

SULTAN CITY COUNCIL AGENDA ITEM COVER SHEET

ITEM NO: D-2

DATE: June 9, 2009

SUBJECT: Transportation and Park Impact Fees

CONTACT PERSON: Deborah Knight, City Administrator

ISSUE:

The issue before the City Council is to consider amendments to the City's impact fee regulations and provide direction to staff.

STAFF RECOMMENDATION:

Staff is seeking direction from Council on amending transportation and park impact fee regulations in Chapter 16.112.020 Sultan Municipal Code (Attachment A) as discussed during the 2008 Revisions to the 2004 Comprehensive Plan.

SUMMARY:

This report evaluates four specific policy questions presented to the City Council on May 14, 2009 related to potential amendments to the City's development regulations:

1. When can impact fees be paid? *Does the Council want to evaluate and consider changing when impact fees "vest" or can be paid?*
2. How should traffic impact fee credits be managed? *Should the city reinstitute a policy and development regulations to allow developers to carry-forward transportation impact fee credits?*
3. Should impact fees be based on proximity to Sultan's "core"? *Should developments in different areas of the city pay different fees?*
4. Should on-site recreation facilities be credited against park impact fees? *Does the City Council want to provide impact fee credits for recreation facilities and trails which are designed to serve the neighborhood or connect to a larger system?*

The outcome of this discussion is to review each policy question and corresponding alternatives. The City Council should be prepared to provide specific direction to city staff on the Council's preferred alternatives.

Since the policy questions have an impact on the City's transportation improvement plan and capital facilities plan, following Council direction, staff will prepare any necessary analysis of the Council's preferred alternatives.

The City Council may need to retain technical support from financial planning and transportation consultants to assist city staff in analyzing the impacts to the Comprehensive Plan and amending the development regulations.

DISCUSSION:

When can impact fees be paid?

Policy Question: Does the Council want to evaluate and consider changing when impact fees "vest" or can be paid?

City Regulations

Sultan Municipal Code 16.112.020 "Imposition of Impact Fees"

The City's regulations (past and present) do not allow developers to pay impact fees until building permit application. There is no "vesting" in impact fees under state law and court cases have upheld cities' right increase fees prior to building permit application¹.

The benefit of this approach is that the city collects the impact fees in effect at the time of building permit. This approach connects the cost of improvements needed to serve growth more closely with actual development. It also ensures adequate funding is available for construction of system improvements. The majority of cities surveyed in Western Washington require payment of impact fees at the time of building permit. A quick survey of the Municipal Research website (Attachment B) provides a sample of impact fee policies.

Alternatives

1. **Paid at preliminary plat.** Impact fees could be paid following Council approval of a preliminary plat. A preliminary plat is the approved subdivision of land before the required improvements are completed. Preliminary plats are effective for five years at which time the applicant must have submitted the final plat or the preliminary plat expires. Under SMC 16.10.150 Preliminary Planned Unit Developments expire after twelve months.
2. **Paid at final plat.** In accordance with Sultan Municipal Code (SMC) 16.28.400 at final plat, all required improvements have been completed or the arrangements or contracts have been entered into a guarantee that such required improvements will be completed. Under SMC 16.28.460 the terms, conditions, ordinances and statutes in effect at the time of final plat approval are "vested" for five years. As a policy, "vesting" could be expanded to include impact fees.

¹ RCW 58.17.030 see also New Castle v. City of LaCenter Court of Appeals Division 2

3. **Paid at building permit.** The City of Sultan and most jurisdictions surveyed require impact fee payments prior to issuance of building permit.
4. **Paid at preliminary plat, final plat or building permit.** A few jurisdictions allow developers to pay the impact fee in effect at any of the approval points at the developers' option.
5. **Vesting.** The fee amounts could "vest" (be determined and set) at one stage of the process (for example preliminary plat) but the fee would be due at another stage (for example building permit). Usually such vesting is accompanied with an expiration time (for example five years after final plat). A few jurisdictions including Snohomish County provide for "vesting" in impact fees at the time of preliminary plat approval rather than building permit application.

Discussion

The key issue between the alternatives is the point in the process when the impact fee is paid or "vests". Payment of the impact fee is the primary concern for the City and its residents because there needs to be sufficient revenues to fund improvements needed to serve the new growth. While providing greater predictability to developers can facilitate the development process, the City needs to ensure its revenue stream for new infrastructure is not compromised.

Allowing impact fees to be paid at any point in the process provides an off-set to increasing construction costs because the money paid to the City is earning interest for the City.

In contrast, vesting without payment does not afford this same financial offset. For example, if the Council adopted a policy under which impact fees vest at preliminary plat but are not paid until building permit, the city has "lost" the time value of money. Impact fees may need to be increased to cover the construction cost inflation between when the fees are vested and when they are paid. For reference purposes, the April 2009 WSDOT construction cost index (which is routinely updated for roadway project costs based on actual bid calls) indicates that construction costs have escalated about 21% since 1999.

Under most circumstances a developer will subdivide land and then sell the plat to a builder or builders. This passes the cost of impact fees to the builder. If the impact fees are unknown at the time the plat is sold and it may be some time before a building permit is issued, the builder has a difficult time knowing how much to pay for the plat. If the developer has the option to pay the fees at preliminary plat or final plat then the impact fees can be recouped at the sale of the lots or plat to the builder. Note, this approach capitalizes the impact fees on the plat and increases the cost to the developer. (unless the costs of these fees are anticipated in the negotiated purchase price of the raw land-in which case the fees are absorbed by the original property owner)..

Systems that separate the setting of the fee amount and its payment, either through vesting or giving the developer options, will tend to increase administrative costs in tracking such payments and obligations.

How should traffic impact fee credits be managed?

Policy Question: Should the city reinstitute a policy and development regulations to allow developers to carry-forward transportation impact fee credits?

City Regulations

Sultan Municipal Code 16.112.085 "Traffic Impact Fee Credits".

Prior to the adoption of Ordinance 993-08 in September 2008, the City allowed developers to "carry forward" excess traffic impact fee credits to new developments and use the credits to off-set new development costs. In essence the prior regulation created a market for transportation impact fee credits. The credits could be used, traded or transferred to other developments.

Ordinance 993-08 eliminated the "carry forward" provision essentially capping any credit for excess frontage improvements required by the City at the value of the improvement. SMC 16.112.085 states, "*A credit shall be limited to the total amount of the transportation impact fee for the particular development.*"

There may be developments (preliminary and final plat) who premised their development profit or breakeven point on the availability of the credit.

Alternatives

1. **Vest credits for approved preliminary plats.** Allow developments with preliminary plat approval to "vest" under the regulations adopted prior to Ordinance 993-08 and "carry-forward" credits to subsequent developments.
2. **Vest credits for approved final plats.** Allow developments with final plat approval to "vest" under the regulations adopted prior to Ordinance 993-08 and "carry-forward" credits to subsequent developments.
3. **Repeal SMC 16.112.085.** Return to the previous credit system and allow credits to carry forward to subsequent developments.
4. **Do not amend 16.112.085.**

Discussion

Based on Ordinance No. 988-08, a frontage improvement is not a "qualified public improvement" for purposes of impact fee credits unless it creates system capacity in excess of that needed for the new development; and then, it is only eligible for credits to the extent of the cost expended to increase the capacity beyond the impact of the new development. In other words, no impact fee credit is available under the statute for a contiguous improvement except to the extent that it increases system capacity.

Providing a credit “carry-forward” reduces the amount of impact fees paid without increasing the system capacity. The City may need to increase impact fees if the amount of credits applied without corresponding system improvements affects the City’s ability to pay for system improvements needed to serve new growth.

Another concern at a staff level is effectively managing the credit system and carry-forward credits. The repealed regulations (SMC 16.112.080) did not limit how a credit could be applied:

“In the event the amount of the credit is calculated to be greater than the amount of the impact fee due, the developer may apply such excess credit toward impact fees imposed on other developments within the city. “

The Council could choose to “grandfather” approved preliminary plan and/or final plats and address a short term inequity without impacting the City’s long-term need to fund system improvements to serve new growth.

The amended regulations could further define how carry-forward credits could be used and place time limitations so city staff are not processing credits a decade after they are issued.

Should impact fees be based on proximity to Sultan’s “core”?

Policy Question: Should developments in different areas of the city pay different fees?

City Regulations

Sultan Municipal Code 16.112.030 and 16.112.040 “Impact Fee Formulas”.

The City currently requires the same impact fee payment regardless of a development’s location in the city. Developments adjacent to the City’s historic “core” pay the same impact fee as a development located at the most northern edge of the City limits.

The City’s comprehensive plan policies encourage in-fill development (growth from the core in concentric circles to the outer edges). One way to achieve this goal is to develop impact fees based on proximity to existing established infrastructure.

The downtown core has the majority of infrastructure in place to serve growth while the plateau requires a complete roadway system to serve new growth. The idea is to connect the impact fee to the system improvements needed to serve growth in a particular area of the City.

Alternatives

1. **Create “no fee” zones.** No-Fee Zones are believed to encourage economic development by relieving builders/developers of the requirement to pay

transportation impact fees. No-Fee Zones need to be off-set by public investment through taxes or higher impact fees in other areas of the City.

2. **Create a “small project” waiver.** The City of Stanwood adopted regulations to waive transportation impact fees under specific circumstances for small redevelopment projects in its Main Street Business district (MB zone). Depending on the size of the area, waiving impact fees for certain developments may require a public investment through taxes or higher impact fees for developments in other areas of the City.
3. **Create more than one zone.** Currently the City has one traffic zone encompassing the city limits. The fee for developing in the downtown is the same as the fee to develop at the most northern edge of the city. Creating more than one zone could improve equity and encourage economic development in the historic downtown core. This would be based on the presumption that trip length is shorter for trips originating in the core.
4. **Do not amend 16.112.030 and 16.112.040.** The current impact fees are based upon a thorough analysis of needs and costs. Under the existing system the City has some certainty adequate revenues will be collected to serve future growth.

Discussion

This discussion is based on the premise that reducing or suspending impact fees stimulates development activity. There is scant evidence, however, that such measures have the desired effect. Charlotte County, Florida, for example, reduced its impact fees by two-thirds in January 2008, but has seen no increase in residential construction and no significant increase in nonresidential construction since then.²

Another alternative is to create more than one traffic impact fee “zone” and have different fees for different zones. This alternative assumes two different zones would be created, one to include the core area and a second one on the plateau. Relatively longer trip lengths may justify charging higher fees for trips in the plateau zone. Further, since the majority of new development is forecast to occur on the plateau that is also where most of the new infrastructure is required. However, raising revenues to create system improvements in the core may be difficult and result in higher impact fees to offset the relatively low level of development.

Should on-site recreation facilities be credited against park impact fees?

Policy Question: Does the City Council want to provide impact fee credits for recreation facilities and trails which are designed to serve the neighborhood or connect to a larger system?

² <http://www.impactfees.com/index.php>

City Regulations

Sultan Municipal Code 16.72 “Recreation and Open Space Standards”

City staff and the hearing examiner have distinguished between on-site recreation facilities to serve the development (e.g. tot lots) and impact fees which are collected to acquire and development community parks. The City Council reduced the park impact fee when it removed smaller parks from the parks capital needs and focused on developing a single community park in the Sultan Basin area.

Prior Council decisions have distinguished between on-site facilities and regional facilities. Developers can receive credits against park impact fees for creation of community parks. SMC 16.72 was amended in 2008 to clarify this distinction: *“The requirements of this chapter 16.72 are in addition to park impact fee requirements of chapter 16.112.”*

Under the SMC 16.72 (Subdivision Code) developments of a certain size are required to provide neighborhood parks. Maintenance and repair are the responsibility of the homeowner’s association. Many homeowner’s associations are unable to maintain these small parks or have difficulty insuring the sites. As a result some associations simply choose to abandon the parks.

Alternatives

- 1. Remove tot-lots as a requirement in the subdivision code.**
- 2. Add neighborhood parks such as tot-lots to parks level of service standards.**
- 3. Do not amend SMC 16.72. Continue to require neighborhood parks under the development code in addition to park impact fees for system improvements.**

Discussion

Impact fees can be spent on "system improvements" (which are typically located outside the development), as opposed to "project improvements" (which are typically provided by the developer on-site within the development). *RCW 82.02.050(3)(a) and RCW 82.02.090(6) and (9).*

Neighborhood parks are often categorized as small and large. Both small and large neighborhood parks are primarily meant to serve the outdoor recreation needs of people living within walking distance of the park site.

Offering informal recreation areas less than 1-acres in size, small neighborhood parks are usually found in densely populated residential areas to serve a specific local recreation need, or to take advantage of special opportunities. Small neighborhood parks frequently appear as pocket or mini-parks within subdivisions.

The difficulty with including neighborhood parks as an adopted level of service in the capital improvement plan is generating sufficient revenues to purchase and develop neighborhood parks. It may be possible to acquire and develop neighborhood parks in larger jurisdictions with full-time park staff, but it would be difficult with Sultan's small city staff to develop and maintain neighborhood parks.

The question is whether the City Council as a policy wants to include small neighborhood parks as a system improvement. A system improvement signifies the facility serves the entire community rather than a single neighborhood. Including neighborhood parks as a system improvement will raise park impact fees and put the burden on the City to develop and maintain small neighborhood parks throughout the community.

ANALYSIS:

Each of the policy questions has potential fiscal impacts to the City's comprehensive plan and capital facilities plan. Under the Growth Management Act, the City is required to demonstrate how it will fund the projects needed to serve anticipated growth.

The Council went through an extended exercise and public discussion in 2008 as it struggled to develop a financing plan that would not overburden new growth and provide sufficient revenues to meet established levels of service for parks and streets. In the end, the Council had to make difficult decisions to ensure the comprehensive plan and capital improvement plan would balance financially.

However, the Council also understood during the discussion that given more time there might be an opportunity to fine-tune the development regulations and provide for a greater balance between funding and capital needs.

Another recent development is the economic downturn. Municipalities across the United States have considered waiving development impact fees for a short period of time to encourage economic development. A quick Internet search revealed mixed analyses of whether waiving development fees has any impact on stimulating local economies. The Council may want to consider a short, focused "relief" package with a sunset clause to encourage development in the community. However, this approach doesn't address the larger policy questions.

There is no quick-fix. If the Council chooses to move forward on any of the policy questions the process to amend the development regulations will require some level of analysis. Depending on the level and scope of proposed changes to the City's development regulations, revisions may need a public hearing and notification to the state Community Trade and Economic Development (CTED). Changes could be adopted in as little as 90 days or take as long as 12 months.

FISCAL IMPACT:

The short-term fiscal impacts are related to staff time and consultant support. The costs depend on what policy question(s) the City Council wants to pursue. Most of the

questions will require a fiscal analysis. City staff recommend contracting with Pat Dugan to assist the city with calculating the impacts of various fee alternatives. Cost estimate \$2,500 to \$5,000.

Changing the City's one-size fits all traffic impact fee regulations to a set of regulations based upon where the development is located within the City will require assistance from a traffic planner such as Eric Irelan who assist the City with the transportation plan in 2008. The cost could range between \$5,000 and \$10,000.

The long-term fiscal impacts of changing the City's financing structure for capital improvements needed to serve growth won't be known until the City Council provides direction.

The fewer changes that are made especially if they are limited in scope and time, the less the overall impact to the City's financing strategy. Any long-term fundamental decisions to reduce impact fees will likely require either further reducing levels of service or increasing the financial burden on current residents.

ALTERNATIVES:

1. Consider amendments to the City's impact fee regulations and provide direction to staff.
2. Do not consider amendments to the City's impact fee regulations at this time.

RECOMMENDED ACTION:

Staff is seeking direction from Council on amending transportation and park impact fee regulations in Chapter 16.112.020 Sultan Municipal Code (Attachment A) as discussed during the 2008 Revisions to the 2004 Comprehensive Plan.

ATTACHMENTS

- A – September 9, 2008 Mark-up Version of Proposed Changes to Development Regulations
- B – Information from other municipalities on impact fees

AMENDMENTS TO CITY CODE TO IMPLEMENT
COMPREHENSIVE PLAN POLICY REVISIONS

16.16 General Regulations

(New section) 16.16.045 New septic system reasonable use exception – future sewer connection required.

A. The purpose of this section is to allow reasonable use of the property where sewer infrastructure is not yet in place, while ensuring connection to sewer as soon as practicable.

B. Where a property owner proposes to build one (1) new single family home on an existing lot zoned for single family residences and a sewer extension is necessary, but not financially feasible, the property owner may apply for approval to construct and use an on-site sewage system, subject to approval by Snohomish County health department. Such request must be submitted to and approved by the community development director.

C. If denial of the request to build an on-site sewage system would deny all reasonable use of the property, development may be allowed which is consistent with the general intent of this title and the public interest; provided, that the director finds that:

1. This title would otherwise deny all reasonable use of the property;
2. The proposed on-site sewage system does not pose an unreasonable threat to the public health, safety or welfare on or off the property;
3. The property owner agrees to payment of
 - (a) the estimated cost for the collector sewer across the entire front of the property, as recommended by the city engineer;
 - (b) the current sewer facilities charge; and
 - (c) the estimated project cost for 100 feet of the sewer main or interceptor needed to reach the property, as recommended by the city engineer
4. The property owner must also construct the necessary connection stub from the residence to allow future connection to the sewer line when sewer becomes available.
5. The residence must be connected to the sewer line within 90 days of notice that the connection can be made.

D. Any decision of the director regarding this reasonable use exception shall be final unless appealed.

16.28 Subdivision Regulations

16.28.230 Minimum requirements and improvement standards.

A. General Standards. The public use and interest shall be deemed to require compliance with the standards of this subsection as a minimum, unless a modification is specifically approved by the council. The following minimum standards shall be met:

1. That each lot shall contain sufficient square footage to meet minimum zoning and health requirements;

~~2. If the lots are to be served by septic tanks, soil data and percolation rates may be required by the Snohomish health district. Notations regarding the conditions for health district approval may be required to be inscribed upon the short plat;~~

3. Where any abutting road has insufficient width to conform to minimum road width standards for the city of Sultan, sufficient additional right-of-way shall be dedicated to the city on the short plat to conform the abutting half to such standards;

~~4~~3. Short subdivisions located in special flood hazard areas as defined elsewhere in this code shall comply with the floodplain protection standards contained in this chapter.

B. Roadway Design Standards.

1. Access to Roads. Access to the boundary of all short subdivisions shall be provided by an opened, constructed and maintained city road or roads, except that access to the boundary of a short subdivision by private road may be permitted where such private roads are otherwise permitted. If the subdivider uses a private road, each lot having access thereto shall have a responsibility for maintenance of such private road. Any private road shall also contain a utilities easement.

2. Minimum access to all lots within a short subdivision shall be provided by an opened, constructed and maintained city road or private road sufficiently improved for automobile travel having right-of-way width as set forth in the following table:

Design Potential Minimum for Access Right-of-Way Widths

1 lot not exceeding

1 dwelling unit ~~20~~ feet

2 – 4 lots not exceeding

4 dwelling units ~~30~~ feet

5 or more lots or

dwelling units ~~60~~ feet

3. The maximum number of lots that may be served by a private road shall be four unless modification is granted by the council. In all other cases, access to any lot shall be by an opened, constructed and maintained city road or roads.

4. Road Standards. All plat roads shall be designed and constructed in conformance with the design standards and specifications as specified.

5. Sidewalk Standards. Sidewalks and/or walkways shall be provided to assure safe walking conditions for pedestrians and students who walk to and from school. Sidewalks shall be constructed in accordance with the design standards and specifications as specified.

C. Stormwater Drainage Design Standards. All plats shall comply with the requirements.

D. Design Standards for Areas with Steep Slopes. All plats shall comply with the requirements. (Ord. 840-04 § 1; Ord. 822-03 §§ 1, 2; Ord. 630 § 2[16.10.010(1)(a)(vii)(q)], 1995)

16.72 Recreational and Open Space Standards

16.72.010 Applicability.

All types of residential subdivisions shall be required to provide recreation. In addition to the recreation requirements, residential developments shall meet the open space requirements of this title. The requirements of this chapter 16.72 are in addition to park impact fee requirements of chapter 16.112. Residential developments include condominium, multifamily, manufactured home parks and subdivisions. (Ord. 716-00; Ord. 630 § 2[16.10.060(A)], 1995)

16.92 Stormwater Management Performance Standards

16.92.040 Stormwater management permits.

A stormwater management permit shall be applied for and obtained from the building and zoning official prior to commencement of development or redevelopment activity on land for which a permit waiver has not been issued and is described in SMC 16.92.030(A).

A. Applicability. A stormwater management permit is required for the development or redevelopment on land with more than 3,000 square feet of impervious area (roof, parking, etc.).

B. Application for Stormwater Management Permit. Anyone desiring to develop land shall apply for a stormwater management permit. In addition, the applicant shall submit copies of the following items which shall be prepared by a registered professional engineer.

1. A location map showing the location of the site with reference to such landmarks as major waterbodies, adjoining roads, estates, or subdivision boundaries.

2. A detailed site plan showing the location of all existing and proposed pavement and structures.

3. Topographic maps of the site before and after the proposed alterations.

4. Information regarding the types of soils and groundwater conditions existing on the site.

5. General vegetation maps of the site before development and a plan showing the landscaping to be performed as part of the project.

6. Construction plans and specifications necessary to indicate compliance with the requirements of these standards.

7. Runoff computations based on the most critical situation (rainfall duration, distribution, and antecedent soil moisture condition) using rainfall data and other local information applicable to the affected area.

8. Storage calculations showing conformance with the requirements of these standards.

9. Sufficient information for the building and zoning official to evaluate the environmental qualities of the affected waters, and the effectiveness and acceptability of those measures proposed by the applicant for reducing adverse impacts.

10. Such other supporting documentation as may be appropriate, including maps, charts, graphs, tables, specifications, computations, photographs, narrative descriptions, explanations, and citations to supporting references.

11. Additional information necessary for determining compliance with the intent of these standards as the building and zoning official may require.

C. Performance Standards. The performance standards for the development or redevelopment on parcels for which a stormwater management permit is required shall be as follows:

1. All projects shall provide treatment of stormwater. Treatment BMPs (best management practices) shall be sized to capture and treat the water quality design storm, ~~defined as the six-month, 24-hour return period storm.~~ The first priority for treatment shall be to infiltrate as much as possible of the water quality design storm, only if site conditions are appropriate and groundwater quality will not be impaired. Direct discharge of untreated stormwater to

groundwater is prohibited. All treatment BMPs shall be selected, designed, and maintained according to the adopted Washington State Department of Ecology's "Stormwater Management Manual for Western Washington."

Stormwater treatment BMPs shall not be built within a natural vegetated buffer, except for necessary conveyance systems as approved by the local government.

Stormwater discharges to streams shall control streambank erosion by limiting the discharge in accordance with the most current Washington State Department of Ecology's "Stormwater Management Manual for Western Washington" (WDOE Manual)~~peak rate of runoff from individual development sites to 50 percent of existing condition two-year, 24-hour design storm while maintaining the existing condition peak runoff rate for the 10-year, 24-hour and 100-year, 24-hour design storms.~~ As the first priority, streambank erosion control BMPs shall utilize infiltration to the fullest extent practicable, only if site conditions are appropriate and groundwater quality is protected. Streambank erosion control BMPs shall be selected, designed, and maintained according to the WDOE Manual~~an approved manual.~~

Stormwater treatment BMPs shall not be built within a natural vegetated buffer, except for necessary conveyance systems as approved by the local government.

2. The cumulative impact of the discharge from the site on downstream flow shall be considered in analyzing discharge from the site.

3. Where possible, natural vegetation shall be used as a component of drainage design. The manipulation of the water table should not be so drastic as to endanger the existing natural vegetation that is beneficial to water quality.

4. Runoff from higher adjacent land shall be considered and provisions for conveyance of such runoff shall be included in the drainage plan.

5. No site alteration shall cause siltation of wetlands, pollution of downstream wetlands, or reduce the natural retention or filtering capabilities of wetlands. This shall be deemed to include the requirement that no herbicides, pesticides, or fertilizers may be used within 150 feet of any stream or aquifer recharge area.

6. Stormwater runoff shall be subjected to best management practice (BMP) according to the Washington State Department of Ecology's guidelines prior to discharge into natural or artificial drainage systems.

7. All site alteration activities shall provide for such water retention and settling structures and flow attenuation devices as may be necessary to insure that the foregoing standards and requirements are met.

8. Design of water retention structures and flow attenuation devices shall be subject to the approval of the building and zoning official pursuant to the standards herein.

9. Runoff shall be treated to remove oil and floatable solids before discharge from the site in a manner approved by the building and zoning official.

10. Erosion by water shall be prevented throughout the construction process.

11. For the purpose of this section, it is presumed that the lowering of the water table to construct detention/retention basins and to permanently protect road construction does not conflict with the stated objectives of these standards, if all of the following are met:

a. The development site is not in a sole-source aquifer protection area or wellhead protection area.

b. If ditches, underdrains or similar devices are used to lower the water table, the lateral volumetric effect will be calculated, and the volume will be deducted from that allowed for retention areas.

c. The high water table may be lowered to two feet below the undisturbed ground in the vicinity of roads for the purpose of protecting the sub-base and base of the roadway.

d. The lowering of the water table has no adverse effect on wetlands as defined in this section.

e. The lowering of the water table does not increase flows to the detriment of neighboring lands.

12. Storm conveyance systems shall accommodate the peak discharge from the 25-year, 24-hour design storm based on post-development site conditions including storm water flowing through the site which originates onsite and off-site.

13. Setbacks from drainage facilities.

a. Open drainage facilities. A setback of at least fifteen (15) feet, measured horizontally, shall be provided between the plan view projection of any structure, on-site or off-site, and the top of the bank of a constructed open channel or open retention or detention pond.

b. Closed drainage facilities. A setback of at least ten (10) feet, measured horizontally, shall be provided between the plan view projection of any structure, on-site or off-site and the nearest edge of a closed drainage facility, unless the public works director determines that adequate accessibility can be provided otherwise.

14. Drainage Easements. Drainage facilities shall include easements to protect the public from flooding, water quality degradation, damage to aquatic habitat, and other drainage impacts. Easements shall be granted to the city for the right to enter property, at the city's discretion, for the purpose of inspecting, maintaining, modifying, or replacing the following drainage facilities when such drainage facilities are constructed to serve a proposed development activity and are located on the site of the proposed development activity:

a. All detention facilities, retention facilities, infiltration facilities, and storm water treatment facilities;

b. Conveyance systems that conduct storm water from a public or private right-of-way to detention facilities, retention facilities, infiltration facilities, and storm water treatment facilities;

c. Closed-conduit conveyance systems that conduct water downstream of a public or private right-of-way;

d. Closed-conduit conveyance systems that conduct storm water from detention facilities, retention facilities, and storm water treatment facilities downstream to a public right-of-way;

e. Any other privately-owned drainage system, if the public works director determines that damage to a public right-of-way or city property, or a threat to public health, safety, and welfare may occur if the drainage system does not function properly; and

f. Any other drainage easements offered by the owner of the subject property which may be accepted by the public works director if the public works director determines the easement serves the public interest.

D. Review Procedure. The building and zoning official will ascertain the completeness of the stormwater management permit application within 10 working days of receipt. Completeness shall only be insofar as all required exhibits have been submitted and shall not be an indication of the adequacy of these exhibits. Within 30 working days after the determination has been made that a completed permit application package has been submitted, the planning commission shall approve, with specified conditions or modifications if necessary, or reject the proposed plan and shall notify the applicant accordingly. If the planning commission has not rendered a decision within 60 working days after plan submission, the plan shall be deemed to be approved.

The planning commission, in approving or denying a stormwater management permit application, shall consider as a minimum the following factors:

1. The characteristics and limitation of the soil at the proposed site with respect to percolation and infiltration.

2. The existing topography of the site and the extent of topographical change after development.

3. The existing vegetation of the site and the extent of vegetational changes after development.

4. The plans and specifications of structures or devices the applicant intends to employ for on-site stormwater retention or detention with filtration, erosion control and flow attenuation.
 5. The impact the proposed project will have on the natural recharge capabilities of the site.
 6. The impact the proposed project will have on downstream water quantity and, specifically, the potential for downstream flooding conditions.
 7. The continuity of phased projects. (Projects that are to be developed in phases will require the submission of an overall plan for the applicant's total land holdings.)
 8. The effectiveness of erosion control measures during construction.
 9. Permits required by any governmental jurisdiction to be obtained prior to the issuance of a permit under this section.
 10. The adequacy of easements for drainage systems in terms of both runoff conveyance and maintenance.
 11. The method of handling upland flow which presently discharges through the site.
 12. The maintenance entity responsibility for upkeep of the system upon its completion.
- (Ord. 630 § 2[16.10.110(3)(b)], 1995)

16.108 Concurrency Management System

16.108.070 Facilities and services subject to concurrency.

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

- A. Roadways;
- B. Potable water;
- C. Wastewater;
- ~~D. Police protection;~~
- E. Parks and recreation. (Ord. 630 § 2 [16.12.070], 1995)

16.108.120 Concurrency determination — Police protection (Reserved).

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

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

~~C. If the LOS information indicates that the proposed project would result in a LOS failure, the concurrency determination would be that adequate facility capacity at acceptable levels of service was not available at the date of application or inquiry. (Ord. 630 § 2[16.12.120], 1995)~~

16.112 Development Impact Fees

(New Section) 16.112.015 Definitions

The following definitions apply to this chapter 16.112:

A. System Improvements – transportation capital improvements that are identified in the city’s latest adopted 20 year comprehensive plan and are designed to provide services to the community at large.

B. Project Improvements – site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users of the project, and are not system improvements.

C. Frontage – that portion of the development property adjacent to an existing or future roadway where access to the site or individual properties is permitted by the city.

D. Frontage Improvements – shall include all improvements as designed in the city comprehensive plan, city standards, or other adopted plan that can include roadway surfacing, curb & gutter, sidewalk, drainage, lighting, landscaping, and signs.

E. Designated City Official – shall be the public works director or their designee.

F. Local Access Classified Roadway – the designate roadway cross section as included in the city’s adopted standards, comprehensive plan, or a city area master plan.

G. Developer – any representative of a development that is the designated traffic impact fee payer.

16.112.020 Imposition of impact fees.

A. After the effective date of this code, any person who seeks to develop land within the city of Sultan by applying for a building permit ~~for a residential building or manufactured home installation~~, shall be obligated to pay an impact fee in the manner and amount set forth in this chapter.

B. The fee shall be determined and paid to the designated city of Sultan official at the time of issuance of a building permit for the development. For manufactured homes, the fee shall be determined and paid at the time of issuance of an installation permit. (Ord. 630 § 2[16.13.020], 1995)

16.112.030 Recreation facility impact fee formula.

A. Findings and Authority. The demand for parks and recreation facilities is proportionate to the size of the user population. The larger a population grows the greater the demand for city parks and recreation facilities. In order to offset the impacts of new residential development on the city’s park system, the city has determined to adjust the current park impact fee consistent with city standards as new development occurs. Impact fees are authorized under the State Environmental Policy Act (SEPA) and the Growth Management Act (GMA) to help offset the cost of capital facilities brought about by new growth and development. Impact fees imposed will be used to acquire and/or develop parks, open space and recreation facilities that are consistent with the capital facilities and park and recreation elements of the Sultan comprehensive plan.

B. The impact fee component for recreation facilities shall be calculated using the following formula:

$$\text{Fee} = (T/P \times U) - A$$

1. “Fee” means the recreation impact fee.
2. “T” means the total development cost of new facilities. Such costs shall be adjusted periodically, but not more than once every year.
3. “P” means the new population to be served.
4. “U” means the average number of occupants per dwelling unit.

5. "A" means an adjustment for the portion of anticipated additional tax revenues resulting from a development that is proratable to facility improvements contained in the capital facilities plan. ~~Such adjustment for a recreation facility impact fee will be established by city council ordinance and at this time is established at \$130.00. Such adjustment rates shall be updated periodically, but not more than once every year.~~

~~C. Park Impact Fees Imposed. The amended park impact fee based on the parks and recreation needs and impact fee analysis and recreation facility impact fee ordinance, calculated in accordance with this section, is \$3,415 for each single-family, duplex and multifamily residential dwelling unit. (Ord. 929-06 §§ 1, 2, 3; Ord. 630 § 2[16.13.030], 1995)~~

16.112.040 Traffic impact fee formula.

The impact fee component for roads shall be calculated using the following formula:

$$\text{TIF} = F \times T \times A$$

A. "TIF" means the traffic impact component of the total development impact fee.

B. "F" means the traffic impact fee rate per trip in dollar amounts. Such rate shall be established by estimating the cost of anticipated growth-related roadway projects contained in the capital facilities plan divided by the projected number of growth-related trips, as adjusted for other anticipated sources of public funds. Such rates shall be adjusted periodically, but not more often than once every year, to reflect changes in the prevailing construction cost index, facility plan projects, and anticipated growth.

C. "T" means the trip generated by a proposed development.

~~D. "A" means an adjustment for the portion of anticipated additional tax revenues resulting from a development which is proratable to system improvements contained in the capital facilities plan. (Ord. 630 § 2[16.13.040], 1995)~~

16.112.050 Calculation of impact fee.

A. The impact fee for nonresidential development shall be computed by applying the traffic impact fee formula set out in SMC 16.112.040. The impact fee for a residential development shall be computed by applying the traffic impact fee and recreation facility impact fee formulae set out in SMC 16.112.030 and 16.112.040, combining the results.

B. If development for which approval is sought contains a mix of uses, the impact fee must be separately calculated for each type of use.

~~C. The city council shall have the authority to adjust the standard impact fee at the time the fee is imposed to consider unusual circumstances peculiar to specific development activity to ensure that impact fees are imposed fairly.~~

~~D. Upon application by the developer of any particular development activity, the designated city official council may consider studies and data submitted by the developer, and if warranted, may adjust the amount of the impact fee. Such adjustment shall be deemed warranted if it can be demonstrated that:~~

~~1. Due to unusual circumstances, the system improvements would not reasonably benefit the proposed development;~~

~~2. The public facility improvements identified are not reasonably related to the proposed development; and~~

~~3. The formula set forth for calculating the impact fee does not accurately reflect impacts results in a fee that is not proportionate to the project's impacts. (Ord. 630 § 2[16.13.050], 1995)~~

16.112.080 Impact fee credits for other than traffic impact fees.

The developer shall be entitled to a credit against the applicable impact fee component for the present value of any dedication of land for improvement to or new construction of any system improvements provided by the developer (or the developer's predecessor in interest), to system facilities that are/were identified in the capital facilities plan and are required by the city as a condition of approval for the immediate development proposal.

The amount of credit shall be determined at the time of building permit issuance (or site plan approval where no building permit is required). A credit against the applicable impact fee shall be limited to the total amount of the applicable impact fee for the particular development. In the event the amount of the credit is calculated to be greater than the amount of the impact fee due, the developer may apply such excess credit toward impact fees imposed on other developments within the city. (Ord. 630 § 2[16.13.080], 1995)

(New section) 16.112.085 Traffic Impact Fee Credits

The developer shall be entitled to a credit against the transportation impact fee component for the present value of any dedication of land for improvement to or new construction of any system improvements provided by the developer (or the developer's predecessor in interest) whenever a particular system improvement is a condition of approval or terms of a voluntary agreement. A credit shall be limited to the total amount of the transportation impact fee for the particular development.

The initial amount of credit shall be determined by the designated city official at the time of building permit issuance or site plan approval where no building permit is required. The final amount of the credit may be adjusted with the approval of the designated city official to reflect actual costs.

Calculating a transportation impact fee credit shall be determined as follows:

A. When a development frontage abuts a designated system improvement roadway, any credit for this roadway section will be reduced by the cost for the required frontage improvement. Land dedication shall be credited for any additional right-of-way dedication exceeding the local access classified roadway right-of-way standard.

B. Credit shall not be given for project improvements that are primarily for the benefit of the development users or occupants, or that are not located on the frontage when identified in a city adopted plan. This could include access walkways to schools, centers, and parks. This could also include roadway or safety improvements not identified as system improvements.

C. Credit for land dedication shall be determined by an appraisal conducted by an independent professional appraiser chosen by the developer from a list of at least three such appraisers approved by the city. The cost of the appraisal shall be borne by the developer and is not subject to a credit. The appraisal shall only value the land dedicated and not any alleged damages to any abutting property.

D. Cost for facility construction for system and project improvements shall be based upon a construction cost worksheet provided by the city and completed by the developer, or the city may require actual costs provided by the developer's contractor.

For any residential portion of development, credit shall be determined on a per dwelling unit basis. The credit per dwelling unit shall be determined by calculating the total

impact fee credit for the residential portion of generated trips and dividing by the number of dwelling units. Credit will then be applied at the time of permit issuance for each dwelling unit.

No refund or future credit will be allowed in the event that the impact fee credit calculated or actual construction costs exceed the amount of the impact fee.

16.112.090 Appeals.

A developer may appeal the impact fee determination to the designated city official within 20 days of the issuance of the determination of the impact fee.

The following is the process:

A. The developer shall submit a letter explaining the reason for the appeal. Any cited documents in the letter shall be included.

B. The designated city official shall review and respond to the developer within 30 calendar days of the submittal of the appeal letter. The city representative can approve, request additional information, or deny.

1. An approval will include an impact fee determination adjustment.

2. Requested additional information must be provided by the developer to the city within 20 calendar days or in a timeframe as agreed upon by the designated city official.

3. Denial of an appeal will provide an explanation of why this decision was made.

C. If a developer is not satisfied with the designated city official's determination, the developer may request a determination by the city's hearing examiner pursuant to SMC 16.120.100.

D. Impact fees must be paid at time of permit issuance. If the developer has or will be appealing the impact fees, the developer shall submit a letter of protest at the time of the impact fee payment is made.

E. When impact fees have been paid and a determination of a fee reduction is made in the appeal process, a refund or credit for future site fees will be made. No refund will be allowed to exceed the amount of the total impact fees paid for a particular development.

~~Any person aggrieved by the amount of the impact fee calculated and imposed upon a particular development activity may appeal such determination to the city council with 20 days of the issuance of the determination of the impact fee. (Ord. 630 § 2[16.13.090], 1995)~~

16.150 Definitions

16.150.040 "D" definitions.

1. Day Care Facility. The following definitions shall apply to the various day care facilities allowed in the different zoning districts:

a. "Day care center" means a structure used for the care of children under the age of 12 located in a facility other than a family dwelling of those individuals under whose direct care the

child or children are placed which accommodates 13 or more children regardless of whether such services are provided for compensation.

b. "Family day care home" means a residence used for the care of children ~~under the age of 12~~ located in the family dwelling of the person or persons under whose direct care the child or children are placed, accommodating ~~six~~ 12 or fewer children ~~for full-time care and two children for part-time care~~, such numbers to include those ~~members~~ children of the resident family ~~who are under the age of 12 years old~~. This definition shall apply regardless of whether the care is provided for compensation.

c. "Mini-day-care facility" means a structure used for the care of children under the age of 12 located in a facility other than a family dwelling or located in the family dwelling of the person or persons under whose direct care the child or children are placed which accommodates 12 or fewer children including those of the resident family who are under the age of 12 years of age, regardless of whether said services are provided for compensation.

2. "Decision" means written notification to an applicant that his or her permit application has been approved or denied.

3. "Declaration of short subdivision" means a document signed by all persons having any real interest in the land being subdivided and acknowledged before a notary that they signed the same as their free act and deed. The declaration shall, as a minimum, contain the following elements:

- a. A legal description of the tract being divided and all parcels contained therein;
- b. An illustrative map; and
- c. If applicable, the restrictive covenants.

4. "Dedication" means the deliberate appropriation of land by an owner for the general and public uses, reserving to himself or herself no other rights than such as are compatible with the full exercise and enjoyment of the public uses to which the property has been devoted. The intention to dedicate shall be evidenced by the owner by the presentment for filing of a final plat or short plat showing the dedication thereon, and, the acceptance by the public shall be evidenced by approval of such plat for filing by the city.

5. "Deed" means a written instrument under seal by which an estate in real property is conveyed by the grantor to the grantee.

6. "Density" means the number of permitted dwelling units allowed on each acre of land or fraction thereof.

7. "Department" means the department of public works of the city of Sultan.

8. "Design storm" means a prescribed hyetograph and total precipitation amount (for a specific duration recurrence frequency) used to estimate runoff for a hypothetical storm of interest or concern for the purposes of analyzing existing drainage, designing new drainage facilities or assessing other impacts of a proposed project on the flow of surface water. (A hyetograph is a graph of percentages of total precipitation for a series of time steps representing the total time during which the precipitation occurs.)

9. "Detention facility" means an above-ground or below-ground facility, such as a pond or tank, that temporarily stores stormwater runoff and subsequently releases it at a slower rate than it is collected by the drainage facility system. There is little or no infiltration of stored stormwater.

10. "Determination" means written notification to the issuing authority and all appropriate interested parties that the decision of the issuing authority has been affirmed or nullified.

11. "Developer" means any person, firm, partnership, association, corporation, company, or organization of any kind, engaged in any type of man-made change of improved or unimproved land.

12. "Development" means the placement, erection, or removal of any fill, solid material, or structure on land, in or under the water; discharge or disposal of any dredged material or of any liquid or solid waste; or the grading, removing, dredging, mining, or extraction of any materials,

including mineral resources; the construction, reconstruction, removal, demolition or alteration of the size of any structure; or 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 that do not disturb the coastal waters or sea, or any improvement made in the interior of any structure.

13. "Development right" means a legal claim to convert a tract of land to a specific purpose by construction, installation, or alteration of a building or other structure.

14. Development, Substantial. With regard to projects that have been initiated, substantial development shall constitute at least 10 percent of the total expected cost (including architectural and engineering fees) to complete the project as it was approved. Development shall also be considered to be substantial if the developer of an approved project has secured financing for the project and can demonstrate, in writing, his or her financial commitments to the project in question.

15. "Director" means the superintendent of public works of the city of Sultan.

16. "District, zoning" means any portion of the city within which, on a uniform basis, certain uses of land and buildings are permitted and certain other uses of land and buildings are prohibited as set forth in this unified development code; and within which certain yards and other open spaces are required, certain lot areas are established, and a combination of such aforesaid conditions are applied.

17. "Domestic animal" means an animal normally kept incidental to a single-family dwelling. Included are dogs and cats; excluded are wild or exotic animals, horses and cows, chickens, goats, or other similar animals.

18. "Drainage" means the removal of surface water or groundwater from land by drains, grading, or other means. Drainage includes the control of runoff to minimize erosion and sedimentation during and after development and includes the means necessary for water supply preservation, prevention, or alleviation of flooding.

19. "Drainage basin" means a geographic and hydrologic subunit of a watershed.

20. "Drive-in establishment" means a business establishment so developed that its principal retail or service character is dependent on providing a driveway approach or parking spaces for motor vehicles so as to either serve patrons while in the motor vehicle, or intended to permit consumption in the motor vehicle of food or beverages obtained by a patron of said business establishment (restaurants, cleaners, banks, etc.).

21. "Drive-in or drive-through facility" means an establishment that, by design, physical facilities, service, or by packaging procedures, encourages or permits customers to receive services or obtain goods while remaining in their motor vehicles.

22. "Driving range (golf)" means an unconfined recreational facility (i.e., without netting overhead or along side the facility) situated on a plot of land at least 400 yards in length and a minimum of 300 feet wide. A golf driving range may be built with overhead netting, as well as netting (or other confining material) along the sides and the rear of the facility. In such cases, the land requirements shall be at least 100 yards in length and a minimum of 150 feet wide. The purpose of such facility is to allow golfers an opportunity to practice their golf shots.

23. "Driveway" means that space specifically designated and reserved on the site for the movement of vehicles from one site to another or from a site to a public street.

24. "Dwelling" means a building or portion thereof, occupied or intended to be occupied exclusively for residential purposes, but not including hotels or recreation vehicles. (See also "dwelling, multiple-family" and "family").

25. "Dwelling, attached" means a dwelling having any portion of a wall in common with adjoining dwellings.

26. "Dwelling, detached" means a dwelling that is entirely surrounded by open space on the same lot.

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27. " Dwelling, duplex" means a detached building, designed for or occupied exclusively by two families living independently of each other, and shall not include a mobile home.

28. " Dwelling, multiple-family" means a building or portion thereof, used or designed as a residence for three or more families living independently of each other and each with facilities that are used or intended to be used for living, sleeping, and cooking in said building. This definition includes apartment houses but does not include hotels, trailers, or mobile homes.

29. " Dwelling, single-family" means a detached building designed for or occupied exclusively by one family.

30. " Dwelling unit" means any room or group of rooms located within a residential building and forming a single habitable unit with facilities that are used or intended to be used for living, sleeping, and cooking. (Ord. 630 § 2[16.05.276 – 16.05.334], 1995)

Memorandum

Date: June 3, 2009
 To: Deborah Knight, Sultan City Administrator
 From: Kris Liljelblad, Transportation Planning Director
 Re: Transportation Impact Fee Program Questions



Summarized below is my research from the Washington Municipal Research Services Center (MRSC) website, reviewing transportation impact fee ordinances of eight other WA cities. The listing below identifies each city for which the impact fee ordinance was reviewed, and the point at which the transportation impact fees must be paid.

City	When Paid
Bellevue	Before building permit issuance
Bothell	At the time the development permit is ready for issuance. Administrative fee due with application. Development permit not issued without payment. Subdivisions may defer payment until building permits are issued for individual lots.
Kirkland	Prior to building permit issuance, or for change in use, prior to occupancy permit.
Lacey	Due and payable at time of issuance of building permit, in lump sum or annual installments over 5 years. With installments, 20% is due with permit or with final plat approval and balance due in annual installments.
Newcastle	Prior to issuance of building permit or certificate of occupancy if no building permit is involved.
Olympia	At the time of a complete building permit application for each unit. Building permits not issued until fees are paid. Where credits are awarded, fees will be collected at the time the building permit is issued for each unit in the development. Downtown Deferred Impact Fee Payment Option Area is a unique provision, allowing properties within Downtown to voluntarily lien their property for the unpaid fees; essentially deferring payment until sale of the property.
SeaTac	Assessed at the time of application for building permit. Due and payable at issuance of permit.
Vancouver	Assessed by development type: SF subdivision per lot fee calculated at preliminary plat approval and imposed on a per lot basis at the time of building permit application. For MF and non-residential development, calculated at the site plan approval or at building permit application. The fee must be recalculated for building permit applications filed more than 3 years after preliminary plat or site plan approval.

Conclusion: Sultan's current provisions, requiring payment just prior to issuance of the building permit is a common practice. However, there are provisions in place in Lacey that allow developers to make payments in installments over a 5 year period. Vancouver's provisions are more tailored to the residential market, vesting the fees at the platting or site plan approval stage, while still requiring payment prior to building permit issuance, with a 3-year sunset period.