

**BEFORE the HEARING EXAMINER for the
CITY of SULTAN**

DECISION

FILE NUMBER: PP19-005

APPLICANT: Cobble Hill, LLC
ATTN: Matt Anderson/Tim Albers
6003 29th Avenue NE
Seattle, WA 98115

TYPE OF CASE: Preliminary subdivision (*Cobble Hill*)

STAFF RECOMMENDATION: Approve subject to conditions

EXAMINER DECISION: APPROVE subject to conditions

DATE OF DECISION: July 23, 2020

INTRODUCTION¹

Cobble Hill, LLC (“the LLC”) seeks preliminary approval of *Cobble Hill*, a 128-lot single family residential subdivision of a 24.9 acre site zoned Moderate Density (“MD”).

The LLC filed the application on December 23, 2019. (Exhibits 1; 2²) The Sultan Department of Community Development (“DCD”) deemed the application complete on December 26, 2019. (Exhibit 7) DCD issued a substitute Notice of Application on March 2, 2020.³ (Exhibit 9; and testimony)

The subject property is located at 31129 124th Street SE. Its Assessor’s Parcel Number is 28082900200600 (“Parcel 006”). (Exhibit 23)

The Sultan Hearing Examiner (“Examiner”) viewed the subject property on May 18, 2020.

The Examiner held an open record hearing on June 1, 2020. The hearing was conducted remotely using the “Zoom” program due to assembly restrictions attendant to the current COVID-19 pandemic. DCD gave

¹ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

² Exhibit citations are provided for the reader’s benefit and indicate: 1) The source of a quote or specific fact; and/or 2) The major document(s) upon which a stated fact is based. While the Examiner considers all relevant documents in the record, typically only major documents are cited. The Examiner’s Recommendation is based upon all documents in the record.

³ Exhibit 9 contained the content necessary to substitute for the Notice of Application which, as issued, did not comply with code requirements. (Testimony)

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notice of the hearing as required by the Sultan Municipal Code (“SMC”). (Exhibit 10) The Examiner continued the hearing to June 15, 2020, at the LLC’s request to allow it to provide additional information to correct code compliance shortcomings.⁴ When the Examiner reconvened the hearing on June 15th, the LLC requested a further continuance. The Examiner continued the hearing to July 14, 2020.⁵ The Examiner reopened and concluded the hearing on July 14, 2020.

The following exhibits were entered into the hearing record during the hearing:

- Exhibits 1 - 16: As listed on the prehearing Exhibit List prepared by DCD
- Exhibit 17: E-mail, Judy Heydrick to Examiner, May 29, 2020
- Exhibit 18: Combined: 1) Sultan Vegetation Removal Application-Development Permit; and 2) Department of Natural Resources Forest Practices Application/Notification
- Exhibit 19: Critical Area Tract and Lot Averaging letter, Neil Latta, June 29, 2020
- Exhibit 20: Revised Sheet C-1 of Exhibit 6, dated June 29, 2020
- Exhibit 21: Revised Sheet C-3 of Exhibit 6, dated June 29, 2020
- Exhibit 22: Revised Exhibit 13.1, dated June 3, 2020
- Exhibit 23: Supplemental Staff Report for July 14, 2020, public hearing

Preliminary subdivision applications generally are to “be approved, disapproved or returned to the applicant for modification or correction within 90 days [of the date the application is complete], unless the applicant consents to the extension of such time period ...” [SMC 19.08.060(A)] DCD believes that the Examiner’s initial open record hearing was held within the 90th net review day. (Testimony)

The action taken herein and the requirements, limitations and/or conditions recommended for imposition by this recommendation are, to the best of the Examiner’s knowledge or belief, only such as are lawful and within the authority of the Examiner to take and recommend pursuant to applicable law and policy.

FINDINGS OF FACT

1. The application before the Examiner at the initial June 1st hearing proposed a 114-lot single-family residential subdivision of Parcel 006. (Exhibit 6) During that hearing the Examiner identified eight areas where the proposal appeared to lack compliance with the SMC. Those eight areas and the remedial actions taken by the LLC prior to the July 14th hearing are:
 - A. Confirmation was needed as to whether the western steep slope was classified as a landslide hazard area under the SMC because if it was, certain aspects of the proposed plat did not comply with the SMC.

⁴ Written notice of the hearing continuance was not required since the continuance was announced during the initial hearing and was to a date, time and method (“Zoom”) certain.

⁵ Written notice of the hearing continuance was not required since the continuance was announced during the initial hearing and was to a date, time and method (“Zoom”) certain.

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Action: The LLC confirmed that the western slope does meet the criteria of a landslide hazard area. (Testimony) Design revisions were made to the proposed plat. (Exhibits 20; 21)

- B. The authors of the Geotechnical Investigation Report (Exhibit 13.1) incorrectly assumed that Parcel 006 was located in unincorporated Snohomish County, resulting in incorrect code citations and use of incorrect factors of safety in the slope stability analysis.

Action: A replacement Geotechnical Investigation Report was prepared and submitted. (Exhibit 22) Using the proper slope stability factors of safety, the replacement report concludes that the steep western slope is safe if a top-of-slope setback of 25 feet for most of the length of the slope and 30 feet near the south end of the site is maintained. (Exhibit 22, pp. 24 – 26)

- C. The required buffer for a slope of 40% or greater is the height of the slope, but it may be reduced to not less than 25 feet in certain circumstances. [SMC 17.10.330(A)(4)] The slope buffer on Exhibit 6 was, for the most part, only 20 feet wide.

Action: The LLC prepared a revised plat on which the minimum slope setback is 25 feet as noted in Finding of Fact 1.B, above. (Exhibits 20; 21)

- D. If the area encumbered by a steep slope and its required buffer is one acre or more, that area must be placed in a separate tract for protection. [SMC 17.10.080(A)(1)] The steep slope on Exhibit 6 was in an open space tract, but its buffer was, for the most part, just an easement across the rear of the lots backing up to the slope.

Action: The LLC determined that the steep slope and its required buffer encumbered one acre or more of Parcel 006. (Testimony) The LLC prepared a revised plat on which the steep slope and its entire buffer are contained within a separate protective tract (Tract 999). (Exhibits 20; 21)

- E. It was unclear whether the record contained a code-compliant critical areas report.

Action: DCD testified that the Wetland and Stream Reconnaissance (Exhibit 13.3), Hydrological Investigation (Exhibit 13.4), and the Geotechnical Investigation (Exhibit 22) collectively met the content requirements for a critical areas report. (Testimony)

- F. The original proposal contemplated phased development of *Cobble Hill*. (Exhibit 6) Subsection 19.08.150(F) SMC requires that a subdivision applicant proposing phased development must include a draft development agreement with the preliminary subdivision application. The LLC had not presented a draft development agreement.

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Action: The LLC has withdrawn the phased development aspect of the proposal. (Exhibits 20; 21; and testimony)

- G. The Concurrency Certificate (Exhibit 12) and DCD-Recommended Condition 10 (Exhibit 1) both relied on an off-site sewer system mitigation concept rejected by the Examiner in four recent subdivision cases.

Action: DCD revised Recommended Condition 10. (Exhibit 23)

- H. The DCD Staff Report stated that a vegetation removal permit had been issued to log the site. (Exhibit 1, p. 1) No such permit was in the record. The Examiner asked that a copy be provided in order to provide assurance that no logging of the landslide hazard area had been approved.

Action: A copy of a Sultan Vegetation Removal Application-Development Permit and a Department of Natural Resources Forest Practices Application/Notification were submitted. Logging of the steep slope and its required buffer have not been authorized under either permit. (Exhibit 18)

2. As a result of the above actions, the LLC found that it qualified for lot size averaging since the steep slope and its required buffer encumbered 13.96% (14%) of the total site area, exceeding the 10% threshold for use of lot size averaging. Thus, in the process of increasing the width of the steep slope buffer, the LLC made slight adjustments to the plat layout, applied lot size averaging, and developed a 128-lot plat. (Exhibits 20; 21) The LLC correctly calculated lot yield under the lot size averaging code provisions. The maximum permissible yield under lot size averaging for Parcel 006 is 151 lots. The proposed yield is well below the allowed maximum. All proposed lots meet SMC area and dimension requirements for a lot size averaged subdivision. (Exhibits 19; 20; 21; 23, pp. 4 - 8)
3. Parcel 006 is a rectangular tract located on the north side of 124th Street SE at its western end. The very west edge and the northwest corner of Parcel 006 are encumbered by a steep down slope; the remainder of the site exhibits a gentle to moderate slope generally trending south – southwest. A 225-foot wide Bonneville Power Administration (“BPA”) high voltage transmission easement containing two lines crosses the southern third of the property in a general east-southeast/west-northwest alignment. (Exhibit 21)
4. Parcel 006 is bordered on its east by the *SkyRidge Estates* subdivision, presently under construction. *Rosewood Estates*, a small, single-family residential subdivision, lies on the south side of 124th Street SE opposite Parcel 006. Parcel 006 is bordered on the west by the City-owned water plant property. The property to the north is undeveloped, forested land in unincorporated Snohomish County. It lies outside the City’s Urban Growth Area. (Exhibits 1; 8; 20; 21; 22, p. 4)

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5. The currently proposed plat will create a public street network intersecting 124th Street SE in alignment with the current Rosewood Drive/124th Street SE intersection and connecting with the *SkyRidge Estates* street system to the east. A looped street system will provide access to most of the lots; nine lots south of the BPA easement will be served by a short cul-de-sac. Stormwater infiltration facilities will be located within the BPA easement. Tracts 993, 994, and 995, all located outside of the BPA easement, will meet the code requirement for on-site recreation. The LLC plans to see if BPA will allow it to develop some trails within the BPA easement to augment the recreation facilities within Tracts 993, 994, and 995. The plat will be served by public water and sewer. (Exhibits 1; 6; 20; 21; 23)
6. The site exhibits a mixed deciduous/coniferous forest with a varied understory. The LLC has received the necessary permits to log the site except for the area that is regulated as steep slope and its buffer. No other regulated critical areas exist on or in the near vicinity of Parcel 006. (Exhibits 13.3; 18)
7. “Each proposed subdivision shall be reviewed for its compliance with all of the criteria and standards listed in [SMC 19.08.080(A)].” [SMC 19.08.080(A)] Those criteria and the facts relating to each are as follows:
 - “1. The proposal conforms to:
 - “a. The goals, policies, criteria and plans set forth in the city of Sultan comprehensive plan;”

Facts: Parcel 006 is designated Moderate Density on the adopted Comprehensive Plan. The Moderate Density designation envisions residential development at between 6 – 10 dwelling units per acre. (Exhibit 1, pp. 2 & 5) The proposed density is slightly more than 5 dwelling units per acre ($128 \div 24.9 = 5.14$) – just under the lower end of the Moderate Density designation.
 - “b. Sultan water system plan;”

Facts: The City has confirmed water availability. (Exhibit 1, p. 5)
 - “c. Sultan general sewer plan;”

Facts: See Finding of Fact 8 *et seq.*, below.
 - “d. Sultan critical areas regulations;”

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Facts: The only regulated critical areas on or in close proximity to Parcel 006 are the steep slopes along the western edge of the site. ⁶ (Exhibits 1; 13.3; 13.4; 21) The current plat design (Exhibits 20; 21) provides the code-required top-of-slope buffer. (Exhibit 22)

“e. Sultan concurrency management system;”

Facts: See Finding of Fact 8 *et seq.*, below.

“f. Sultan stormwater management performance standards;”

Facts: On-site soils are suitable for infiltration of stormwater runoff. The preliminary stormwater management plan contemplates collection and on-site infiltration of stormwater runoff. The stormwater management plan has been developed in compliance with the applicable manual. (Exhibits 16; 22; and testimony)

“g. Sultan shoreline master program;”

Facts: Parcel 006 is not located within the jurisdictional area of the Shoreline Management Act of 1971.

“h. Stormwater Management Manual for Western Washington;”

Facts: The stormwater management plan has been developed in compliance with the applicable manual. (Exhibits 16; 22; and testimony)

“i. Sultan park recreation and open space plan;”

Facts: Section 16.62.040 SMC requires that subdivisions provide recreation space totaling at least 250 SF per lot. Based on the 128 currently proposed lots, 32,000 SF is required. Section 16.62.050 SMC requires residential developments to provide recreation facilities within the required recreation areas based on the number of proposed lots. The current proposal contains 32,002 SF of designated recreation areas (Tracts 993, 994, and 995). (Exhibits 20; 21)

Section 16.62.060 SMC requires that at least five percent of the total site area be set aside as open space in any subdivision proposing more than 10 lots. That requirement applies here. The total site area is 1,054,334 SF, of which 5% is 53,940 SF. The proposed open space tracts total 249,373 SF. (Exhibits 20; 21)

⁶ Parcel 006 is located in a mapped High Aquifer Vulnerability Area. However, a hydrogeological investigation found that “the aquifer under the site is confined and not vulnerable to contamination from outside sources.” (Exhibit 13.4, p. ii) Recharge of the aquifer occurs in a heavily forested area north of Parcel 006 at a higher elevation. (*Ibid.*)

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- “2. The proposal conforms to the development standards set forth in SMC Title 16, Zoning Code;”

Facts: All lots conform to zoning standards. (Exhibit 23, especially pp. 4 & 5)

- “3. The proposal conforms to the requirements of this chapter and Public Works Engineering, Design, and Development Standards (EDDS), and Chapter 19.42 SMC, Public Facility Requirements;”

Facts: The proposed streets conform to adopted standards. (Exhibits 1; 6)

- “4. The proposed street system conforms to the Public Works Design and Development (*sic*) Standards (EDDS);”

Facts: The proposed streets conform to adopted standards. (Exhibits 1; 6)

- “5. The proposed subdivision is laid out in such a manner as to provide for the safe, orderly and efficient circulation of traffic;”

Facts The proposed street system provides a connection to a street stub in *SkyRidge Estates*; intersects 124th Street SE in alignment with Rosewood Drive; and maintains access into the City’s water plant site to the west. (Exhibits 20; 21)

- “6. The proposed subdivision will be adequately served with city-approved water and sewer and other utilities appropriate to the nature of the subdivision;”

Facts: See Item 1.b, above, regarding water availability; see Finding of Fact 8 *et seq.*, below, regarding sewer service.

- “7. The layout of lots and their size and dimensions take into account topography and vegetation on the site in order that buildings may be reasonably sited, to minimize disruption of the site, topography, trees and vegetation;”

Facts: The site will require very little grading because of the uniformity of the surface within the development area. Most trees within the development area will have to be removed due to the small lot sizes. (Exhibits 6; 20; 21)

- “8. Identified hazards and limitations to development have been considered in the design of streets and lot layout to assure street and building sites are on geologically stable soil considering the stress and loads to which the soil may be subjected;”

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Facts: No hazards have been identified other than the steep slope on the western edge of the site. That slope has been addressed consistent with adopted code requirements. (Exhibits 20 – 22)

8. Chapter 16.70 SMC, Concurrency management system, requires issuance of a Certificate of Concurrency (“Certificate”) for many types of land use applications, including those seeking preliminary subdivision approval. [SMC 16.70.030] “The certificate of concurrency identifies available capacity based on the information submitted by the applicant and capacity information available to the city at the time the certificate is issued.” [SMC 16.70.020(A)] A Certificate must contain nine elements, one of which is a statement of “[A]ny mitigation required by the applicant at the applicant’s cost for concurrency.” [SMC 16.70.150(A)(2)(h), emphasis added] “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.” [SMC 16.70.070(A)] The SMC provides a right of administrative appeal from denial of a Certificate. [SMC 16.70.150(A) & (B)(3)]
9. Wastewater (sewer) system adequacy is a component of the concurrency management system. [SMC 16.70.090(C)] Section 16.70.120 SMC, Concurrency determination – Wastewater, contains guidance for determining whether a proposed development will meet concurrency with respect to impact on the sewer system:
 - D. The city of Sultan will provide level of service information as set forth in the city’s comprehensive plan. 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.
 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, quantity of utility service required (average flow and peak periods), special treatment or hazards involved, and compliance with applicable requirements of the Sultan Municipal Code and other 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 and wastewater treatment plant, less the capacity which is needed, can accommodate the proposed development while allowing city sewer service to remain within the city’s level of service standards. If so, the building and zoning official will provide the applicant with a sewer certificate of concurrency.
 4. The building and zoning official will deny the sewer certificate of concurrency and underlying development application if there is insufficient capacity in the city’s sewer system, 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 the development.

(Emphasis added)

10. Certificates have been issued in recent years for at least five significant preliminary subdivisions served by Sultan Basin Road: *SkyRidge Estates* in 2018 and *Daisy Meadows*, *Wyndham Highlands*, *Wyndham Highlands 2*, and *Wyndham Highlands 3* in 2019. The total number of currently approved lots in *SkyRidge Estates*, *Daisy Meadows*, *Wyndham Highlands*, *Wyndham Highlands 2*, and *Wyndham Highlands 3* is 543.⁷ (Official notice)

Each of those five subdivisions was subject to Chapter 16.70 SMC. A Certificate was issued for each of the five preliminary subdivision applications. Off-site sewer improvements to mitigate impacts of each development were addressed in each Certificate and in each preliminary subdivision decision. The consideration of those five cases overlapped and became intertwined. A review of the history of those five subdivisions is required to understand a concurrency issue with *Cobble Hill*.

- A. A Certificate was issued for *SkyRidge Estates* on March 23, 2018. The *SkyRidge Estates* property was not served by the City sewer system; the developer would have to install significant new sewer mains to reach the nearest terminus of the City system. Engineering consultant RH2 evaluated the expected impact of sewage flows from *SkyRidge Estates* on the existing, downstream City sewer system. RH2 found that “three segments of existing sewer mains were ... technically inadequate under current conditions. ... RH2 suggested that if improvement of those segments is not done in conjunction with development of *SkyRidge Estates*, they should be closely monitored.” The Certificate required “some off-site improvements” to the City sewer system. [Official Notice: May 7, 2018, Decision, PP2017-001, p. 7] That led to *SkyRidge Estates* Condition 11 on the Examiner’s May 18, 2018, approval of the preliminary subdivision:

Prior to Certificate of Occupancy of the first phase of single family residential building permits (61 single family lots), the developer shall complete all off-site improvements required by the Sultan Municipal Code and identified in Title 13 and the RH2 Hydraulic modeling of the City’s sewer system as listed below.

- a. CIP-WW1-Replace approximately 475 LF of 12-inch-diameter gravity main along US Highway 2 with 24-inch-diameter pipe.
- b. CIP DF1A-Replace approximately 375 LF of 15-inch-diameter gravity main along Main Street with 27-inch-diameter pipe.

⁷ 258 + 70 + 171 + 30 + 14 = 543

- c. CIP DF1C-Replace approximately 1,275 of 15-inch-diameter gravity main along Main Street with 27-inch diameter pipe.

The developer's cost may be off-set by any grant funds obtained by the City for these projects to the extent approved by the City Council.

[*Op. cit.*, emphasis added] The total length of those three segments is 2,125 feet.⁸

- B. The Certificate for *Daisy Meadows* was issued on August 16, 2019. The *Daisy Meadows* Certificate stated that sewage flows from *Daisy Meadows* would exacerbate existing deficiencies in the sewer system. The Certificate concluded that some unspecified off-site sewer system improvements might be necessary. [Official notice: September 6, 2019, Decision, PP19-001, pp. 7 & 8]

The first open record hearing for *Daisy Meadows* was held on August 23, 2019. DCD recommended an "open-ended" off-site sewer improvement condition based on the August 16, 2019, Certificate. Applicant Acme Homes objected to the imprecise nature of the recommended condition. The Examiner addressed the issue in his September 6, 2019, Decision. The Examiner noted the other pending subdivisions in the area and opined that a collaborative analysis would benefit all. In the absence of such an analysis and given the evidence in the record, the Examiner concluded that he had but two choices: Impose the imprecise condition recommended by DCD or return the application to Acme Homes to specifically identify the off-site improvements needed to off-set *Daisy Meadows*' impact. The Examiner chose the former route and imposed Condition 11. [Official notice: September 6, 2019, Decision, PP19-001] Acme Homes and DCD each filed requests for reconsideration challenging Condition 11 (and Condition 13, unrelated to the off-site sewer issue). [Official notice] Those requests led the Examiner to reopen the hearing on November 21, 2019, to receive additional evidence. (See subparagraph E, below.)

- C. The open record hearing for *Wyndham Highlands 3* was held on September 19, 2019. DCD had yet to issue a Certificate, so the Examiner held the record open until September 23, 2019, for submittal of a Certificate. The Certificate for *Wyndham Highlands 3* was issued on September 23, 2019. The Certificate stated that it relied on an August 5, 2019, analysis by the City's consulting engineer (MurraySmith) which found that off-site sewer improvements might be required; the Certificate deferred specifying those improvements until construction plan review. MurraySmith's analysis was attached to the Certificate as Attachment B. That analysis pinpointed flooding at one sewer manhole in 1st Street as a problem that would be created by the addition of flows from *Wyndham Highlands 3* and recommended that that manhole be sealed.⁹

⁸ 475 + 375 + 1,275 = 2,125

⁹ That specific manhole was not again mentioned in any of the subsequent documents regarding off-site sewer system impacts.

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DCD had not recommended imposition of a specific off-site sewer impact mitigation condition during the hearing. Land Resources objected to a vaguely worded condition that DCD had recommended; the Examiner concurred and instead imposed what became Condition 2.e in the Examiner's October 7, 2019, *Wyndham Highlands 3* Decision:

Prior to occupancy of any homes in the development, the developer shall have sealed or caused to be sealed the sewer manhole on 1st Street between Ash and Alder Streets.

[Official notice, October 7, 2019, Decision, PP19-002]

- D. The Certificate for *Wyndham Highlands* was issued on November 13, 2019. The Certificate stated that the sewer system concurrency analysis for *Wyndham Highlands* was based on the concurrency analysis completed in 2017 for *SkyRidge Estates*. The Certificate stated that the *SkyRidge Estates* analysis found that the sewer system would surcharge unless 1,650 feet of pipe (6.6 feet of pipe for each of 249 lots in *SkyRidge Estates*) beneath Main Street between 8th Street and 4th Street was upgraded.¹⁰ The Certificate then created two options for *Wyndham Highlands*: Replace 6.6 feet of sewer main per lot beneath Main Street, which when extended to the nearest manhole came to 1,325 feet of sewer main, on the "upstream" side of the *SkyRidge Estates* segment; or pay \$2,640.00 per lot "based on the engineer's estimate of how much it will cost the city to correct the capacity issue for the proposed development." \$2,640.00 per lot for 171 lots would generate \$451,440.00. The Certificate does not provide the cost of the repairs, so the basis for the per lot calculation cannot be verified from the *Wyndham Highlands* record. [Official notice: March 23, 2020, Decision, PP19-003]

¹⁰ *SkyRidge Estates* was approved as a 206-lot preliminary plat. There were three existing single-family residences on the property when the application was filed, none connected to the City sewer system because the system ended a considerable distance from the *SkyRidge Estates* site. Thus, the Examiner approved 203 new lots, but 206 new sewer system connections. On June 29, 2018, DCD approved a major modification to increase the number of lots to 258, for a net total of 255 new lots, but 258 new sewer system connections. The Certificate of Concurrency was based on 206 lots (of which 203 were new), not on either 258 or 255 new lots. The Certificate's analysis seems to have incorrectly accounted for the number of *SkyRidge Estates* lots resulting from the July, 2018, upward adjustment in the number of lots.

The three segments of sewer in the downtown area identified in the *SkyRidge Estates* Certificate as inadequate totaled 2,125 linear feet (not 1,650 feet). [Official Notice: May 8, 2018, Decision, pp. 7, 8, & 25]

The Examiner's approval of *SkyRidge Estates* was subject to 38 conditions. [Official Notice: May 8, 2018, Decision, pp. 23 – 28] DCD's June 29, 2018, *SkyRidge Estates* adjustment was subject to 10 conditions. Some of the 10 major adjustment conditions go well beyond the topic of increasing the number of lots and replacing on-site park tracts with a fee-in-lieu; some topically overlap original approval conditions. Whether DCD intended that they supplement or replace the original conditions is not intuitively obvious from the document. If the intent was to replace, it was not stated and would have gone far beyond the scope of the requested adjustments.

- E. The Examiner reopened the *Daisy Meadows* hearing on November 21, 2019, to address Condition 11 (and 13). The evidence presented in that hearing indicated that the City was conducting further evaluation of its sewer system. Exhibit 27.A in that case, which was submitted during the reconsideration process, indicated that, based upon the formula used when off-site sewer impact mitigation fees were set for the *SkyRidge Estates* preliminary subdivision, each lot would be responsible for upgrading 6.6 feet of sewer pipe at an estimated cost of \$2,640.00. \$2,640.00 per lot for 70 lots would generate \$184,800. In his Revised Decision After Reconsideration issued on December 4, 2019, the Examiner substantially revised Condition 11 to reflect the new evidence regarding off-site sewer impact:

The City has determined that certain improvements may be required to resolve sewer main deficiencies pertaining to this development. Prior to final plat approval, the developer shall decide which of the following options it will choose with respect to off-site sewer improvements. However, if the City updates its sewer model and the City finds that off-site sewer improvements are not necessary or are smaller in scale than currently proposed, the City may reduce or eliminate the amount of sewer pipe or the sewer improvement in-lieu fee in either of the options listed below. In no event shall the options below be increased.

Option 1:

The developer shall replace sections of the deficient off-site sewer main not to exceed 6.6 feet per lot. Said improvements shall be identified by the City. Installation shall occur prior to final plat approval.

OR

Option 2:

The developer shall pay a sewer improvement in-lieu fee not to exceed \$2,640.00 per lot. The payment in-lieu fee may be deferred by the developer until the 25th building permit has been issued. The 25th building permit shall not be issued until all deferred in-lieu fees have been paid in full.

The Certificate was not updated as *Daisy Meadows* worked its way through the reconsideration process. [Official notice: December 4, 2019, Decision, PP19-001]

- F. The first hearing for *Wyndham Highlands* was held on November 22, 2019. Based on the *SkyRidge Estates* model, DCD and applicant Land Resources recommended that a condition be imposed requiring upgrade of 6.6 feet of sewer main per lot or payment of an impact mitigation fee of \$2,640.00 per lot. On December 6, 2019, the Examiner Returned *Wyndham*

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Highlands for Modification for reasons unrelated to off-site sewer issues. [Official Notice: December 6, 2019, Decision, PP19-003] *Wyndham Highlands* came on for a second hearing on March 18, 2020. (See Subsection H, below.)

- G. The Certificate for *Wyndham Highlands 2* was issued on January 17, 2020. That Certificate was based on an analysis by MurraySmith dated December 12, 2019, supplemented by a letter dated January 17, 2020. MurraySmith identified three pipe segments beneath Main Street that required upsizing to handle increased flows:

These pipe segment deficiencies are noted in the City's General Sewer Plan (2019) and included in the City's Sewer Capital Improvement Plan (CIP) as projects CIP DF1A and DF1C,

MurraySmith noted that *SkyRidge Estates* had previously been conditioned to fix those three segments. It concluded that when those segments were fixed no further sewer system improvements would be required to handle sewage flows from *Wyndham Highlands 2*. The Certificate did not specify a project cost or per lot share. [Official notice: March 12, 2020, Decision, PP19-004]

The open record hearing for *Wyndham Highlands 2* was held on March 5, 2020. DCD recommended, the applicant agreed to, and the Examiner imposed what became Condition 10 in the Examiner's March 12, 2020, Decision:

To address the offsite sewer deficiencies, the developer shall do one of the following:

- a. The developer may construct improvements to the sewer system, including at least 198 feet (6.6-feet per lot) of 27-inch pipe on the section beneath Main Street. This must be completed or a security accepted for its constructed prior to the recording of the final plat; or
- b. The developer may pay a per lot fee of \$3,000 (an equal proportion of the \$90,000 improvement cost) prior to issuance of each building permit; or
- c. If the City has established a new general connection charge which collects money for this project prior to application of a building permit, the developer shall pay the new connection fee and no other action is required to address the Main Street Sewer line.

[Official notice: March 12, 2020, Decision, PP19-004] \$3,000.00 per lot for 30 lots would generate \$90,000.00. The origin of the 198-foot pipe segment length, the \$3,000 per lot fee, or the \$90,000.00 improvement cost was not disclosed in the record of that hearing.

- H. *Wyndham Highlands* came on for a second hearing on March 18, 2020. The Certificate had not been updated. The evidence presented in that hearing indicated that MurraySmith had found sewer main deficiencies beneath a segment of Main Street. MurraySmith again mentioned the *SkyRidge Estates* condition. DCD and the applicant agreed to a modified version of the condition agreed to in *Wyndham Highlands 2*, but with a vastly different dollar amount. That agreed language became Condition 10:

To address the offsite sewer deficiencies, the developer shall do one of the following:

- a. The developer may construct improvements to the sewer system, including at least 198 feet (6.6-feet per lot) of 27-inch pipe on the section beneath Main Street. This must be completed or a security accepted for its constructed prior to the recording of the final plat; or
- b. The developer may pay a per lot fee of \$526.32 (an equal proportion of the \$90,000 improvement cost) prior to issuance of each building permit; or
- c. If the City has established a new general connection charge which collects money for this project prior to application of a building permit, the developer shall pay the new connection fee and no other action is required to address the Main Street Sewer line.

[Official notice: March 23, 2020, Decision, PP19-003] \$526.32 per lot for 171 lots would generate \$90,000.72. The origin of the \$90,000.00 improvement cost was not disclosed in the record of that hearing. DCD later asserted that the \$526.32 per lot figure “appears to be an error on the Hearing Examiner’s part.”

- I. *Daisy Meadows, Wyndham Highlands, Wyndham Highlands 2, and Wyndham Highlands 3* each sought major adjustments to their approved preliminary plats: Each sought to increase the number of lots and sought a change in their off-site sewer impact mitigation conditions. Those four requests were consolidated and came on for hearing on April 16, 2020. The lot number increase portion of the requests is not relevant to the off-site sewer impact issue and will omitted from this summary. After a lengthy analysis, most of which is repeated in this Decision, the Examiner imposed a condition on all four projects patterned after the *SkyRidge Estates* condition, the only one which the Examiner concluded complied with the SMC:

Prior to occupancy of the first single family residence in the subdivision, the following improvements to the existing off-site sewer system shall have been completed to ensure concurrency as required by Chapter 16.70 SMC:

- a. CIP-WW1-Replace approximately 475 LF of 12-inch-diameter gravity main along US Highway 2 with 24-inch-diameter pipe.

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- b. CIP DF1A-Replace approximately 375 LF of 15-inch-diameter gravity main along Main Street with 27-inch-diameter pipe.
- c. CIP DF1C-Replace approximately 1,275 of 15-inch-diameter gravity main along Main Street with 27-inch diameter pipe.

This condition does not obligate the developer to fund completion of the required improvements on its own. Costs may be shared with other developers obligated to make the same improvements; a late-comers reimbursement system may be created if approved by the City Council. This condition only requires that the necessary improvements be completed before sewage begins to flow from the development into the City's sewer system.

[Official notice: May 5, 2020, Decisions, PP19-001, PP19-002, PP19-003, and PP19-004] (The applicant for *Wyndham Highlands 3* subsequently asked to withdraw its request to change its off-site sewer impact mitigation condition, a request which the Examiner granted on May 13, 2020.)

- 11. The Certificate for *Cobble Hill* was issued on February 7, 2020.¹¹ The Certificate stated that the sewer system concurrency analysis for *Cobble Hill* was based on the MurraySmith January, 2020, analysis (Attachment B to the Certificate) and the concurrency analysis completed in 2017 for *SkyRidge Estates*. The Certificate stated that the *SkyRidge Estates* analysis found that the sewer system would surcharge unless 1,650 feet of pipe (6.6 feet of pipe for each of the incorrectly calculated 249 new lots in *SkyRidge Estates*) beneath Main Street between 8th Street and 4th Street was upgraded. The Certificate then created two options for *Cobble Hill*: Replace 6.6 feet of sewer main per lot (stated as 760 feet in the Certificate but actually 752.4 feet for the 114 lots proposed at that time) beneath Main Street, which would need to be extended an unstated distance to the nearest manhole; or pay \$2,640.00 per lot “based on the engineer’s estimate of how much it will cost the city to correct the capacity issue for the proposed development.” (Exhibit 12, quote from p. 3) \$2,640.00 per lot for the 114 lots then proposed would generate \$300,960.00. The Certificate does not provide the cost of the repairs, so the basis for the per lot calculation could not be verified from that record.
- 12. DCD’s original Staff Report for *Cobble Hill* addressed the off-site sewer impact situation with Recommended Condition 10:

Prior to Certificate of Occupancy of the first single-family residential building permit the applicant shall do one of the following:

¹¹ Based upon an apparent scrivener’s oversight in the introductory paragraph of the Certificate (where the project which is the subject of the Certificate is referred to as “Wyndham Highlands”), it appears that the *Cobble Hill* Certificate was modified from the *Wyndham Highlands* Certificate. The wastewater discussion is very similar.

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- i. Replace 753 feet (6.6-feet per lot) of 15-inch sewer pipe with 27-inch pipe on the section beneath Main St where the City has identified insufficient capacity.
- ii. Pay the City \$300,960 to install sewer improvements to provide additional capacity in the sewer system downstream of the proposed development.
- iii. If the City has established a new general connection charge which collects money for this project prior to application of a building permit, the developer shall pay the new connection fee and no other action is required to address the Main Street Sewer line. However, no single-family residences within the project may be occupied until the sewer improvements have been constructed.

(Exhibit 1, p. 14) (This condition was written when the proposal was for 114 lots, not the current 128 lots.)

DCD's Supplemental Staff Report proposes without explanation a different off-site sewer system impact mitigation condition:

Prior to Certificate of Occupancy of the first single-family residential building permit the applicant shall replace 845 feet (6.6-feet per lot) of 15-inch sewer pipe with 27-inch pipe on the section beneath Main St between US2 and 1st St where the City has identified insufficient capacity.

(Exhibit 23, p. 10, Recommended Condition 10) DCD testified that it had revised the condition to reflect the new number of proposed lots and to eliminate the per lot fee option. (Testimony)

DCD testified that the City has hired an engineer to design the Main Street sewer main replacement project and hopes to have it built "right away." The City is looking to some developer to construct the entire project using a late-comers agreement process to recoup costs above its fair share. DCD stated that no additional residential units that would contribute flows to that section of the City sewer system can be constructed until the main is replaced. (Testimony)

13. The "City of Sultan General Sewer Plan" ("GSP"), prepared by RH2 consultants, was issued in draft form in May, 2018, and in final form in March, 2019.¹² No part of the GSP was entered into the proceedings described in the preceding Findings of Fact nor in the current hearing, although some of its proposed projects were referred to.

The GSP uses Equivalent Residential Units ("ERUs") "for domestic sewer flow forecasting and planning purposes. One ERU is equivalent to the amount of domestic sewer flow generated by one

¹² The GSP is a public domain document adopted by the City. The Examiner takes official notice of its content.

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single-family residence.” [GSP, p. 4-9] The average annual flow rate in the City sewer system is 197 gallons per day (“gpd”) per ERU. [GSP, p. 4-12, Table 4-10] The GSP projects residential sewer population to increase from 3,882 to 6,040 between 2014 and 2026. [GSP, p. 4-13, Table 4-11] Average annual flow through the wastewater treatment plant is projected to rise from 330,000 gpd in 2014 to 658,000 gpd in 2026. [GSP, p. 4-15, Table 4-13]

The GSP divides the City into “Sewer Drainage Basins.” *Daisy Meadows*, *Wyndham Highlands*, *Wyndham Highlands 2*, and *Wyndham Highlands 3* are all located in Basin H; *SkyRidge Estates* is located in Basin T. [GSP, Figure 206] The average annual flow from Sewer Drainage Basin H is projected to rise from 48,643 gpd in 2014 to 112,883 gpd in 2026; the GSP did not project any flows from Sewer Basin T until after 2026. [GSP, p. 4-16, Table 4-14]

14. Chapters 6 and 7 of the GSP present a discussion of system deficiencies and improvements needed by 2026 (10-Year Capital Improvements) and by 2036 (Long-Term Planning Capital Improvements). “All of the growth and related improvements for 2026 are necessary to accommodate flow from expected future developments; therefore, they are expected to be developer-funded improvements.” [GSP, p. 6-3] The 2026 10-Year Capital Improvements are divided into two categories: Wastewater Treatment Plant Improvements (CIP WW#) and Developer Funded Gravity Sewer Main Improvements (CIP DF#). [GSP, p. 7-1]

The major pipe and facility improvements that will be required when development occurs in those areas are considered to be developer-funded projects, unless over-sizing of the improvements provides benefit to the existing customers. The CIP numbers for developer-funded improvements have a “DF” prefix.

[GSP, p. 7-2] Three GSP CIP projects were cited in the *SkyRidge Estates* case, two of which have also been specifically cited in the four cases whose major adjustment requests were heard on April 16, 2020: CIP WW1, CIP DF1A, and CIP DF1C.

15. Project CIP WW1, Short-term Wastewater Treatment Plant (WWTP) Improvements, includes “WWTP Influent Gravity Sewer Main Replacement”. That portion of CIP WW1 is to “[c]onstruct approximately 475 linear feet (LF) of 24-inch gravity sewer pipe per City standards.”¹³ [GSP, pp. 7-1 & 7-2]

Project CIP DF1A, Main Street Sewer Replacement, is a Developer Funded Existing System Improvement of sewer main between 5th and 6th Streets which is needed because “[a]ccording to the hydraulic model, the capacity of this 15-inch sewer interceptor is currently being exceeded during peak hour flows” [GSP, pp. 7-2, 7-8 (quotation), and 7-19] Project CIP DF1A is to “[r]eplace approximately 375 LF of existing gravity pipe with 27-inch-diameter gravity pipe per City standards.” [GSP, p. 7-8]

¹³ The sewer pipe replacement portion of Project CIP WW1 lies west of the Sultan River. It does not overlap the location of Projects CIP DF1A and CIP DF1C. [GSP, Figure 7-1]

Project CIP DF1C, Main Street Sewer Main Replacement, is a Developer Funded 10-Year Capital Improvement from approximately 165 feet east of 3rd Street to 8th Street¹⁴ which is an improvement

necessary to serve currently undeveloped areas of the City’s UGA expansion. The improvements [in this group] include the major pipeline and facility construction that will be required to properly serve those areas. The improvement costs should be borne by the developers, rather than the existing customers, unless over-sizing of the improvements provides benefit to the existing customers.

[GSP, p. 7-8 (quotation) & 7-19] Project CIP DF1C is to “[r]eplace approximately 1,450 LF of existing gravity pipe with 27-inch-diameter gravity pipe per City standards.” [GSP, p. 7-10]

16. Cost estimates in the GSP are based on 2017 costs. [GSP, p. 7-17] The estimated costs of Projects CIP DF1A, CIP DF1C, and the sewer main portion of CIP WW1 are:

PROJECT	ESTIMATED COST
CIP DF1A	\$262,000.00
CIP DF1C	1,011,000.00
SUBTOTAL	\$1,273,000.00
CIP WW1	\$315,400.00 ¹⁵
TOTAL	\$1,588,400.00

[GSP, p. 7-19] The per lot cost for funding Projects CIP DF1A and CIP DF1C based on 543 contributing lots would be \$2,344.38.¹⁶ If the pipe portion of Project CIP WW1 is added, the per lot cost for 543 lots would be \$2,925.23.¹⁷ If *Cobble Hill*’s 128 lots are added, the total number of lots becomes 671. The per lot cost for funding Projects CIP DF1A and CIP DF1C based on 671 contributing lots would be \$1,897.168.¹⁸ If the pipe portion of Project CIP WW1 is added, the per lot cost for 671 lots would be \$2,367.21.¹⁹

17. Section 13.08.030(B) SMC provides for establishment by the City Council of a “General Facilities Charge” (“connection fee”) by ordinance. The SMC does not explain the purpose of the General Facilities Charge.

¹⁴ Although the described location of Project CIP DF1C overlaps that of Project CIP DF1A, Figures 7-1 and 7-2 show that Project CIP DF1C omits the segment replaced by Project CIP DF1A. [GSP, Figures 7-1 & 7-2] There is no duplication.
¹⁵ Project CIP WW1 consists of several sub-parts. The cost of those sub-parts is not broken out in Table 7-8. The total cost for project CIP WW1 is listed as \$3,348,000.00. [GSP, Table 7-8] Table 7-7 on page 7-16 lists per foot 2017 sewer main construction costs to install each size of sewer pipe specified in the GSP. The cost per foot to install 24” sewer pipe is listed as \$664.00 per foot. \$664.00 x 475 feet of 24” pipe = \$315,400.
¹⁶ \$1,273,000.00 ÷ 543 = \$2,344.383 or \$2,344.38 per lot
¹⁷ \$1,588,400.00 ÷ 543 = \$2,925.230 or \$2,925.23 per lot
¹⁸ \$1,273,000.00 ÷ 671 = \$1,897.168 or \$1,897.17 per lot
¹⁹ \$1,588,400.00 ÷ 671 = \$2,367.213 or \$2,367.21 per lot

“Sewer general facilities charges are collected for each new or upgraded connection to the sewer system. These charges are for the right to connect and make use of the system.” [GSP, p. 9-1]

18. The LLC submitted the required application (Exhibit 2), a project narrative (Exhibit 2), survey, proposed plat, and preliminary supporting plans (Exhibits 6; 20; 21), and technical studies (Exhibits 13.1; 13.2; 13.3; 13.4; 14; 16; 19).
19. Sultan’s State Environmental Policy Act (“SEPA”) Responsible Official issued a Mitigated Determination of Nonsignificance (“MDNS”) on March 2, 2020. (Exhibit 9) The MDNS was not appealed. (Exhibit 23) The mitigation measures within the MDNS require compliance with recommendations contained within Exhibits 13.1 – 13.4. (Exhibit 9)

MDNS mitigation measures are conditions of development approval whether or not specifically listed as special conditions of approval.

20. The record contains two written comments from Judy Heydrick (“Heydrick”). (Exhibits 11.2; 17) Heydrick submitted Exhibit 11.2 on March 16, 2020, the final day to appeal the MDNS. She opens her comment by stating that she “strongly disagree[s] with the” MDNS. However, she did not officially or legally appeal the MDNS.

Heydrick’s concerns/objections are asserted inadequacy of the road system serving the *Cobble Hill* site, asserted inaccuracy of the applicant’s traffic impact study, asserted contribution of the development to global warming, and distance from emergency service providers. (Exhibit 11.2)

Heydrick’s second submittal was filed on May 29, 2020, and focuses on asserted lack of traffic concurrency and sewer concurrency. (Exhibit 17)

The Deputy Fire Chief of Fire District #5 responded at DCD’s request to Heydrick’s initial comment. The Deputy Chief stated that developments served by dead-end roads are not uncommon in the District and that 124th Street SE, while not ideal, is adequate from a fire service perspective. (Exhibit 11.1)

21. DCD recommends approval of *Cobble Hill* subject to 41 conditions. (Exhibit 23) The LLC has no objection to the conditions recommended in Exhibit 23. (Testimony)
22. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

LEGAL FRAMEWORK ²⁰

²⁰ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

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The Examiner is legally required to decide this case within the framework created by the following principles:

Authority

Preliminary subdivisions are subject to a pre-decision open record hearing before the Examiner. The Examiner makes a final decision on the application which is subject to the right of reconsideration and appeal to Superior Court. [SMC 2.26.125, 2.26.140, 19.06.060(A), 19.08.100, and Chapter 19.26 SMC]

Review Criteria

The review criteria for preliminary subdivisions as set forth in SMC 19.08.080 have been stated in Finding of Fact 7, above.

Sections 58.17.100, .110, .120 and .195 RCW set forth criteria to be applied when considering preliminary subdivision applications. A subdivision application must be evaluated against each criterion. Many are covered by the criteria in SMC 19.08.080.

- A. Section 58.17.100 RCW provides that the city shall “assure conformance of the proposed subdivision to the general purposes of the comprehensive plan and to planning standards and specifications as adopted by the city” Section 58.17.195 RCW states that

[n]o plat or short plat may be approved unless the city ... makes a formal written finding of fact that the proposed subdivision or proposed short subdivision is in conformity with any applicable zoning ordinance or other land use controls which may exist.

If a favorable conclusion on the criteria within RCW 58.17.100 cannot be reached, then the application may be denied; if a favorable conclusion on the criteria within RCW 58.17.195 cannot be reached, then the application cannot be approved.

- B. Section 58.17.110 RCW requires that a proposed preliminary subdivision

shall not be approved unless the city ... makes written findings that: (a) Appropriate provisions are made for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and (b) the public use and interest will be served by the platting of such subdivision

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[RCW 58.17.110(2)] If a favorable conclusion on the criteria within RCW 58.17.110 cannot be reached, then the application “shall not be approved”. [RCW 58.17.110(2)]

C. Section 58.17.120 RCW authorizes the city to

disapprove a proposed plat because of flood, inundation, or swamp conditions. Construction of protective improvements may be required as a condition of approval, and such improvements shall be noted on the final plat.

No plat shall be approved by any city ... covering any land situated in a flood control zone ... without the prior written approval of the department of ecology of the state of Washington.

[Note: State flood control zones were abolished by the legislature in 1987; see decodified RCW 86.16.060.] If a favorable conclusion on the criteria within RCW 58.17.120 cannot be reached, then the application may be denied.

The Local Project Review Act [Chapter 36.70B RCW] establishes a mandatory “consistency” review for “project permits”, a term defined by the Act to include “building permits, subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, site plan review, permits or approvals required by critical area ordinances, site-specific rezones authorized by a comprehensive plan or subarea plan”. [RCW 36.70B.020(4)]

(1) Fundamental land use planning choices made in adopted comprehensive plans and development regulations shall serve as the foundation for project review. The review of a proposed project’s consistency with applicable development regulations or, in the absence of applicable regulations the adopted comprehensive plan, under RCW 36.70B.040 shall incorporate the determinations under this section.

(2) During project review, a local government or any subsequent reviewing body shall determine whether the items listed in this subsection are defined in the development regulations applicable to the proposed project or, in the absence of applicable regulations the adopted comprehensive plan. At a minimum, such applicable regulations or plans shall be determinative of the:

- (a) Type of land use permitted at the site, including uses that may be allowed under certain circumstances, such as planned unit developments and conditional and special uses, if the criteria for their approval have been satisfied;
- (b) Density of residential development in urban growth areas; and
- (c) Availability and adequacy of public facilities identified in the comprehensive plan, if the plan or development regulations provide for funding of these facilities as required by [the Growth Management Act].

[RCW 36.70B.030]

Vested Rights

Subdivision and short subdivision applications are governed by a statutory vesting rule: such applications “shall be considered under the subdivision or short subdivision ordinance, and zoning or other land use control ordinances, in effect on the land at the time a fully completed application ... has been submitted” [RCW 58.17.033; see also SMC 19.08.060]

Standard of Review

The standard of review is preponderance of the evidence. The applicant has the burden of proof.

Scope of Consideration

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

CONCLUSIONS OF LAW

1. The total number of currently approved lots in *SkyRidge Estates*, *Daisy Meadows*, *Wyndham Highlands*, *Wyndham Highlands 2*, and *Wyndham Highlands 3* is 543. Add to that the 128 lots in *Cobble Hill* and the total number of new lots that are subject to an off-site sewer system impact mitigation requirement is 671. If each new lot is responsible for replacement of 6.6 feet of inadequate sewer main, 4,428.6 feet of sewer main would be replaced. But the best available evidence indicates that the total length of the segment that is inadequate is only 2,125 feet long. The numbers don't work: Too much pipe would be replaced.

In the alternative, if each new lot is assessed \$2,460.00, \$1,650,660.00 would be collected. But the total estimated cost of the three projects listed in the *SkyRidge Estates* Decision as inadequate is only \$1,588,400.00. The numbers still don't work: Too much money would be collected.

2. The Conclusions of Law regarding off-site sewer system impact mitigation that follow are nearly verbatim copies of Conclusions of Law which this Examiner set forth in his Decisions on the *Daisy Meadows*, *Wyndham Highlands*, *Wyndham Highlands 2*, and *Wyndham Highlands 3* Major Modification requests earlier this year. All of those Decisions had been publicly issued by mid-May this year. No reconsideration requests were filed in any of them (except for the *Wyndham Highlands 3* request to withdraw a portion of its request).
3. Chapter 16.70 SMC provides the regulatory basis to require mitigation of off-site sewer system impacts. Section 16.70.120(D)(4) SMC requires that concurrency be denied “if there is insufficient capacity in the city’s sewer system, and improvements ... are not planned to be constructed concurrent with the development.” [Emphasis added] If concurrency is denied, then the application

with which it is associated must also be denied. [SMC 16.70.100(D)(5) (Transportation concurrency), 16.70.110(D)(3) (Potable water concurrency), 16.70.120(D)(4) (Wastewater concurrency), and 16.70.140(B)(5) (Parks and recreation concurrency)]

4. If the evidence shows that a proposed development will create an insufficient capacity condition or exacerbate an existing insufficient capacity condition in the City's sewer system (the evidence in this record demonstrates that sewage flows from *Cobble Hill* will exacerbate an existing insufficient capacity condition in three specifically identified segments of the system through which sewage from *Cobble Hill* must flow to reach the wastewater treatment plant), then the developer must make improvements to alleviate the insufficient capacity condition concurrent with the development in order to obtain concurrency. Section 16.70.120(D)(4) SMC does not contemplate payment of a proportionate share in lieu of physical improvements to remedy deficiencies. Rather, it explicitly requires that the improvements be completed with the development.

This makes sense from a practical perspective: If the sewage from a new development is going to create or exacerbate an inadequacy in the sewer system, then that inadequacy must be corrected before the development comes on line or untreated sewage will exceed the capability of the system. Paying a proportionate share and/or making a partial improvement while waiting for the full improvement to be built later by someone else would not ensure public health, welfare, or safety: The system capacity would be exceeded while funds were incrementally amassed to pay for needed improvements or improvements were made to only a part of the inadequate system.

5. The problem is that there may be many developments, known and unknown, which would contribute sewage flows to an identified inadequate segment of the system. It would not be fair to require one developer to pay the entire cost of the remedial measures when other developers would benefit from those measures (to put it colloquially, "get a free ride").

Unfortunately, the currently codified system does not provide a method for apportioning improvement costs over all known and unknown future new developments. The developer whose application is before the City for approval must show that the needed improvement will be constructed concurrent with its development or that application must be denied. [SMC 16.70.120(D)(4)]

There are ways that costs could be equitably apportioned even in the absence of a codified procedure. For example, one developer (or a group of developers) could "front" the total cost of the needed mitigation through a "late-comer's" arrangement authorized by the City Council. A late-comer's arrangement would get the mitigation accomplished before the first development added flows to the system while allowing the developer(s) who funded that mitigation to be repaid for those costs beyond their fair share over time as new developments are proposed and developed.²¹

²¹ There may be other methods as well.

Establishment of a late-comer's arrangement is not the duty of the Examiner nor does the Examiner have authority to mandate creation of such an arrangement. The Examiner's only authority is to apply the SMC as written. [*Chaussee v. Snohomish County*, 38 Wn. App. 630, 638, 689 P.2d 1084 (1984), holding that the Examiner must base his/her land use decisions upon duly adopted laws and ordinances, and may not consider equitable defenses.]

6. Of the Certificates and preliminary subdivision conditions associated with *SkyRidge Estates*, *Daisy Meadows*, *Wyndham Highlands*, *Wyndham Highlands 2*, *Wyndham Highlands 3*, and *Cobble Hill*, only those for *SkyRidge Estates* fully comply with Chapter 16.70 SMC:²²
 - A. The Certificate issued for *SkyRidge Estates* met the requirements of Chapter 16.70 SMC: Based upon a technical study, it identified a specific inadequacy that would be exacerbated by flows from the development and it identified a specific improvement that had to be completed before sewage began to flow from the development into the City system. The mitigation condition mirrored the Certificate.
 - B. The Certificate issued for *Daisy Meadows* did not meet the requirements of Chapter 16.70 SMC: It stated that sewage flows from the subdivision would exacerbate an existing deficiency in the sewer system, but it neither specified that deficiency nor identified the actions necessary to mitigate that deficiency. The mitigation condition did not comply with Chapter 16.70 SMC as it required improvement to only 462 feet of sewer main (6.6 feet x 70 lots) when the evidence from *SkyRidge Estates* which was available at that time showed that far more than 462 feet of sewer main would be inadequate to handle additional flows. In addition, the proportionate share payment alternative did not comply with Chapter 16.70 SMC as it, too, would not result in compliance with the adopted standard concurrent with the development.
 - C. The Certificate issued for *Wyndham Highlands* did not meet the requirements of Chapter 16.70 SMC: It specified that 1,650 feet of sewer main would be inadequate, purportedly the same 1,650 feet identified in the *SkyRidge Estates* analysis (but the *SkyRidge Estates* analysis had identified 2,125 feet of inadequate sewer main) and specified mitigation to 1,325 feet of the same pipe to be replaced by *SkyRidge Estates*. It provided a per lot fee-in-lieu option

²² The Examiner does not "look for trouble" when conducting hearings. The Examiner is not an investigator; he is a judge. He is generally required to rely on the testimony and evidence entered into the record of each hearing. To the extent that compliance with Chapter 16.70 SMC was an issue in the preliminary subdivision hearings, the concern was about the wording of the mitigation conditions. In each case, the applicant and DCD eventually agreed on proposed language for a condition. Thus, the Examiner did not delve deeply into Chapter 16.70 SMC compliance prior to the request from the *Daisy Meadows*, *Wyndham Highlands*, *Wyndham Highlands 2*, and *Wyndham Highlands 3* applicants to adjust their off-site sewer impact mitigation conditions opened up a disagreement between them and DCD which necessitated a "deep dive" into Chapter 16.70 SMC to resolve the conflicts.

It should be noted that the dollar amounts and per lot bases stated in the Certificates and off-site sewer mitigation conditions seem to be inconsistent and at least partly inexplicable.

which would not comply with Chapter 16.70 SMC because it, too, would not result in compliance with the adopted standard concurrent with the development.

- D. The Certificate issued for *Wyndham Highlands 2* did not meet the requirements of Chapter 16.70 SMC: It specifically identified the sewer main segments that would not meet standards with additional flows. It concluded that when *SkyRidge Estates* fixed those segments there would be no problem. However, that position relied on another development fixing the problem without any assurances that that development would be built before *Wyndham Highlands 2* was developed. Thus, the Certificate lacked the required linkage between the proposed development and mitigation of the problem. Like *Daisy Meadows*, the mitigation condition did not comply with Chapter 16.70 SMC as it required improvement to only 198 feet of sewer main (6.6 feet x 14 lots) when the evidence from *SkyRidge Estates* which was available at that time showed that far more than 198 feet of sewer main would be inadequate to handle additional flows. In addition, the proportionate share payment alternative did not comply with Chapter 16.70 SMC as it, too, would not result in compliance with the adopted standard concurrent with the development.
- E. The Certificate issued for *Wyndham Highlands 3* did not meet the requirements of Chapter 16.70 SMC: The Certificate *per se* identified a deficiency but neither specified its nature nor specified mitigation measures to alleviate it concurrent with the development. An attached analysis from MurraySmith identified the problem as an overflowing manhole in 1st Street. (That is interesting in hindsight because Figure 7-2 in the GSP indicates that flows from the Sultan Basin Road plateau area do not flow through the main beneath 1st Street. Unless the manhole overflow resulted from back-up in the 1st Street main caused by flows in the main beneath Main Street, there was no rational nexus for the condition.) The related mitigation condition required sealing of the specified manhole.
- F. The Certificate issued for *Cobble Hill* does not meet the requirements of Chapter 16.70 SMC: It states that sewage flows from the subdivision would exacerbate an existing deficiency in the sewer system, but it requires improvement of only a portion of the inadequate sewer segment. In addition, the proportionate share payment alternative does not comply with Chapter 16.70 SMC as it, too, would not result in compliance with the adopted standard concurrent with the development. The latest mitigation condition (Exhibit 23, p. 10, Recommended Condition 10) does not comply with Chapter 16.70 SMC as it requires improvement to only 845 feet of sewer main (6.6 feet x 128 lots) when the evidence from *SkyRidge Estates* and subsequent MurraySmith work shows that far more than 845 feet of sewer main would be inadequate to handle additional flows.
7. Common sense supports standardizing the off-site sewer system impact mitigation requirement for *Daisy Meadows*, *Wyndham Highlands*, *Wyndham Highlands 2*, and *Cobble Hill*. All four of them will generate sewer flows through the inadequate segment of the system ; all four are subject to the Certificate requirements of Chapter 16.70 SMC; and no (or very little) development activity has

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commenced. The off-site sewer system impact mitigation requirement should be consistent for all four.

8. The off-site sewer system impact mitigation requirement for these four subdivisions should reflect the most recent data/facts. Subdivision applications vest to regulations, not to facts. As summarized in the Findings of Fact, above, the facts regarding needed off-site sewer impact mitigation evolved over time. The evidence presented in each hearing was sparse and inconsistent. For example, the length of sewer main that needed upgrading changed, the cost of the upgrade project was never substantiated with any evidence, the per lot share changed for no apparent reason.
9. Further, the off-site sewer system impact mitigation requirement for these four subdivisions should consider the existence of *SkyRidge Estates*. The sewer main segments that have been identified as requiring mitigation because of flows from these projects are, according to the evidence, the same segments that *SkyRidge Estates* was required to mitigate because of impacts from its flows.
10. The per lot share concept for mitigating off-site sewer system impacts is not consistent with the requirements of Chapter 16.70 SMC as has been explained above. Therefore, the Examiner will not compound previous errors by using it again.
11. The *SkyRidge Estates* off-site sewer system impact mitigation is based on evidence (that was relied on in part when the City issued the Certificates for the five subsequent projects) that reflects needed, developer funded improvements listed in the City's adopted GSP to sewer main segments that will be directly impacted by flows from these developments, including *Cobble Hill*. The *SkyRidge Estates* condition is consistent with the requirements of Chapter 16.70 SMC. The Examiner imposed a condition patterned after the *SkyRidge Estates* condition for *Daisy Meadows*, *Wyndham Highlands*, *Wyndham Highlands 2*, and *Wyndham Highlands 3*. (*Wyndham Highlands 3* subsequently withdrew its request, so it is the outlier. When the *Wyndham Highlands 3* applicant withdrew its Major Adjustment request, the Examiner no longer had jurisdiction to change its original off-site sewer impact mitigation condition.) The Examiner will impose a similar condition on the approval of *Cobble Hill*. That condition will ensure that the sewer system will remain concurrent as these subdivisions develop.
12. The Examiner understands that Heydrick does not like the City's traffic impact assessment process nor its manner of determining traffic concurrency. But those are policy decisions which reside with the City Council, not with the Examiner. The Examiner's obligation is to implement the adopted regulations as fairly and impartially as possible.
13. Subject to the above discussion, *Cobble Hill* meets the criteria for preliminary subdivision approval contained in SMC 19.08.080 as documented in Finding of Fact 7, above. In addition, *Cobble Hill* meets the criteria for preliminary subdivision approval contained in Chapter 58.17 RCW, the vast majority of which are covered by the SMC 19.08.080 criteria.

The one criterion in RCW 58.17.110(2) for which additional comment is warranted is safe walking conditions for school children. *Cobble Hill's* interior streets and its frontage on 124th Street SE will include sidewalks (as will the streets and frontage improvements in *SkyRidge Estates*). All students will be bussed to their public schools from one or more bus stops within *Cobble Hill*. (Exhibit 1, p. 11)

14. There must be some criteria by which to judge whether a proposed subdivision serves the public health, safety, and welfare. The content of adopted City regulations forms reasonable criteria. *Cobble Hill* meets all applicable review criteria. Therefore, it must also be concluded that it serves the public health, safety, and welfare.²³
15. The recommended conditions of approval as set forth in Exhibit 23 are reasonable, supported by the evidence, and capable of accomplishment with the following changes:
 - A. Recommended Condition 1. DCD recommends that Exhibit 21 be cited as the approved preliminary plat. The Examiner will add Exhibit 20 as it is the cover sheet for the plan set and provides important textual data. In addition, the Examiner will cite Exhibit 6, except Sheets C-1 and C-3, as the approved supporting plans (to the extent not inconsistent with Exhibits 20 and 21).
 - B. Recommended Condition 10 will be replaced as discussed above.
 - C. A few minor, non-substantive structure, grammar, and/or punctuation revisions to Recommended Conditions 6 – 9 and 13 will improve parallel construction, clarity, and flow within the conditions. Such changes will be made.
16. Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

DECISION

Based upon the preceding Findings of Fact and Conclusions of Law, the testimony and evidence submitted at the open record hearing, and the Examiner's site view, the Examiner **APPROVES** the proposed preliminary subdivision of *Cobble Hill* **SUBJECT TO THE ATTACHED CONDITIONS**.

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²³ It would be illogical to conclude that a project which met every established standard of review was nevertheless contrary to public health, safety and welfare. If such were the case, then the adopted standards must be woefully deficient. Even if some believe that the adopted standards are deficient, there is no basis in this case to conclude that compliance with those standards is not sufficient: the application is vested to the standards which existed when it was deemed complete regardless of any subsequent changes. New standards would apply to new applications but not to applications in process.

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\s\ John E. Galt (Signed original in official file)

John E. Galt,
Hearing Examiner

HEARING PARTICIPANTS²⁴

Neil Latta

Andy Galuska

NOTICE OF RIGHT OF RECONSIDERATION

This Decision, dated July 23, 2020, is subject to the right of reconsideration pursuant to SMC 2.26.125. Reconsideration may be requested by the appellant, a party of record, or the City. Reconsideration requests must be filed in writing with the City Clerk/Treasurer not later than 5:00 p.m., local time, on the seventh calendar day after the date of mailing of this Decision. Any reconsideration request shall specify the error of law or fact, procedural error, or new evidence which could not have been reasonably available at the time of the hearing conducted by the Examiner which forms the basis of the request. Any reconsideration request shall also specify the relief requested. See SMC 2.26.125 for additional information and requirements regarding reconsideration.

NOTICE OF RIGHT OF APPEAL

This Decision becomes final and conclusive as of the eighth calendar day after the date of mailing of the Decision unless reconsideration is timely requested. If reconsideration is timely requested, the Examiner's order granting or denying reconsideration becomes the final and conclusive action for the City. The final action may be reviewed in Superior Court pursuant to the procedures established by Chapter 36.70C RCW, the Land Use Petition Act. Section 36.70C.040 RCW requires that any appeal be properly filed with the Court within 21 days of the issuance of the final action. Please refer to SMC 2.26.140 and Chapter 36.70C RCW for further guidance regarding judicial appeal procedures.

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

²⁴ The official Parties of Record register is maintained by the City's Hearing Clerk.

CONDITIONS OF APPROVAL
PP19-005
COBBLE HILL

This Preliminary Subdivision is subject to compliance with all applicable provisions, requirements, and standards of the Sultan Municipal Code and standards adopted pursuant thereto. The permittee is responsible to obtain all necessary State and Federal permits and approvals required for completion of the project. In addition, development shall comply with the following special conditions:

1. Exhibits 20 and 21 are the approved preliminary plat; Exhibit 6, exclusive of Sheets C-1 and C-3, is the approved supporting plans to the extent not inconsistent with Exhibits 20 and 21. Any discrepancies between the approved preliminary plat and the SMC shall be resolved in favor of the SMC. All improvements shall be constructed in accordance with Exhibit 21. Minor adjustments of the approved preliminary plans may be approved by the Planning Director if the modifications meet the criteria outlined in SMC 19.08.140.
2. Final engineering drawings depicting street improvements, water and sewer improvements, and drainage design shall be submitted to the City's Public Works Director for final review and approval prior to issuance of any grading permits. The street, water and sewer, and drainage improvements shall be designed in accordance with the City's most current Engineering Design and Development Standards (EDDS).
3. The project shall implement all of the applicable recommendations contained in the following technical reports submitted to the City:
 - a. Wetland Report, Wetland Resources, October 25, 2019. (Exhibit 13.3)
 - b. Hydrogeological Investigation Report, Northwest HydroGeo Consultants, December 16, 2019. (Exhibit 13.4)
 - c. Drainage Study, Neil Latta, PW, March 30, 2020. (Exhibit 16)
 - d. Geotechnical Investigation and Engineering Report, Materials Testing and Consulting, Inc., Revised June 3, 2020. (Exhibit 22)
4. The applicant shall follow the recommendations contained in the January 24, 2020 Traffic Analysis prepared by TSI, Inc. (Exhibit 13.5)

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5. Where applicable and required by the City, the applicant shall implement the provisions and recommendations within the latest versions of any referenced reports, plans, or supporting documents made record as exhibits accompanying this Staff Analysis and Recommendation for the project or subsequent versions approved by the City.

CLEARING AND GRADING

6. A comprehensive erosion and sedimentation control plan to ensure appropriate on-site and off-site water quality control shall be developed and implemented for all construction activities. The Best Management Practices outlined in the 2019 Department of Ecology (“Ecology”) Stormwater Management Manual for Western Washington shall be incorporated into the design. At a minimum, the plan shall include the following elements.
 - a. Exposed soils shall be stabilized and protected with straw, hydro-seeding or other appropriate materials to limit the extent and duration of exposure.
 - b. Disturbed areas shall be protected from stormwater runoff impacts through the use of silt fence. Other means of filtration of stormwater runoff and for limiting erosion/sedimentation such as check dams, and sediment traps may be required and are recommended.
 - c. Clearing and grading activities shall not be performed in the winter-wet season when soils are unstable unless determined suitable by the Public Works Director.

STORM DRAINAGE IMPROVEMENTS

7. The stormwater system design and stormwater discharge shall utilize the Best Management Practices of the 2019 Ecology Stormwater Management Manual for Western Washington.
8. Stormwater pollution prevention measures shall be employed per the approved Stormwater Pollution Prevention Plan and as necessary to ensure appropriate on-site and off-site water quality control. Site runoff during construction shall be handled and treated as to quantity and quality impacts by utilizing Best Management Practices, as defined in the 2019 Ecology Stormwater Management Manual for Western Washington.
9. The developer shall obtain a General Construction Stormwater NPDES Permit from Ecology prior to beginning construction.

UTILITIES

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10. Prior to occupancy of the first single family residence in the subdivision, the following improvements to the existing off-site sewer system shall have been completed to ensure concurrency as required by Chapter 16.70 SMC:
 - a. CIP-WW1-Replace approximately 475 LF of 12-inch-diameter gravity main along US Highway 2 with 24-inch-diameter pipe.
 - b. CIP DF1A-Replace approximately 375 LF of 15-inch-diameter gravity main along Main Street with 27-inch-diameter pipe.
 - c. CIP DF1C-Replace approximately 1,275 of 15-inch-diameter gravity main along Main Street with 27-inch diameter pipe.

This condition does not obligate the developer to fund completion of the required improvements on its own. Costs may be shared with other developers obligated to make the same improvements; a late-comers reimbursement system may be created if approved by the City Council. This condition only requires that the necessary improvements be completed before sewage begins to flow from the development into the City's sewer system.

ROAD IMPROVEMENTS

11. Prior to final plat application, all public streets fronting and within the subdivision as depicted on the approved preliminary plat shall be constructed (or bonded for construction) to City standards, including curb, gutter, sidewalk, and landscaping; traffic control devices shall be provided (or bonded for installation) for all streets within the subdivision.
12. Offsite improvements as described in the TSI report (Exhibit 13.5) shall be constructed prior to final plat.
13. The cul-de-sac proposed on Road B shall be constructed as a temporary turnaround as approved by the City Engineer.

BONDS AND WARRANTIES

14. Prior to approval of the final plat, all landscaping associated with the plat shall require the submittal of an acceptable warranty surety to warrant all required landscaping improvements against defects in labor materials for a period of 24 months after acceptance of those improvements by the City. The warranty amount shall be equal to fifteen (15) percent of the costs of improvements, as determined by the Planning Director.

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15. Prior to approval of the final plat, the developer shall submit an acceptable warranty surety to warrant all required public improvements, installed, against defects in labor and materials for a period of 24 months after acceptance of those improvements by the City. The warranty amount shall be equal to ten (10) percent of the costs of the improvements, as determined by the Public Works Director. The surety shall be submitted to and approved by the City of Sultan and executed prior to final plat approval.

FEES

16. Park, Traffic and School impact fees assessed in accordance with SMC Chapter 16.72, shall be required and paid at the rate in effect at the time of building permit issuance.
17. The water general facilities charge, in accordance with SMC Section 13.12.080(B)(2) shall be required and paid prior to issuance of the building permit and/or installation.
18. The sewer general facilities charge, in accordance with SMC Section 13.08.030 shall be required and paid prior to issuance of the building permit and/or installation.
19. Credits for infrastructure improvements and right-of-way dedication may be applied for during the site civil construction phase of the development consistent with SMC 16.72.070 and 16.72.080 and 16.72.090.
20. If requested, the applicant may defer payment of impact fees until a later date as allowed by Chapter 16.76 SMC.

FINAL PLAT

21. Prior to final plat submittal, all improvements shall be installed, inspected, and approved by the City Engineer/Public Works Director per the approved plans. All improvements shall be constructed in accordance with the approved engineering plans and approved preliminary plat map. Minor Modifications of the plans submitted may be approved by the Planning Director if the modifications meet the criteria outlined in SMC 19.08.140.
22. Prior to final plat submittal, the applicant shall either construct the required recreation facilities or to provide a payment in-lieu as permitted by SMC 16.62.070.
23. Tract 999 will be dedicated to the City as open space.

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24. All lot corners shall be installed with road and cap or other City-approved survey method prior to final plat approval.
25. All existing and proposed easements and maintenance agreements shall be clearly shown and labeled on the final plat.
26. The following note shall appear on the face of the final plat map: “The Homeowners Association, with an equal and undivided interest between all lots of Cobble Hills, is responsible for maintaining, in a uniform manner, all landscaping, parks, and drainage within all commonly owned tracts and easements”.
27. The following waiver of Claim for Damages Statement shall appear on the face of the final plat map: “This dedication includes conveyance of roads, tracts, utility and storm drainage infrastructure, and other areas of right-of-way intended for public use and/or any ownership as shown on or otherwise referenced by the plat. The (*INSERT NAME HERE*) hereby waives all claims against the City of Sultan and/or any other governmental authority for damages which may occur to the adjacent land as a result of the construction, drainage, and maintenance of such facilities and improvements.”
28. The following shall be shown on the recording block section of the plat map: “Refer to Auditor Recording Number”.
29. The following note shall be shown on the face of the final plat map: “The proposed lots within this development shall only be developed with detached single-family residences as required by SMC 19.44.030(A).”
30. The final plat shall provide space for approving signatures, of the Planning Director, Public Works Director, and the mayor, and the City Clerk shall attest the signatures.
31. The title block on the final plat map shall have the names of all the legal owners of the property named on the plat and the name of the surveyor/engineering firm which prepared the final plat map.
32. An Auditor’s Certificate shall be shown on the final plat map.
33. The following are required to be shown on the final plat map:
 - a. Surveyor Certificate;
 - b. Correct legal description of all lots as set out in Chapter 58.17 RCW;

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- c. Owners Statement;
- d. All new easement(s) over the property, their legal description(s) and associated dedication block(s);
- e. Recording block/Certification blocks for City approval;
- f. North arrow;
- g. Certification of Payment of Taxes and Assessments;
- h. Auditor's Certificate; and
- i. The survey control scheme, monumentation, basis of bearing and references.

MISCELLANEOUS

- 34. Preliminary plat approval shall be effective for a maximum time period of five years upon which a final plat meets all conditions of the preliminary plat approval submitted, in accordance with SMC Title 19.
- 35. The developer shall apply to the Snohomish County Auditor at 3000 Rockefeller Avenue, Everett WA 98201-4060 for a plat name reservation certificate and furnish the City with a copy of the approved reservation certificate at the time of final plat submittal.
- 36. If applicable, at the time of final plat submittal the developer shall submit a mail box plan, approved by the U.S. Postal Service, to the Planning Department for final addressing.
- 37. Mail routes, including mailbox type and locations, shall be approved by the Postmaster prior to construction.
- 38. All construction equipment, building materials, and debris shall be stored on the applicant's property, out of the public rights of way. In no case shall the access to any private or public property be blocked or impinged upon without prior consent from the affected property owners and the City of Sultan.

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39. If at any time during clearing or grading and construction the streets are not kept clean and clear, all work will stop until the streets are cleaned and maintained in a manner acceptable to the Public Works Director.
40. Construction Noise is not allowed between ten (10) p.m. and seven (7) a.m. weekdays and ten (10) p.m. and nine (9) a.m. weekends.
41. The developer and contractor shall attend a pre-construction meeting with City staff to discuss expectations and limitations of the project permit before starting construction.