Anderson Farm Preliminary PUD and Subdivision (FPPUD05-003)
EXHIBITS

Only the most current report that is the basis for City decisions is included. Original items that were updated with later submittals are not included.

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28-30	S-2.	SEPA Standard of Review
31-146	S-3.	Original application, received September 15, 2005 a) Master Land Use Application Form b) Property Owner Declarations and Property Application Declaration c) Narrative, Statement of Objectives, & Quantitative Data; d) Letter of Water Availability, issued August 12, 2005 e) Letter of Sewer Availability, issued August 12, 2005 f) Letter of acknowledgement for impact fees g) Anderson Farms Open Space Requirements acknowledgement h) Concurrency application i) Adjacent property information j) Traffic Analysis, Gibson Traffic Consultants, August 12, 2005 k) Subsurface Exploration, Geologic Hazard, and Preliminary Geotechnical Engineering Report, Associated Earth Sciences, Inc., September 2, 2005 l) Title Report, Stewart Title Company, August 30, 2005 m) Minutes from the June 29, 2005 pre-application meeting, September 13, 2005
147-151	S-4.	Streetscape and Unit Plans, Carl J. Colson, September 7, 2005
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166-226	S-9.	Second Submittal reducing the project scope from 35 lots to 26 lots, May 4, 2006 a) Response to preliminary submittal review comments, Higa Burkholder, May 4, 2006 b) SEPA Checklist, signed May 5, 2006 c) Preliminary Drainage Report, Higa Burkholder, April 28, 2006
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265-269	S-15.	Settlement Agreement between City of Sultan and Granview Inc., January 2005
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b) Drainage and Grading Plan
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297-301 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

302-305 S-19. Mitigated Determination of Non-Significance, City of Sultan, October 16, 2007

306-313 S-20. Notice of Appeal of Mitigated Determination of Nonsignificance, William B. Foster, November 13, 2007

314-315 S-21. Letter from City regarding timeliness of appeal, dated November 15, 2007

316-318 S-22. SEPA MDNS Appeal Staff Report to the Hearing Examiner, City of Sultan, February 28, 2008

Exhibit S-1
Staff Report and Recommendation to the Hearing Examiner

City of Sultan
Staff Report and Recommendation

To: Sultan Hearing Examiner Hearing Date: May 5, 2008

From: Erin Martindale, AICP

Re: Anderson Farm Preliminary Planned Unit Development and Plat and SEPA Appeal (FP-PUD 05-003 /AP 07-003/MDNS07-05)

I. Application Information

a. Request
The applicant requests preliminary planned unit development (PUD) and plat approval to develop 26 single-family lots on two (2) legal parcels totaling approximately 6.47 acres in size as a PUD single-family (PUD-SF) overlay. The project is located in the City of Sultan's Moderate Density Residential (MD) zone. The site is located on the west side of Sultan Basin Road, north and south of 135th Street SE (Bryant Road).

b. Property Owner
Scott Wammack
Grandview Inc.
PO Box 159
Arlington, WA 98223

c. Applicant
John E. Bissell
HBA Design Group
1721 Hewitt Ave
Everett, WA 98201

d. Background and Project Description
This property is historically known as the Anderson (northern) and Wilcox (southern) properties. While these properties may have been used for agricultural uses in the past, for at least the last seven (7) years at least, these sites have had only single-family residential uses.

On October 15, 2001, the City issued a Notice and Order (Exhibit S-12) against Grandview Inc. for violation of the City's ordinances with regard to a wetland fill. Grandview appealed that Notice and Order (Exhibit S-13) on October 26, 2001. After a public hearing, the Hearing Examiner issued a Decision on the Appeal (Exhibit S-14) on June 3, 2002, upholding part of the Notice and Order and vacating other parts of the Notice and Order. Grandview did not comply with the requirements of the Hearing Examiner's 2002 Decision. In 2003, the City commenced an action under Snohomish County Superior Court to enforce the Hearing Examiner's decision. In 2005, a Settlement Agreement (Exhibit S-15) was made between the City of Sultan and Grandview Inc. This Settlement Agreement required:

EXHIBIT S-1

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1. Grandview to submit a Joint Aquatic Resources Permit Application (JARPA) to the US Army Corps of Engineers and Department of Ecology for activities in the wetlands and buffers.
2. Grandview to submit a preliminary plat application to the City of Sultan.
3. Grandview to develop with appropriate speed after all approvals under the preliminary plat application were obtained.
4. Grandview to make improvements to Sultan Basin Road and pay traffic impact fees. The City is required to apply traffic impact fee credits, determined in accordance with SMC 16.112.080.
5. Grandview to make a best effort to obtain right-of-way from the neighboring property (Mabel Coon) and to make improvements to Sultan Basin Road (this is the piece of property that is excepted from the northern property of the subject application).
6. Grandview agrees to reduce any credit in the traffic impact fees by $10,000 for full satisfaction of all obligations for civil penalties or to reimburse the City for fees or costs incurred.

In the Settlement Agreement, final plat approval was required prior to December 31, 2006 or the City could then renote the County Court Case. The City has not taken this action, as the application process has lengthened passed this deadline.

The PUD and Plat proposal, submitted on September 15, 2005, includes development of thirty-five (35) single-family residential lots on two (2) legal properties totaling 6.47 acres in the City's Moderate Density (MD) zone. The northern site is encumbered by three (3) Category 3 wetlands; the southern site is encumbered by five (5) Category 3 wetlands. Access to the site is proposed to be from 135th Street SE via three (3) public streets. Street improvements to Sultan Basin Road and 135th Street SE are proposed. Stormwater drainage facilities, recreation areas, wetland mitigation, and landscaping are also proposed. The proposal includes a significant amount of grading, as described in Exhibit S-9b to prepare the site for construction of the homes.

An existing single-family residence on the northern property is proposed to be demolished as part of the project.

The application for Preliminary PUD was received by the City on September 15, 2005. The application was determined to be complete in a letter dated October 11, 2005. This letter also called for additional materials pertaining to wetland impacts and mitigations necessary to complete the review of the application (Exhibit S-6). A Notice of Application was issued on October 18, 2005.

A second submittal of development plans was submitted on May 4, 2006 reducing the number of lots from 35 to 26 (Exhibit S-9). Additional materials were requested of the Applicant on June 16, 2006 (Exhibit S-10), and August 23, 2006 (S-11) (This letter was originally issued with an incorrect date of August 23, 2003).

The most recent submittal was received on January 26, 2007 (Exhibits S-16 and S-17). A Mitigated Determination of Nonsignificance (MDNS) was issued on October 16, 2007 (Exhibit S-19). The Applicant appealed the MDNS on November 13, 2007 (Exhibit S-20).

e. Location

The site is located on the west side of Sultan Basin Road, at the intersection with 135th Street SE and within the northeast quarter of Section 32, Township 28N, Range 8E, W.M. in the City of Sultan, Snohomish County, Washington. Tax parcels 28083200101100 and 28083200100600.

f. Existing Site and Surrounding Land Uses

The northern site currently contains a one (1) single-family residence and associated outbuildings. Formerly there have been single-family residential structures on the southern site, but it is currently without improvements.

The site is generally flat, sloping slightly at about three (3) percent to the south and east. The maximum slope on the site is nine (9) percent on the northern property. The surrounding area is characterized by large undeveloped or underdeveloped parcels. Existing development is predominantly single-family residential development. More residential developments to the north on Yew Avenue, at the west end of 135th Street SE, and south near 138th Street SE have emerged in recent years. The entire area is designated in the Comprehensive Plan and zoned for moderate density residential uses.

Adjacent land uses and zoning designations include:

North:	Single-Family Residential / Moderate Density
South:	Vacant / Moderate Density
West:	Vacant and Single-Family Residential / Moderate Density
East:	Single-Family Residential / Low/Moderate Density

g. Utilities, Fire, and School Districts

Water Source: City of Sultan
Sewer Service: City of Sultan
Fire District: Snohomish County Fire Protection District No. 5
School District: Sultan School District No. 311

h. Related Permits and Reviews

Development of the site will require building, vegetation removal, grading, right-of-way, stormwater and demolition permits, in addition to PUD and plat approval including right-of-way improvements. Permits by other agencies may also be required (National Pollutant Discharge Elimination System, Forest Practices, and 404 Water Quality Certification). A U.S. Army Corps of Engineers Nationwide Permit for wetland filling was issued March 3, 2005. The approval of the Corps fill permit expired within two (2) years; the status of this permit is unknown.

II. Analysis

a. Planned Unit Development

The general review criteria for PUD's are set forth at SMC 16.10.090(B):

"The hearing examiner recommendation shall include, at a minimum, findings and conclusions regarding the preliminary PUD's compliance with the criteria for location and approval for the particular type of preliminary PUD listed in SMC 16.10.100 (retail PUD's), SMC 16.10.110 (residential PUD's). A preliminary PUD shall be recommended for approval if, together with reasonable modifications or conditions, the project is determined to comply with the requirements of these sections. A preliminary PUD shall be recommended for denial if, even with reasonable modifications or conditions, the project is determined to not comply with the requirements of these sections."

Single-Family PUD's may only be located in areas where they meet the locational criteria in SMC 16.10.110(B):

Criteria	Proposal	Does it meet the criteria?
1. Comprehensive Plan Designation for single-family residences	The designation of these areas is Moderate Density, a single-family residential designation	Yes
2.a. Site is located on one or more arterials On corner properties access is encouraged from lower functional class street	Sultan Basin Road is a Minor Arterial. All residences will access from 135th Street SE, a local access road.	Yes
2.b Total area is minimum 2 acres	Northern site is 3.68 acres and southern site is 2.79 acres. Total site area is 6.47 acres	Yes
2.c Site can connect to an existing off-site pedestrian and bicycle circulation system	Comprehensive Plan shows the City adopted trail system through this property on 135th Street SE. The applicant has proposed sidewalks on 135th Street SE. Sidewalks are also proposed to be constructed along the frontage of Sultan Basin Road for both the northern and southern properties. The applicant has also proposed boardwalks through the property, which are not permitted under SMC 16.80.	Yes
3.d Transit is available in sufficient proximity to facilitate transit access.	In Resolution 08-03, the City Council found that SMC 16.10.110(B)(2)(d) "does not require that transit be available for pedestrians to access	Yes

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	transit. Vehicular proximity must also be taken into account." This site is approximately 1 mile from the nearest transit stop on Highway 2. Vehicular proximity to this site is adequate to facility transit access.	
3.e Public services and utilities are sufficient so that the public will not be burdened with a higher or earlier cost.	The applicant proposes to construct all utilities on-site, including water, sewer, power, and stormwater drainage. Water is available on 135th Street SE and will be extended into the property to serve the proposed lots. Sewer is available on Sultan Basin Road and will be extended into the property to serve the proposed lots.	Yes
3.f Schools, parks, playgrounds and public facilities are available to this site as it would be for another development	All residents will be able to use public facilities at the same level as all residents of Sultan.	Yes
3.g Alternative standards for utilities, facilities, or services	Not needed.	N/A
3.h Multi-family residential use	None proposed.	N/A

b. Development Standards

The site is zoned Moderate Density Residential (MD). Single-family detached homes and PUD's in the MD zone are subject to the following zoning requirements per SMC 16.12.020, as modified through PUD development standards in SMC 16.10.120(B):

Density

Gross density is proposed to be approximately four (4) dwelling units per acre (26 dwelling units over 6.47 acres). The maximum density permitted for PUD's is seven (7) dwellings per acre.

Does the proposal comply with the standards? Yes.

Lot Size

The minimum lot size in the MD zone is 7,200 square feet. Under SMC 16.10.120(B)(2), those minimum lot sizes may be reduced where:

1. A variety of housing types are proposed.
2. Additional site amenities are proposed.

3. The amount of open space compensates for the reduced lot sizes.

The applicant proposes lot sizes that range from 2,225 square feet to 31,510 square feet with an average lot size of 5,231 square feet. Twenty-two (22) of the proposed lots would be under the underlying zoning minimum lot size of 7,200 square feet. These reduced lot sizes are not supported by the site plan. As described in the Recreation and Open Space section, this site plan does not meet the requirements for open space or recreation areas.

In addition, as shown in Exhibit S-4, there are not a variety of housing types proposed. There are four (4) elevations shown which employ similar designs (building materials, garages, window treatments, front entry ways), and are all two (2) or three (3) story single-family residences.

Does the proposal comply with the standards? No. Reduced lot sizes are not supported by the site plan and do not comply with the criteria for reduced lot sizes.

Lot width
The required lot width in the MD zone is sixty (60) feet. The proposed minimum lot widths range from twenty-three (23) feet to sixty (60) feet. Lot widths are reduced under the same standards as lot sizes. The lot widths proposed meet standard planning principles, except for Lots 10 and 20, which have lot widths of twenty-three (23) and twenty-seven (27) feet respectively. Except for panhandle lots, which are not proposed here, thirty (30) feet is minimum street frontage needed for access and front yard uses.

Does the proposal comply with the standards? The project could be conditioned to comply.

Front Yard Setbacks
The applicant proposes front yard setbacks of 15 feet. SMC 16.10.120(B)(1)(f) states "Where a developer provides privacy by reducing traffic flow through street layout such as cul-de-sacs, or by screening or planting, or by facing the structure toward open space or a pedestrian way, or through the room layout or location, and access to garages of the home face perpendicular to or are not visible from the street frontage, then it is possible to reduce the front yard setback to 15 feet. Also, if 60 percent of the front facing portion of a structure consists of a front porch, setbacks may also be reduced to 10 feet for the front yard. Front porches and stoops which contain less than 60 percent of the front facade may project into the setback; provided, they do not interfere with minimum vehicular sight distance requirements."

This proposal does not meet these standards, because all elevations will have the garage facing the street. Therefore, twenty (20) foot setbacks, as required in the MD zone, are required.

In addition, driveway length on many lots is shown at sixteen (16) feet. This is inadequate, as a standard parking space is eighteen (18) feet long, per SMC 16.60.020. This would result

in cars hanging over the sidewalk or into the street for those lots where no sidewalk is proposed.

Does the proposal comply with the standards? No. The site plan shows fifteen (15) foot setbacks on all lots. Twenty (20) foot setbacks are required.

Side Yard Setbacks
The applicant proposes minimum side yard setbacks of five (5) feet. Per SMC 16.10.120(B)(1)(a), side yards may be reduced to a zero lot line, provided a five foot minimum is maintained between buildings and structures on the adjacent lot and appropriate easements are provided to maintain spacing and permit maintenance access.

Does the proposal comply with the standards? Yes. Standard side yard setbacks in the MD zone (SMC 16.12.020 Table under "Single-Family Detached Dwellings" require a five (5) foot setback minimum, with a total of fifteen (15). The impact of a reduction to a five (5) foot setback on either side is minimal.

Rear Yard Setbacks
The applicant proposes ten (10) foot minimum rear yard setbacks. Per SMC 16.10.120(B)(1)(a), the minimum rear yard requirement is intended to provide privacy for the outdoor area behind the dwelling unit. Where physical elements such as fences, screens, or open space are provided, rear yard setbacks may be reduced to 10 feet. Six (6) foot fences are proposed for those lots that do not back up to a critical area. No privacy elements are shown for Lots 25-26.

Does the proposal comply with the standards? It can be conditioned to comply.

c. Comprehensive Plan Designation
The site is designated "Moderate Density Residential" by the City of Sultan Comprehensive Plan. The proposed use of the site as single family residential at a density of approximately 4 dwelling units per acre is consistent with the Comprehensive Plan. The Comprehensive Plan includes a land use goal to "Maintain a realistic balance between the land's capable, suitable potentials and Sultan's ability to provide urban services." Objectives under this goal include "Allocate urban development onto lands that are capable of supporting urban uses and/or that pose fewest environmental risks; allocate urban development onto lands that are suitable for urban use and/or that have the least social value in an undeveloped state; and allocate urban uses onto capable, suitable lands that Sultan can provide sewer, water, storm, and other basic utilities."

Does the proposal comply with the standards? Yes.

d. Recreation and Open Space

Recreation

In accordance with SMC 16.72, required recreation areas are calculated at 75 square feet per person and in developments with 21 to 50 dwelling units, two separate recreation areas with a minimum of 2,000 square feet are required. Anderson Farm as proposed, with 26 single-family residences, would require two (2) recreation areas totaling a minimum of 5,580 square feet. The applicant proposes two (2) recreation areas totaling 3,878 square feet, once the critical area are removed from Tract 994. Tract 994 has an area of 3,228 square feet, providing a multipurpose court and picnic area. Tract 998 has an area of 650 square feet and proposes a picnic area.

Does the proposal comply with the standards? No. The proposal does not comply with the minimum requirement for usable open space of 5,580 square feet. The proposal included critical area buffer in the recreation calculations, which is not permitted under SMC 16.72.040(F). In addition, Tract 998 does not meet the minimum area requirements of 2,000 square feet in SMC 16.72.040(C), or the minimum required for a picnic area in SMC 16.72.050(E). The design does not comply with other requirements for perimeter landscaping and fencing. In addition, seventy-five (75) percent of open space is required to be free from structures or other improvements. Several of the open space tracts have structures or other improvements within them , including retaining walls, detention structures, and pedestrian structures.

Open Space

All PUD's are required to provide open space in the amount of 20% of the gross land area of the site, per SMC 16.10.140. A minimum of 15% of the gross area must be "usable open space." The percentage of gross area counted toward the open space requirement is limited for "buffer open space" (2%) "constrained open space" (2%) and "unusable detention open space" (5%). Any amount of "conservation open space" may also be used to meet the minimum required open space.

Not all open space areas have their areas included. The approximate gross open space provided is 107,000 square feet. This meets the twenty (20) percent minimum of 56,337 square feet.

The site plan shows several areas as usable open space. However, only Tracts 998, 996, a portion of 995, and a portion of 994 are unencumbered by critical areas or buffers. Only 7,245 square feet of usable open space is shown on the site plan. The minimum required is 42,253 square feet.

The applicant has proposed using elevated boardwalks to partially comply with the usable open space requirements. However, pedestrian walkways are not permitted within wetland areas, only wetland buffers, under SMC 16.80.080(B) and (D).

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Does the proposal comply with the standards? No. The requirements for usable open space requiring fifteen (15) percent of the total site area, have not been met. The proposal includes walkways within wetland areas, which is prohibited under SMC 16.80.

e. Vegetation Protection

SMC 16.76 requires a vegetation inventory be submitted with this proposal. None was submitted. The Critical Area Report (S-16) has some information on the types of vegetation present on-site. From this report and the other information submitted, the City is not able to determine whether the requirements of SMC 16.76 have been met.

Does the proposal comply with the standards? Unknown.

f. Landscaping

SMC 16.104 requires landscaping to be installed for this project. A total of 28 trees must be installed on the residential lots of three (3) different species. This excludes wetland mitigation requirements and street tree requirements. The landscaping plan (Exhibit S-17d), shows sixteen (16) trees of one (1) species.

Does the proposal comply with the standards? No. The minimum number of trees required in SMC 16.104.090, and the minimum number of species required under SMC 16.104.120 are not met.

g. Critical Areas

Within the City of Sultan, critical areas, including wetlands are subject to regulations per SMC 16.80.030(Ordinance 630, 1995). The application was vested under this earlier version prior to adoption of Ordinance 918-06. According to the critical area report, wetlands are the only critical area present on the subject site. There are several unregulated ditches that are not discussed here.

Wetlands

The preliminary site plan submitted to the City shows that there are eight (8) Category 3 wetlands.

Wetland	Required Buffer	Proposed Buffer
Wetland A	50	0' (adjacent to Road C and Lots 16-17)to 30'
Wetland B	50	0' to 45'
Wetland C	50	0' (Lots 20-24) to 30'
Wetland D	Will be filled	
Wetland E	50	0' (Lots 4, 6-10, detention structure) to 35'
Wetland F	Will be filled	
Wetland G	Will be filled	
Wetland H	50	0' (Turnaround) to 35'

The applicant is proposing to use the innovative development design information in SMC 16.80.100. This allows reduced buffers than required in SMC 16.80.040(B), subject to five (5) criteria:

1. The innovative design will result in a net improvement of the functional values of the stream or wetlands and their buffers.
2. The innovative design has been approved by the state resource agencies with jurisdiction.
3. The innovative design is consistent with the purpose and objectives of this chapter.
4. The innovative design is consistent with the standards in SMC 16.80.090.
5. The innovative design will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is located.

The proposal as submitted does not comply with the criteria under SMC 16.80.100(B). As stated in Exhibit S-18, the proposal will not result in a net improvement in the functional values of the wetland and its buffers, because there are no buffers proposed for parts of the wetlands. While SMC allows for reduced buffers, it does not allow elimination of all buffers.

Mitigation measure #1 was added to the MDNS, issued October 16, 2007, to bring the proposal into compliance with SMC 16.80.100.

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.

No changes to the site plan have been made since the MDNS was issued. This mitigation measure was appealed as part of the November 13, 2007 appeal of the MDNS by the applicant (Exhibit 20).

In addition, Wetland C extends off-site to the North. The applicant has proposed a reduced buffer width for the off-site portion. The full buffer width of fifty (50) feet must be applied to Lot 18 – the applicant cannot propose buffer enhancement off-site. Lot 18 must be revised to show the full fifty (50) foot buffer.

Does the proposal comply with the standards? No. The requirements under innovative design in SMC 16.80.100 have not been met.

h. Water Availability

According to SMC 16.10.070(C)(8) new developments must show evidence of adequate water availability as stated in RCW 19.27.097. The City of Sultan Public Works Department has issued a letter stating water availability to the site on August 12, 2005. This letter states that the developer/owner may need to build improvements to the City's water system in order to provide water to the site. These connections must be made within one year of the Availability Notice.

Does the proposal comply with the standards? Yes, if the applicant requests an extension to the water availability letter from the Public Works Department. No request has been submitted at this time. The City Council should not approve the development without a current water availability letter.

i. Sanitary Sewer Availability

According to SMC 16.10.070(C)(7) new developments must show evidence of sewer availability. The City of Sultan Public Works Department has issued a letter stating sewer availability to the site on August 12, 2005. This letter states that the developer/owner of the site may need to build improvements to the City's sewer system in order to provide sewer service to the site. Connections to the system must be made within one year of Availability Notice.

Does the proposal comply with the standards? Yes, if the applicant requests an extension to the sewer availability letter from the Public Works Department. No request has been submitted at this time. The City Council should not approve the development without a current sewer availability letter.

j. Stormwater Management

Per SMC 16.92.010, the City of Sultan adopts the most recent Department of Ecology Stormwater Management Manual for the Puget Sound basin. The applicant proposes to use wetlands for stormwater detention in the north portion of the site using integrated management practices (IMP) from the Low Impact Development Technical Guideline Manual from Puget Sound Action Team. The IMPs involve using bio-retention cells and bio-retention swales to infiltrate and treat runoff. The City has not adopted these IMPs, and therefore has no basis for approving their application here.

The southern portion of the site will use a conventional stormwater system constructing two permanent stormwater detention ponds. Stormwater management for the site is documented on the site plan and the revised *Preliminary Drainage Report* dated May 4, 2006 prepared by HBA . Stormwater runoff from the development will be conveyed to the stormwater management wetland located in the southern portion of the site. Detention ponds will be used for internal and external runoff from the road system. The stormwater detention areas are shown within buffer areas. Utilities are only permitted in buffer areas where there is no other reasonably feasible location outside of buffer area. The applicant has not demonstrated that there are no other reasonably feasible locations. Detention facilities could be placed under roadways or in other non-buffer areas.

The *Preliminary Drainage Report* states that the proposed design of the stormwater management facility will comply with the applicable WSDOE minimum requirements.

Does the proposal comply with the standards? No. The Low Impact Development standards have not been approved by the City, so the proposal has no basis for approval. In addition, the applicant has not demonstrated the need to place stormwater detention areas within wetland buffer areas.

k. Lot Access and on-site streets

The applicant has proposed three access streets (Roads A, B and C) to serve all twenty-six (26) lots. All three (3) streets would include the following improvements:

Standard	Requirement	Proposed
Right-of-Way	60'	31.5'
Travel lanes	2 - 12' lanes	2 – 12' lanes
Parking lanes	2 - 8' lanes	None
Sidewalks	2 - 5' sidewalks	1 - 5' sidewalk
Curb and gutter	On each side	1 - .5' curb
Street trees	1 per 20 lineal feet	None (Planters would be installed outside the right-of-way on Road C)

Under SMC 16.10.120(B)(4)(d), right-of-way and street widths may be reduced, especially where it is found that the PUD provides for the separation of vehicular and pedestrian circulation and provides adequate off-street parking.

The proposal does not meet this criteria. As proposed, there is no separation of pedestrian and vehicular traffic. Only one (1) side of the street on each road would have sidewalks, and no planters with street trees or on-street parking areas are proposed. This would place the pedestrians directly adjacent to moving vehicles. Additionally, the pedestrian facilities proposed to be within the wetlands are not permitted under SMC 16.80.

There is also not adequate off-street parking. Under SMC 16.60.020, a parking space is required to be 153 square feet, and a minimum of eighteen (18) feet long. While there are two (2) car garages proposed, sixteen (16) lots would be unable to provide additional parking spaces within the driveway without the vehicles extending into the sidewalk or street. Lots 1-6, 8, 10, 15, 19, 23-24 and 26 have driveway lengths of less than eighteen (18) feet. Lots 1-6, 8, 10, 12-13, 15-16, 19, 23-24 and 26 do not have at least 306 square feet of driveway area to accommodate an additional two (2) spots. Four (4) total spots is the minimum accepted by City to meet this requirement.

The City Engineer provided written comments (Exhibit S-7) that the geotechnical report does not support the street section. Additional information is needed before these street sections can be approved for construction.

Does the proposal comply with the standards? No. The proposed street right-of-way do not meet the criteria for allowing a reduced right-of-way and street section. The road design

proposed is slightly more than that for a private road. The City's Design Standards and Specifications allow a private road for less than four (4) lots, and not within a formal subdivision. No formal Plat Modification has been requested to allow a private road within a formal subdivision for four (4) or less lots.

1. Off-site streets

135th Street SE

135th Street SE, also known as Bryant Road, is a local access street. It has the same street standards as the local access streets above. The applicant does not own the same amount of frontage on the southern property as the northern property. For the area where the applicant owns the property on both sides of the street (approximately 407 feet), the following road section is proposed:

Standard	Requirement	Proposed
Right-of-Way	60'	60'
Travel lanes	2 - 12' lanes	2 – 12' lanes
Parking lanes	2 - 8' lanes	2 – 8' lanes
Sidewalks	2 - 5' sidewalks	2 - 5' sidewalks
Curb and gutter	On each side	1 - .5' curb
Street trees	1 per 20 lineal feet	1 per 50 lineal feet
Planter	Sufficient for street trees	2 – 3' planters

The City Engineer provided comments that the geotechnical report does not support the street section. Additional information is needed before this street section can be approved.

Does the proposal comply with the standards? Yes, when a final geotechnical report and revised street sections are submitted as part of final design, and with a condition on the street trees and curb and gutter.

For that portion of the right-of-way where the applicant does not own the southern parcel (approximately 208 feet), the following street section is proposed:

Standard	Requirement	Proposed
Right-of-Way	60'	30' (existing)
Travel lanes	2 - 12' lanes	2 – 10' lanes
Parking lanes	2 - 8' lanes	None
Sidewalks	2 - 5' sidewalks	1 – 5' sidewalk
Curb and gutter	On each side	1 - .5' curb
Street trees	1 per 20 lineal feet	1 per 50 lineal feet
Planter	Sufficient for street trees	1 – 3' planter

Does the proposal comply with the standards? No. As proposed, this street section would be unsafe. The City Engineer provided written comments that the transition from a full street right-of-way to a half-street section would create a safety hazard.

Sultan Basin Road

The application proposes half street frontage improvements along the site's entire frontage Sultan Basin Road including the frontage along the adjacent parcel at the corner of Sultan Basin Road and 135th Street SE. The following half street section is proposed:

Standard	½ Street Requirement	Proposed
Right-of-Way	33'	33' (3' of dedication)
Travel lanes	1 - 12' lanes	1 – 12' lane
Parking lanes	None	1 – 8' lane
Turning lanes	1 – 12' lane (entire street)	None
Sidewalks	1 - 6' sidewalks	1 – 5' sidewalk
Curb and gutter	On each side	1 - .5' curb
Street trees	1 per 20 lineal feet	1 per 25 lineal feet, not shown on adjacent northern parcel
Planter	1 – 5'	1 – 3' planter
Bike Lane	1 – 3' lane	1 - 3' lane

Does the proposal comply with the standards? Yes, when a final geotechnical report and revised street sections are submitted as part of final design, and with a condition on the turning lane, street trees, planter, and sidewalk.

m. Traffic Impacts

According to SMC 16.112.020, the owner/developer is required to pay impact fees and offset impacts to the City's street system. Twenty-six (26) traffic impact fees will be due at the time of building permit issuance. Traffic impact fee credit will be granted for improvements to Sultan Basin Road, under the Settlement Agreement (Exhibit S-15).

Traffic impact fees will also be due to WSDOT for the Sultan WCL West Bound Passing Lane.

Does the proposal comply with the standards? Yes.

n. School Impacts

Sultan Elementary, Middle, and High schools are located approximately 2 miles away from the site. The applicant has acknowledged that school impact fees shall be paid to the City in accordance with SMC 16.116. Twenty-six (26) school impact fees will be due at the time of building permit issuance.

Does the proposal comply with the standards? Yes.

o. Park and Recreation Impacts
Per SMC 16.112, the developer is required to pay impact fees to offset the project's impact on the City's recreation facilities. Twenty-six (26) park impact fees will be due at the time of building permit issuance.

Does the proposal comply with the standards? Yes.

p. Fire Hydrants
No fire hydrants are shown on the proposed site plan. During final engineering design following preliminary PUD/plat approval the City would determine the number and location of required hydrants.

Does the proposal comply with the standards? No. Fire hydrants are required with this project and must be shown in a preliminary manner on plans.

q. Concurrency Requirements
SMC section 16.108.010 states that property owners must meet the concurrency provisions of the Comprehensive Plan as required in RCW 36.70A.070. This ensures that adequate public facilities are available and will be able to support the development's impact. Facilities subject to this review are:

- Roadways
- Potable Water
- Wastewater
- Police Protection
- Parks and Recreation

On September 5, 2007, the Central Puget Sound Growth Management Hearings Board found the City's 2004 Capital Facilities Plan noncompliant and invalid with the Growth Management Act. This has no bearing on this project, because a determination of invalidity is prospective in nature and has no impact on vested applications. A PUD and Plat becomes vested at the time of a complete application, which was issued on October 11, 2005. This application is reviewed against the Level of Service Standards in place at the time of a complete application. This project is reviewed against the 2004 Comprehensive Plan, including the Capital Facilities Plan.

Arterial Roadways
The 2004 Comprehensive Plan LOS is B for identified intersections.

In accordance with SMC 16.112, the applicant is required to pay traffic impact fees to offset traffic impacts associated with the development. Traffic related improvements scheduled to meet and maintain the City's adopted LOS concurrent with development are planned under the adopted Six-Year Transportation Improvement Program. The applicant's traffic study analyzed PM peak hour LOS at two intersections and found that the northbound approach of the US 2/Sultan Basin Road performed at LOS E and the south-bound approach performed at LOS B in 2005. The intersection has been rebuilt since then. The study also found that the

intersection of US 2 at Main Street performed at LOS C. The study estimated that in 2007 without the proposed project and with the US 2/Sultan Basin Road improvements, the US2/Sultan Basin Road intersection would perform at LOS D (north-bound) and LOS C (south-bound). The US 2/Main Street intersection would drop to LOS D. With the project, US 2/Sultan Basin Road would continue to perform at LOS D and B respectively, and the US 2/Main Street intersection would drop to LOS E (Exhibit S3). The City's traffic consultant concurred with the study findings (Exhibit S5).

Other Roadways
The 2004 Comprehensive Plan LOS is B for local streets.

In accordance with Chapter 16.112 SMC, the applicant is required to pay traffic impact fees to offset traffic impacts associated with the development. Traffic related improvements scheduled to meet and maintain the City's adopted LOS concurrent with development are planned under the adopted Six-Year Transportation Improvement Program. The traffic study did not address the LOS of other roadways.

Potable Water
The 2004 Comprehensive Plan LOS is 800 gallons of supply per equivalent residential unit. The City currently has a 20-year projected surplus of 249,560 gallons supply.

On August 12, 2005, the City issued a letter of water availability. System improvements may be required of the applicant to connect to the City water system. Water system improvements scheduled to maintain the City's adopted LOS concurrent with development are planned under the adopted 6-year Capital Facilities Plan.

Wastewater
The 2004 Comprehensive Plan LOS is 100 gallons per day per capita. The City currently has available wastewater capacity.

On August 12, 2005, the City issued a letter of sewer availability. System improvements may be required of the applicant to connect to the City sewer system. Wastewater system improvements scheduled to maintain the City's adopted LOS concurrent with development are planned under the adopted 6-year Capital Facilities Plan.

Police
The 2004 Comprehensive Plan LOS is 2.6 uniform officers per 1,000 residents.

Police services are funded through the City's general fund and other sources. Increased tax revenue associated with the development will work towards offsetting incremental increases of police services as needed to accommodate the City's population. Police service improvements scheduled to maintain the City's adopted LOS concurrent with development are planned under the adopted 6-year Capital Facilities Plan. Currently, the LOS for officers is not being met. The City Council has adopted the following policy applied to new residential growth.

The following condition will be applied to this development, to meet concurrency requirements.

> "Prior to issuance of a certificate of occupancy and/or occupancy of any residence within the subdivision, a combination of developer agreements and public funds, including additional tax adoptions (such as an increased real estate excise tax and a B & O tax), other funding sources (such as potential developer loans to advance the receipt of payment of needed funds), and monies contributed by the proposed development for its impacts on the LOS, shall put in place the required public services for police concurrent with the development impacts, and provide appropriate strategies for the six years from the time of development to achieve the necessary police LOS as now established or as subsequently revised; or, in the alternative, the police services LOS in existence at the time of final building permit inspections shall be met before approval for occupancy is granted."

Parks and Recreation

The 2004 Comprehensive Plan LOS is 42.6 acres per 1,000 residents. In 2007 the City had just under 200 acres of space, serving a population of about 4,530, or 43.7 acres per 1,000 population which exceeds the standard.

Certificate of Concurrency

The proposed Anderson Farm Preliminary PUD and Plat will not lower the existing level of service (LOS) of for roads, police and parks and recreation, or impacts of the development are anticipated to be offset by facility or service improvements within six years of the time of development as conditioned. A certificate of concurrency cannot be granted unless there are current water and sewer availability letters. The applicant can request an extension to the 2005 letters from the Public Works Department to keep these certifications current. No request has been made.

Does the proposal comply with the standards? A condition could be added requiring current certificates of water and sewer availability before Council action.

III. SEPA

SEPA, under RCW 43.21C, requires governmental agencies to consider the environmental impacts of a proposal before making decisions. A City of Sultan Environmental Checklist was submitted to the City on September 15, 2005 and updated May 5, 2006 (Exhibit S-9). A mitigated Determination of Nonsignificance (MDNS) was issued on October 16, 2007 (Exhibit S-19). The basis for the MDNS include Exhibits S-3j, S-3k, S-9b, S-9c, S-16, and S17.

There were seven mitigation measures added to the MDNS:

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.

The MDNS was partially appealed by the applicant on November 13, 2007. Mitigation measures 1A, 1B, 2, 3, and part of 5 regarding police protection were appealed. These measures were appealed based on the arguments in Section 4 of the Applicants appeal filing in Exhibit S-20.

The other conditions (1C, 1D, 1E, 4, 6, 5 excluding police protection, and 7) were not appeal issues and will not be addressed in the staff report.

a. Standing and Timeliness of Appeal

The applicant has standing as the owner of the property and the applicant for the PUD.

Exhibit S-21 shows that the appeal fee required to be submitted with a Notice of Appeal was not submitted within the appeal period. This appeal was not timely due to the deficiency of the

Notice of Appeal without the required fee. However, this report will include a staff response to the SEPA appeal.

b. Appeal Issues, Basis for Appeal, and Staff Response

Exhibit S-20 is the Notice of Appeal of the MDNS. Sections 3 and 4 include the Factual Basis of Appeal and Basis of Appeal, which are the arguments. In general, the mitigation measures, including 1A, 1B, 2, 3, and part of 5 regarding police protection, are appealed. The appeal issues are summarized below.

Appeal Issue #1:	**Staff Response:**
Mitigation measure #1 a and b, regarding buffer on Wetland E (to 25 feet) and Wetland C (to 12 feet minimum and an average of 25 feet) are not based on SMC 16.80, adopted SEPA policies, are clearly erroneous and/or arbitrary and capricious, are an incorrect application of the law, has no nexus to the impacts, is not reasonably proportional, and prevents all economic use of the property.	Mitigation measure #1 a and b requires that buffers on two (2) wetlands, Wetland C and Wetland E, both Category 3 wetlands, be enlarged. The proposal as submitted calls for: • Wetland C: 0' foot buffers adjacent to Lots 20-23, up to 30' adjacent to Lot 24 • Wetland E: 0' adjacent to Lots 6-10 up to 35' on Lot 6. WAC 197-11-660(1)(e) and (1)(g) require that if existing federal, state and local plans and development regulations adequately analyze and mitigate environmental impacts, then mitigation measures shall not be imposed through SEPA. This environmental impact can be adequately addressed through the existing provisions in the Code. The requirement for upland buffers on Wetland C and Wetland E, as well as the other recommendations of Graham-Bunting in their March 2007 recommendation (Exhibit S-18), must be met in order to approve the innovative design, as required by SMC 16.80. **SMC 16.80.100 Innovative Development Design** – Allows for reduced buffer widths below the minimum of 50' required in SMC 16.80.040, but it does not allow the elimination of all buffers. In order for an innovative design to be approved, one (1) criteria requires that the design must show that there will be a net improvement of the functional values of the wetland and their buffers. If there are no buffers, then the functional values of those buffers cannot be increased. Because the current site plan does not meet the criteria under of the SMC 16.80.100 (B), the City is recommending denial of the PUD and Plat.

Appeal Issue #2:

Mitigation measure #2, regarding public safety and service impacts requiring minimum 50 foot rights-of-way, sidewalks on both sides, and on-street parking on one side of the street is contrary to SMC 16.80, adopted SEPA policies, are clearly erroneous and/or arbitrary and capricious, are an incorrect application of the law, has no nexus to the impacts, is not reasonably proportional, and prevents all economic use of the property.

Staff Response:

Mitigation measure #2 requires that the local access roads, Roads A, B and C, comply with the City's Design Standards, adopted in SMC 16.16.150.

WAC 197-11-660(1)(e) and (1)(g) require that if existing federal, state and local plans and development regulations adequately analyze and mitigate environmental impacts, then mitigation measures shall not be imposed through SEPA.

This environmental impact can be adequately addressed through the existing provisions in the Code. The requirement for street sections to meet the City's Design Standards must be met in order to approve the project.

The proposal includes the following road standards for Roads A, B and C:

Standard	Proposed
Right-of-Way	31.5'
Travel lanes	2 – 12' lanes
Parking lanes	None
Sidewalks	1 - 5' sidewalk
Curb and gutter	1 - .5' curb
Street trees	None (Planters would be installed outside the right-of-way on Road C)

City's Design Standards – The City's Design Standards and Specifications include the following minimum requirements:

Standard	Requirement
Right-of-Way	60'
Travel lanes	2 - 12' lanes
Parking lanes	2 - 8' lanes
Sidewalks	2 - 5' sidewalks
Curb and gutter	On each side
Street trees	1 per 20 lineal feet

The street sections proposed for Roads A, B and C do not meet any of the street standards, except for the provision for two (2) 12-foot travel lanes. Allowing roads that do not provide for on-street parking, sidewalks on both sides of the street, curb and gutter on both sides of the street, street trees, and a minimum fifty (50) foot right-of-way would be detrimental to the public health, welfare, and safety, for several reasons. This development would have significant pedestrian

safety issues, and would result in parking problems due to lack of on-street parking and insufficient off-street parking. Lack of curb and gutter on both sides of the street would result in stormwater drainage runoff into critical areas and their buffers.

Because the street sections as proposed do not meet the City's Design Standards, adopted through SMC 16.16.150, the City is recommending denial of the PUD and Plat application.

Appeal Issue #3:

Mitigation measure #3, regarding site development impacts requiring compliance with SMC 16.10.120 or a variance request is contrary to the SMC, adopted SEPA policies, are clearly erroneous and/or arbitrary and capricious, are an incorrect application of the law, has no nexus to the impacts, is not reasonably proportional, and prevents all economic use of the property.

Staff Response:

Mitigation measure #3 requires that the site design comply with SMC 16.10.120 or that a variance is requested.

SMC 16.10.120, Residential PUD density increases and development standards, is discussed in this staff report under Section II.b. Development Standards. No density bonuses are proposed, so this mitigation measure and appeal is only in regards to SMC 16.10.120(B). The provisions in this section that impact this property are regarding lot sizes, setbacks, and streets.

As discussed above, the application as proposed does not meet the requirements for reduced front yard setbacks and does not meet the requirements for reduced street right-of-way under SMC 16.10.120(B).

WAC 197-11-660(1)(e) and (1)(g) require that if existing federal, state and local plans and development regulations adequately analyze and mitigate environmental impacts, then mitigation measures shall not be imposed through SEPA.

This environmental impact can be adequately addressed through the existing provisions in the Code. The requirement for setbacks to comply with the requirements of SMC 16.10.120(B) must be met in order to approve the project.

Because the site plan does not meet the requirements of SMC 16.10.120(B) as proposed, the City is recommending denial of the PUD and Plat.

Appeal Issue #4	**Staff Response:**
Mitigation measure #5, regarding police concurrency is contrary to adopted SEPA policies, are clearly erroneous and/or arbitrary and capricious, are an incorrect application of the law, has no nexus to the impacts, is not reasonably proportional, and prevents all economic use of the property.	Mitigation measure number 5 requires that the development meet concurrency requirements under SMC 16.108 for arterial and other roadways, potable water, wastewater, police protection and parks and recreation. WAC 197-11-660(1)(e) and (1)(g) require that if existing federal, state and local plans and development regulations adequately analyze and mitigate environmental impacts, then additional mitigation measures shall not be imposed through SEPA. This environmental impact can be adequately addressed through the existing provisions in the Code; therefore the mitigation measure through SEPA is unnecessary.

Appeal Issue #5	**Staff Response:**
The City did not issue the MDNS in the time required by state statute or City Ordinance	WAC 197-11-310, Threshold determination required, requires in WAC 197-11-310(6)(c) a City that is planning under GMA to issue a threshold determination at least fifteen (15) days prior to an open record hearing, if one is required.

IV. Public Notice

As required by the City's subdivision and public hearing regulations (SMC 16.28.300 and SMC 16.124.010) notice of the preliminary plat and PUD application has been posted, published and mailed. Notice of public hearing was posted, mailed, and published April 25, 2008.

V. Conclusion & Staff Recommendation

Staff concludes that the proposed Anderson Farm PUD does not meet the criteria for preliminary plats in accordance with SMC 16.28.330(A) and for preliminary single family residential PUDs in accordance with SMC 16.10.110(B).

As described in this staff report:

1. The proposal is not consistent with RCW 36.70B, Local Project Review, requiring that projects be determined to be consistent with local development regulations.

2. The proposal is not consistent with SMC 16.28.330:

    a. The proposal is not in conformance with the general purposes of the comprehensive plan and planning standards and specifications adopted by the laws of the state of Washington and the City of Sultan.
    b. The proposal does not make appropriate provisions for drainageways, streets, water supplies, sanitary wastes, parks and recreation, sidewalks and other safe walking conditions for students walking to and from school.
    c. The public use and interest will not be served by the subdivision.

At this time, staff recommends the Hearing Examiner recommend DENIAL of the Anderson Farm Preliminary PUD and Plat to the City Council based on the above conclusions. The following list of the reasons for denial, also discussed within the staff report, provide additional evidence for the above conclusion.

1. The proposal is not in compliance with the development regulations in the MD zone, under SMC 16.12.020, or the PUD provisions in SMC 16.10.120. The lot sizes and front yard setbacks proposed do not meet the criteria allowing a reduction from the standards in the MD zone for a detached single-family dwelling unit and would not service the public interest. The proposal will not provide for adequate off-street parking within driveways. The requirements for reduced setbacks have not been met with the proposed elevations.
2. The proposal is not in compliance with the recreation standards in SMC 16.72. The proposal does not meet the minimum total recreation area requirement of 5,580 square feet, does not meet the minimum area requirement of 2,000 square feet per recreation area. It proposed recreation facilities (a trail) within a critical area, which is not permitted. The proposal does not comply with the requirement to provide a picnic area. The proposal does not comply with the requirement for seventy-five percent of open space to be free from structures or other improvements.
3. The proposal is not in compliance with the open space standards in SMC 16.72 or SMC 16.10.140. The proposal does not comply with the usable open space requirement of fifteen (15) percent or 42,253 square feet. The proposal includes pedestrian walkways within wetland areas, which is prohibited by SMC 16.80.
4. The proposal has not demonstrated compliance with the vegetation protection standards SMC 16.76. Information demonstrating compliance with these standards has not been submitted with the proposal.
5. The proposal is not in compliance with the landscaping standards in SMC 16.104. The proposal does not provide the minimum number of trees (28 trees), or the minimum number of tree species (3) required.
6. The proposal is not in compliance with the wetland and streams standards in SMC 16.80. It does not meet the requirements of innovative design required under SMC 16.80.100. The minimum necessary to comply with this provision were added as mitigation measures to the MDNS issued October 16, 2007. No changes to the site plan have been

made subsequent to the issuance of the MDNS and this mitigation measure was appealed by the Applicant.

7. The proposal is not in compliance with City Street Design Standards as adopted in SMC 16.16.150, with the requirements of SMC 16.10.120(B), or SMC 16.28.230. The design of Roads A, B, and C does not comply with the City's Design Standards and Specifications for local access roads. The proposed right-of-way does not meet the requirements for reduced right-of way in SMC 16.10.120(B), as there is not separation of vehicular and pedestrian traffic or adequate off-street parking. The proposal does not comply with the subdivision regulations in SMC 16.28.230 which requires a sixty (60) foot right-of-way for five (5) or more lots. The proposed street section to 135th Street SE for the eastern portion (where the applicant only owns the northern property) would create a traffic safety hazard where it transitions from a sixty (60) foot right-of-way to a thirty (30) foot right-of-way.
8. The proposal needs updated water and sewer availability letters in order to demonstrate compliance with SMC 16.108.
9. The proposal is not in compliance with the stormwater regulations in SMC 16.92. The proposal includes using Low Impact Development Techniques that the City has not adopted. The downstream analysis is inadequate for the City to review it against the 2005 Department of Ecology Stormwater Manual. Stormwater drainage facilities are proposed within wetland buffers – this is only allowed where there are no other reasonably feasible location outside of buffer area. It has not been demonstrated that this requirement is met.
10. The proposal is not in compliance with the International Fire Code, adopted in SMC 15.01.030. No fire hydrants are shown on the site plan.

Exhibit S-2
SEPA Standard of Review

BEFORE THE
CITY OF SULTAN HEARING EXAMINER

RE: Anderson Farm Preliminary Planned Unit Development and Plat

NO. FP-PUD-05-003

CITY OF SULTAN'S STATEMENT OF STANDARD OF REVIEW

I. INTRODUCTION

The City of Sultan ("City") issued a Mitigated Determination of Nonsignificance ("MDNS") on the Anderson Farm Preliminary Planned Unit Development and Plat, File Number FP-PUD 05-003. The MDNS was appealed by the applicant, and the appeal is scheduled to be heard on May 5, 2008, in conjunction with the open record hearing on the application. The City is submitting this brief in order to assist the hearing examiner in reviewing the MDNS appeal.

II. STANDARD OF REVIEW

The City's decision to issue a MDNS is reviewed under the "clearly erroneous" standard. *Moss v. Bellingham*, 109 Wn. App. 6, 13, 31 P.3d 703 (2001). Under the clearly erroneous standard, the City's decision may only be overturned if the reviewing body is "left with the firm conviction that a mistake has been committed." *Id. citing Association of Rural Residents v. Kitsap County*, 141 Wn.2d 185, 196, 4 P.3d 115 (2000).

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EXHIBIT S-2

In *Moss*, the court noted that "[w]e do not substitute our judgment for that of the decision-making body, but we examine the record in light of public policy contained in the legislation authorizing the decision." 109 Wn. App. at 13. As described by another court in reviewing a MDNS, "[i]n reviewing the SEPA decision, the reviewing court recognizes and defers to the expertise of the administrative agency." *Pease Hill Community Group v. County of Spokane*, 62 Wn. App. 800, 809, 816 P.2d 37 (1991).

The City respectfully asks the hearing examiner to uphold the City's MDNS on this application, unless the hearing examiner finds the City's decision to be clearly erroneous.

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