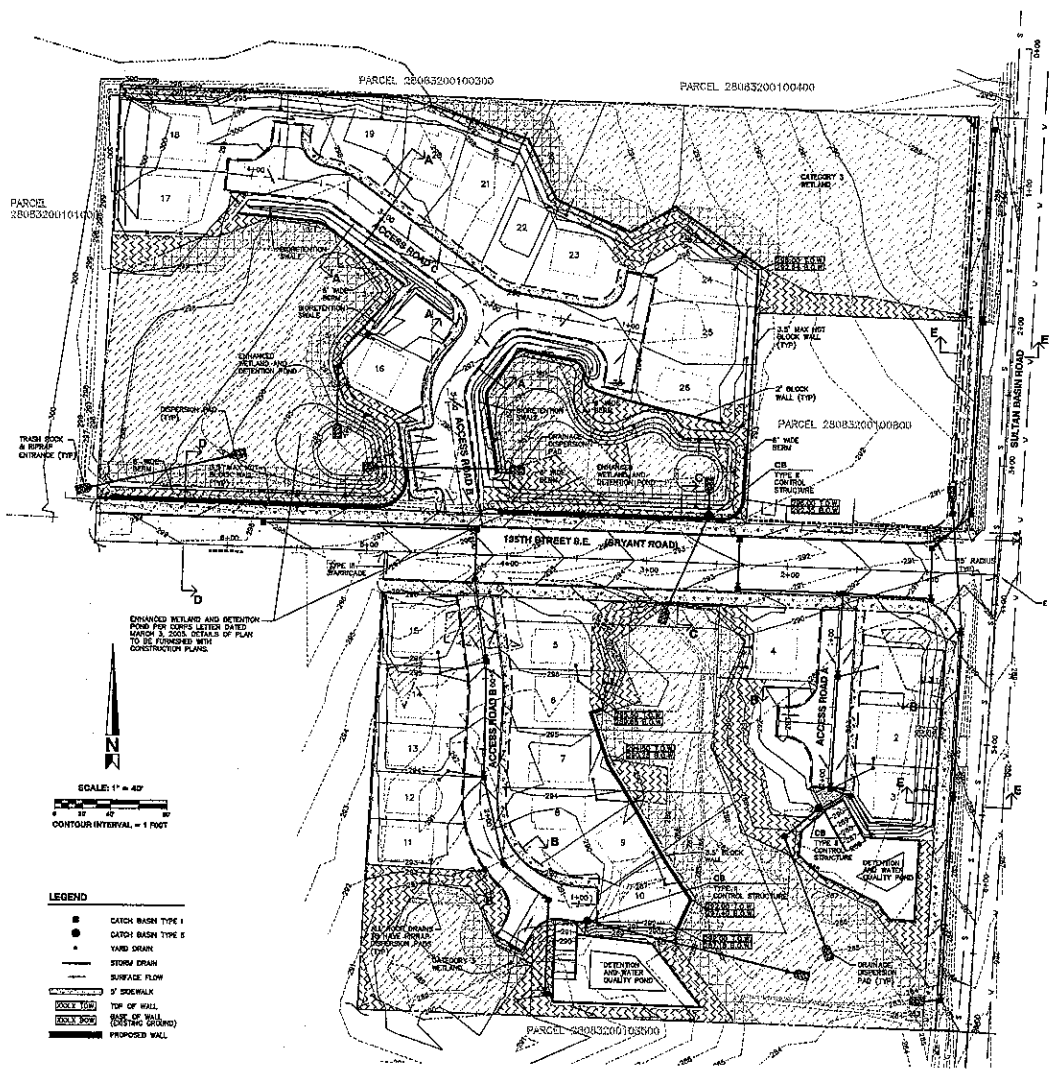
JOB NO. 1765

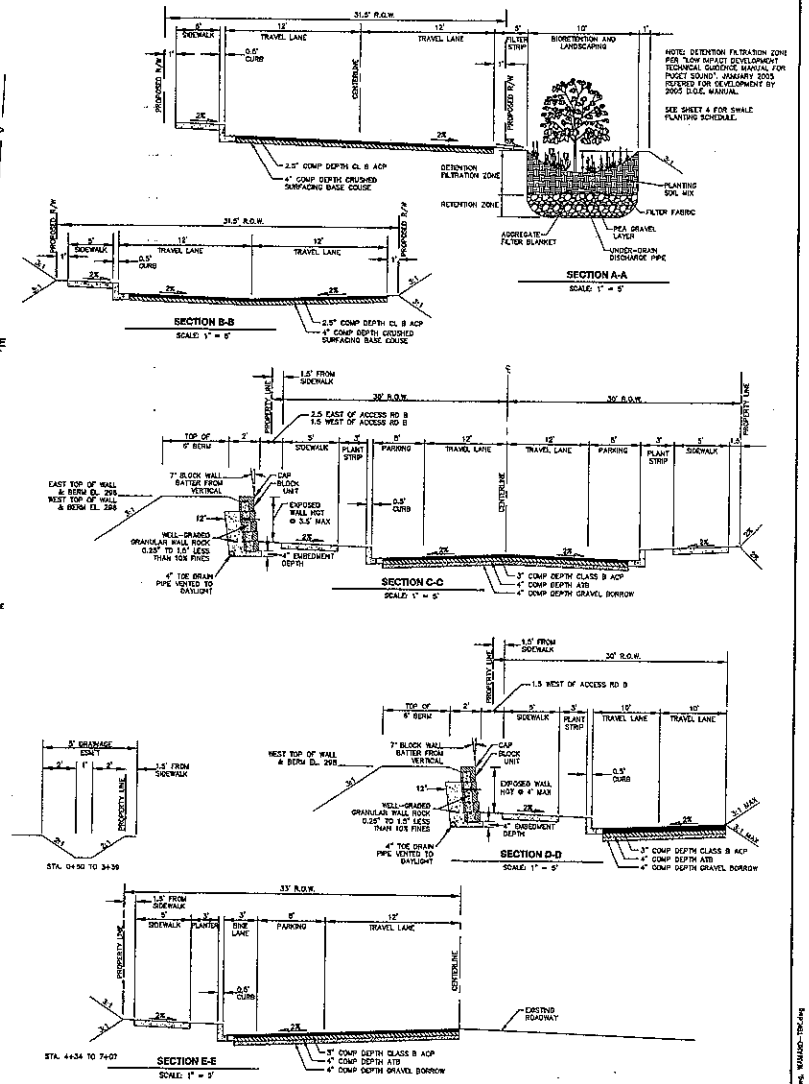
1/4

EXHIBIT S-17

292

PORTION OF NE 1/4 OF SECTION 32, TOWNSHIP 28 NORTH, RANGE 8 EAST, W.M.





HIGA-BURKHOLDER ASSOCIATES, LLC
LAND USE PLANNING / CIVIL ENGINEERING
1721 Hewitt Avenue ■ Suite 401
Everett, Washington 98201
(425) 252-2825 Telephone
(425) 252-9651 Fax
160 North Seventh Street
Springfield, Oregon 97477
Telephone (541) 988-1868
Fax (541) 988-1868

EXPIRES 3/17/2006

DATE	REVISIONS	BY
5/1/05	PER CITY COMMENTS	JRP
1/19/07	PER CITY COMMENTS	JRP

ISSUE DATE: 09/14/2005
DESIGNED BY: JAK
DRAWN BY: LDR, ABC
PLAN CHECK BY: JAK
FIRST SUBMITTAL: 09/14/2005
SECOND SUBMITTAL: 01/19/2007

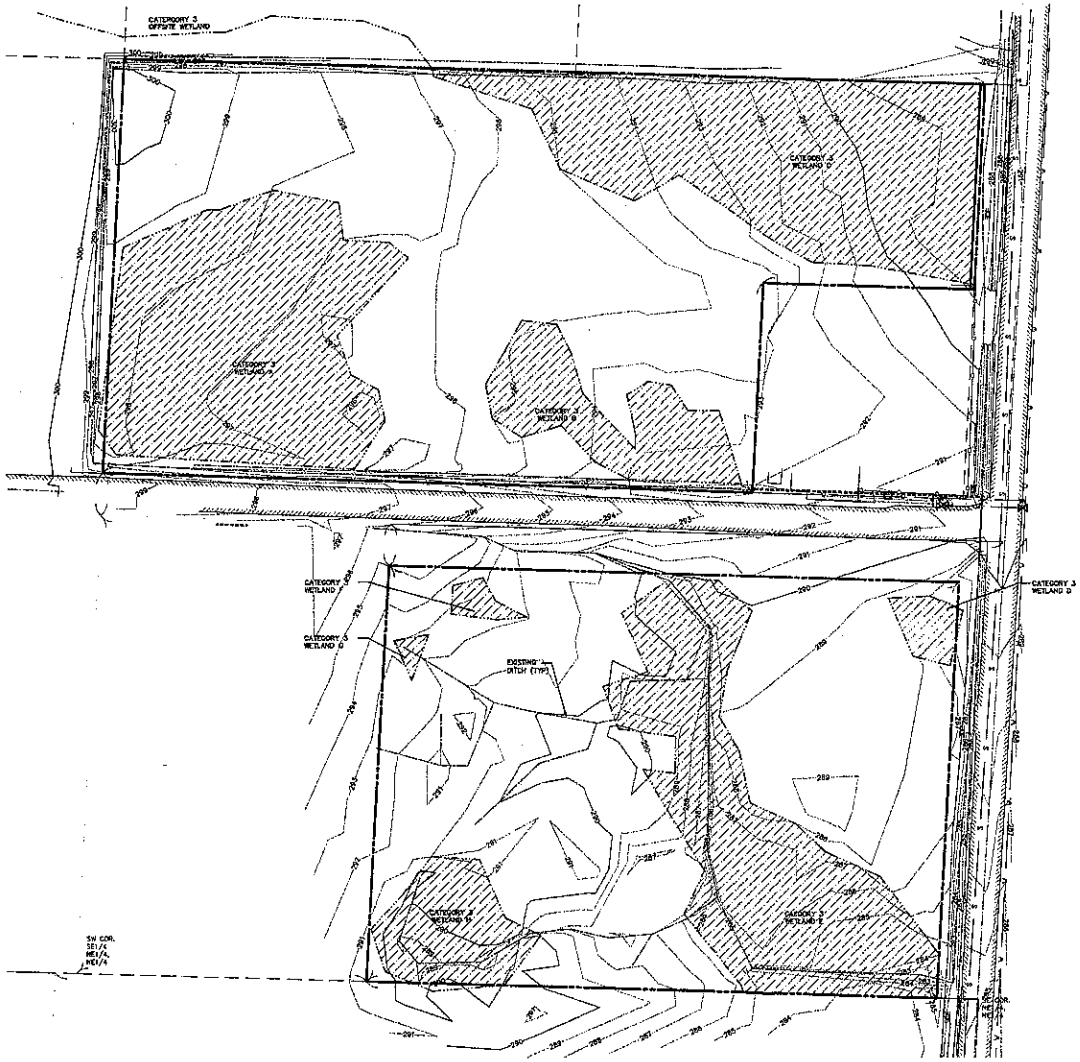
PRELIMINARY PLANS
ANDERSON FARM
DRAINAGE AND GRADING PLAN

JOB NO. 1765

2/4

293

PORTION OF NE 1/4 OF SECTION 32, TOWNSHIP 28 NORTH, RANGE 8 EAST, W.M.



N

SCALE: 1" = 40'

CONTOUR INTERVAL = 1 FOOT

NOTE:
SURVEY BY CASCADE SURVEYING AND ENGINEERING, INC.

HIGA-BURKHOLDER ASSOCIATES, LLC
LAND USE PLANNING / CIVIL ENGINEERING
1721 Hewitt Avenue ■ Suite 401
Everett, Washington 98201
(425) 252-2829 Telephone
(425) 252-9851 Fax
150 North Seventh Street
Springfield, Oregon 97477
Telephone (541) 988-1882
Fax (541) 988-1863

DATE	REVISIONS	BY
5/1/06	PER CITY COMMENTS	JRP
1/19/07	PER CITY COMMENTS	JRP

ISSUE DATE: 09/14/2005
DESIGNED BY:
DRAWN BY: LDR, JRP
PLAN CHECK BY: JAK

FIRST SUBMITTAL: 09/14/2005
SECOND SUBMITTAL: 01/19/2007

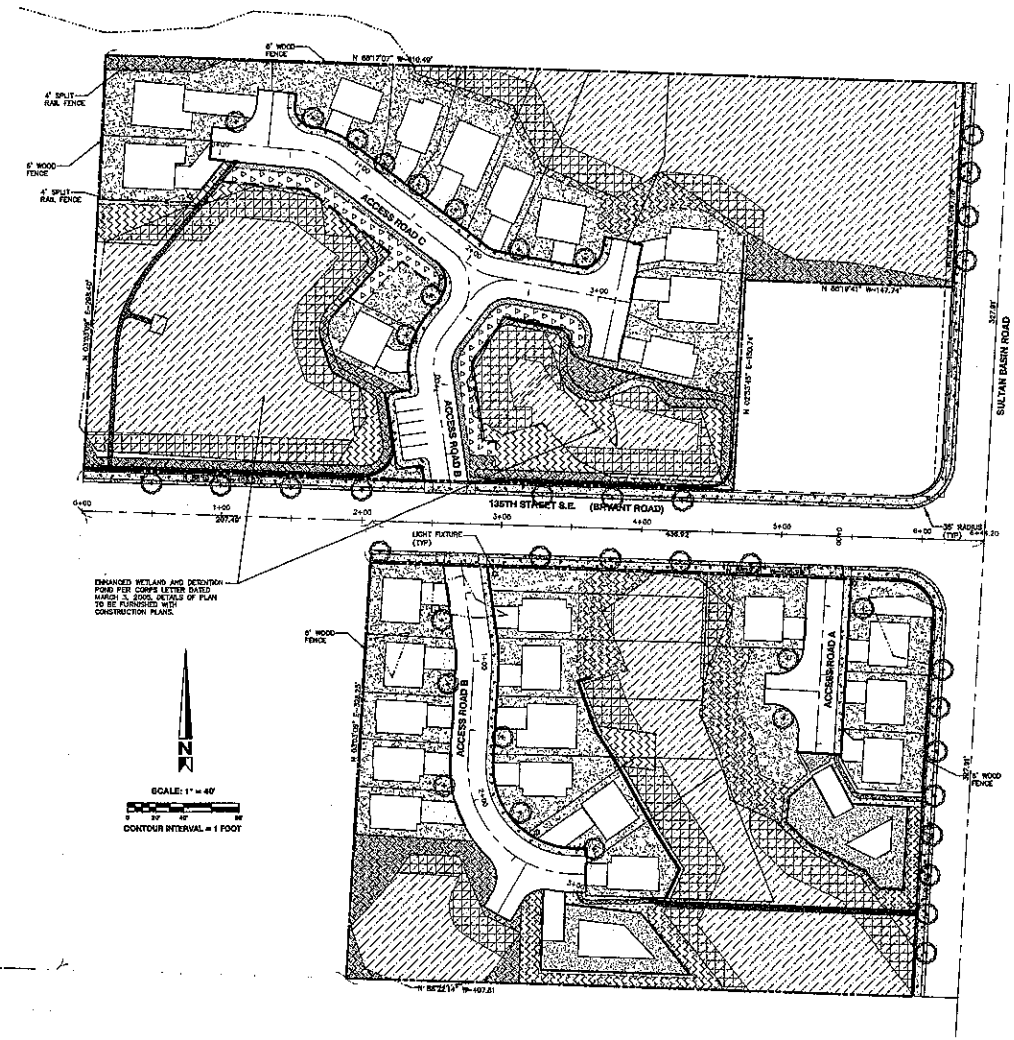
PRELIMINARY PLANS
ANDERSON FARM
EXISTING CONDITIONS

JOB NO. 1765

3/4

294

PORTION OF NE 1/4 OF SECTION 32, TOWNSHIP 28 NORTH, RANGE 8 EAST, W.M.



LANDSCAPE PLANT SCHEDULE

TREES	BOTANICAL NAME	COMMON NAME	INSTALL SIZE	MATURE SIZE	SPACING	QUANTITY
	PYRUS CALLERYANA 'CHANTICLEER'	CALLERY PEAR	2" CAL, 8' HT.	50'	30' O.C.	43

SHRUBS	BOTANICAL NAME	COMMON NAME	INSTALL SIZE	SPACING	QUANTITY
	CORNUS SERICEA 'KELSEY'	DWARF RED TWIG DOGWOOD	24" HT.	36" O.C.	231
	GAULTHERIA SHALLON	SALAL	24" HT.	36" O.C.	232
	MAHONIA AQUIFOLIUM 'COMPACTA'	LOW OREGON GRAPE	24" HT.	36" O.C.	231
	RIBES SANGUINEUM	RED FLOWERING CURRANT	24" HT.	36" O.C.	232

SWALE	BOTANICAL NAME	COMMON NAME	INSTALL SIZE	SPACING	
	FRAGARIA CHILOENSIS	WILD STRAWBERRY	18" HT.	18" O.C.	650
	PHYSOCARPUS CAPITATUS	PACIFIC NINEBARK	24" HT.	36" O.C.	190
	PRUNUS EMARGINATA	BITTER CHERRY	6' HT.	48" O.C.	77
	ROSA NUTKANA	NOOTKA ROSE	24" HT.	36" O.C.	155
	VACCINIUM OVATUM	EVERGREEN HUCKLEBERRY	24" HT.	36" O.C.	156

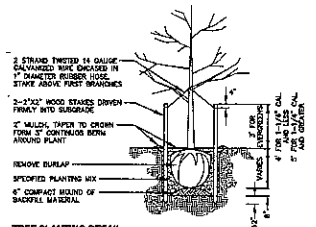
POND	BOTANICAL NAME	COMMON NAME	PERCENT	SEEDING NOTE
	AGROSTIS ALBA/TENUIS	REDTOP/COLONIAL BENTGRASS	10%	SEED SIDES & BOTTOM OF POND IN SPRING OR FALL
	ALOPECURUS PRATENSIS	MEADOW FOXTAIL	10%	
	DESCHAMPSIA CESPITOSA	TUFTED HAIR GRASS	8%	
	FESTUCA RUBRA	RED FESCUE	60%	
	GLYCERIA STRIATA	FOWL MANNA GRASS	6%	
	TRIFOLIUM REPENS	WHITE CLOVER	6%	

LANDSCAPE PLANTING NOTES

1. SEE CRITICAL AREA STUDY AND MITIGATION PLAN, PREPARED BY WETLAND RESOURCES, INC. FOR BUFFER ENHANCEMENT PLANTING PLAN, WETLAND ENHANCEMENT PLANTING PLAN, AND WETLAND CREATION AREA PLANTING PLAN.
2. SEE SHEET 2 FOR BIORETENTION SWALE SECTION.
3. PLANTING PITS SHALL RECEIVE AN APPLICATION OF 4-2-2 TRANSPLANT FERTILIZER.
4. AFTER PLANTING, IMMEDIATELY SATURATE ALL PLANTING PITS TO ELIMINATE AIR POCKETS AND FACILITATE SETTLING OF BACKFILL MATERIAL.
5. ALL PLANTS SHALL BE MARKED WITH BIODEGRADABLE SURVEY FLAGGING TO FACILITATE FUTURE MONITORING.
6. PROVIDE 3" DEPTH OF BARK MULCH FOR ALL PLANTING BEDS. BARK MULCH AREAS SHALL REMAIN FREE OF WEEDS AND COMPETING PLANTS TO ENSURE OPTIMUM GROWTH.
7. ALL TREES OVER 4" IN HEIGHT SHALL BE STAKED.
8. PLANT STREET TREES AT A RATE OF ONE EVERY 25 FEET.
9. MAINTAIN A 6' DIAMETER MULCH RING AROUND ALL TREES IN LAWN AREA.
10. LANDSCAPE PLANTING SHALL BE INSTALLED AFTER SITE WORK IS DONE, INCLUDING ROADS UTILITIES, DRIVEWAYS, ETC.
11. HAND WATERING OF PLANTS SHALL BE DONE AS NEEDED FOR PLANT SURVIVAL, UNLESS OTHERWISE NOTED ON PLANTING PLAN.
12. ALL NON-NATIVE/UNDESIRABLE PLANTS (BLACKBERRY, SCOTCH BROOM, RED CANARY GRASS, ETC.) THAT MAY INHIBIT THE GROWTH OF NEW PLANTINGS SHALLBE REMOVED FROM THE AREA.
13. PLANTING DATES: OCTOBER 1 THROUGH APRIL 15.
14. IRRIGATION TO BE DESIGNED AND INSTALLED AS A DESIGN-BUILD CONTRACT.

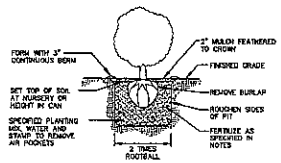
LANDSCAPE LEGEND

- EXISTING WETLAND (TO BE ENHANCED)
- WETLAND DESIGNATED AS BUFFER/PAPER FILL (PER CRITICAL AREA STUDY)
- BUFFER ENHANCEMENT (PER CRITICAL AREA STUDY)
- LANDSCAPE SHRUBS AND GROUNDCOVER
- BIORETENTION SWALE PLANTING AREA
- DETENTION POND SEED AREA
- HYDROSEED LAWN AREA
- LIGHT FIXTURE



TREE PLANTING DETAIL

NOT TO SCALE



SHRUB PLANTING DETAIL

NOT TO SCALE

HIGA-BURKHOLDER ASSOCIATES, LLC
LAND USE PLANNING / CIVIL ENGINEERING
1721 Hewitt Avenue ■ Suite 401
Everett, Washington 98201
(425) 252-2885 Telephone
(425) 252-9551 Fax
150 North Seventh Street
Springfield, Oregon 97477
Telephone (541) 988-1888
Fax (541) 988-1563

DATE	REVISIONS	BY
5/1/06	PER CITY COMMENTS	JRP
1/19/07	PER CITY COMMENTS	JRP

ISSUE DATE: 09/14/2005
DESIGNED BY: JRP
DRAWN BY: JRP
PLAN CHECK BY: JHL
FIRST SUBMITTAL: 09/14/2005
SECOND SUBMITTAL: 01/19/2007

PRELIMINARY PLANS
ANDERSON FARM
LANDSCAPE PLAN

JOB NO. 1765

4/4

295

Exhibit S-18

Letter to Rick Cisar regarding third party review of the December 2006 Critical Area Report/Mitigation Plan and January 2007 Preliminary Plans, Graham-Bunting Associates, March 28, 2007

RECEIVED
MAR 2 9 2007
BY:

Graham-Bunting Associates
Environmental & Land Use Services
3643 Legg Road, Bow, WA 98232
Ph.360.766.4441 Fx. 360.766.4443

March 28, 2007

Rick Cisar, Director
City of Sultan, Community Development
PO Box 1199
Sultan, WA 98294

RE: Third Party Review, Environmental Services
File No: FPPUD 05-003, Anderson Farm PUD
Applicant: Scott Wammack

Dear Rick Cisar:

Graham-Bunting & Associates (GBA) have reviewed the revised Critical Area Study and Mitigation Plan dated December 4, 2006 prepared by Wetland Resources Inc. (WRI) and associated Preliminary Plans sheets 1 through 4 revision date January 19, 2007, prepared by Higa-Burkholder Associates, LLC. Per the request of Higa-Burkholder Associates, and yourself, GBA prepared a list of comments, questions and observations addressed to Jake Libaire, dated August 23, 2003 (should have been 2006) itemizing ordinance compliance issues for the benefit of the final submittal revisions. In addition to the preliminary review and comments, a meeting with representatives from Higa-Burkholder, the City of Sultan, BHC Consultants and GBA was held on September 13, 2006 to discuss outstanding issues to be resolved. Since that meeting the plan was revised to incorporate a five-foot wide buffer to Wetland C and the boardwalk has been raised to reduce impacts to the wetland.

The current plan indicates a five-foot wide buffer on portions of Wetland C and E for approximately 270 linear feet. On Wetland E no upland buffer is proposed for approximately 170 feet. The reduction of buffers per SMC is allowed with enhancement, but complete removal of buffers on regulated wetlands is not allowed per SMC. In order for the City to approve an Innovative Design, the functions of wetlands *and buffers* must be increased from the existing functions. Below are our comments on the most recent submittal as it applies to the Sultan Municipal Code (SMC) revised 2004. Some of these comments are reiterated from our submittal on August 23, 2006.

SMC 16.80.100 Innovative design ,

B. Criteria for Approval. An innovative development design approval pursuant to this section shall be granted in conjunction with the decision on the underlying permit(s), if the following criteria are met:

EXHIBIT S-18

1. The innovative design will result in a net improvement of the functional values of the stream or wetlands ***and their buffers*** *(emphasis added).*

Wetlands A, B, and C are degraded as mentioned in the WRI reports. Due to the degraded conditions of these wetlands, some of the areas where these wetlands are used as buffer ("paper buffer") are acceptable as long as the functions of the buffer and wetland are increased. The method of wetland as buffer ("paper buffer") is typically acceptable where an upland buffer is limited or non-existent (DOE, Corps, EPA, March 2006) such as, where wetlands are adjacent to existing roads and typically for compensatory mitigation. GBA agree that Wetlands A, B, and C located north of 135th Street would result in an increase in functions to the wetland based upon the enhancement of the wetland. However, the existing buffer on Wetland C will need to be wider than 5 feet in order to increase the functions of the buffer. The required buffer for all of the regulated Category 3 wetlands is 50 feet. Upland buffers can be reduced with buffer enhancement where a net improvement of the functional values is demonstrated.

A recently published document titled Wetland Mitigation in Washington State, (DOE, CORPS, EPA, March 2006) discusses "wetlands as buffers". This document discusses the importance of adjacent upland habitat for screening, protection of the wetland and water quality. The proposed mitigation design addresses water quality in the wetland but does not allow for upland screening and habitat. The DOE et al. document also discusses the need for reduced buffers in urban spaces where wildlife species may not be the main function of the wetland. This appears to be the case for Wetlands A, B, and C. Wetland E is large (plus or minus 5 acres), has structural diversity (herbs, trees and shrubs) and is proposed to be enhanced for wildlife as a component of the mitigation plan. GBA disagree that the buffer and wetland functions will be increased without the benefit of upland buffers. It is also important to note that without buffers, blow downs and danger trees become an issue after the development is established.

Wetlands D, F, and G are not regulated by the SMC and will not be addressed in accordance with Chapter 16. Other state and/or federal regulations may apply.

2. *The innovative design has been approved by the state resource agencies with jurisdiction;*

Department of Ecology (DOE) has not had the opportunity to review the project plans at time of this writing. Communications with DOE staff indicated that the intent of "paper buffers" was not to allow the elimination of existing upland buffers for new developments but more for flexibility with existing roads along degraded wetlands.

3. *The innovative design is consistent with the purpose and objectives of this chapter.*

GBA do not agree that the mitigation plan has successfully avoided impacts to, predominantly Wetland E and to a lesser degree Wetland C. Wetland E and C will need upland buffers in order to protect the existing wetland functions.

4. *The innovative design is consistent with the standards in SMC 16.80.090.*

To be consistent with the standards in SMC, Wetland E will need an enhanced upland buffer along lots 7 through 10 and the detention pond. Wetland C will need an increased upland buffer width with enhancement. This will avoid and minimize impacts to the wetlands and buffers.

5. *The innovative design will not be materially detrimental to the public welfare or injurious to property or improvements in the vicinity and zone in which the subject property is located.*

The innovative design proposes to eliminate the upland buffer along lots 7 through 10. Since this wetland will have residential lots located at the edge of Wetland E and there are trees in the wetland, windthrow and degradation of the wetland vegetation due to danger trees can be expected.

Recommendations:

1. Add an enhanced upland buffer to Wetland E to be a minimum twenty-five feet behind lots 7-10. Increase the buffer width of Wetland E to a minimum of 25 feet wide with enhancement by the detention ponds.
2. Increase the buffer width along lots 19-23 on Wetland C to be a minimum of 12 feet wide in small areas with an average of a 25 foot upland buffer combined with enhancing the wetland.
3. Obtain approval for mitigation plan, if needed, from the Department of Ecology.
4. Plant bio-swales with vegetation to enhance the upland buffer on Wetlands A and B.

GBA does not find the proposed mitigation plan as written to be in compliant with Chapter 16.80 of the SMC. Please feel free to call me if you have any questions about this review. Thank you for contacting us with your project.

Sincerely,

Patricia Bunting, Principal
Wetland Ecologist

cc. Chanda Emery, BHC Consultants

REFERENCES

City of Sultan, Comprehensive Plan, 2004 with Map Folio

City of Sultan, Unified Development Code, Title 16, February 3, 2004

Cowardin L., V. Carter, F. Golet, E. LaRoe, 1979. Classification of Wetlands and Deepwater Habitats of the United States. U.S. Department of the Interior, Fish and Wildlife Service.

Munsell Color. 1994 revised. Munsell Soil Color Charts. Kollmorgen Instruments Corp., Baltimore, MD.

Pojar J. and A. MacKinnon, 1994. Plants of the Pacific Northwest Coast Washington, Oregon, British Columbia & Alaska. Lone Pine Publishing, Vancouver B. C., 528 pp.

Reppert, R.T., W. Sigleo, E. Stakhiv, L. Messman, and C. Myers. 1979. Wetland Values: concepts and methods for wetland evaluation (Research Report 79-R1). U.S.Army Corps of Engineers. Institute for Water Resources, Fort Belvoir, Virginia. 109pp.

Washington Department of Ecology, US Army Corps of Engineers, Environmental Protection Agency, 2004. Guidelines for Developing Wetland Mitigation Proposals and Plans, Publication #04-06—13B.

Washington State Department of Ecology, U.S. Army Corps of Engineers Seattle District, and U.S. Environmental Protection Agency Region 10. March 2006 Wetland Mitigation in Washington State-Part I: Agency Policies and Guidance (Version 1). WDOE Publication #06-06-011a. Olympia, Washington

Washington State Department of Ecology, March 1997, Washington State Wetlands Identification and Delineation Manual, Publication 96-94. Washington State Dept. of Ecology. Olympia, Washington.

Washington State Department of Fish and Wildlife, February 2005, Priority Habitats and Species Report and Maps.

Personal Communications

Andrea Bachman, Wetland Resources, Inc., March 22, 2007
Susan Meyer, Department of Ecology, Wetland Specialist, March 27, 2007
Eric Stockdale, Department of Ecology, Wetland Specialist, March 23, 2007

CITY OF SULTAN
ENVIRONMENTAL MITIGATED
DETERMINATION OF NONSIGNIFICANCE

The City Of Sultan has conducted an Environmental Review of the following project:

FILE NAME AND NUMBER:
Anderson Farms Planned Unit Development:
File Number FP-PUD 05-003

LOCATION:
The project site is located in the City of Sultan, West of Sultan Basin Road, and North of Bryant at 3316 135th St. SE and 32205 Bryant Road, Sultan, Washington 98294

SEPA DETERMINATION:
MITIGATED DECLARATION OF NON-SIGNIFICANCE (MDNS)

PROJECT DESCRIPTION:
Preliminary Planned Unit Development and Subdivision of two parcels totaling 6.47 acres to create home sites for 26 new single family residences. One existing building will be demolished. Private streets, native growth protection areas, and on-site recreation areas would be included.

PROPONENT:
Grandview, Inc.
POB 159
Arlington, Washington 98223
ATTN: Scott Wammack

LEAD AGENCY:
City of Sultan
319 Main Street
PO Box 1199
Sultan WA 98294-1199

Responsible Official: Rick Cisar, Director of Community Development

The City of Sultan has determined that this proposal does not have probable significant impacts on the environment subject to the conditions described in attachment A. An environmental impact statement (EIS) is not required under RCW 43.21C.030 (2)(c) provided the applicant complies with the attached conditions. This decision was made after review of a completed environmental checklist and other information on file with the City of Sultan. This information is available to the public on request.

This Mitigated Determination of Non-significance (MDNS) is issued under WAC 197-11-340(2) and WAC 197-11-350.

EXHIBIT S-19

ATTACHMENT A

ANDERSON FARMS PLANNED UNIT DEVELOPMENT ENVIRONMENTAL IMPACTS TO BE MITIGATED:

1. Impacts on critical areas shall be mitigated in accordance with the March 28, 2007 letter by Graham-Bunting Associates, including (at minimum):

   A. Add an enhanced upland buffer to Wetland E to be a minimum twenty-five feet behind lots 7-10. Increase the buffer width of Wetland E to a minimum of 25 feet wide with enhancement by the detention ponds.
   B. Increase the buffer width along lots 19-23 on Wetland C to be a minimum of 12 feet wide in small areas with an average of a 25 foot upland buffer combined with enhancing the wetland.
   C. Obtain approval for mitigation plan, if needed, from the Department of Ecology.
   D. Plant bio-swales with vegetation to enhance the upland buffer on Wetlands A and B.
   E. Maintain and monitor wetland and stream mitigation for a three-year period following installation. Such mitigation shall be secured with a performance bond filed with the City.

2. Public safety and service impacts shall be mitigated by development of public streets with minimum 50 foot rights-of-way, sidewalks on both sides, and on-street parking on one side in accord with the City Design Standards.

3. Site development impacts shall be mitigated either by evidence supporting a variance request to depart from required setbacks, or by redesign to comply with SMC 16.10.120.

4. Recreation impacts shall be mitigated by implementing an approved open space and recreation plan meeting the requirements of SMC 16.72, 16.10.140 and payment of impact fees. Trails that are part of the open space plan shall be designed to provide usable access, avoid interference with adjacent lots and wetlands impacts related to the trail shall be mitigated.

5. The development shall meet concurrency requirements for Arterial and other roadways, Potable water, Wastewater, Police Protection, and Parks and Recreation SMC 16108.

6. Transportation impacts shall be mitigated by Sultan Basin Road improvements and/or payment of impact fees.

7. School impacts shall be mitigated by payment of impact fees.

Issuance of this threshold determination does not constitute approval of the building permit. This proposal will be reviewed for compliance with all applicable City codes that regulate development activities.

Comments:
Written comments may be submitted to the City of Sultan at the address above prior to 5:00 pm on October 30, 2007. Unless action is taken by the Lead Agency, this MDNS shall become final at the end of the comment period.

Appeal: Any interested person may appeal this threshold determination in accordance with SMC 17.04.240. Appeals must be received within 14 days of the end of the comment period (by 5:00 pm November 13, 2007). You should be prepared to make specific factual objections.

For more information, contact:
Rick Cisar, City of Sultan Director of Community Development; (360) 793-2231; rick.cisar@ci.sultan.wa.us; 319 Main Street; PO Box 1199, Sultan, WA 98294-1199.

Signature: _____ Date: 10-15-07

Date of Issuance: October 16, 2007
MDNS: 07-05
Send: Corps of Engineers, Ecology, Fish and Wildlife, WSDOT, Tulalip Tribes, Snohomish County

Exhibit S-20
Notice of Appeal of Mitigated Determination of Nonsignificance, William B. Foster, November 13, 2007

CITY OF SULTAN
DEPARTMENT OF COMMUNITY DEVELOPMENT
319 Main Street
P.O. Box 1199
Sultan, Washington 98294-1199

CITY OF SULTAN DEPARTMENT OF COMMUNITY DEVELOPMENT, Respondent, and **GRANDVIEW, INC., a Washington corporation,** Appellants.	**FILE NO. FP-PUD 05-003** **NOTICE OF APPEAL OF MITIGATED DETERMINATION OF NONSIGNIFICANCE**

COMES NOW GRANDVIEW, INC., a Washington corporation, (hereinafter "Appellant"), by and through its attorney, William B. Foster of Hutchison & Foster, and hereby submits the following Notice of Appeal of Mitigated Determination of Nonsignificance issued by **THE CITY OF SULTAN** under **FP-PUD 05-003**.

1. ***Identification of Decision Being Appealed***. Appellants hereby appeal that certain Mitigated Determination of Nonsignificance (hereinafter the "MDNS") dated the 15th day of October, 2007, a copy of which MDNS is attached hereto as Exhibit "1", and is incorporated herein by reference as if fully set forth.

2. ***Authority for Appeal***. This appeal is authorized pursuant to the provisions of RCW 43.21C.075 and WAC 197-11-680(4)(a).

3. ***Factual Basis of Appeal***. The Appellants, through their duly authorized representative, made application to the City of Sultan for a Planned Unit Development and Subdivision under the above-referenced file number. On October 15th, 2007, the City of Sultan issued a Mitigated Determination of Nonsignificance ("MDNS"). The MDNS included the following conditions:

EXHIBIT S-20
ORIGINAL

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3.1 "Impacts on critical areas shall be mitigated in accordance with the March 28, 2007 letter by Graham-Bunting Associates, including (at minimum):

3.1.1 Add an enhanced upland buffer to Wetland E to be a minimum twenty-five feet behind lots 7-10. Increase the buffer width of Wetland E to a minimum of 25 feet wide with enhancement by the detention ponds.

3.1.2 Increase the buffer width along lots 19-23 on Wetland C to be a minimum of 12 feet wide in small areas with an average of a 25 foot upland buffer combined with enhancing the wetland.

3.2 Public safety and service impacts shall be mitigated by the development of public streets with minimum 50 foot rights-of-way, sidewalks on both sides, and on-street parking on one side in accord with the City Design Standards.

3.3 Site development impacts shall be mitigated either by evidence supporting a variance request to depart from required setbacks, or by redesign to comply with SMC 16.10.120.

3.4 The development shall meet concurrency requirements Police Protection.

4. ***Basis of Appeal***. This appeal is based upon the following:

4.1 The imposition of the above-cited conditions 3.1.1, 3.1.2 and 3.2 are contrary to the duly adopted provisions of Sultan Municipal Code ("SMC") Section 16.80.100, et seq.

4.2 The imposition of the above-cited conditions 3.1.1, 3.1.2 and 3.2 are not based upon policies identified by the City of Sultan, and incorporated into regulations, plans or codes which are formally designated by the agency as a possible basis for the exercise of SEPA authority. (RCW 43.21C120; RCW 43.21C.135; WAC 197-11-900).

4.3 The imposition of the condition 3.3 is contrary to the duly adopted provisions of Sultan Municipal Code ("SMC"), specifically the designated setbacks comply with the applicable provisions of SMC.

4.4 The imposition of the above-cited condition 3.3 is not based upon policies identified by the City of Sultan, and incorporated into regulations, plans or codes which are formally designated by the agency as a possible basis for the exercise of SEPA authority. (RCW 43.21C120; RCW 43.21C.135; WAC 197-11-900).

4.5 The imposition of the above-cited condition 3.4 is not based upon policies identified by the City of Sultan, and incorporated into regulations, plans or codes which are formally designated by the agency as a possible basis for the exercise of SEPA authority. (RCW 43.21C120; RCW 43.21C.135; WAC 197-11-900).

4.6 The imposition of the condition 3.4 is contrary to the duly adopted provisions of Sultan Municipal Code ("SMC") regarding concurrency requirements for police protection. Specifically the development proposal meets or exceeds concurrency requirements for police protection.

4.7 The imposition of the above-cited conditions (3.1.1, 3.1.2, 3.2, 3.3 and 3.4) are clearly erroneous and/or arbitrary and capricious.

4.8 The imposition of the above-cited conditions (3.1.1, 3.1.2, 3.2, 3.3 and 3.4) is an incorrect application of the law to the facts.

4.9 The imposition of the above-cited conditions (3.1.1, 3.1.2, 3.2, 3.3 and 3.4) is not the result a nexus between the impacts, if any, that may result from the development that is proposed.

4.10 The imposition of the above-cited conditions (3.1.1, 3.1.2, 3.2, 3.3 and 3.4) is not reasonably proportional when compared to the impacts, if any, that may result from the development that is proposed.

4.11 The imposition of the above-cited conditions (3.1.1, 3.1.2, 3.2, 3.3 and 3.4) prevents any viable economic use of the property.

4.12 The MDNS was not issued within the time required by state statute or City Ordinance.

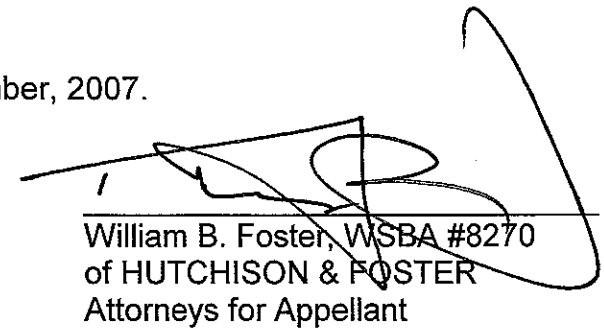
5. ***Identification of Appellants***. The name, address and daytime telephone number of the Appellants is:

Grandview, Inc.
P.O. Box 159
Arlington, Washington 98223
(360) 435-7171

6. ***Identification of Appellants' Agent***. The duly appointed representative of the Appellants is:

William B. Foster, Esq.
Hutchison & Foster
4300 - 198th Street S.W.
Suite 100
P.O. Box 69
Lynnwood, Washington 98046-0069
Telephone: (425) 776-2147
Facsimile: (425) 776-2140

DATED THIS 13th day of November, 2007.



William B. Foster, WSBA #8270
of HUTCHISON & FOSTER
Attorneys for Appellant

CITY OF SULTAN
ENVIRONMENTAL MITIGATED
DETERMINATION OF NONSIGNIFICANCE

The City Of Sultan has conducted an Environmental Review of the following project:

FILE NAME AND NUMBER:
Anderson Farms Planned Unit Development:
File Number FP-PUD 05-003

RECEIVED
OCT 17 2007
HBA Design Group, LLC

LOCATION:
The project site is located in the City of Sultan, West of Sultan Basin Road, and North of Bryant at 3316 135th St. SE and 32205 Bryant Road, Sultan, Washington 98294

SEPA DETERMINATION:
MITIGATED DECLARATION OF NON-SIGNIFICANCE (MDNS)

PROJECT DESCRIPTION:
Preliminary Planned Unit Development and Subdivision of two parcels totaling 6.47 acres to create home sites for 26 new single family residences. One existing building will be demolished. Private streets, native growth protection areas, and on-site recreation areas would be included.

PROPONENT:
Grandview, Inc.
POB 159
Arlington, Washington 98223
ATTN: Scott Wammack

LEAD AGENCY:
City of Sultan
319 Main Street
PO Box 1199
Sultan WA 98294-1199

Responsible Official: Rick Cisar, Director of Community Development

The City of Sultan has determined that this proposal does not have probable significant impacts on the environment subject to the conditions described in attachment A. An environmental impact statement (EIS) is not required under RCW 43.21C.030 (2)(c) provided the applicant complies with the attached conditions. This decision was made after review of a completed environmental checklist and other information on file with the City of Sultan. This information is available to the public on request.

This Mitigated Determination of Non-significance (MDNS) is issued under WAC 197-11-340(2) and WAC 197-11-350.

EXHIBIT 1

ATTACHMENT A

ANDERSON FARMS PLANNED UNIT DEVELOPMENT
ENVIRONMENTAL IMPACTS TO BE MITIGATED:

1. Impacts on critical areas shall be mitigated in accordance with the March 28, 2007 letter by Graham-Bunting Associates, including (at minimum):

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   B. Increase the buffer width along lots 19-23 on Wetland C to be a minimum of 12 feet wide in small areas with an average of a 25 foot upland buffer combined with enhancing the wetland.
   C. Obtain approval for mitigation plan, if needed, from the Department of Ecology.
   D. Plant bio-swales with vegetation to enhance the upland buffer on Wetlands A and B.
   E. Maintain and monitor wetland and stream mitigation for a three-year period following installation. Such mitigation shall be secured with a performance bond filed with the City.

2. Public safety and service impacts shall be mitigated by development of public streets with minimum 50 foot rights-of-way, sidewalks on both sides, and on-street parking on one side in accord with the City Design Standards.

3. Site development impacts shall be mitigated either by evidence supporting a variance request to depart from required setbacks, or by redesign to comply with SMC 16.10.120.

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7. School impacts shall be mitigated by payment of impact fees.

Issuance of this threshold determination does not constitute approval of the building permit. This proposal will be reviewed for compliance with all applicable City codes that regulate development activities.

Comments:
Written comments may be submitted to the City of Sultan at the address above prior to 5:00 pm on October 30, 2007. Unless action is taken by the Lead Agency, this MDNS shall become final at the end of the comment period.

Appeal: Any interested person may appeal this threshold determination in accordance with SMC 17.04.240. Appeals must be received within 14 days of the end of the comment period (by 5:00 pm November 13, 2007). You should be prepared to make specific factual objections.

For more information, contact:
Rick Cisar, City of Sultan Director of Community Development; (360) 793-2231; rick.cisar@ci.sultan.wa.us; 319 Main Street; PO Box 1199, Sultan, WA 98294-1199.

Signature: _____ Date: 10-15-07

Date of Issuance: October 16, 2007
MDNS: 07-05
Send: Corps of Engineers, Ecology, Fish and Wildlife, WSDOT, Tulalip Tribes, Snohomish County

Exhibit S-21
Letter from City regarding timeliness of appeal, dated November 15, 2007

City of Sultan
Office of Community Development
319 Main Street, Suite 200
P.O. Box 1199, Sultan, WA 98294
Phone (360) 793-2231 Fax (360) 793-3344

Mr. William B. Foster
Hutchinson & Foster
P.O. Box 69
Lynnwood, WA 98046-0069

November 15, 2007

Subject: Anderson Farms MDNS Appeal – FPPUD 05-003

Dear Mr. Foster:

The City received your Notice of Appeal of Mitigated Determination of Nonsignificance on November 13, 2007. Your Appeal has been forwarded to the City's Hearing Examiner.

You are alerted to the following facts concerning the filing of this Appeal:

Your delivery person gave the Appeal to Mrs. Tami Pevey, a Utility Clerk, in a sealed envelope addressed to Rick Cisar. Mrs. Pevey was not advised the envelope contained an Appeal and she therefore signed a receipt that she had accepted it and placed the envelope in my mailbox. When I checked my mailbox later that afternoon, I found the envelope and Appeal but the $1,000.00 Appeal Fee that we discussed that morning was not included.

I called your office the afternoon of November 14, 2007 and left you a voice message regarding my concern with the non-payment of the Appeal Fee.

I also called Mr. Jake Libaire of HBA Design Group this morning, November 15, 2007 regarding the Appeal Fee. Mr. Libaire returned my call and indicated the check was not included and they had found it in their recycling bin. He said he would send the check over. He asked if this would affect the completeness of the Appeal and I indicated I would look into it.

The City received the check for the Appeal at 9:45 am on November 15, 2007.

You are advised that the City reserves the right to challenge the timeliness and completeness of the Appeal filed, due to the failure to deliver the required filing fee in a timely fashion.

Very truly yours,

Rick Cisar
Director of Community Development

Cc: Jake Libaire, HBA Design Group

EXHIBIT S-21

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Exhibit S-22
SEPA MDNS Appeal Staff Report to the Hearing Examiner, City of Sultan,
February 28, 2008

City of Sultan, Washington

PLANNING STAFF RESPONSE TO HEARING EXAMINER

To: Sultan Hearing Examiner Response Date: March 5, 2008

From: Roger Wagoner, FAICP, BHC Consultants, LLC
Erin Martindale, AICP, Perteet Inc.

Re: Anderson Farms Preliminary PUD and Subdivision SEPA Appeal (AP2007-03, FPPUD05-003, MDNS 07-05)

Summary

The City of Sultan issued a Mitigated Determination of Nonsignificance (MDNS) regarding the Anderson Farms Preliminary Planned Unit Development and Subdivision on October 16, 2007. Grandview, Inc. filed an appeal of the City's MDNS on November 13, 2007.

A pre-hearing conference was held on February 20, 2008. At that conference, Roger Wagoner, as the City consultant working on the planning review for this project, was directed to submit in writing to the Hearing Examiner within two (2) weeks whether changes to the MDNS were needed based on the Applicants October 2007 submittal.

Roger Wagoner and Erin Martindale, who is also working as a planning consultant for the City on this project, in conjunction with the City Attorney, have determined that **a revised MDNS will not be issued** prior to the April 2, 2008 public hearing.

Application History

The application for Preliminary PUD was received by the City on September 15, 2005. The application was initially determined to be complete in a letter dated October 11, 2005. This letter also requested additional materials pertaining to wetland impacts and mitigations.

A notice of application was published October 18, 2005. Subsequently, during the City review of the application, and between October 11, 2005 and October 16, 2007, at least three (3) written requests for additional information and corrections to the submittal to comply with the development code were made, and the applicant was informed of the need for design and mitigation changes to address project impacts in compliance with the code. The application was also redesigned with fewer lots, but issues remained with the application.

The MDNS was issued on October 16, 2007 (the date of signature is October 15, 2007).

EXHIBIT S-22

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Mitigated Determination of Nonsignificance
There were seven mitigation measures included in the MDNS. They included the following:

1. Impacts on critical areas shall be mitigated in accordance with the March 28, 2007 letter by Graham-Bunting Associates, including (at minimum):

A. Add an enhanced upland buffer to Wetland E to be a minimum twenty-five feet behind Lots 7-10. Increase the buffer width of Wetland E to a minimum of 25-feet wide with enhancement by the detention ponds.
B. Increase the buffer width along Lots 19-23 on Wetland C to be a minimum of 12-feet wide in small areas with an average of a 25-foot upland buffer combined with enhancing the wetland.
C. Obtain approval for mitigation plan, if needed, from the Department of Ecology.
D. Plant bio-swales with vegetation to enhance the upland buffer on Wetlands A and B.
E. Maintain and monitor wetland and stream mitigation for a three (3) year period following installation. Such mitigation shall be secured with a Performance Bond filed with the City.

2. Public safety and service impacts shall be mitigated by development of public streets with a minimum 50-foot right-of-way, sidewalks on both sides, and on-street parking on one side in accordance with the City Design Standards.

3. Site development impacts shall be mitigated either by evidence supporting a variance request to depart from required setbacks, or by redesign to comply with SMC 16.10.120.

4. Recreation impacts shall be mitigated by implementing an approved open space and recreation plan meeting the requirements of SMC 16.72 , 16.10.140 and payment of impact fees. Trails that are part of the open space plan shall be designed to provide usable access, avoid interference with adjacent lots and wetlands impacts related to the trail shall be mitigated.

5. The development shall meet concurrency requirements for arterial and other roadways, Potable water, Wastewater, Police Protection, and Parks and Recreation SMC 16.108.

6. Transportation impacts shall be mitigated by Sultan Basin Road Improvements and/or payment of impact fees.

7. School impacts shall be mitigated by payment of impact fees.

Appeal Filing

The appeal filed on November 13, 2007 includes the following appeal issues, found in sections 3.1 through 3.4 from the appeal filing:

3.1 Impacts on critical areas shall be mitigated in accordance with the March 28, 2007 letter by Graham-Bunting Associates, including (at minimum):

3.1.1 Add an enhanced upland buffer to Wetland E to be a minimum of twenty-five feet behind lots 7-10. Increase the buffer width of Wetland E to a minimum of 25 feet wide with enhancement by the detention ponds.

3.1.2. Increase the buffer width along lots 19-23 on Wetland C to be a minimum of 12 feet wide in small areas with an average of a 25 foot upland buffer combined with enhancing the wetland.

3.2 Public safety and service impacts shall be mitigated by the development of public street with minimum 50 foot rights-of-way, sidewalks on both sides, and on-street parking on one side in accord with the City Design Standards.

3.3 Site development impacts shall be mitigated either by evidence supporting a variance request to depart from required setbacks, or by redesign to comply with SMC 16.10.120.

3.4 The development shall meet concurrency requirements Police Protection.

The appeal filing also lists several bases for the appeal, which are not relisted here.

Staff Understanding of Appeal Issues

After reviewing the appeal filing, the Applicant has appealed the following mitigation measures contained within the MDNS: 1A, 1B, 2, 3, and part of 5 regarding police protection. These measures were appealed based on the arguments in Section 4 of the Applicants appeal filing.

The other conditions (1C, 1D, 1E, 4, 6, 5 excluding police protection, and 7) are not appeal issues and will not be addressed in the staff report for the April 2, 2008 consolidated public hearing, except to be incorporated as project conditions, pursuant to SMC 17.04.130(F).

Staff will respond to these appeal issues within the staff report for the April 2, 2008 consolidated public hearing. After reviewing applicable regulations and policies, staff may choose to not argue some appeal issues or mitigation measures. For purposes of the appeal and consolidated public hearing on April 2, the MDNS will stand as issued.