

## **SULTAN CITY COUNCIL AGENDA ITEM COVER SHEET**

---

ITEM NO: A-6

DATE: November 18, 2010

SUBJECT: Ordinance No. 1085-10 Concurrency Management

CONTACT PERSON: Deborah Knight, City Administrator

### **ISSUE:**

The issue before the city council is to have First Reading Ordinance No. 1085-10 (Attachment A) repealing Chapter 16.108 “Concurrency Management System” and adopting a new Chapter 16.108 to be consistent with 2004 Comprehensive Plan as revised in 2008.

The city council previously had First Reading of Ordinance No. 1085-10 on August 12, 2010. During First Reading, Keith Arndt and Chip McElhany submitted public comment regarding the proposed ordinance. Specifically, Mr. Arndt and Mr. McElhany raised concerns regarding the proposed phasing and wastewater concurrency determination. The city council directed staff to work with Mr. Arndt and Mr. McElhany.

Mr. Arndt retained the services of Newman and Associates to review the city’s concurrency ordinance. The city received a copy of Mr. Newman’s analysis of the proposed ordinance on October 5, 2010 (Attachment C).

The city attorney has reviewed Mr. Newman’s analysis. Attachment A includes the attorney’s recommended changes. The changes further clarify the process for making a concurrency determination.

### **STAFF RECOMMENDATION:**

Since more than 90 days have passed since council had First Reading of Ordinance No. 1085-10, city staff recommend repeating the First Reading Ordinance No. 16.108 “Concurrency Management System” and schedule Second Reading on the consent agenda for December 2, 2010. The proposed ordinance provides for the following:

- Repeal Chapter 16.108 of the Sultan Municipal Code in its entirety and enacting a new chapter 16.108 titled “concurrency management system”
- Provide a regulatory mechanism to evaluate impacts from development on adopted levels of service;

- Describe the information necessary to make a concurrency determination;
- Adopt procedures for issuing certificates of concurrency or denial letters;
- Report and monitoring reserved capacity;
- Provide for severability; and establishing an effective date

### **PLANNING BOARD REVIEW AND RECOMMENDATION:**

The planning board recommends the city council adopt an ordinance to amend Sultan Municipal Code 16.108 – Concurrency Management.

The city council reviewed the concurrency procedures at its March 25, 2010 meeting and directed the planning board to work with city staff to amend SMC 16.108 Concurrency to include procedures to effectively administer the city's concurrency management system consistent with the 2004 Comprehensive Plan.

The planning board received an introduction to the concurrency application and approval procedures at its meeting on April 20, 2010. The planning board directed staff to return with the item for further discussion at its May 4, 2010 meeting. The planning board reviewed and discussed the concurrency management system again at its June 8, 2010 meeting.

On June 8, 2010, the board made the motion to forward the staff recommendation to the city council for adoption. The planning board did not receive any written or oral comments from the public on the staff recommendation.

### **BACKGROUND:**

- The Growth Management Act, 36.70A RCW requires communities to adopt levels of service for capital facilities and that concurrency be provided for all growth.
- State law provides guidelines for concurrency under WAC 365-196-840.
- The City of Sultan requires concurrency for developments that must have threshold determinations and Environmental Impact Statements as outlined in the State Environmental Policy Act.
- The City of Sultan has been seeking to develop policies and procedures for determining and allocating capacity in the city's facilities to proposed developments consistent with the 2004 comprehensive plan as revised in 2008.
- The City Council has considered codifying concurrency application and approval procedures in the city's concurrency management system and updating the city's concurrency management system to implement the comprehensive plan by adding new subsections to Sultan Municipal Code Chapter 16.108.

- The Planning Board reviewed proposed changes to the concurrency management system on April 20, 2010; May 4, 2010; and June 8, 2010 and made a recommendation to the City Council to adopt proposed changes to SMC 16.108 as presented by city staff.
- The City Council discussed proposed changes to the concurrency management system on June 9, 2009; July 23, 2009; August 27, 2009; October 15, 2009; March 25, 2010; and June 21, 2010.
- The City Council held a public hearing on July 8, 2010 to take public testimony on the proposal to amend SMC 16.108 “Concurrency Management System” to incorporate certificate of concurrency application and approval procedures; and
- No public testimony was given on the proposed amendments at the July 8, 2010 public hearing.
- The city council had First Reading of Ordinance No. 1085-10 on August 12, 2010.

## **SUMMARY:**

### What is Concurrency?

The Growth Management Act requires communities to adopt levels-of-service (LOS) for capital facilities. Levels-of-service are the minimum community standards for public facilities including transportation, parks, water, and sewer services. As new development arrives in a community, the city must review each development application and determine if the proposed development can be accommodated within the existing or planned capacity of the city’s capital facilities without lowering the adopted level-of-service.

The city has been seeking to develop policies and procedures for determining and allocating capacity in the city’s facilities (transportation, parks, water, and sewer) to proposed developments consistent with the 2004 comprehensive plan as revised in 2008.

In order to achieve these goals, City staff recommend codifying the concurrency application and approval procedures into the city’s concurrency management system as provided in SMC 16.108 (Attachment A). City staff also recommend updating the city’s concurrency management system to implement the comprehensive plan by adding new subsections to Sultan Municipal Code Chapter 16.108.

### How is Concurrency Measured?

The Sultan Municipal Code (SMC) 16.108 provides specific details for determining transportation concurrency (Attachment A). Unfortunately, the SMC does not include specific policies and procedures for determining and allocating capacity consistent with the 2004 comprehensive plan as revised in 2008.

In 2004, the city adopted several comprehensive plan policies that favor a phased approach to development starting from the historic district and working outward to the city limits. The comprehensive plan also favors allocating capacity to commercial development before residential development.

The 2008 Revisions to the 2004 Comprehensive Plan are consistent with this policy direction. The 2008 Revisions include several maps (Attachment B) that break the city into Traffic Analysis Zones (TAZ). The city calculated growth in each TAZ consistent with the phase growth strategy.

The Growth Management Act requires the city adopt development regulations in the Sultan Municipal Code that are consistent with and implement the comprehensive plan.

New development cannot reduce the level-of-service below the adopted standard. For transportation facilities only, the city is required to deny new development if the proposed new development causes the affected transportation facilities to fall below the adopted level of service and there is no plan in place to mitigate the impact within six-years.

The city will issue a “certificate of concurrency” to an applicant for new development if the city determines the capacity of the facility, less the capacity needed can be provided while remaining within the city’s level of service standards.

### Purpose of the Concurrency Application and Approval Procedures

The city requires concurrency for developments that must have threshold determinations and Environmental Impact Statements as outlined in the State Environmental Policy Act (SEPA). All other developments within the city are exempt from concurrency under city code.

The purpose of the concurrency application and approval procedures is to provide a process for accepting development applications in order to make a concurrency determination and issue a certificate of concurrency or denial letter consistent with the 2004 comprehensive plan as revised in 2008. State law provides guidelines for concurrency under WAC 365-196-840 (concurrency).

The concurrency application and approval procedures describe the information required by the city in order to make a concurrency determination and issue a certificate of

concurrency or denial letter on a proposed project in accordance with Sultan Municipal Code 16.108.

## **DISCUSSION:**

The proposed Certificate of Concurrency Application and Approval Procedures are divided into six sections. City staff recommend incorporating the procedures, as appropriate, into SMC 16.108:

1. Scheduling a pre-application meeting
2. Submission of a concurrency application
3. Acceptance of a concurrency application
4. Procedures for determining capacity – transportation, parks, water, and sewer
5. Procedures for issuing a certificate of concurrency or denial letter
6. Reporting and monitoring

### Scheduling a pre-application meeting

The city currently recommends applicants requiring a certificate of concurrency under SMC 16.108 schedule a pre-application meeting with city departments prior to applying for a certificate of concurrency.

The proposed policy maintains the same recommendation as a benefit to the applicant.

### Submission of a concurrency application

An application for a certificate of concurrency must be submitted with the underlying development permit application requiring concurrency. A certificate of concurrency cannot be submitted alone if concurrency is required.

The proposed procedures require a specific application for a certificate of concurrency. The application includes the information that must be submitted in order for the city to make a concurrency determination.

### Acceptance of a concurrency application

The city has 28 days after receiving an application to determine whether the application is complete or incomplete. This is consistent with other development applications required by the city. An application is “complete” if it meets all the submission requirements. The city may request additional information and studies after the application is deemed complete.

Incomplete applications will be returned to the applicant with a letter outlining what needs to be provided to submit a complete application.

An application for a certificate of concurrency will not be accepted or processed until it is complete and the underlying development application has been determined to be complete.

#### Procedures for determining capacity

**Transportation** – The city has adopted a level of service “D” for city arterial streets while retaining the WSDOT adopted level of service “D” for US 2. Level of service “D” translates into wait time at arterial intersections. “A” is no wait and “F” is gridlock during peak morning travel times.

The building and zoning official will review the application and determine if the capacity of the city’s transportation system, less the capacity needed for the development, can be provided while meeting the level of service standards in the comprehensive plan.

The building and zoning official will issue a certificate of concurrency if capacity is available.

If capacity is not available and the level of service failure is on an arterial roadway, the applicant may propose other strategies to accommodate the impacts of the proposed development as outlined in SMC 16.108.100 such as van pooling; modify the development to lessen traffic impacts; volunteer to construct transportation improvements to mitigate the impacts; withdraw the application or take other corrective measures approved by the official.

**Parks** –The adopted level of service for neighborhood parks is 1.5 acres/1,000 residents. The level of service for community parks is 2.0 acres/1,000 residents. The city will need a minimum 17.2 acres of additional community parkland to serve the city’s future population of 11,119 people.

The city council is considering, as part of the 2010 Park, Recreation, and Open Space Plan, reducing the level of service for parks to 3.3 acres of community park per 1,000 residents.

Similar to transportation, the building and zoning official will review the application and determine if the capacity of the city’s park system, less the capacity needed for the development, can be provided while meeting the level of service standards in the comprehensive plan.

The building and zoning official will issue a certificate of concurrency if capacity is available.

The building and zoning official will deny the concurrency application and underlying development if the proposed development will cause the level of service of the city’s park facilities to decline below the standard adopted in the comprehensive plan, and

improvements or strategies to accommodate the impacts of development are not planned concurrent with development.

**Water** – The city has adequate water supply to meet forecast needs as identified in the comprehensive plan. The city’s water treatment plant will require improvements to meet future growth needs. The city has a minimum fire flow standard of 1,000 gallons per minute for residential and 1,500 gallons per minute for non-residential development. A water storage tank and distribution system are included in the city’s capital facilities plan to provide adequate operating pressure in the distribution system and fire protection. The city will not extend water service to areas outside the urban growth area except for a documented water supply emergency.

The process for issuing and denying water certificate of concurrency applications is the same as for parks (see above).

**Sewer** – Level of service standards for sewer system facilities are defined by WAC 173-240-050 and the “criteria for sewerage works design” published by the Washington State Department of Ecology (DOE).

Under the city’s discharge permit with the Department of Ecology, the city’s waste water treatment plant is near 80% capacity. Designs for increasing the plant capacity in three phases are described in the “2006 City of Sultan WWTP Upgrade Engineering Report”. Until improvements are constructed the size and design of the city’s waste water treatment facility limits the available sewer connections to accommodate future forecast flows and avoid violating the city’s NPDES permit issued by the DOE.

In order to determine concurrency, the city will conduct an analysis of the remaining capacity of the city’s sewer treatment facilities and the foreseeable demand. The building and zoning official will determine if the capacity of the city’s sewer facilities, less the capacity which is needed, can be provided while remaining within the city’s level of service standards and waste water treatment plant capacity.

Because of the limited plant capacity, the building and zoning official will allocate available sewer utility connections using the Traffic Analysis zones (TAZ) in the figure titled “Projected Increase in Population, Housing and Employment Estimates” in the city’s adopted comprehensive plan and anticipated capacity estimates provided in the 2006 Waster Water Treatment Plant Engineering Report.

The TAZ maps (Attachment B) delineate future projected growth and commercial development. As shown in the table below, the 254 Equivalent Residential Units (ERU’s) of available waste water treatment plant capacity (including short-term improvements) will be allocated to Traffic Analysis Zones 2, 3, 4, 5, 10 ,11, 12, 13, 14 and 15. This is consistent with the phased growth strategy outlined in the comprehensive plan.

As capacity of the city's waste water treatment plant increases, as anticipated in the 2006 Engineering Report, the city will set aside the following accounts of available capacity for specific types of development consistent with growth in the Traffic Analysis Zones as projected comprehensive plan.

**Table 1 - Waste Water Treatment Plant - Anticipated Capacity Allocations**

Phase	Additional ERU's Available	Commercial Capacity Account	Septic System Replacement Capacity Account	Residential Capacity Account	Traffic Analysis Zones
Available RU's + short-term imp	254	105	25	124	2, 3, 4, 5, 10,11, 12, 13, 14 and 15
Phase I	1300	145	255	900	8,9,16,19,21,22 and 23
Phase II	520	25	120	375	1,6,7,and 20
Phase III	1098	0	0	1098	17 and 18
<b>Total</b>	<b>3,172</b>	<b>275</b>	<b>400</b>	<b>2497</b>	

If the development meets the Traffic Analysis Zone Requirements, sewer utility requests will be placed in one of the three capacity account categories – commercial, septic system replacement or residential. In the event requests for sewer certificates of concurrency exceed the allocated account of available capacity, the building and zoning official will withdraw available capacity first from the residential capacity account. If the residential account is exhausted the building and zoning official will withdraw available capacity from the septic system replacement account.

Setting aside capacity to serve commercial development and septic system replacement is consistent with the goals and policies in the comprehensive plan.

Overall, the proposed sewer allocation system provides more demand than supply. For example, there are currently 254 ERU's available. Short-term demand as calculated within the traffic analysis zones is 296 ERU's. If demand exceeds supply, the city would issue a moratorium on development and deny sewer certificates of availability. All development would stop. Residential development will cease when the Residential Capacity Account (124 ERU's) are allocated without additional capacity.

The building and zoning official will deny the sewer certificate of concurrency and underlying development application if there is no allocated capacity in the city's sewer system as determined by Table 1 above for the proposed project, and improvements or strategies to accommodate the impacts of development are not planned concurrent with development.

This agenda cover includes a colored map (Attachment B) which graphically shows how sewer connections will be allocated by traffic analysis zone (TAZ) consistent with the 2004 comprehensive plan. The map is intended to assist the city council in understanding how sewer connections will be allocated under the proposed concurrency approval procedures.

#### Procedures for issuing a certificate of concurrency or denial letter

Prior to issuing a water and/or sewer certificate of concurrency, the applicant will pay an administrative fee as determined by council resolution for each water and sewer connection required by the applicant.

A certificate of concurrency is a letter or other form prepared by the city and sent to the applicant and/or property owner. If the proposed development is modified a new application fee, concurrency application, evaluation and approval may be required.

If there is a lack of concurrency the official will issue a denial letter. The letter will identify the application and options available to the applicant. The denial letter may be appealed within 10 days after it is issued.

#### Reporting and monitoring

The building and zoning official or designee is responsible for completing a report on available capacity. The report will be considered by the city council and used to review development permits during the next period.

#### **FISCAL IMPACT:**

There is an application fee set by the city council included in the proposed concurrency and application procedures. The council should set the fee to cover the cost of processing the application and making a determination.

Adopting the proposed concurrency management policies formalizes the city's policies and procedures for reviewing applications for development and issuing certificates of concurrency. City staff are already performing the majority of the procedures recommended in the concurrency application and approval procedures.

The reporting requirements listed in Section 6 of the procedures are a new level of service. The proposed procedures assign this work to the building and zoning official (community development director). There is some concern that it may be difficult to add this work item to the community development director's annual work plan. The city council may want to consider whether the report should be provided by the public works director rather than the community development director.

## ALTERNATIVES:

1. Have First Reading Ordinance No. 1085-10 to repeal the existing regulations and adopt new regulations consistent with the 2004 comprehensive plan as revised in 2008.

This alternative implies the city council is prepared to make changes to the policies and procedures for issuing certificates of concurrency. The revised regulations require additional information and constraints for issuing certificates of concurrency.

Sewer certificates of concurrency are allocated to specific regions (Traffic Analysis Zones) within the city based on capacity at the waste water treatment plant. The policy could result in denying residential and commercial development applications that do not meet the allocation policy.

2. Do not have First Reading of Ordinance No. 1085-10 and direct staff to areas of concern.

The city council may have questions or concerns regarding the proposed policy. The city council may also wish to postpone action until a later date.

The impact of this decision is to delay taking action on the Growth Management Act mandate to implement the city's comprehensive plan through its development regulations. Currently, the city's development regulations are not consistent with the comprehensive plan.

Specifically, there are policies in Chapter 8 of the comprehensive plan that require the city to prioritize utility extensions to correspond with existing and potential utility capacities. If the city council chooses to delay action, the city's comprehensive plan and development regulations will not be consistent as required under the Growth Management Act.

Program all long range utility and public facility planning to conform and implement the objectives of the approved Sultan Comprehensive Plan Update using the strategies outlined. Negotiate agreements with other public agencies that conform with and implement the intents of the approved Sultan Comprehensive Plan Update. Update the written growth management policies - and the comprehensive plan, as necessary to reflect current conditions, opportunities, needs and desires.

### 6 Growth management priorities

Prioritize planning unit development phasing sequences and phase the approval of land use changes and utility extensions to correspond with existing and potential utility capacities to avoid overloading or overextending sewage collection systems and wastewater treatment plant capacities.

### 7 Allocate Sultan's limited infrastructure capacity to those lands that can provide most housing and employment related opportunities.

### 8 Sunset development provisions

Owners of vacant lands could tie-up a considerable portion of the capacity available within sewer, water, and other infrastructure if the properties are not developed under a propitious time schedule. Therefore, a sunset provision or time schedule should be established with that to determine how long a property owner can rightfully reserve a claim on a limited infrastructure system capacity.

RECOMMENDED ACTION:

Have first reading ordinance no. 16.108 “Concurrency Management System”

- Repealing chapter 16.108 of the sultan municipal code in its entirety and enacting a new chapter 16.108 titled “concurrency management system”
- Providing a regulatory mechanism to evaluate impacts from development on adopted levels of service;
- Describing the information necessary to make a concurrency determination;
- Adopting procedures for issuing certificates of concurrency or denial letters;
- Reporting and monitoring reserved capacity;
- Providing for severability; and establishing an effective date

ATTACHMENTS:

A – Ordinance No. 1085-10 Concurrency Management (mark-up version)

B – Graphic illustration of sewer connection allocation by traffic analysis zone

C – Newman and Associates – Concurrency Management Concerns

**CITY OF SULTAN  
WASHINGTON  
ORDINANCE NO. 1085-10**

**AN ORDINANCE OF THE CITY OF SULTAN, WASHINGTON, REPEALING CHAPTER 16.108 (CONCURRENCY MANAGEMENT SYSTEM) OF THE SULTAN MUNICIPAL CODE IN ITS ENTIRETY; ENACTING A NEW CHAPTER 16.108 TITLED “CONCURRENCY MANAGEMENT SYSTEM” TO PROVIDE A REGULATORY MECHANISM TO EVALUATE IMPACTS FROM DEVELOPMENT ON ADOPTED LEVELS OF SERVICE; DESCRIBING THE INFORMATION NECESSARY TO MAKE A CONCURRENCY DETERMINATION; ADOPTING PROCEDURES FOR ISSUING CERTIFICATES OF CONCURRENCY OR DENIAL LETTERS; REPORTING AND MONITORING RESERVED CAPACITY; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE**

WHEREAS, the Growth Management Act, RCW 36.70A.020(12) and RCW 36.70A.070(6)(a)(iii)(B) and (b), requires communities to adopt levels of service for capital facilities and ensure that improvements or strategies to accommodate the impacts of growth and development are made concurrent with that growth and development; and

WHEREAS, State law provides guidelines for concurrency under WAC 365-196-840; and

WHEREAS, the City of Sultan requires concurrency for developments for which issuance of a threshold environmental determination or Environmental Impact Statements is required under the State Environmental Policy Act and the Sultan Municipal Code; and

WHEREAS, the City of Sultan has been seeking to develop policies and procedures for determining and allocating capacity in the city’s facilities to proposed developments consistent with the City’s 2004 Comprehensive Plan, as revised in 2008; and

WHEREAS, the City Council has considered codifying concurrency application and approval procedures in the city’s concurrency management system and updating the city’s concurrency management system to implement the comprehensive plan by adding new subsections to Sultan Municipal Code Chapter 16.108; and

WHEREAS, the Planning Board reviewed proposed changes to the concurrency management system on April 20, 2010; May 4, 2010; and June 8, 2010 and made a

Attachment A

Ordinance No. 1085-10 Concurrency Management (attorney’s comments)

recommendation to the City Council to adopt proposed changes to SMC 16.108 as presented by city staff; and

WHEREAS, the City Council discussed proposed changes to the concurrency management system on June 9, 2009; July 23, 2009; August 27, 2009; October 15, 2009; and March 25, 2010; and

WHEREAS, the City Council held a public hearing on July 8, 2010 to take public testimony on the proposal to amend SMC 16.108 “Concurrency Management System” to incorporate certificate of concurrency application and approval procedures; and

WHEREAS, no public testimony was given on the proposed amendments at the July 8, 2010 public hearing; and

WHEREAS, the City Council has determined that it is in the interest of the public health, safety and welfare to repeal the current Chapter 16.108 of the Sultan Municipal Code and to replace the same in its entirety to better address concurrency management;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SULTAN, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Repealer. The existing SMC Section 16.108 “Concurrency Management System” is hereby repealed in its entirety.

Section 2. New Chapter 16.108. A new Chapter 16.108 “Concurrency Management System” is hereby enacted as set forth in Exhibit A.

Section 3. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be preempted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 4. Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

**ADOPTED** BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE \_\_\_\_\_  
\_\_\_\_\_ DAY OF \_\_\_\_\_, 2010.

CITY OF SULTAN

---

Carolyn Eslick, Mayor

ATTEST/AUTHENTICATED:

---

Laura Koenig, City Clerk

Approved as to form:

---

Margaret J. King, City Attorney

Ordinance: 1085-10

Passed by the City Council:

Date of Publication:

Effective Date:

**Chapter 16.108  
CONCURRENCY MANAGEMENT SYSTEM**

Sections:

- [16.108.010](#) Purpose.
- 16.108.020 Definitions
- [16.108.030](#) Exemptions.
- [16.108..040](#) Applications.
- [16.108050](#) Acceptance of a Concurrency Application
- 16.108.060 Nonbinding determinations.
- [16.108.070](#) Certificate of concurrency.
- [16.108.080](#) Standards for concurrency.
- [16.108.090](#) Facilities and services subject to concurrency.
- [16.108.100](#) Concurrency determination.
- [16.108.110](#) Concurrency determination – Potable water.
- [16.108.120](#) Concurrency determination – Wastewater.
- [16.108.130](#) *Reserved.*
- [16.108. 140](#) Concurrency determination – Parks and recreation.
- 16.108.150 Procedures for issuing a certificate of concurrency or denial letter
- 16.108.160 Reporting and monitoring

**16.108.010 Purpose.**

The purpose and intent of this chapter of the unified development code is to provide a regulatory mechanism to ensure that a property owner meets the concurrency provisions of the comprehensive plan for development purposes as required in RCW 36.70A.070. This regulatory mechanism will ensure that adequate public facilities at acceptable levels of service are available to support the development’s impact.

**16.108.020 Definitions**

A. “Certificate of concurrency” is a document issued by the building and zoning official indicating that capacity to serve a proposed development was available to that development when the certificate was issued. The certificate of concurrency identifies available capacity based on the information submitted by the applicant and capacity information available to the

Attachment A

Ordinance No. 1085-10 Concurrency Management (attorney’s comments)

city at the time the certificate is issued. A certificate of concurrency is not a guarantee that capacity will be available at the time of development or vesting of system charges, connection fees and/or impact fees.

B. “Capacity” refers to the ability or availability of the city’s transportation, parks, water, and sewer facilities to accommodate new development or redevelopment without decreasing the city’s adopted level of service standards.

C. “Available capacity” represents a specific amount of capacity that may be needed by new users of the city’s transportation, parks, water and sewer facilities.

D. “Needed capacity” when a certificate of concurrency is issued, capacity is identified from the available capacity account to indicate the capacity needed to serve a particular development.

E. “Used capacity” capacity is considered used once the proposed development is constructed and an occupancy permit is issued.

### **16.108.030 Exemptions.**

Any development that is categorically exempt from the requirement to prepare a threshold environmental determination or an Environmental Impact Statement (EIS) requirements as stated in pursuant to the State Environmental Policy Act (SEPA) is also exempt from the requirement to apply for or obtain a certificate of concurrency under this chapter.

### **16.108.040 Applications.**

A. Each applicant for a development approval, except those exempted from concurrency, shall submit an application for apply for a certificate of concurrency along with the development approval application. -

B. An application for a certificate of concurrency must be accompanied by the requisite fee, as determined by city council resolution. Applicants with projects requiring a certificate of concurrency are encouraged to schedule a pre-application meeting with city departments prior to submitting a development or certificate of concurrency application.

C. An applicant for a certificate of concurrency must submit the following information to the building and zoning official (“official”), on a form provided by the city together with the underlying development permit application requiring concurrency:

1. Date of Submittal
2. Owner/applicant’s name, address and telephone number and/or primary contact information if different from owner/applicant’s contact information
3. Project name
4. Project development schedule

5. Written consent of the property owner, if different from the developer
6. Acreage of the property
7. Legal description and parcel identification number(s) of property as required by the underlying development permit application together with an exhibit showing a map of the property.
8. Existing use of the property.
9. Proposed request of capacity by legal description, if applicable
10. Proposed uses(s) by land use category, square feet and number of units.
11. Proposed site design information, if applicable.
12. Phasing information by proposed uses, square feet and number of units, if applicable.
13. For transportation concurrency applications, a traffic study per 16.108.100.
14. The applicants' proposed mitigation, if any, for the impact on the city's transportation facilities.
15. Parks – The applicants' proposed mitigation, if any, for the impact on the city's parks facilities.
16. For water concurrency applications, a water hydraulic report prepared by a licensed professional engineer including fire flow requirements and water meter sizing for commercial projects.
17. For sewer concurrency applications, a sewer hydraulic report prepared by a licensed professional engineer including waste water composition for commercial projects.

#### **16.108.050 Acceptance of a Concurrency Application**

A. The building and zoning official or designee will notify an applicant for a certificate of concurrency within 28 days after receiving an application whether the concurrency application is complete or incomplete.

B. An application for a certificate of concurrency is “complete” when it meets the submission requirements listed in SMC 16.108.040. The determination of completeness will be made when the application is sufficiently complete for review even though additional information may be required or project modifications may be undertaken subsequently. The building and zoning official's determination of completeness will not preclude the official's ability to request additional information or studies.

C. Incomplete applications. Whenever the city issues a determination that the certificate of concurrency application is not complete, the application will be returned to the applicant with a letter stating the application's deficiencies and measures necessary to submit a complete application.

D. Date of acceptance. An application for a certificate of concurrency will not be officially ~~accepted~~ or processed until it is complete and the underlying development application has been determined to be complete. The building and zoning official will accept and note the date of acceptance of the application for the certificate of concurrency.

E. No development approvals will be granted unless the applicant is eligible for and obtains a certificate of concurrency.

#### **16.108.060 Nonbinding determinations.**

A. A nonbinding concurrency determination may be made by the City received prior to a request for development action or approval by submitting a request and any applicable fee to the building and zoning official. Information required to obtain a nonbinding concurrency ~~make this~~ determination is the same as that required by cited in-SMC 16.108.040. The building and zoning official may require additional information in order to make a nonbinding concurrency determination. The non-binding concurrency determination may become a part of the staff recommendation regarding the requested development action.

B. Any nonbinding concurrency determination, whether requested as part of an application for development, is a determination of what public facilities and services are available at the date of inquiry, but does not reserve capacity for that development.

C. The city shall charge a processing fee to any individual ~~that who~~ requests a nonbinding concurrency determination not associated with an application for development approval or development action. The processing fee shall be nonrefundable and nonassignable to any other fees. Such fee shall be determined by resolution of the city council. The following types of development shall be exempt from paying the concurrency determination fee:

1. Nonprofit agencies whose primary chartered purpose is to provide affordable housing; and
2. Other governmental agencies.

#### **16.108.070 Certificate of concurrency.**

A. A certificate of concurrency shall be issued for a development approval, and remain in effect for the same period of time as the development approval with which it is issued. If the development approval does not have an expiration date, the certificate of concurrency shall be valid for 12 months.

B. A certificate of concurrency is valid for ~~may be accorded~~ the same terms ~~and conditions~~ as the underlying development approval. If a development approval is shall be extended, the certificate of concurrency shall also be extended for the same period of time that the development approval is extended.

C. A certificate of concurrency may be extended by the building and zoning official to remain in effect for the life of each subsequent development approval for the same parcel, as long as the

applicant obtains a subsequent development approval prior to the expiration of the earlier development approval.

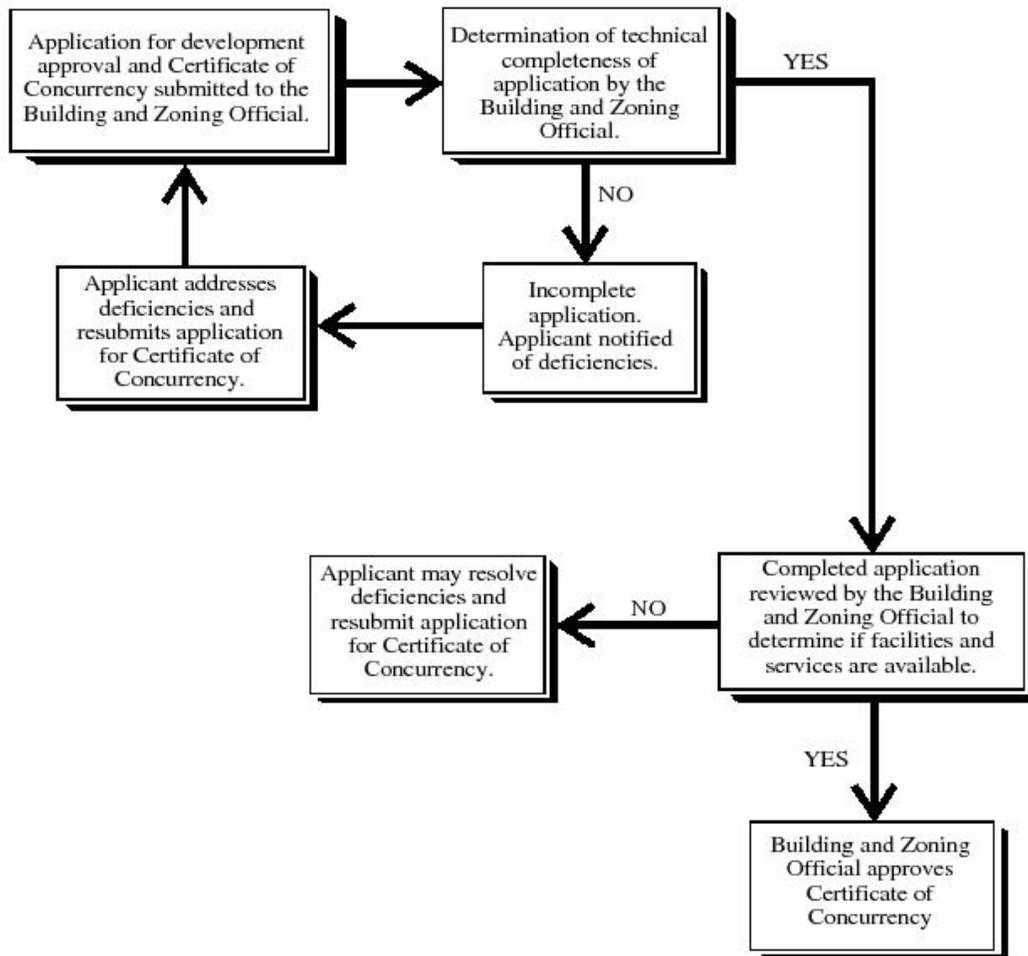
D. A certificate of concurrency runs with the land, is valid only for the subsequent development approvals for the same parcel, and is transferable to new owners of the original parcel for which it was issued; provided, however, that the certificate of concurrency will be valid only for subsequent development approvals for the same parcel that were obtained prior to expiration of a prior development approval as set forth in SMC 16.108.070(C) above.

E. A certificate of concurrency shall expire if the underlying development approval expires or is revoked by the city.

**City of Sultan**

**Concurrency Review Process**

**Request for Development Approval Certificate of Concurrency (Binding)**



**16.108.080 Standards for concurrency.**

The city of Sultan shall review applications for development and a development approval will be issued only if the proposed development does not lower the existing level of service (LOS) of public facilities and services below the adopted LOS in the comprehensive plan. A project shall be deemed concurrent if one of the following standards is met:

- A. The necessary public facilities and services are in place at the time the development approval is issued; or
- B. The development permit is issued subject to the condition that the necessary public facilities and services will be in place concurrent with the impacts of development; or
- C. The necessary public facilities and services are guaranteed in an enforceable development agreement to be in place concurrent with the development. “Concurrent with the development”

shall mean that improvements or strategy are in place at the time of the development or that a financial commitment is in place to complete the improvements or strategies within six years of the time of the development. If the financial commitments that underwrite the planned public facilities include impact fees, the applicant shall have paid all impact fees when due under the applicable provisions of the Sultan Municipal Code.

#### **16.108.090 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. Transportation;
- B. Potable water;
- C. Wastewater;
- D. Parks and recreation.

#### **16.108.100 Concurrency determination – Transportation.**

A. Level of Service Standards. Transportation concurrency requires that the transportation impacts of land use development actions do not reduce the transportation levels of service (LOS) below the adopted standard.

1. The city’s comprehensive plan adopts a level of service “D” standard for city arterials while retaining the Washington State adopted level of service “D” for US 2 in compliance with state requirements and standards for Highways of Statewide Significance (HSS).
2. If the building and zoning official determines the proposed land use action will reduce the LOS below the adopted standard, either the development as proposed must be modified to reduce its transportation impact, or the corrective transportation improvements must be identified and constructed ~~implemented~~ at the time of the development or within a six-year period.

B. Traffic Study. The developer shall prepare a traffic study. The level of detail and scope of a traffic study may vary with the size, complexity and location of the proposed development. A traffic study shall be a thorough review of the immediate and long-range effects of the proposed development on the city’s transportation system. The traffic study shall include the following basic data:

1. Provide a site plan drawn to appropriate scale of the proposal showing the road system, rights-of-way, type of roads, access points and other features of significance in the road system;
2. Vicinity map showing transportation routes to be impacted by the development;
3. Type of dwelling units proposed (single-family, multiple-family, attached, detached, etc.) and trip generation rates for the development. In cases of activity other than

- residential, the same type of information will be required (commercial, industrial, etc.);
4. Volume of traffic expressed in terms of average daily traffic on the roadway network that can reasonably be expected to be used by existing traffic and traffic from the development expressed in terms of current average daily traffic along with directional distribution (D factor), peak hour demand (K ratio) and percentage of trucks (T factor), in the traffic stream;
  5. Physical features of the road network involved, with regard to functional classification, capacity, safety and operations;
  6. A level of service analysis of the road system that can reasonably be expected to bear traffic generated by the development:
    - a. The level of service may generally assume conditions for two-lane highways without access control and at-grade intersections as defined in the highway capacity manual;
    - b. Level of service and volume to capacity ratio (v/c) is to be determined and indicated within the report, showing factors used and methodology;
    - c. Volume figures used shall consist of:
      - i. Current average daily traffic (ADT),
      - ii. Projected ADT at completion of proposal,
      - iii. Growth projection if completion is more than two years away;
  7. The staged increase in traffic volumes on all transportation routes to be caused by the development as different phases are completed;
  8. Traffic volumes shall be projected for 10 years into the future and, if a future phase of the development will extend beyond 10 years, to the time of completion of future phases of the development;
  9. Other similar data that may be required to provide a complete and thorough analysis.

B. The city may also require that the traffic study include other information necessary for a thorough review of the immediate and long-range effects of the proposed development on the transportation system.

- C. Procedures. The following procedures are used to determine transportation concurrency:
1. The building and zoning official will determine whether a proposed development can be accommodated within the existing or planned capacity of transportation facilities.
  2. The building and zoning official will determine if the capacity of the city's transportation facilities, less the capacity which is needed, can be provided while meeting the level of service standards set forth in the city's comprehensive plan.

3. The building and zoning official's determination of available capacity will be based on application materials, acceptable to the city, submitted by the applicant.
4. The building and zoning official will issue a transportation certificate of concurrency if capacity is available.
5. The transportation certificate of concurrency and underlying development application will be denied if the building and zoning official determines that the proposed development will cause the level of service of a city-owned transportation facility to decline below the standards adopted in the comprehensive plan, and improvements or strategies to accommodate the impacts of development are not planned concurrent with development.
6. If the level of service failure is on an arterial roadway, the applicant may perform one of the following measures; modify the development proposal to lessen the traffic impacts; volunteer to construct transportation improvements to mitigate the impacts; withdraw the certificate of concurrency application or take other corrective measures approved by the official. Other corrective measures may include:
  - a. Preparing a more detailed Highway Capacity Analysis, as outlined in the Highway Capacity Manual, Special Report 20 (1985 as amended) or other traffic analysis following procedures outlined by the Washington State Department of Transportation (WSDOT).

This more detailed study may include demand management strategies to accommodate the impacts of the proposed development such as increased public transportation service and ride-sharing programs.

- b. If the developer chooses to do a more detailed analysis as described above, the building and zoning official will:
  - i. Meet with the developer to review and accept or deny the more detailed highway capacity analysis methodology;
  - ii. Review the completed alternative analysis for accuracy and appropriate application of methodology;
  - iii. If the alternative methodology, after review and acceptance by the building and zoning official, indicates an acceptable LOS where the comprehensive plan indicates a LOS failure, the alternative methodology will be used, based on a binding or enforceable development agreement.

#### **16.108.110 Concurrency determination – Potable water.**

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

B. Standards for water system facilities are defined by WAC 246-290-100 and the "Water System Design Manual" published by the Washington State Department of Health.

1. The Water System Design Manual specifies that the minimum operating pressure in the water distribution system will not fall below 30 pounds per square inch (PSI) at the water meter, which is normally the right-of-way line for the served property.
2. In accordance with the National Fire Code, the city has established the minimum fire flow standard as 1,000 gallons per minute for residential areas and 1,500 gallons per minute for non-residential development.

C. The city will not extend water service to areas outside the Urban Growth Area (UGA) except in the case where a property has a documented water supply emergency.

D. The following procedures are used for determining water concurrency:

1. The building and zoning official or designee will determine whether a proposed development can be accommodated within the existing or planned capacity of the city's water system.
2. The building and zoning official will determine if the capacity of the city's water facilities, less the capacity which is needed, can be provided while remaining within the city's level of service standards, and if so, will provide the applicant with a water certificate of concurrency.
3. The building and zoning official will deny the water certificate of concurrency and underlying development application, if there is no capacity in the city's water system for the proposed project, and improvements or strategies to accommodate the impacts of development are not planned concurrent with development.

#### **16.108.120 Concurrency determination – Wastewater.**

A. Level of Service Standards. Standards for sewer system facilities are defined by WAC 173-240-050 and the "Criteria for Sewerage Works Design" published by the Washington State Department of Ecology. The Department of Ecology issues an NPDES permit to the city with requirements for wastewater effluent quality and monitoring to ensure compliance with receiving water standards.

1. Designs for increasing the waste water treatment plant capacity in three phases are described in the 2006 *City of Sultan WWTP Upgrade Engineering Report* ("*Engineering Report*"). Until improvements are constructed, the size and design of the city's waste water treatment plant limits the available sewer connections to accommodate future forecast flows and avoid violating the city's National Pollution Discharge Elimination System permit (NPDES) issued by the Department of Ecology.
2. The sewer system will be designed to contain all sewage and extraneous flow that enters during a 10-year, 24-hour storm event.

3. Sewer capacity will be calculated with the pipe flowing full at the design pipe slope under projected peak conditions. The minimum pipe slope will be sufficient to maintain a velocity of 2 feet per second under flowing full conditions.

B. No new on-site sewage systems will be allowed in the city limits except as provided under SMC 16.16.045 where a property owner proposes to build one (1) single family home on an existing lot.

C. Where new sewer pipe is extended past a parcel with existing development using an on-site sewage system, the property owner will be required to pay the connection fee (general facilities charge) for the benefit conferred by the sewer pipe but will not be required to actually connect and pay monthly service charges unless or until the on-site system fails or the property owner wishes to connect.

D. In accordance with WAC 365-195-835 the following procedures are used to determine sewer concurrency :

1. The building and zoning official or designee will determine whether a proposed development can be accommodated within the existing or programmed capacity of the city's sewer system set forth in Table 1 below.
2. The City will conduct an analysis of the remaining capacity of the City's sewer treatment facilities and the foreseeable demand. The proposed development will be analyzed with respect to its size and density ~~of development~~, quantity of utility service required (average flow and peak periods), special treatment or hazards involved, and compliance with the meeting of all applicable requirements of the Sultan Municipal Code and other codes. development codes. Provision of sewer service to the property shall not jeopardize public health or safety.
3. Using Table 1 and the provisions of this section below, ~~The~~ building and zoning official will determine if the capacity of the city's sewer facilities and waste water treatment plant, less the capacity which is needed, can accommodate the proposed development be provided while allowing city sewer service to remain ~~ing~~ within the city's level of service standards ~~and waste water treatment plant capacity, and if~~ so, the building and zoning official will provide the applicant with a sewer certificate of concurrency.
4. The building and zoning official will allocate available sewer utility connections in the following order of priority using the ~~Traffic~~ Analysis Zones (TAZ) in the figure titled "Projected Increase in Population, Housing and Employment Estimates" in the City's 2008 adopted Comprehensive Plan and anticipated capacity estimates provided in the *2006 Waste Water Treatment Plant Engineering Report as may be revised*:
  - i. Available waste water treatment plant capacity (including short-term improvements at the Waste Water Treatment Plant, described in the 2006 Engineering Report, completed at the time of application) will be allocated only to :

- a. Traffic Analysis Zones 2, 3, 4 and 5. Generally described as areas within the 2010 city limits east from the intersection of US 2 and the Sultan River to Eighth Street and the intersection of US 2 and Main Street; north from US 2 to the northern 2010 city limits; and
  - b. Traffic Analysis Zones 10, 11, 12, 13, 14, 15. Generally described as the area east and west of Sultan Basin Road, north of US 2 from the intersection of Main Street to approximately 330<sup>th</sup> Ave SE, and south of 132<sup>nd</sup> Street to the downtown core; and the area south of US 2 from Fifth Street to the east end of Cascade View Drive.
- ii. Capacity provided by following Phase I improvements to the waste water treatment plant will be allocated only to:
  - a. Traffic Analysis Zones 8, 9 and 16. Generally described as the area north of 132<sup>nd</sup> Street, west of 329<sup>th</sup> Avenue to the western 2010 city limits.
  - b. The area east and west of Sultan Basin Road north of 132<sup>nd</sup> Street to the Urban Growth Area limits;
  - c. Traffic Analysis Zones 19. Generally described as the area west of Rice Road to approximately 330<sup>th</sup> Ave SE; and north of 132<sup>nd</sup> Avenue; and;
  - d. Traffic Analysis Zone 21, 22, 23 which are parcels within the boundary of LID-97. Generally described as The areas east of 330<sup>th</sup> Ave SE, and south of 138<sup>th</sup> Street to the 2010 city limits.
- iii. Capacity provided by following Phase II improvements to the waste water treatment plant will be allocated to:
  - a. Traffic Analysis Zone 1. Generally described as the area west and north of the intersection of US 2 and the Sultan River to the city limits;:-
  - b. Traffic Analysis Zones 6, and 7. Generally described as the area north of Osprey Park and west of the intersection of Trout Farm Road and 307<sup>th</sup> Ave SE; and;
  - c. Traffic Analysis Zone 20. Generally described as the area west of Rice Road (339<sup>th</sup> Street); east of 330<sup>th</sup> Street; south of 132<sup>nd</sup> Avenue; and north of 138<sup>th</sup> Avenue
- iv. In addition to the geographic capacity allocations described in subsection (D)(4)(i) – (iii) above, As the capacity of the city’s waste water treatment plant increases as anticipated in the 2006 Engineering Report, the city will also be allocated in accordance with set aside the following accounts of available capacity for the specified types of proposed development, as set

forth in Table 1 below and in accordance with subsections (D)(4)(v) – (vii). consistent with the comprehensive plan.

**Table 1 - Waste Water Treatment Plant - Anticipated Capacity Allocations**

Phase	Additional ERU's Available	Commercial Capacity Account	Septic System Replacement Capacity Account	Residential Capacity Account	Traffic Analysis Zones
Available RU's + short-term improvements	254	105	25	124	2, 3, 4, 5, 10,11, 12, 13, 14 and 15
Phase I	1300	145	255	900	8,9,16,19,21,22 and 23
Phase II	520	25	120	375	1,6,7,and 20
Phase III	1098	0	0	1098	17 and 18
<b>Total</b>	<b>3,172</b>	<b>275</b>	<b>400</b>	<b>2497</b>	

- v. An application for sewer concurrency Utility requests will be placed in one of the three capacity account categories in the table above – commercial, septic system replacement or residential in the following order of priority:
  1. Commercial Development within the boundaries of LID-97
  2. Other commercial development
  3. Single-family residential development within the city limits that is currently served by on-site sewage systems (i.e. septic system)
  4. Other residential development
  
- vi. In the event requests for sewer certificates of concurrency for commercial development exceed the allocated account of available capacity, the building and zoning official will withdraw available capacity first from the residential capacity account.
  1. If the residential capacity account is exhausted, the building and zoning official will withdraw available capacity from the septic system replacement account.
  2. In order to ensure enough total capacity to meet the population and employment allocations in the comprehensive plan, any withdrawals from the accounts for residential development will be replaced in future phases to ensure the total capacity allocated to each account for Phases I - III does not change.

- vii. The building and zoning official will deny the sewer certificate of concurrency and underlying development application, if there is insufficient ~~no~~-allocated capacity in the city's sewer system as determined by Table 1 (**Waste Water Treatment Plant - Anticipated Capacity Allocations**) above for the type of development proposed ~~project~~ and for the TAZ in which the development is proposed, and improvements or strategies to accommodate the impacts of development and provide the sewer capacity needed by the proposed development are not planned to be constructed concurrent with development.

#### **16.108.130 Reserved.**

#### **16.108.140 Concurrency determination – Parks and recreation.**

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

B. The following procedures are used for determining park concurrency.

1. The building and zoning official will determine whether a proposed development can be accommodated within the existing or planned capacity of parks facilities.
2. The building and zoning official will determine if the capacity of the city's parks facilities, less the capacity which is needed, can be provided while meeting the level of service standards set forth in the city's comprehensive plan.
3. The building and zoning official's determination of available capacity will be based on application materials, acceptable to the city, submitted by the applicant.
4. The building and zoning official will issue a parks certificate of concurrency if capacity is available.
5. The parks certificate of concurrency and underlying development application will be denied if the building and zoning official determines that the proposed development will cause the level of service of a city-owned parks facility to decline below the standards adopted in the comprehensive plan, and improvements or strategies to accommodate the impacts of development are not planned concurrent with development.

#### **16.108.150 Procedures for Issuing a Certificate of Concurrency or Denial Letter**

A. Issuing a Certificate of Concurrency

1. Prior to the issuance of a water and/or sewer certificate of concurrency, the applicant will pay an administrative fee, as determined by city council resolution, for each water and sewer connection required by the applicant.

2. A certificate of concurrency is a letter or other form prepared by the building and zoning official and sent to the applicant. If the applicant is not the property owner, the letter will also be sent to the property owner. The certificate of concurrency will include:
  - a. Primary applicant contact information (name, address, phone number, e-mail etc.).
  - b. The property address.
  - c. The parcel identification number(s).
  - d. Name of project.
  - e. The number and type of dwelling units, square footage of commercial or industrial floor area, specific uses, densities, and intensities for which application(s) were approved.
  - f. The effective date of the certificate of concurrency.
  - g. The expiration date of the certificate of concurrency.
  - h. Any mitigation required by the applicant at the applicant's cost for concurrency.
  - i. The number of water and sewer connections, if any, allocated by the City of Sultan and any deposit payments made by the applicant.
3. If a proposed development project is modified during the review process and results in an increased capacity need, then a new concurrency application, application fee, evaluation, and approval will be required prior to development approval and issuance of certificate of concurrency.

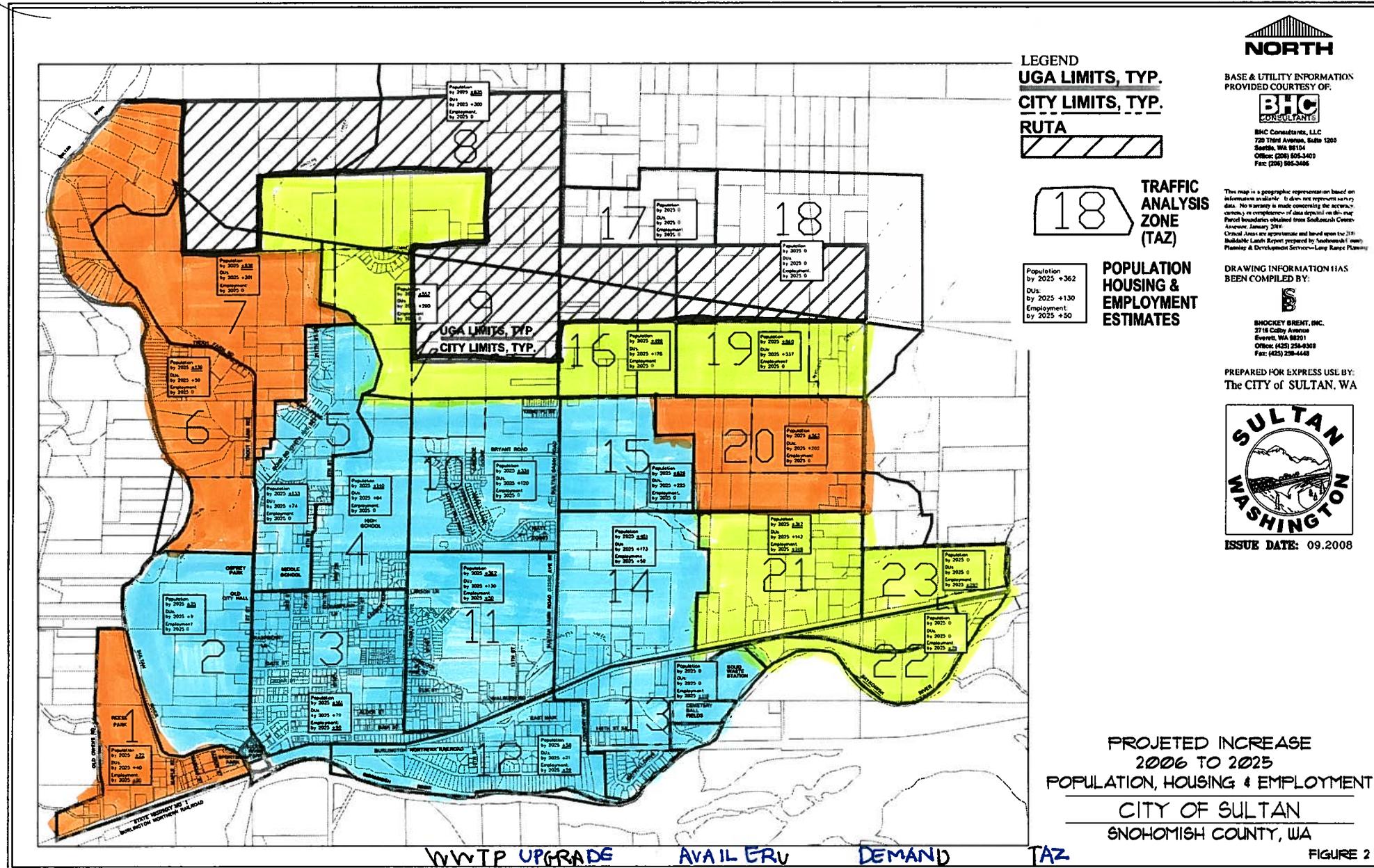
## B. Denial Letter

1. If the building and zoning official determines there is a lack of concurrency, the official will issue a denial letter which will advise the applicant that capacity is not available. If the applicant is not the property owner, the denial letter will also be sent to the property owner.
2. At a minimum, the denial letter will identify the application and options available to the applicant, such as the applicant's agreement to construct necessary facilities at the applicant's cost to maintain the city's adopted levels-of-service
3. The denial letter will include a statement that the denial letter may be appealed to the Hearing Examiner in accordance with SMC 16.120.100 if the appeal is submitted to the building and zoning official within 10 days after the issuance of the denial letter. If an appeal is filed, future processing on the underlying development application will be stopped until the final decision on the appeal.

### **16.108.160 Reporting and Monitoring**

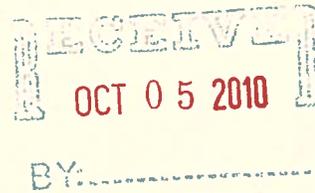
- A. The building and zoning official or designee is responsible for completion of transportation, water and sewer capacity availability reports. These reports will evaluate reserved capacity and permitted development activity for the previous period, and determine existing conditions with regard to available capacity for road, parks, sewer and water facilities.
- B. The capacity report will include capacity used for the previous period and capacity available based on level of service standards and available information.
- C. Capacity forecasts will be based on the most recently updated schedule of capital improvements, growth projections, fire flow, limits of the NPDES permit, public road facility inventories, and revenue projections. At a minimum the report should include:
  1. A summary of development activity;
  2. The status of capacity accounts;
  3. Recommendations on amendments to the capital improvement plan, annual budget, level of service standards, and/or other comprehensive plan;
  4. Available water flow, plant capacity and fire flow measures; and
  5. Limits in the city's NPDES permit and finding of available capacity in the city's wastewater treatment plant.
- D. The findings of the annual capacity availability report may be considered by the council during the budget process.
- E. The building and zoning official will use the findings of the capacity availability report to review development permits and capacity evaluations during the next period.

# Concurrency Management Proposal



Category	AVAIL ERU	DEMAND	TAZ
Avail + short-term	254 ERU	296 ERU	2, 3, 4, 5, 10, 11, 12, 13, 14, 15
Phase I	1300 ERU	1491 ERU	8, 9, 16, 19, 21, 22, 23
Phase II	520 ERU	1212	1, 6, 7, 20
Phase III	1098 ERU	-0	17, 18

5/11/2010



---

October 4, 2010

Sultan City Council  
Mayor Carolyn Eslick  
P.O. Box 1199  
319 Main Street  
Sultan, WA 98294

**Subject: Concurrency Management Concerns- Proposed Ordinance No. 1085-10**

Dear Council Members and Mayor Eslick:

Newman & Associates has been retained by the Arndt Living Trust and trustee Keith Arndt with respect to proposed Ordinance 1085-10 regarding concurrency management and its potential effect, if any, on the pending preliminary plat and planned unit development application known as the Highlands at Sultan.

As background, I have been a practicing planner in Snohomish County for over 30 years, including 22 years with Snohomish County Planning Department and serving as Land Use Manager from 1994 through 2001. I am familiar with the planning and zoning history of the City of Sultan over the past 30 years, which includes leading the town planning commission in preparation of the first Sultan comprehensive plan in 1982 as Snohomish County's Small Communities' Assistance Senior Planner. I subsequently assisted with a rewrite of the city's zoning ordinance update later that decade. I have continued professional planning in private practice the last 10 years, most recently as Director of Planning and Director of Business Development at Triad Associates in Kirkland. I have been a member of the American Institute of Certified Planners for 26 years. I hold a Master's Degree in Regional Planning from Washington State University.

Ordinance 1085-10<sup>1</sup> would repeal Chapter 16.108 (Concurrency Management System) of the Sultan Municipal Code in its entirety and create a new Chapter 16.108 titled "Concurrency Management System" providing a regulatory mechanism to:

- Evaluate impacts from development on adopted levels of service;
- Describe the information necessary to make a concurrency determination;
- Adopting procedures for issuing certificates of concurrency or denial letters; and
- Reporting and monitoring reserved capacity.

---

<sup>1</sup> Proposed Ordinance 1085-10 is presented with accompanying staff recommendation memorandum to Sultan City Council from City Administrator Deborah Knight dated August 12, 2010.

This analysis includes an evaluation of proposed Ordinance No. 1085-10 as it relates to the City of Sultan Comprehensive Plan, as well as the Revised Code of Washington, which establish the framework for local development regulations, concurrency management, and consolidated permit processing.

Key items of concern presented in the order discussed are:

1. **Moratorium:** The action of prohibiting development in certain portions of the city essentially constitutes a moratorium. As such, the statutory moratorium criteria specified in RCW 36.70A.390 must be followed.
2. **Application Process Issues:** The proposed concurrency application process needs to be integrated and consolidated with the local development review process. Chapter 16.120 SMC, which was repealed, needs to be reconstructed with a concurrency process integrated in accordance with the statutory requirements of RCW 36.70B.060.
3. **Proposed Wastewater Concurrency Determination Issues: What is Real Capacity and ERU Availability?:** The wastewater system capacity needs to be clearly identified and corresponding available ERU's need to be accurately portrayed. The quantitative ERU's shown in Table 1, which are subject to change, are proposed to be inappropriately codified.
4. **Proposed Phasing and Allocation Priorities:** The proposed four-tiered phasing plan is based on a map grid, the purpose of which was for analyzing traffic and trip generation. Any phasing plan for infrastructure, including sanitary sewer, should be based upon and support, the adopted Comprehensive Plan.
5. **Comprehensive Plan Analysis:** The proposed ordinance is inconsistent with cited housing and land use policies in the Comprehensive Plan. GMA development regulations, including the proposed ordinance, are required to be consistent with the plan and serve to implement that plan.
6. **Conversion of Existing Septic Systems in the City to Sanitary Sewer:** Without well-planned residential projects on the larger parcels toward the outer boundaries of the current city limits, the sewer lines will not be extended through areas within the city currently served by septic systems. This realistically limits the economic feasibility and incentive to convert the approximately 400 homes within the city currently on septic systems.
7. **Vesting and Applicability of this Ordinance to the Subject Application:** The proposed ordinance is not simply procedural, but contains new level of service performance standards. Certain applications deemed complete would be subject to the standards and regulations in place on the date of a completeness determination.

## 1. Moratorium

If sanitary sewers are required for all new development but will not be provided (with the proposed exception to individual single family homes), then there will not be any new development within the city limits and UGA without improvements to the WWTP system. The action of prohibiting development in certain portions of the city essentially constitutes a moratorium.

Land use moratoriums are adopted as emergency measures in order to prevent the filing of applications which might defeat the general purpose of the moratorium. The authority and limitations of moratoriums are specified in RCW 36.70A.390<sup>2</sup>. Moratoriums are temporary and are designed to prevent the filing of development applications. In this case the application was filed and after many months deemed complete.

By denying the processing of a valid and complete land use application by simply putting it "on hold" goes a step further. By virtue of the four-tiered priority allocation formula proposed in 16.108.120(D)(5) there is essentially a moratorium on development in the "other residential development" category.

In addition, there has not been a State Environmental Policy Act (SEPA) review of the impacts of this proposed ordinance nor the consequential moratorium as determined by previous decisions.<sup>3</sup> A thorough SEPA analysis will identify impacts to affordable housing and conflicts with the City's current housing policies as set forth in the Comprehensive Plan.

---

### <sup>2</sup> RCW 36.70A.390. Moratoria, interim zoning controls -- Public hearing -- Limitation on length -- Exceptions.

A county or city governing body that adopts a moratorium, interim zoning map, interim zoning ordinance, or interim official control without holding a public hearing on the proposed moratorium, interim zoning map, interim zoning ordinance, or interim official control, shall hold a public hearing on the adopted moratorium, interim zoning map, interim zoning ordinance, or interim official control within at least sixty days of its adoption, whether or not the governing body received a recommendation on the matter from the planning commission or department. If the governing body does not adopt findings of fact justifying its action before this hearing, then the governing body shall do so immediately after this public hearing. A moratorium, interim zoning map, interim zoning ordinance, or interim official control adopted under this section may be effective for not longer than six months, but may be effective for up to one year if a work plan is developed for related studies providing for such a longer period. A moratorium, interim zoning map, interim zoning ordinance, or interim official control may be renewed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal. (emphasis added)

This section does not apply to the designation of critical areas, agricultural lands, forest lands, and mineral resource lands, under RCW 36.70A.170, and the conservation of these lands and protection of these areas under RCW 36.70A.060, prior to such actions being taken in a comprehensive plan adopted under RCW 36.70A.070 and implementing development regulations adopted under RCW 36.70A.120, if a public hearing is held on such proposed actions.

<sup>3</sup> *MBA et al. v. City of Sammamish*, CPSGMHB No. 05-3-0030c, 2005.

## **2. Application Process Issues**

***The timing and process for the proposed concurrency determination is not consolidated and integrated with the existing codified development approval process as required by RCW 36.70B.060.***

Under the proposed ordinance, any development not exempt from the SEPA is required to submit an application for a certificate of concurrency (16.108.030). The City of Sultan, like other local governments planning under GMA, is to have an integrated and consolidated project permit process.<sup>4</sup> The City is required to have a clear, concise and consolidated development review process that is predictable for both staff and applicants. SMC 16.120.050 specifies the development permit approval process for all permits and land use approvals. SMC 16.120.060 lists itemized information for all applications.

It appears that 11 of the requested 17 items for the proposed concurrency certificate application would already be requested in the land use master permit application, such as a preliminary plat or a rezone (SMC 16.120.060). This is a redundant request and the process should be streamlined to integrate the checklists for both land use applications and concurrency certificate applications. The 28-day concurrency application completeness determination would also be consistent with the maximum time limits for making completeness determinations for land use applications (SMC 16.108.050(A)).

If “no development approvals will be granted unless the applicant is eligible for a certificate of concurrency” (SMC 16.108.050(E)), when is eligibility determined? Within 28 days? Logic would dictate that it would have to be made prior to the hearing examiner issuing project approvals which would imply a timeframe well in advance of the public hearing. The timing of the certificate of concurrency determination needs to be clarified relative to the SEPA threshold determination process. Again, any concurrency management system process shall be integrated and consolidated with the land use permit and approval process to make the process clear and concise.

The concurrency process for transportation has been well established by most cities and counties operating under GMA.<sup>5</sup> A key concern that stands out with the transportation concurrency section in this proposed ordinance again is the process. Proposed section 16.108.090(D) outlines the building and zoning official's responsibilities, but it does not specify when these actions will take place during the land use application review and approval process.

---

<sup>4</sup> RCW 36.70B.060. Local governments planning under the growth management act to establish integrated and consolidated project permit process -- Required elements.

Not later than March 31, 1996, each local government planning under RCW 36.70A.040 shall establish by ordinance or resolution an integrated and consolidated project permit process that may be included in its development regulations. In addition to the elements required by RCW 36.70B.050, the process shall include the following elements: (1) A determination of completeness to the applicant as required by RCW 36.70B.070; (2) A notice of application to the public and agencies with jurisdiction as required by RCW 36.70B.110.

<sup>5</sup> See Snohomish County Concurrency Management requirements 30.66B.120 through 30.66B.145 SCC.

### **3. Proposed Wastewater Concurrency Determination Issues: What is Real Capacity and ERU Availability?**

***The 254 ERUs (Equivalent Residential Units) which are proposed to be codified in Table 1 as part of the ordinance appear to not be based on all the facts and are substantially underestimated.***

A significant section of concern is SMC 16.108.120, Concurrency Determination-Wastewater. Under subsection D,

1. *"The building and zoning official or designee will determine whether a proposed development can be accommodated within the existing or programmed capacity of the city's sewer system.*
2. *The City will conduct an analysis of the remaining capacity of the City's sewer treatment facilities and the foreseeable demand. The proposed development will be analyzed with respect to its size and density of development, quantity of utility service required (average flow and peak periods), special treatment or hazards involved and the meeting of all development codes. Provision of sewer service to the property shall not jeopardize public health or safety.*
3. *The building and zoning official will determine if the capacity of the city's sewer facilities, less the capacity which is needed, can be provided while remaining within the city's level of service standards and waste water treatment plant capacity, and if so, will provide the applicant with a sewer certificate of concurrency."*

Table 1 in the proposed ordinance cites that there are only 254 ERU's currently available for allocation, which includes specified short term improvements to the WWTP.<sup>6</sup> If this remaining ERU capacity is revised based on adjusted calculations there will be additional ERU's which should be made available to pending applications within the city limits.

The Comprehensive Plan encourages efficiency upgrades of the piped system which will reduce stormwater infiltration and increase the number of available ERU's.

#### ***Infiltration/Inflow Rehabilitation:***

*"Rain induced flow into the sewer system exceeds desirable rates. This problem is believed to be concentrated in the older parts of the sewer system. The City will continue to budget and implement regular rehabilitation programs to minimize the introduction of infiltration and rain induced flow into the sewer system by recognizing that such wastewater volumes take capacity in the pipe system and treatment facilities that would otherwise be available to sewer customers. Processing such extraneous flow also incurs additional costs to the system which must be included in the monthly service charges.*

*The City will continue to inspect and test new sewer installations to verify that construction materials and methods conform to modern standards. The resulting new sewer extensions are expected to exhibit a significantly lower influx of extraneous wastewater than the existing sewer system."<sup>7</sup>*

<sup>6</sup> Memorandum from Deborah Knight, City Administrator to Sultan City Council dated July 8, 2010 recommending allocation of a \$335,000 legislative proviso to upgrade the intermediate pump station and begin design to upgrade the influent pump station.

<sup>7</sup> City of Sultan Comprehensive Plan, Revised September, 2008. Page 128.

Implementing this comprehensive plan policy by sewer line replacement and upgrades will correspondingly decrease stormwater infiltration and increase sanitary sewer capacity. This in turn will logically increase the available ERU's.

With recent improvements to the WWTP and improvements to the efficiency of the piped collection system to reduce substantial infiltration flows, the capacity of the WWTP has been contested and appears to be a moving target. This concern was also raised in response to the proposed General Facilities Charge (GFC) Ordinance No. 1086-10. Until there is consensus based on the engineering evidence in the record regarding sewer system capacity, the building and zoning official will not be able to determine capacity. If it is concluded based on all the evidence in the record that that there is sanitary sewer capacity less the capacity which is needed to serve the development, then the *certificate of sewer concurrency* shall be issued.

#### **4. Proposed Phasing and Allocation Priorities**

As will be shown in the following sections, the basic premise that there is capacity for only 254 ERU's is being challenged. ***First, if capacity is revised, Table 1 needs to be correspondingly revised to accommodate additional immediately available allocations. Second, the allocation or phasing by TAZ designation is inconsistent with the adopted policies of the comprehensive plan. Third, the four-tiered prioritization with commercial first and housing last unfairly limits housing opportunities.***

There are substantial concerns regarding subsection D(4), which reads as follows:

4. ***"The building and zoning official will allocate available sewer utility connections in the following order of priority using the Traffic Analysis Zones (TAZ) in the figure titled "Projected Increase in Population, Housing and Employment Estimates" in the City's 2008 adopted Comprehensive Plan and anticipated capacity estimates provided in the 2006 Waste Water Treatment Plant Engineering Report as may be revised:***
  - i. ***"Available waste water treatment plant capacity (including short-term improvements at the Waste Water Treatment Plant, described in the 2006 Engineering Report, completed at the time of application) will be allocated to:***
    - a. ***Traffic Analysis Zones 2,3,4 and 5. Generally described as areas within 2010 city limits east from the intersection of US 2 and the Sultan River to Eighth Street and the intersection of US 2 and Main Street; north from US 2 to the northern 2010 city limits.***
    - b. ***Traffic Analysis Zones 10,11,12,13,14,15. Generally described as the area east and west of the Sultan Basin Road, north of US 2 from the intersection of main Street to approximately 330<sup>th</sup> Ave SE, and south of 132<sup>nd</sup> Street to the downtown core; and the area south of US 2 from Fifth Street to the east end of Cascade View Drive.***
  - ii. ***"Capacity following Phase I improvements to the waste water treatment plant will be allocated to:***

1. Traffic Analysis Zones 8,9 and 16. Generally described as the area north of 132<sup>nd</sup> Street , west of 329<sup>th</sup> Avenue to the western 2010 city limits.
  2. The area east and west of Sultan Basin Road north of 132<sup>nd</sup> Street to the Urban Growth Area limits.
  3. Traffic Analysis Zone 19. Generally described as the area west of Rice Road to approximately 330<sup>th</sup> Ave. SE and north of 132<sup>nd</sup> Avenue.
  4. Traffic Analysis Zones 21,22,23 which are parcels within the boundary of LID-97. Generally described as the areas east of 330<sup>th</sup> Ave SE, and south of 138<sup>th</sup> Street to the 2010 city limits.
- iii. **“Capacity following Phase II improvements to the waste water treatment plant will be allocated to:**
1. Traffic Analysis Zones 1. Generally described as the area west and north of the intersection of US 2 and the Sultan River to the city limits.
  2. Traffic Analysis Zones 6 and 7. Generally described as the area north of Osprey Park and west of the intersection of Trout Farm Road and 307<sup>th</sup> Ave SE.
  3. Traffic Analysis Zones 20. Generally described as the area west of Rice Road (339<sup>th</sup> Street), east of 330<sup>th</sup> Street, south of 132<sup>nd</sup> Avenue and north of 138<sup>th</sup> Avenue.
- iv. **“As the capacity of the city’s waste water treatment plant increases as anticipated in the 2006 Engineering Report, the city will set aside the following accounts of available capacity for the specified types of development consistent with the comprehensive plan.”**

**Table 1- Waste Water Treatment Plant – Anticipated Capacity Allocations**

Phase	Additional ERU's Available	Commercial Capacity Account	Septic System Replacement Capacity Account	Residential Capacity Account
Available ERU's + short term improvements	254	105	25	124
Phase I	1300	145	255	900
Phase II	520	25	120	375
Phase III	1098	0	0	1098
Total	3,172	275	400	2,497

- v. **“Utility requests will be placed in one of the three capacity account categories in the table above- commercial, septic system replacement or residential in the following order of priority:**
1. Commercial development within the boundaries of LID-97
  2. Other commercial development
  3. Single family residential development within the city limits served by on-site sewage systems (i.e. septic system)
  4. Other residential development
- vi. **“In the event request for sewer certificates of concurrency for commercial development exceed the allocated account of available capacity, the building and zoning official will withdraw available capacity first from the residential capacity account.**

1. *If the residential capacity account is exhausted, the building and zoning official will withdraw available capacity from the septic system replacement account.*
  2. *In order to ensure enough total capacity to meet the population and employment allocations in the comprehensive plan, any withdraws from the accounts for residential development will be replaced in future phases to ensure the total capacity allocated to each account for Phases I-III does not change.*
- vii. *“The building and zoning official will deny the sewer certificate of concurrency and underlying development application, if there is no allocated capacity in the city’s sewer system as determined by Table 1 Capacity Allocations above for the proposed project, and improvements or strategies to accommodate the impacts of development not planned concurrent with development.”*

***Table 1 inappropriately codifies available ERU’s with numeric specificity that can only be undone by legislative action and another code amendment. This is in stark contrast to the general unified development code procedures outlined in SMC 16.120.070:***

“The building and zoning official shall, in the manner required by law and after public hearings, adopt such rules and regulations pertaining to the issuance of permits as it deems necessary. The building and zoning official may thereafter, in the manner required by law, and from time to time, after public hearings, modify or adopt additional rules and regulations as deemed necessary to carry out the provisions of this unified development code; provided, any such rules and regulations issued pursuant to this code may be amended or repealed by the city council in accordance with the appropriate provisions of the Sultan Municipal Code. Such regulations shall include but are not limited to the following:

A. Procedures for the submission, review and approval or denial of permit applications, and the form of application for permits. The building and zoning official shall devise a temporary application form that shall be used upon enactment of this unified development code until such time as rules and regulations are adopted.”

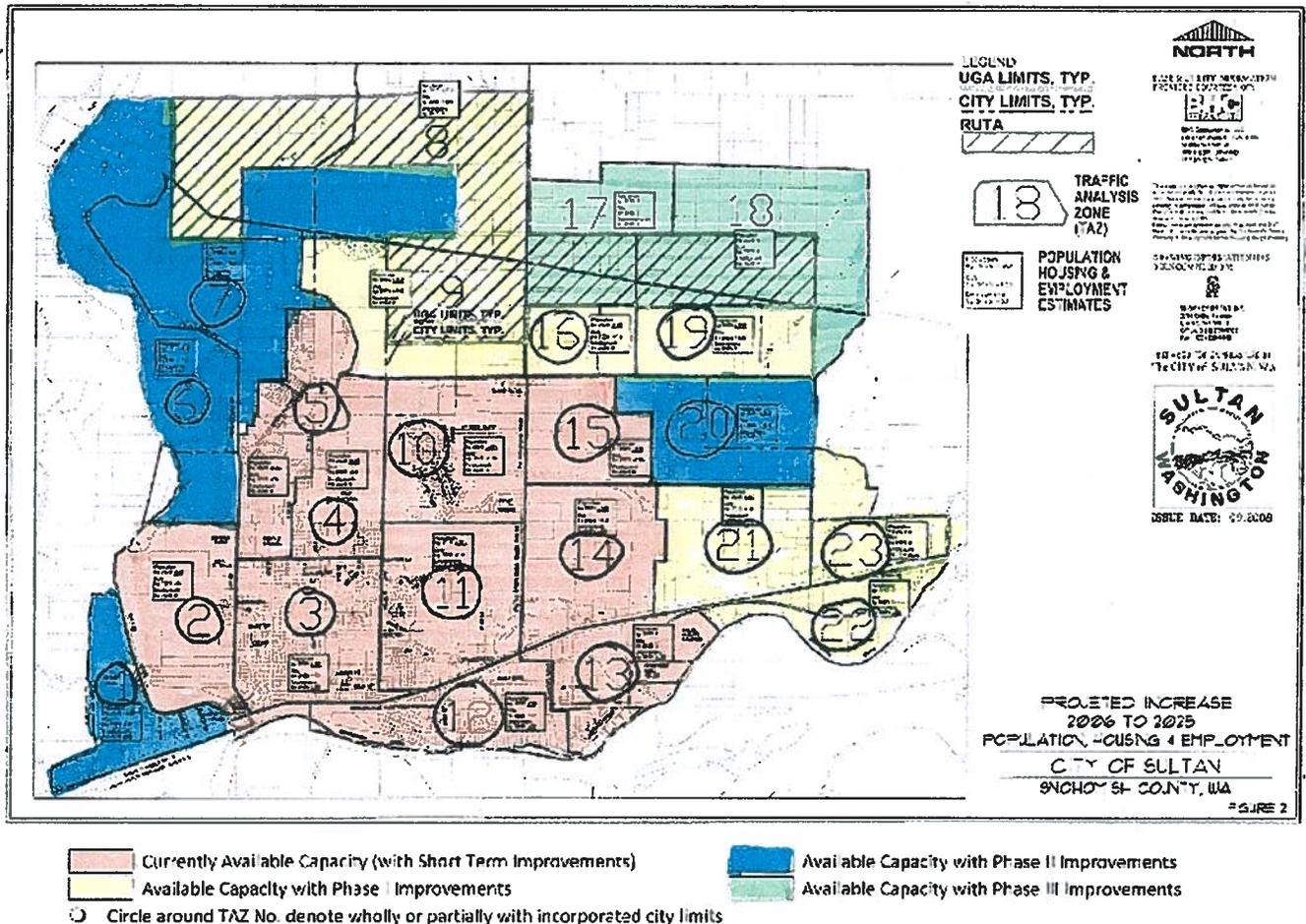
#### **Mapping of Development Phasing Proposed by Ordinance 1085-10.**

***By mapping the four phases of sanitary sewer allocation and comparing it to the adopted comprehensive land use plan, there appears to be significant inconsistencies. The capital improvements plan is required to support the land use element of the comprehensive plan.***

Based upon the sewer connection allocation strategy set forth in SMC 16.108.120(D)(4), the city has proposed using the 23 traffic analysis zones (TAZ), as shown on the map included with this ordinance) as the basis for allocating ERU’s and the sanitary sewer concurrency certificates. It is difficult to easily discern the relationship between this proposed phasing plan and the adopted Comprehensive Land Use Plan map. One would assume that the phasing plan supports the planned and zoned areas for urban density development. In order to delineate the four proposed phases of ERU allocations,

**Figure 1** has been prepared which illustrates the four proposed phases of sewer ERU allocation.

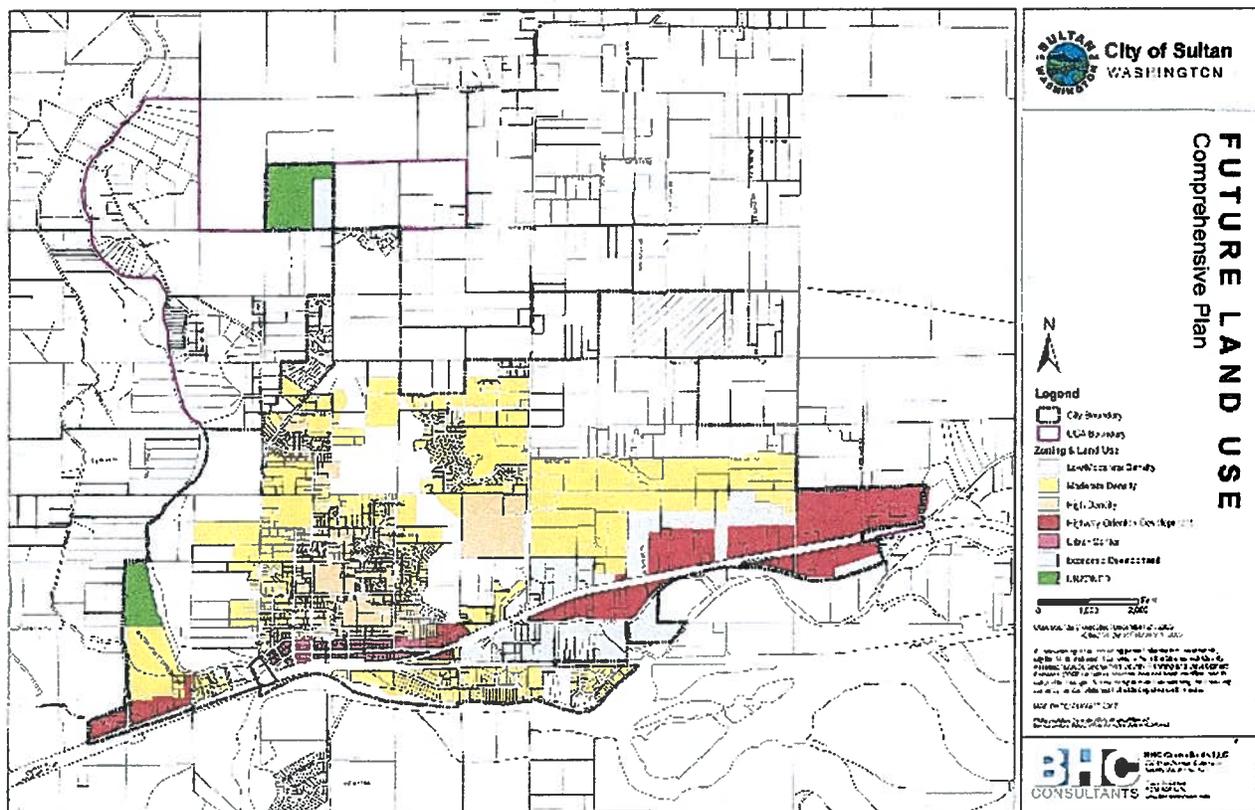
**Figure 1. Development Phasing Proposed by Ordinance 1085-10  
Allocation of Utility Service Connections (and corresponding concurrency certificates) by 16.108.120 SMC**



**Figure 2** is the adopted Comprehensive Plan/Future Land Use Map which delineates urban land use categories into six designations:

- Low/Moderate Density Residential
- Moderate Density Residential
- High Density Residential
- Highway Oriented Development
- Urban Center
- Economic Development

Figure 2. Adopted Comprehensive Land Use Plan Map 2008  
 Inconsistencies between Designated and Zoned Urban Lands and Phasing Plan by TAZ in Proposed ord. No. 1085-10



These land use plan designations are only shown for the incorporated area and no designations are given for the unincorporated portions of the UGA (Urban Growth Area). These plan designations are implemented through corresponding zoning classifications in the Unified Development Code, Title 16 SMC:

- 16.12.010 Low/moderate density (LMD) zone.
- 16.12.020 Moderate density (MD) zone.
- 16.12.030 High density (HD) zone.
- 16.12.040 Urban center (UC) zone.
- 16.12.050 Highway-oriented development (HOD) zone.
- 16.12.060 Economic development (ED) zone.

Zone	Dwellings Allowed	Maximum Density	Min. Lot Size
LMD	Single Family	4.0 d.u./ac.	10,890 sq.ft.
	Duplexes	6.0 d.u./ac.	14,000 sq.ft.
MD	Single Family	6.0 d.u./ac.	7,200 sq.ft.
	Duplexes	8.0 d.u./ac.	10,000 sq.ft.
	Attached, Zero Lot Line	8.0 d.u./ac.	10,000 sq.ft.
	Multi-Family	10.0 d.u./ac.	10,000 sq.ft.
HD	Single Family	8.7 d.u./ac.	5,000 sq.ft.
	Duplexes	12.0 d.u./ac.	7,000 sq.ft.
	Attached, Zero Lot Line	12.0 d.u./ac.	0.5 acres
	Multi-Family	20.0 d.u./ac.	10,000 sq.ft.

UC	Attached, Zero Lot Line Multi-Family, Commercial	14.0 d.u./ac. 24.0 d.u./ac.	10,000 sq.ft. 1.0 acre
HOD	Commercial		
ED	Industrial/Commercial		

**All the areas within the city have one of the urban zoning classifications as set forth above. All new development within the city limits will only be permitted if connected to the sanitary sewer system. The only exception is a septic system for one single family home with the future connection requirements specified in SMC 16.16.045. Therefore, if sanitary sewers are required, but will not be provided, there is essentially a prohibition on new development.**

A closer look at the phasing plan (Figure 1) proposed in Ordinance 1085-10 clearly reveals the inconsistency with the comprehensive plan map (figure2). There are portions of TAZs designated as currently available for sanitary sewers outside the city limits with no city comprehensive plan land use designation. Other TAZs designated for Phase I are not only outside the city limits, but within the Rural Urban Transition Area (RUTA,) and are even outside the UGA boundary.

Based on the TAZ map provided in the ordinance, the following nine conflicts with the adopted comprehensive land use plan map have been identified:

1. A portion of TAZ 10 (designated as *Currently Available Capacity*) is outside the city limits but within the UGA with no comprehensive plan designation.
2. All of TAZ 8 (designated as *Phase I*) is outside of the city limits and the UGA but within the RUTA (Rural Urban Transition Area) with no comprehensive plan designation.
3. A portion of TAZ 9 (designated as *Phase I*) is outside of the city limits and the UGA but within the RUTA with no comprehensive plan designation.
4. A portion of TAZ 16 (designated as *Phase I*) is outside the city limits but within the UGA with no comprehensive plan designation.
5. A portion of TAZ 19 (designated as *Phase I*) is outside the city limits but within the UGA with no comprehensive plan designation.
6. A portion of TAZ 23 (designated as *Phase I*) is outside the city limits and outside the UGA with no comprehensive plan designation.
7. A portion of TAZ 20 (designated as *Phase II*) is outside the city limits but within the UGA with no comprehensive plan designation.
8. All of TAZ 17 (designated as *Phase III*) is outside of the city limits and the UGA with no comprehensive plan designation. A portion of this TAZ is designated as RUTA while the balance is clearly Rural outside of the RUTA.
9. All of TAZ 18 (designated as *Phase III*) is outside of the city limits and the UGA with no comprehensive plan designation. A portion of this TAZ is designated as RUTA while the balance is clearly Rural outside of the RUTA.

**Clearly, under this phasing or prioritization approach, some urban zoned lands within the city limits with pending complete development applications are in the same Phase I category as areas outside the UGA TAZ 8 and portions of TAZ 9 and 23.**

## 5. Comprehensive Plan Analysis

The City of Sultan's initial pre-GMA Comprehensive Plan was adopted in 1982. The first comprehensive plan adopted under GMA was in 1994, with an update in March 2004. This was subsequently revised in September, 2008. The following policies and plan text from the currently applicable comprehensive plan are as follows:

Page 16. Paragraph 7.

*During the planning horizon, sewer service will be available to all properties in the City and in the City's urban growth area.*

***Proposed Ordinance 1085-10 with the phasing plan based on Traffic Analysis Zones proposes to serve areas outside the city limits and outside the UGA under Phase I. This is inconsistent with map and policies of the Comprehensive Plan. Unincorporated areas of the UGA do not even have a land use plan designation on the City's Future Land Use Map (Figure2). Sewer should be made available to all incorporated areas based on demand and consistency with the Comprehensive Plan first, then allocated to the remaining UGA concurrent with annexation when system capacities become available. Properties within the city limits which have complete and vested land use applications should be given priority status.***

Page 31.

Policy 14.

*Complete development of the available lands that are within the present city limits.*

***There is a pending complete and vested application on the Arndt property. Extending a sewer line to serve a unified development plan for 60 acres provides a means for reducing a substantial number of on-site septic systems in the northeast portion of the City as shown in Figure S-2 (attached).***

Page 50.

### Chapter 2.4 Housing.

*Sultan's expected population will require a diverse range of housing. The types and density of housing are crucial elements of this Plan. The City must be ready to accommodate the types of housing needed and, depending on the type and density will dictate how much land is allocated to different land use zones. This distribution will, in turn, affect how capital facilities and services will be provided.*

*There is, and will be, a need for additional affordable housing units to accommodate current and future populations. The term "affordable housing" applies to the adequacy of the housing stock to fulfill the housing needs of all economic segments of the population. The underlying assumption is that the marketplace will guarantee adequate housing for those in the upper economic brackets, but that some combination of appropriately zoned land, regulatory incentives, financial subsidies, and innovative planning techniques will be necessary to make adequate housing available for the needs of middle and lower income persons.*

The Comprehensive Plan-Future Land Use map has factored in population projections as equitably allocated throughout Snohomish County through the county-wide planning policy process. This process, as provided for in the GMA, is a means for distributing the county-wide employment and population forecasts for the 20 incorporated cities and unincorporated Snohomish County.

**Sultan, the remaining cities in Snohomish County, and the County have prepared GMA comprehensive plans based on a proportionate fair share of future employment and population growth. These population projections in turn have been converted to projected housing needs. The range of housing needs in the City have been carefully allocated through three different residential density classifications and corresponding zones: LMD, MD and HD with some higher density housing also permitted in UC.**

Proposed Ordinance 1085-10 puts new housing opportunities as the lowest priority in allocating utility requests at SMC 16.108.120(D)(4):

- i. *“Utility requests will be placed in one of the three capacity account categories in the table above- commercial, septic system replacement or residential in the following order of priority:*
  1. *Commercial development within the boundaries of LID-97*
  2. *Other commercial development*
  3. *Single family residential development within the city limits served by on-site sewage systems (i.e. septic system)*
  4. *Other residential development*
- ii. *“In the event request for sewer certificates of concurrency for commercial development exceed the allocated account of available capacity, the building and zoning official will withdraw available capacity first from the residential capacity account.*
  5. *If the residential capacity account is exhausted, the building and zoning official will withdraw available capacity from the septic system replacement account.*
  6. *In order to ensure enough total capacity to meet the population and employment allocations in the comprehensive plan, any withdraws from the accounts for residential development will be replaced in future phases to ensure the total capacity allocated to each account for Phases I-III does not change.*

**This proposed section of Ordinance 1085-10 is contrary to the housing policies set forth in the Comprehensive Plan on page 50 (as cited above), as well as on page 53:**

Page 53.

**Policy 6 Housing choice.**

*Expand housing district and code definitions to allow a broad choice of housing types, locations, tenures and prices. Provide housing opportunities for every type, age, physical and mental capability of household to include the family, the single-headed household, the individual, and the elderly. To the extent appropriate, recognize social area specialization by household and age group, and provide public services that reflect each areas special needs.*

**Policy 7 Innovative housing product definitions.**

*Amend the zoning ordinance to define an increased variety of housing products including detached single family, detached lot line, duplex, townhouse, multiplex, and garden apartments in addition to the single family and mobile home products now included in the prevailing ordinance.*

**Policy 8 Clustering and planned unit development provisions.**

*Amend the zoning code to allow clustering and planned unit developments where the objective would be to allow for a variety of housing products, create common open space, and/or conserve significant social characteristics of the land like wooded areas and scenic views.*

**Pending complete land use applications within the City limits should be prioritized to be included in the Currently Available Capacity phase.**

Page 52.

**Goal: Manage growth potentials.**

*Maintain a realistic balance between the land's capable, suitable potential potentials and Sultan's ability to provide housing choices and opportunities.*

***The proposed ERU allocation prioritizes commercial first and residential last. This is not a balanced land use approach as set forth in the comprehensive plan policies.***

**1 Growth management priorities**

*Determine the developable acreage contained within the prescribed Sultan urban growth area. Determine population or land use holding capacities and service requirements of proposed urban expansion areas. Establish priorities between the areas to control the extension of services and the timing of acceptable development proposals or public improvement projects.*

Page 56.

**Chapter 2.5 Land Use**

*The Land Use Map is shown on Figure LU-1. Adopted as part of the 2004 Update, it shows how residential, business, industrial, open space and other land uses are to be encouraged through 2025. The amount of land dedicated to these various uses must be founded on an analysis of future housing and employment needs, must protect critical environmental elements and must be capable of accommodation within the Urban Growth Area.*

Page 58.

*Sultan's expected population will require a diverse range of housing. The types and density of housing are crucial elements of the Plan. The City must be ready to accommodate the types of housing needed, and depending on the types and density will dictate how much land is allocated to different land use zones. This distribution will, in turn, affect how capital facilities and services will be provided. The distribution shown above reflects the City's intention to provide sufficient land within different residential areas to achieve this diversity and affordability. (emphasis added)*

Page 126.

**Onsite Sewage Systems:**

*About 409 parcels within the existing city limits have been identified by City staff that are believed to have been developed with on-site sewage systems. All developed parcels outside the city limits and within the UGA use on-site sewage systems. According to the GMA, no new on-site septic systems should be allowed in the UGA as new development is intended to be at urban densities which require sewers. The Growth Hearing Board has ordered that the City's revised capital facilities plan show how all unsewered portions of the UGA will be served by 2025.*

*Parcels with existing development using on-site sewage systems where a sewer is available are not required to connect to the sewer unless the on-site system fails, or the existing structure is remodeled, the property is sold or changes in ownership or the property owner wished to connect. Determination of on-site sewage system failure is the responsibility of the Snohomish Health District.*

*Where a new sewer pipe is extended past a parcel with existing development using an on-site sewage system, the property owner will be required to pay for the benefit conferred by the sewer pipe but will not be required to actually connect and pay monthly service charges unless or until the on-site system fails, the property owner wishes to connect, or the property is sold or changes ownership, or the existing structure is remodeled under a City building permit.*



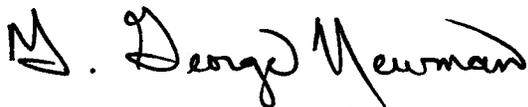
## **Summary & Conclusions**

1. The action of prohibiting development in certain portions of the city essentially constitutes a moratorium. As such, the statutory moratorium criteria specified in RCW 36.70A.390 must be followed.
2. The proposed concurrency application process is not consistent with the statutory requirements of RCW 36.70B.060. Any revision needs to be integrated and consolidated with the local development review process. Chapter 16.120 SMC, which was repealed, needs to be reconstructed with the concurrency process integrated as required.
3. The wastewater system capacity needs to be clearly identified and corresponding available ERU's needs to be accurately portrayed. This is the basis for allocation and needs to be accurately established. Table 1 and specific ERU numbers should not be codified into the ordinance.
4. The phasing plan (Figure 1) is based on a map grid whose purpose was for analyzing traffic and trip generation. Any phasing plan for infrastructure, including sanitary sewer, should be based on and support the adopted comprehensive land use plan.
5. The proposed ordinance is inconsistent with cited housing and land use policies in the adopted comprehensive plan. Development regulations are required to be consistent with the plan and serve to implement the plan.
6. Without well-planned housing projects on the larger parcels toward the outer boundaries of the city limits, the sewer lines will not be extended. This realistically limits the ability and the incentive to convert the approximately 400 homes within the city limits currently on septic systems.
7. The preliminary plat and planned unit development application has been deemed complete and is vested to codes and policies in effect on the date determined complete.

The points raised herein should be seriously considered before acting on proposed Ordinance 1085-10.

Sincerely,

Newman & Associates, LLC

A handwritten signature in black ink that reads "H. George Newman". The signature is written in a cursive style with a large initial "H" and a long, sweeping underline.

H. George Newman, AICP

cc: Deborah Knight, City Administrator  
Bob Martin, Planning Director