SULTAN CITY COUNCIL
AGENDA ITEM COVER SHEET

ITEM NO: Special Meeting

DATE: December 2, 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:

1. When can impact fees be paid? **Consider during 2011 Comprehensive Plan Update.** Changes to impact fees should be considered during the comprehensive plan update in 2010. The council should consider this issue during the technical analysis of park and transportation impact fees in the fourth quarter of 2010.
2. Should on-site recreation facilities be credited against park impact fees?
    - **Keep current requirements.** Do not increase park impact fees by including on-site recreation facilities in parks level-of-service.
3. How should traffic impact fee credits be managed?
    - **Keep current requirements.** The city council should not reinstitute a policy to carry-forward transportation impact fees for new development. This policy will not provide the needed revenues or improvements necessary to maintain the adopted transportation level of service
    - **Consider "grandfathering".** Consider a policy decision to allow active final plats, eligible for credits under Sultan Municipal Code 16.112.080 (Ordinance 630, adopted 1995)[1], to use those credits to offset traffic impact fees. An "active" final plat is defined as a plat where the city has not yet accepted the infrastructure improvements.

1 16.112.080 Impact fee credits. 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 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). 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)

- Council can consider this issue separate from the 2011 comprehensive plan update

4. Should impact fees be based on proximity to Sultan's "core"? **Consider during 2011 Comprehensive Plan Update.** The council should consider a tier system of impact fees during the 2011 comprehensive plan update. Technical analysis of park and transportation impact fees is scheduled for the fourth quarter of 2010.

SUMMARY:

The city council discussed four impact fee policy questions on May 14, 2009 and at a special meeting on June 9, 2009. Since the city council was unable to complete its discussion of impact fees at the June 9 meeting, Garth York requested council continue its discussion of park and transportation impact fees at the November 12, 2009 council meeting.

Due to the long meeting agenda, the city council did not discuss all the policy questions on November 12, 2009. Instead, the council directed staff to analyze the impacts of allowing active final plats, eligible for credits under Sultan Municipal Code 16.112.080 (Ordinance 630, adopted 1995), to use those credits to offset traffic impact fees.

The council set a special meeting for December 2, 2009 to allow time to discuss impact fee policy questions in depth.

This agenda cover continues the previous discussion and evaluates four specific policy questions presented to the City Council on May 14, 2009, June 9, 2009, and November 12, 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. 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?*
3. 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?*
4. Should impact fees be based on proximity to Sultan's "core"? *Should developments in different areas of the city pay different fees?*

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.

ANALYSIS:

Attachments A, B and C provide additional analysis and background information on the following policy questions.

When can impact fees be paid? ***Does the Council want to evaluate and consider changing when impact fees "vest" or can be paid?***

The impact fee ordinance implementing the comprehensive plan provides that the impact fee would be paid at the time of the building permit.

In a typical larger residential development such permits would be issued only after approval and development of the plats for a subdivision, and a significant amount of time usually elapses between the planning of a development and the issuance of the building permit.

Since as noted above the fee will need to be adjusted periodically for inflation, this time lapse makes the amount of fee uncertain for potential developers planning the financing of their developments during the subdivision process.

In order to remove this uncertainty, some developers have requested that the amount of the fee be "vested" (or set) at the time of preliminary plat approval, but paid at the time of the building permit for each residential units.

The effect of such vesting is to reduce the amount of fee that would be generated (in real terms) by each development by eliminating the costs of inflation between the time of preliminary plat approval and the building permit.

The amount of time involved could be substantial, usually at least a couple of years on the average, resulting in a significant reduction (in real terms) in the amount of money available to finance the needed facilities.

Table 3 (below) provided by Pat Dugan in Attachment B analyzes a range of estimates (provided in current dollars) of the effect that such vesting would have on the amount of money generated to finance facilities and the amount that the impact fee would need to be adjusted to compensate over time.

Separate calculations are presented for parks[2] and transportation fees.

The top part of the table identifies the additional revenue needed. The second part of the table identifies the amount the impact fee would need to be adjusted to compensate

[2] The park impact fee estimates do not include mini-parks in the fee basis.

for the financial effect of vesting the fee amount at the time of preliminary plat

The table presents these estimates in a range since the amount of inflation that may occur cannot be anticipated nor can the amount of time that may elapse between the preliminary plat and the issuance of a building permit.

One way to mitigate for this loss of revenue, while still allowing some certainty in the costs of development for developers is to allow the impact fee to be paid at any point in the development process, but paid in the amount that the impact fee is set at that time.

While this still results in a potential erosion in the value of the fees paid early in the process due to the increasing costs of construction over time, this erosion in value would be offset by the city being able to earn interest on fees paid.

Table 3: Impact of Vesting on Impact Fees

Additional Revenue Needed			
	Years of Delay Between Vesting and Building Permit		
Inflation Rate Per Year	1	2	3
Total Increase Needed			
2.5%	$716,715	$1,451,347	$2,204,345
3.5%	$1,003,400	$2,041,920	$3,116,787
4.5%	$1,290,086	$2,638,226	$4,047,032
Parks Increase Needed			
2.5%	$216,287	$437,981	$665,218
3.5%	$302,802	$616,202	$940,571
4.5%	$389,317	$796,153	$1,221,296
Transportation Fee Increase Needed			
2.5%	$500,427	$1,013,366	$1,539,127
3.5%	$700,598	$1,425,718	$2,176,216
4.5%	$900,769	$1,842,073	$2,825,736

Increase in Fee Per Unit of Charge			
	Years of Delay Between Vesting and Building Permit		
Inflation Rate Per Year	1	2	3
Parks Fee Increase Needed			
2.5%	$79	$161	$244
3.5%	$111	$226	$345
4.5%	$143	$292	$448
Transportation Fee Increase Needed			
2.5%	$132	$267	$405
3.5%	$185	$375	$573
4.5%	$237	$485	$744

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 table below provided by Pat Dugan (Attachment B) shows an increase from $3,175

to $4,588 in the impact fee is needed to add min-parks back into the "fee basis" and raise the required revenue. All of the cost estimates and the forecast of development are from the needs assessment for parks facilities in the comprehensive plan.

Table 2: Mini-parks and Impact Fees

Park Projects Necessary for Development		
	Current Caculation	Calculation with Mini-Parks
Not Included in Fee Calculation		
New Mini-parks	$3,850,000	$0
Current Costs in Impact Fee Calculation		
New Mini-parks	$0	$3,850,000
New Community Park 2015	$15,750,000	$15,750,000
Total needed	$15,750,000	$19,600,000
Revenue		
Grants	-$2,743,789	-$2,743,789
REET	-$4,354,727	-$4,354,727
Balance Needed from Impact Fee (Fee Basis)	$8,651,483	$12,501,483
Planned New Units	2,725	2,725
Fee Per Unit	$3,175	$4,588
Increase		$1,412.84
Percent Increase		45%

<u>How should traffic impact fee credits be managed?</u> Consider a policy decision to allow active final plats, eligible for credits under Sultan Municipal Code 16.112.080 (Ordinance 630, adopted 1995)[3], to use those credits to offset traffic impact fees. An "active" final plat is defined as a plat where the city has not yet accepted the infrastructure improvements.

In September 2008, the city council approved Ordinance No. 933-08 eliminating the credit system provided under Ordinance 640. Three developments were affected by decision to eliminate the credit system – Timber Ridge, Denali and Steen Park.

The policy question is whether to allow those active final plats that were formally eligible for credits to use those credits. <u>No other developments would be eligible for credits</u>

3 16.112.080 Impact fee credits. 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 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). 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)

Under the proposed policy, there are two “active” final plats - Denali and Steen Park.

Timber Ridge

Timber Ridge completed its infrastructure improvements and those improvements have been accepted by the city. Timber Ridge is considered “complete”. Timber Ridge received transportation impact fee credits for 20 building permits (20 x $1,837 = $36,740). Six homes have been built. The building permits for the other 14 homes have expired. Future builders will need to reapply for building permits and pay the transportation and park impact fees in place at the time of building permit issuance.

Denali

Denali Ridge received impact fee credits for all 15 building permits (15 x $1,837 = $27,555). Although all the homes have been built, the plat is still considered “active” because the final lift of asphalt can’t be laid until after April 1, 2010 due to weather conditions. Once the infrastructure improvements are accepted in 2010, the plat will be considered “complete.”

Denali received credits for frontage improvements to Sultan Basin Road and is no longer eligible for further credits under Ordinance No. 993-08 adopted in September 2008.

Steen Park

Steen Park is an active final plat eligible for credits under Ordinance 630. Steen Park is an 18 lot subdivision. The value of the credit under 993-08 is 18 x $1837 = $33,066.

City engineer, Jon Stack estimated the value of the frontage improvements provided by Steen Park is $47,485. This estimate was provided to Mr. York on March 23, 2009 in response to a public records request.

Under Ordinance No. 630, Mr. York is eligible to “carry forward” the difference between the value of frontage improvements and the credit balance $47,485-$33,066 = $14,420. The impact fee credit can be applied to future impact fee charges.

Under Ordinance No. 630, Mr. York has a preliminary plat, Cascade Breeze that would be eligible to “accept” the $14,420 in impact fee credits. Cascade Breeze is a 30 lot preliminary plat approved in 2006. The preliminary plat will expire in 2011. Under the current traffic impact ordinance, the total traffic impact fee would be 30 x $5272 = $158,150. The traffic impact fee would be reduced by the credit of $14,420. The credit would be divided between the 30 lots. Each lot would pay $4,791 a 9.1% decrease.

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:

1. When can impact fees be paid? **Consider during 2011 Comprehensive Plan Update.** Changes to impact fees should be considered during the comprehensive plan update in 2010. The council should consider this issue during the technical analysis of park and transportation impact fees in the fourth quarter of 2010.
2. Should on-site recreation facilities be credited against park impact fees?
    - **Keep current requirements.** Do not increase park impact fees by including on-site recreation facilities in parks level-of-service.
3. How should traffic impact fee credits be managed?
    - **Keep current requirements.** The city council should not reinstitute a policy to carry-forward transportation impact fees for new development. This policy will not provide the needed revenues or improvements necessary to maintain the adopted transportation level of service
    - **Consider "grandfathering".** Consider a policy decision to allow active final plats, eligible for credits under Sultan Municipal Code 16.112.080 (Ordinance 630, adopted 1995), to use those credits to offset traffic impact fees. An "active" final plat is defined as a plat where the city has not yet accepted the infrastructure improvements.
    - Council can consider this issue separate from the 2011 comprehensive plan update
4. Should impact fees be based on proximity to Sultan's "core"? **Consider during 2011 Comprehensive Plan Update.** The council should consider a tier system of impact fees during the 2011 comprehensive plan update. Technical analysis of park and transportation impact fees is scheduled for the fourth quarter of 2010.

ATTACHMENTS

A - June 9, 2009 agenda cover

B - Report from Pat Dugan "Impact of Potential Policy Changes to Impact Fee System"

C - Report from Kris Liljeblad "Transportation Impact Fee Program Questions"

D - Meeting minutes from the May 14, 2009 and June 9, 2009 meetings

E - Correspondence between the City of Sultan and Mr. Garth York

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 application[4].

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, condtions, ordinances and statutes in

[4] RCW 58.17.030 see also New Castle v. City of LaCenter Court of Appeals Division 2

effect at the time of final plat approval are "vested" for five years. As a policy, "vesting" could be expanded to include impact fees.

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?

<u>City Regulations</u>

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.[5]

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

[5] http://www.impactfees.com/index.php

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?

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.

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Memorandum

Wednesday, November 25, 2009

To: Deborah Knight
City Administrator
City of Sultan, Washington

From: Pat Dugan
Dugan Planning Services

Subject: Impact of Potential Policy Changes to Impact Fee System

This memo provides an estimate of the fiscal impact of two policy options that the city council is considering for the impact fee system of the city:

- What would be the potential increase needed in the parks impact fee to include tot lots or mini-parks?
- What would be the potential increase needed to compensate for vesting the impact fee at the time of preliminary platting and payment at the time of building permitting?

The city's impact fee system generates revenues to finance public facilities that are necessary to support the development planned in the city's comprehensive plan. The City of Sultan has two such fees, one to assist in financing parks and another to finance transportation facilities. Table 1 presents the amount of revenue that is needed to finance facilities identified in the comprehensive plan, and the fees that would be required to generate the needed revenue (in current dollars).

Table 1: Impact Fees Needed

Column1		Needed Fee Revenue	Fee Per Unit of Charge	Unit of Charge
Needed Transportation Impact Fee Revenue	$	20,017,097	$5,272	Trip
Needed Parks Impact Fee Revenue	$	8,651,483	$3,175	Per Dwelling Unit
Total Fee Revenue	$	28,668,580		

The Effect of Including Mini-parks in the Park Impact Fee

Currently the comprehensive plan identifies two types of park facilities as "facilities necessary for development;" community parks and mini-parks (also known as "tot lots"). The comprehensive plan provides a strategy for financing these facilities. Individual developments under this strategy would be required to provide mini-parks as part of the on-site improvements required for new subdivisions, since these mini-parks primarily, if not exclusively, serve and benefit individual developments. In contrast, community parks, which serve the entire city, are to be funded by a variety of sources including impact fees paid by future development. The total amount of revenue needed from impact fees (known as the "fee basis") on new development is determined by the costs of a planned community park minus the anticipated funds that would be expected to be available from the Real Estate Excise Tax (REET) and grants. This "fee basis" amount is then divided by the planned number of new housing units in the comprehensive plan to determine the impact fee per unit.

Table 2: Mini-parks and Impact Fees

Park Projects Necessary for Development		
	Current Caculation	Calculation with Mini-Parks
Not Included in Fee Calculation		
New Mini-parks	$3,850,000	$0
Current Costs in Impact Fee Calculation		
New Mini-parks	$0	$3,850,000
New Community Park 2015	$15,750,000	$15,750,000
Total needed	$15,750,000	$19,600,000
Revenue		
Grants	-$2,743,789	-$2,743,789
REET	-$4,354,727	-$4,354,727
Balance Needed from Impact Fee (Fee Basis)	$8,651,483	$12,501,483
Planned New Units	2,725	2,725
Fee Per Unit	$3,175	$4,588
Increase		$1,412.84
Percent Increase		45%

Since in the past, prior to the adoption of the new comprehensive plan, the city had included mini-parks in the "fee basis" for impact fees, some developers have sought a "credit" for the costs of mini-parks in their impact fees. However, now that mini-parks are excluded from the "fee basis" such credits would be inappropriate and would reduce the money generated by impact

fees to finance the community park. In order to allow such credits and still raise sufficient funds to finance the park, the anticipated costs of developing mini-parks need to be added back into the fee basis for parks impact fees.

Table 2 above presents the calculations needed to add min-parks back into the "fee basis" and the increase that would be needed in the impact fee to raise the required revenue. All of the cost estimates and the forecast of development are from the needs assessment for parks facilities in the comprehensive plan.

The Effect of Early Vesting of on Impact Fees

As time goes on, the costs of the facilities necessary to support development increases with inflation. Consequently, the financial forecast in the comprehensive plan's financial strategy included the increases in costs anticipated due to inflation.[6] To offset these inflationary costs increases, the forecast also assumed that the impact fee system would be periodically reviewed by the city to adjust for inflation.

The impact fee ordinance implementing the comprehensive plan provides that the impact fee would be paid at the time of the building permit. In a typical larger residential development such permits would be issued only after approval and development of the plats for a subdivision, and a significant amount of time usually elapses between the planning of a development and the issuance of the building permit. Since as noted above the fee will need to be adjusted periodically for inflation, this time lapse makes the amount of fee uncertain for potential developers planning the financing of their developments during the subdivision process. In order to remove this uncertainty, some developers have requested that the amount of the fee be "vested" (or set) at the time of preliminary plat approval, but paid at the time of the building permit for each residential units.

The effect of such vesting is to reduce the amount of fee that would be generated (in real terms) by each development by eliminating the costs of inflation between the time of preliminary plat approval and the building permit. The amount of time involved could be substantial, usually at least a couple of years on the average, resulting in a significant reduction (in real terms) in the amount of money available to finance the needed facilities.

Table 3 provides a range of estimates (provided in current dollars) of the effect that such vesting would have on the amount of money generated to finance facilities and the amount that the impact fee would need to be adjusted to compensate over time. Separate calculations are presented for parks[7] and transportation fees.

The top part of the table identifies the additional revenue needed. The second part of the table identifies the amount the impact fee would need to be adjusted to compensate for the financial effect of vesting the fee amount at the time of preliminary plat

[6] Although the base forecasts included assumptions regarding inflation, the results of the forecast were presented in the plan in current dollars.
[7] The park impact fee estimates do not include mini-parks in the fee basis.

Table 3: Impact of Vesting on Impact Fees

Additional Revenue Needed			
	Years of Delay Between Vesting and Building Permit		
Inflation Rate Per Year	1	2	3
Total Increase Needed			
2.5%	$716,715	$1,451,347	$2,204,345
3.5%	$1,003,400	$2,041,920	$3,116,787
4.5%	$1,290,086	$2,638,226	$4,047,032
Parks Increase Needed			
2.5%	$216,287	$437,981	$665,218
3.5%	$302,802	$616,202	$940,571
4.5%	$389,317	$796,153	$1,221,296
Transportation Fee Increase Needed			
2.5%	$500,427	$1,013,366	$1,539,127
3.5%	$700,598	$1,425,718	$2,176,216
4.5%	$900,769	$1,842,073	$2,825,736

Increase in Fee Per Unit of Charge			
	Years of Delay Between Vesting and Building Permit		
Inflation Rate Per Year	1	2	3
Parks Fee Increase Needed			
2.5%	$79	$161	$244
3.5%	$111	$226	$345
4.5%	$143	$292	$448
Transportation Fee Increase Needed			
2.5%	$132	$267	$405
3.5%	$185	$375	$573
4.5%	$237	$485	$744

The table presents these estimates in a range since the amount of inflation that may occur cannot be anticipated nor can the amount of time that may elapse between the preliminary plat and the issuance of a building permit.

One way to mitigate for this loss of revenue, while still allowing some certainty in the costs of development for developers is to allow the impact fee to be paid at any point in the development process, but paid in the amount that the impact fee is set at that time. While this still results in a potential erosion in the value of the fees paid early in the process due to the increasing costs of construction over time, this erosion in value would be offset by the city being able to earn interest on fees paid.

Memorandum

Date: June 3, 2009

To: Deborah Knight, Sultan City Administrator

From: Kris Liljeblad, Transportation Planning Director

Re: Transportation Impact Fee Program Questions

Perteet

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.

2000
CITY OF SULTAN COUNCIL MEETING – May 14, 2009

Parking Zones:
Adding:

1. Commercial Loading Zones (Max 30 minutes):
2. Loading Zone on 5th Street from Main south 60 feet. Provides the 30 minute commercial loading zones adjacent to the Past Time Tavern on 5th Street.
3. No Parking Zones:
   Timber 141st Street SE No Parking on North side of street
   Ridge 143rd Street SE No Parking on South side of street
   Area 142nd Place SE No Parking in street
   143rd Place SE No Parking on South side of street
   Wildwood 328th Avenue SE No Parking between Lots 4 and 5
   Place - 133rd Place SE No Parking on North side of street
   Skoglund 135th Place SE No Parking on South side of street

Deleting:
Loading Zone on 5th Street from Main north 100 feet, contacted Lee Wilson owner of Larry's Auto Store, this zone is no longer needed for the truck that delivered to Ed's True Value (no longer in business) and Larry's Auto Store (receive night deliveries).
Discussion was held regarding the turn lane on 5th Street and ability to provide loading access from Main Street; time limits for loading zones; changing the intersection back to a four way stop.

Councilmember Beeler arrived at 9:30 PM

Special Events Permits: In order to address the public's concerns, the city formed a small work group consisting of citizens, planning board members, City Council members and staff. The purpose of the group was to develop special events regulations to manage the impacts of private events on city services such as police, traffic management, and garbage collection and public property such as city streets and parks. While developing the draft regulations, the work group considered several policy questions. These policy questions are the foundation for the draft regulations: City Staff is doing a test permit for an upcoming event to determine if all issues have been addressed. The Council needs to consider what fees will be charged as part of the special event permit.

Transportation and Park Impact Fees: Staff is seeking direction from the Council on the interest in evaluating or revisiting some or all of the deferred policy questions related to transportation and park impact fees discussed during the 2008 Revisions to the 2004 Comprehensive Plan. In 2008 the City Council and Planning Board discussed a number of policy questions related to the payment of park and transportation impact fees and credits for transportation frontage improvements during the year-long process to adopt the 2008 Revisions to the 2004 Comprehensive Plan. Given the time constraints for meeting the Growth Management Hearings Board deadline of September 30, 2008 a number of these policy questions had to be postponed. Brief discussion was held regarding the need to address the impact fees; have the Council address the issues instead of the Planning Board; traffic impact fees for commercial development in the downtown core; credits and on site recreational facilities. Staff was directed to add the issue to the June 9, 2009 Special Council meeting agenda.

WWTP Funding: 50% and will be put on hold at that point. The City needs to move forward with the NEPA/SEPA process for the project.

Pat Dugan recommended the Council consider a double barrel bond (revenue bond voted by the people) as an option for funding the plant. Water/Sewer bond ratings are difficult to get. They could pay the bonds with the rates and use the assessed tax as a fall back for payment.

The Council consensus was to move forward with the line of credit and if the rates start to increase, convert to a fixed rate loan.

Transportation and Park Impact Fees:
Staff is seeking direction from Council on amending transportation and park impact fee regulations in Chapter 16.112.020 Sultan Municipal Code as discussed during the 2008 Revisions to the 2004 Comprehensive Plan.
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? Currently paid at time of building permit.

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?

Pat Dugan briefly discussed tot lots. The impact fee would be higher if the tot lots were allowed. The City has a lot of land but not for a community park and the level of service was lowered to one park instead of two community parks. Tot lots are not considered in the calculation for impact fees for the community park and are not included in the park system. The City could reduce the fee by changing the way tot lots are treated and reducing the number of parks.

Due to time constraints, the Council discussed policy question 1 and deferred the rest to a future workshop.

1. **When can impact fees be paid**: The council can chose to allow payment of the fees at any time – preliminary plat; final plat or building permit. They could allow a

Impact Fees: developer to vest the fees at a certain point in the development process. The City could collect the fees and hold the money until construction time for parks. If vesting is allowed, no money is collected until the time of payment. The City could offer options to developers to allow them to pay the fees before increases go into effect similar to the way water/sewer connections payments are allowed.

Flower: The City impacts developers when fees are increased as they financed the plat based on the fees at the time of applicable.
Champeaux: Should require payment when they vest. The developer based their costs on the market and when it goes south, they can't sell and the impact fees go up. There needs to be something in the code to help protect the developers
Blair: If they are allowed to vest, they would pay at today's cost but if the City builds in six years, their costs would increase. The Council needs to know which developers might be vested. The land owner develops and possibly sells the project to the builder. They need to be able to determine if the project is feasible and must know the fees to do that.
Slawson: If there is building going on, the fees are paid by the developer but when times are lean, the citizens must pay the cost of projects. If they are vested and on don't go forward with the project, would they get their money back?

Discussion was held regarding pending developers and the impact of increase fees to their projects; structure impact fee increases; the need to tie the fees to the Comp Plan and an objection measure of calculation; when fees should be paid; lack of action by prior Council's and the impact on the current fees charged; transportation credits and the need to charge higher impact fees to cover costs; level of service impacts on fees and the need to be consistent with information provided to the developers.

Water Rater Proposed Ordinance:
The Council reviewed the water rate study findings and rate options at the Council retreat on March 21, 2009 and at the Council meeting on April 9, 2009. The City Council held a public hearing and took public comment at the Council meeting on April 23, 2009. At the Council meeting on May 14, 2009 the Council directed staff to set a special meeting on June 9, 2009 to continue discussion of the proposed rates.

The issue before the City Council is to discuss the water rate ordinances prepared for First Reading:

1. Ordinance No. 1043-09 adopts a five (5) year water rate structure for single-family, multi-family and commercial customers. New rates would be effective December 1, 2009; and increases the general facility charge (GFC) from $5,254 to $6,209 paid by new development to connect to the City's water system. The new charge would be effective December 1, 2009.

RECEIVED
OCT 3 1 2007
BY: 4

Steen Park, LLC
P.O. Box 12
Startup, WA 98293
Phone: 425-268-8816

October 24, 2007

RE: Park Impact/Mitigation Fees for plat of Steen Park Estates Estates

Ms. Deborah Knight

City of Sultan
319 Main Street, Suite 200
P.O. Box 1199
Sultan, WA 98294

Dear Ms. Knight,

In the Hearing Examiners Reports dated April 18, 2006 for the plat of Steen Park Estates the hearing examiner states that "Mitigation fees are required for park, traffic and school impacts. The amount of those fees will be determined and collected prior to building permit issuance."

Prior to the enactment of the new park impact fee schedule, Mr. York attempted to pay the $300.00 per unit park impact fee on August 31, 2006 as was originally assessed against the plat of Steen Park Estates. Payment was denied by City staff. In the Developer Subdivision Agreement between the City of Sultan and Steen Park, LLC however, under Conditions of Approval, General Conditions, Special Requirements #2 as stated above the words "prior to building permit issuance" are used to define when fees may be paid with no implication that the fees must be paid only in conjunction with building permit issuance.

Snohomish County Building Permit and Development Code 30.66A.020 uses the same phrase of "prior to building permit issuance" and prepayment of fees for parks and traffic are accepted at any time prior to building permit issuance. We have attached a page from the Snohomish County Building and Development Code referring to this code as well as a page from the Subdividers Agreement for the Development of Outlook Point in Snohomish County which demonstrates that they are being vested according to the fee schedule in effect for parks and traffic at the time of preliminary plat approval.

When compared with other jurisdictions and building codes it is our opinion that due to the lack of any language in the legal documents that relate to the plat of Steen Park Estates that explicitly denies prepayment of the fees for parks and traffic that prepayment is allowable by law and should have been accepted. Mayor Tolson responded to a previous letter submitted to the City of Sultan by Mr. York but only on the grounds of a credit for installation of improvements to traffic and park infrastructure. We are requesting that the city reconsider accepting the payment offered by Mr. York on the grounds that the legal documents agreed to by the Hearing Examiner, The City of Sultan,

and the Developer implied that payment at any time prior to building permit issuance was allowed and at the very least was not forbidden.

Thank you,

Garth York - Pres.

Garth York
President
Steen Park, LLC

Enclosures (6)-City of Sultan Developers/Subdividers Agreement Steen Park Estates
Hearing Examiners Report Steen Park Estates
Snohomish County Building and Development Code Chapter 30.66A.020
Page 6 of Developers/Subdividers Agreement between Outlook Point And Snohomish County
Letter Submitted to City of Sultan on September 8, 2006
Letter of Response from Mayor Tolson

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approved detention facility, or otherwise treated to protect water quality before, during, and after the development of this subdivision.

5. The plattor shall obtain Hydraulic Project Approval from the Washington Department of Fish and Wildlife prior to extending the outfall culvert under the Sultan Basin Road to the Type 4 stream in the southwest portion of the site.

Prior to initiation of any site development work-

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

2. Construction Plans must be approved by the City of Sultan. The plans shall include, but not be limited to, designs for storm drainage, potable water, sanitary sewer, roads, street lighting, signage, landscaping, and other utilities. Said designs shall comply with the requirements of the Unified Development Code, City of Sultan Design Standards and Specifications, and Water/Sewer Design Standards.

The following special requirements shall be included on the face of the final plat-

1. The development restrictions of SMC 16.80.080(D) shall apply to the Type 4 50-foot stream buffer. NGPA signs shall be posted on the buffer line in Tract 999 and along the boundaries of Tract 998, at the discretion of the Public Works Director. NGPA signs are available at the City of Sultan. An informative sign shall be placed at the northern boundary of Tract 996 to inform residents that their stormwater flows to a fish stream.

2. "Mitigation fees are required for park, traffic, and school impacts. The amount of those fees will be determined and collected prior to individual building permit issuance."

3. The following additional restrictions shall be indicated on the face of the final plat:

   a. All Critical Areas shall be designated Native Growth Protection Areas (NGPA).

   b. "All NATIVE GROWTH PROTECTION AREAS shall be left permanently undisturbed in a substantially natural state, and utilized for passive recreation only. No clearing, grading, filling, building construction or placement, or road construction of any kind, except removal of hazardous trees, shall be allowed."

2. Construction Plans must be approved by the City of Sultan. The plans shall include, but not be limited to, designs for storm drainage, potable water, sanitary sewer, roads, street lighting, signage, landscaping, and other utilities. Said designs shall comply with the requirements of the Unified Development Code, City of Sultan Design Standards and Specifications, and Water/Sewer Design Standards.

C. The following special requirements shall be included on the face of the final plat:

1. The development restrictions of SMC 16.80.080(D) shall apply to the Type 4 50-foot stream buffer. NGPA signs shall be posted on the buffer line in Tract 999 and along the boundaries of Tract 998, at the discretion of the Public Works Director. NGPA signs are available at the City of Sultan. An informative sign shall be placed at the northern boundary of Tract 996 to inform residents that their stormwater flows to a fish stream.

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a. All Critical Areas shall be designated Native Growth Protection Areas (NGPA).

b. "All NATIVE GROWTH PROTECTION AREAS shall be left permanently undisturbed in a substantially natural state, and utilized for passive recreation only. No clearing, grading, filling, building construction or placement, or road construction of any kind, except removal of hazardous trees, shall be allowed."

D. Prior to approval and recordation of the final plat:

1. The developer/plattor shall demonstrate that each lot conforms to all requirements of the Sultan Municipal Code and other standards and specifications that apply.

2. Homeowners Association articles of incorporation shall have been submitted to and approved by the City. The articles shall provide for ownership and responsibility for all commonly owned tracts. The articles may provide that the Association may divest its interest in open space tracts to a willing municipality or land conservation trust provided that the tract must remain subject to all appropriate restrictions for such areas as set forth in the SMC. The Association shall be created contemporaneous with final plat recordation.

3. Sight distance meeting City standards shall be available at the plat cul-de-sac's intersection with Sultan Basin Road.

Chapter 30.66A
PARK AND RECREATION FACILITY IMPACT MITIGATION

Reviser's Note: Chapter 30.66A consisting of sections; 30.66A.010, 30.66A.020, 30.66A.030, 30.66A.040, 30.66A.050, 30.66.052, 30.66A.055, 30.66A.060, 30.66A.070, 30.66A.090, 30.66A.100, 30.66A.110, 30.66A.120, 30.66A.130, 30.66A.140, 30.66A.150, and 30.66A.160 was repealed in its entirety effective March 11, 2005 and a NEW Chapter 30.66A was enacted (Amended Ord. 04-016, Feb. 23, 2005; Eff date March 11, 2005)

30.66A.010 Purpose and applicability.

(1) The purpose of this chapter is:

(a) To ensure that adequate park land and park facilities are available to serve new growth and development as defined in SCC 30.91D.200;

(b) To require that new growth and development pay its proportionate share of the costs of new park land and park facilities identified in the capital facilities plan element of the comprehensive plan that are reasonably related to the new development;

(c) To ensure that impact fees are imposed through established procedures and criteria so that specific developments do not pay arbitrary or duplicative fees for the same impact; and

(d) To implement the policies established in the comprehensive park and recreation plan.

(2) This chapter shall apply to all development, except for development that was subject to a prior SEPA threshold determination that provided for mitigation under chapter 30.66A SCC as codified prior to the effective date of this chapter. An applicant subject to a prior version of this chapter may consent in writing to the application of this chapter.

(Added Amended Ord. 04-016, Feb. 23, 2005, Eff date March 11, 2005)

30.66A.020 Park and recreation impact fee required.

1) Each development, as a condition of approval, shall be subject to the park and recreation impact fee established in Table 30.66A.040(1).

(2) Payment of a park impact fee is required prior to building permit issuance. The amount of the fee shall be based upon the rate in effect at the time of filing a complete application for development; provided however, that those applications deemed complete before the adoption of the GMA-based impact fee contained in this section shall be required to pay the SEPA-based mitigation fee in effect at the time the application was deemed complete and further provided that if the building permit is not issued within five years after the application is deemed complete the fee shall be based upon the rate in effect at the time of building permit issuance.

(Added Amended Ord. 04-016, Feb. 23, 2005, Eff date March 11, 2005)

30.66A.030 Service areas established.

The county is divided into seven park service areas (□PSAs□) for purposes of calculating and imposing park impact fees. These PSAs correspond to year 2000 census tract boundaries.

(Added Amended Ord. 04-016, Feb. 23, 2005, Eff date March 11, 2005)

30.66A.040 Impact fee schedule.

Outlook Point Subdividers Agreement

CONDITIONS

A. The revised preliminary plat received by PDS on May 12, 2006 (Exhibit 13) shall be the approved plat configuration. Changes to the approved plat are governed by SCC 30.41A.330.

B. Prior to initiation of any further site work; and/or prior to issuance of any development/construction permits by the county:

i. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above.

ii. The plattor shall mark with temporary markers in the field the boundary of all Native Growth Protection Areas (NGPA) required by Chapter 30.62 SCC, or the limits of the proposed site disturbance outside of the NGPA, using methods and materials acceptable to the county.

C. The following additional restrictions and/or items shall be indicated on the face of the final plat:

i. "The dwelling units within this development are subject to park impact fees in the amount of $1,244.49 per newly approved dwelling unit pursuant to Chapter 30.66A. Payment of these mitigation fees is required prior to building permit issuance; provided that the building permit has been issued within five years after the application is deemed complete. After five years, park impact fees shall be based upon the rate in effect at the time of building permit issuance."

ii. "The lots within this subdivision will be subject to school impact mitigation fees for the Snohomish School District to be determined by the certified amount within the Base Fee Schedule in effect at the time of building permit application, and to be collected prior to building permit issuance, in accordance with the provisions of SCC 30.66C.010. Credit shall be given for two existing parcels. Lots 1 through 2 shall receive credit."

iii. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:

$2,326.29 per lot for mitigation of impacts on county roads paid to the county,

$330.17 per lot for mitigation of impacts on state highways paid to the county,

$539.87 per lot for mitigation of impacts on city streets for the city of Mill Creek, paid to the city. Proof of payment is required.

These payments are due at the time of building permit issuance for each single-family residence. Notice of these mitigation payments shall be contained in any deeds involving this subdivision of the lots therein. Once building permits have been issued all mitigation payments shall be deemed paid.

iv. "On lots with more than one road frontage, the county Engineering Design and Development Standards (EDDS) of Snohomish County restrict lot access to the minor road, unless a formal deviation is granted by the Department of Public Works."

v. Additional right-of-way, parallel and adjacent to the right-of-way centerline of Seattle Hill Road shall be dedicated to the State along the development's frontage such that [1]40 37 feet of right-of-way exists from centerline of the Seattle Hill Road right-of-way.

[1] Per letter from WSDOT dated 9/10/07: 40 feet of right-of-way changed to 37 feet of right-of-way. (9/13/07)

05127256.doc

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Cascade Breeze, Inc.
P.O. Box 12
Startup, WA 98293
Phone (425)268-8816

RECEIVED
SEP - 8 2006
BY:

September 8, 2006

Mayor & Members of the Sultan City Council
319 Main Street
Sultan, WA 98294

Dear Mayor and Members of the Sultan City Council:

Subject: Park Impact/Mitigation Fees and Providing of Parks and Recreational/Open Space within Plat of Cascade Breeze Estates

On August 24th, 2006 City Council approved ordinance #929-06 establishing park impact fees in the amounts of $3415.00 per residential dwelling unit. The conditions of approval for the plat of Cascade Breeze Estates require footage of land and installation of equipment and landscaping for improvements to the parks/open space and recreational facilities for the residents of the community. As outlined in Chapter 16.112.010 section C specific developments are to be exempt from paying duplicate fees for the same impact.

In addition, Section 16.112.080 states that "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 facilities that are/were identified in the capital facilities plan and are required by the city as a condition for the immediate development proposal." During discussion for preliminary plat approval, the City stated their desire to have the parks and open space in the plat of Cascade Breeze Estates to be dedicated to the City of Sultan and to thereby become a part of the Capital Facilities for the purpose of increasing acreage for the residents of Sultan. On August 31st, 2006 Mr. York Attempted to pay the $300.00 per unit impact fee as originally assessed against the plat but payment was declined by City staff.

Over the years Members of the Sultan City Council have discussed deleting 16.72.030 recreational standards which encourage "tot lots" and other small parks in favor of raising impact fees with the goal of creating larger parks and recreational facilities that would be of interest to a wider range of residents. Section 16.72.020 should be deleted as well so that each unit created in the city would be required to equally fund creation of recreational opportunities. Cascade Breeze, Inc. is willing to pay the new park impact fee

in the amount of $3415.00 per dwelling unit without contest if Sultan City Council agrees to delete the recreational standards currently imposed on the plat and release the footage impacted by the onsite park to revert from a tot lot to a building lot, thereby assisting the city with its long range goal of larger parks.

In the event however that City Council Members do not want to release the plat of Cascade Breeze Estates from the required recreational standards as per Section 16.112.010 and Section 16.112.080 as stated above, then this letter is to serve as notice under Section 16.112.090 to appeal the Park Impact Fees on the legal grounds that we would be paying a duplicate fee for the same service and that the impact of this development is already being mitigated onsite.

Thank you,

Garth York - Pres.

Garth York
President
Cascade Breeze, Inc.
GY

City of Sultan

Mr. Garth York
Cascade Breeze, LLC
Steen Park, LLC
P.O. Box 12
Startup, WA 98293]

October 13, 2006

Subject: Recreation Standards; Development Impact fees; Potential Credit

Dear Garth:

By letter dated September 8, 2006, you questioned the City's adoption of Ordinance 929-06 increasing the City's Development Impact Fee for Parks, raised issues concerning the City's on-site recreational requirements, and sought credit now for trail and/or park dedications you might make. You have asked for a formal response from the City.

1. Ordinance 929-06.

City Staff does not intend to recommend either the repeal or the revision of this Ordinance. As such, unless the City Council takes a different course of action, when you request building permits for your lots, you will be expected to pay fees in accordance with this Ordinance, subject to any credits to which you may be entitled.

2. On-Site Recreational Requirements

Both of your developments exceed the ten (10) lot exemption of SMC 16.72.020, and accordingly are subject to the on-site requirements of Chapter 16.72 SMC. Accordingly, each of your projects is required to build one on-site recreation facility. Because it is the likely smallest and least expensive facility, we presume that you will chose to build a "tot lot" on each development. You are welcome to consider another, more expansive improvement if you desire.

City Staff have, as has the Hearing Examiner, distinguished between a small tot lot on-site and facilities built with the City's Development Impact Fee. The on-site facility provides an immediately available local improvement to mitigate the recreational impact of a development. The Development Impact Fee is designed to provide a resource to mitigate the impact on large neighborhood or community facilities, such as baseball and soccer fields. In the City's view, then, there is no duplication or double mitigation of impacts when the Chapter 16.72 facility is a tot lot, and the Development Impact Fee of Chapter 16.112 is for larger neighborhood and community facilities. Should you chose to build under Chapter 16.72 a facility that does provide a neighborhood or community benefit, then of course consideration of a credit would be given.

319 Main Street, Suite 200 – PO Box 1199 – Sultan, WA 98294-1199
City Hall (360) 793.2231 – Fax (360) 793.3344
cityhall@ci.sultan.wa.us

3. Credit

Your Park Development Impact Fees are due when you obtain building permits. A credit is available under SMC 16.112.080 as follows:

16.112.080 Impact Fee Credits.

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 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). 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.

Staff understands that you may propose certain dedications and the creation of certain trails which might entitle you to a credit under this section. Indeed, Rick Cisar has attempted to sit down with you and secure more information about your proposals and their value/cost to give you some preliminary idea what your credit might be. You are encouraged to work with Rick to refine this information so a better sense could be gained of what your credit might be.

Very truly yours

Benjamin R. Tolson
Mayor

AFTER RECORDING
PLEASE RETURN TO:

_____
_____
_____

DEVELOPER AGREEMENT TO ESTABLISH CONCURRENCY

This Developer Agreement to Establish Concurrency is voluntarily made between **Sultan 144, LLC** (hereinafter "Developer") and the City of Sultan, Washington (hereinafter "City") to establish concurrency of a preliminary plat assigned processing number **FPPUD 05-005** and named **Skoglund Estates Planned Unit Development/ Preliminary Plat**.

WHEREAS, Chapter 16.108 Sultan Municipal Code establishes Levels of Service for certain public services and establishes a concurrency management system;

WHEREAS, under Section 16.108.060 prohibits development approval when an adopted level of services fails as a consequence of development;

WHEREAS, the City's hearing examiner has found and ruled that the City currently has a failure in its level of service for Police;

WHEREAS, Sultan Municipal Code 16.108.060 C permits a finding of concurrency when:

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

WHEREAS, Developer wishes to voluntarily enter into this Developer Agreement to Establish Concurrency to aid in obtaining preliminary plat approval at this time;

NOW, THEREFORE, it is agreed between Developer and City as follows:

1. Developer commitment to satisfy impacts of development. Developer's preliminary plat proposes the creation of **47 new plus one existing** single family lots (or multiple family units). City, for planning purposes assigns a population of **2.7** to each lot/unit for a total population impact of **127**. City has an adopted level of service for police of 2.6 officers per 1000 population. Developer's impact requires a contribution for

0.33 of an officer. City estimates the annual cost of an officer to be **$110,878**. Developer therefore agrees to pay a cash contribution to City of **$36,612**, consisting of **33** % of the first year annual cost of an officer and an additional **$9,964** to serve as a contribution to a reserve for future years of service. This contribution shall be divided equally among the lots/units approved, and shall be paid on a lot by lot/unit by unit basis as building permits are issued.

2. City's acceptance. City agrees to accept the contributions detailed above and for any cash contributions will place them in a separate fund. Cash contributions made will be used within six (6) years of payment to City or they will be refunded to Developer. City staff agree to issue a revised concurrency determination finding concurrency based upon this agreement and to support that determination in further proceedings before the hearing examiner and any appeal of a hearing examiner determination.

3. Effect of Level of Service change. Should City reduce or eliminate a Level of Service requirement prior to the conveyance occurring or the cash contribution being made, Developer's obligation under this agreement shall be adjusted or eliminated consistent with the reduction or elimination of the Level of Service. If however, a Level of Service is reduced or eliminated after the conveyance occurs or the cash contribution has been made, there shall be no return of the conveyed property or the cash contribution. If the Level of Service is increased prior to the conveyance occurring or the cash contribution being made, Developer's obligation under this agreement shall not be increased, and Developer shall be deemed to vest under the terms of this agreement.

4. Recordation. At the option of the City, City may cause a certified copy of this agreement, or a memorandum of this agreement to be recorded with the records of the Auditor of Snohomish County.

5. Enforcement. Besides any remedy City may have to enforce the terms of this agreement in court, Developer specifically agrees that City shall have no obligation to issue a building permit unless required cash contributions are made and City shall have no obligation to accept any final plat until the required deed for conveyance of park land has been delivered with irrevocable instructions allowing its recordation.

6. Complete Agreement. This is a complete agreement and all prior discussions and agreements are merged into this agreement.

7. Voluntary Agreement. Developer represents that he voluntarily and intentionally enters into this agreement to the goal of receiving preliminary plat or other development approval at this time.

DATED this _____ day of _____, _____.

CITY OF SULTAN

By_____
BEN TOLSON, MAYOR

DEVELOPER

By_____
CFO of SULTAN 144, LLC

Attest:

By_____
LAURA KOENIG, City Clerk

Approved as to form:

By_____
THOM H. GRAAFSTRA, City Attorney

STATE OF WASHINGTON)
)ss.
COUNTY OF King)

I certify that I know or have satisfactory evidence that Jeffrey E. Hamilton is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

DATED this 25 day of April 2006.

Heather Ross

Notary Public
State of Washington
HEATHER E MCGEORGE
My Appointment Expires Sep 30, 2006

[Legibly print name of notary]
Notary Public in and for the State of
Washington, residing at Kirkland
My Commission expires: 9/30/2006

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