

From: cohobanger@aol.com
To: [Contact Council](#); [Countryman, Ryan](#); [Lao, Elena](#); [Somers, Dave J](#)
Cc: [Judy Heydrick](#); [Genny Smith](#); [Contact Auditor](#); [Contact Prosecutor](#); [todd.gray](#)
Subject: Re: PROPOSED ORDINANCE NO. 24-005 and Legal Status of Proposed Mountain View Park Parcel and Addendum
Date: Tuesday, February 20, 2024 9:10:25 AM



CAUTION: This email originated from outside of this organization. Please exercise caution with links and attachments.

Dear County Executive and County Council,

It has come to our attention that it appears the City of Sultan has no six-year plan identifying the location of new or proposed Parks, nor does the city have a plan to finance existing or proposed Parks.

These missing plans are mandatory under RCW 36.70A.070(3). We believe this defect must be remedied prior to the city or county taking any further action to move the current Mountain View Park proposal forward.

See our letter to Ecology below my signature for further details.

Sincerely,

Ron Kraut

Dear Department of Ecology,

Please accept these comments for the record regarding the Mountain View park Stormwater Permit Application: WAR313138 Construction SW GP

The Proposed Park is not listed in any element of the city's comprehensive plan. As a result, there are multiple issues which appear to render the proposal ineligible for approval.

1. The proposal does not appear to be compliant with the GMA, Sultan's Comprehensive Plan, Sultan Municipal Code and other statutes.

A. The proposed location of the Mountain View Park is not contemplated in the city's capital facilities element as required per WAC 365-196-415(1)(c).

B. The proposed financing of Mountain View Park is not contemplated in the city's capital facilities element as required per WAC 365-196-415(1)(d) and (e)

In order for the city to BEGIN the process of assessing the viability of ANY PUBLIC PARK facility, an amendment to the capital facilities plan element of the city comprehensive land use plan is mandatory.

The first step of that process, compels the city to issue a threshold determination to consider the impacts of bringing the non-compliant capital facility element into conformance with the law. This step is mandatory regardless of whether or not the city chooses to continue its pursuit of Mountain View Park. All Agencies with jurisdiction, the Tulalip Tribes, and the public will require notification.

All parties must be afforded the opportunity to comment on the potential impacts of the required amendment during both the SEPA and Public Hearing process.

Once the city has adopted an ordinance to update the comprehensive plan, the process of adding a new park can begin, so long as they are listed in conformance with the comprehensive plan.

2. The proposed Park is currently ineligible for impact fee funding.

In 2017, the City of Sultan chose to discontinue its six-year parks and recreation capital facilities financing plan element of the City's comprehensive land use plan.

By law, Parks are defined as public facilities.

The record appears to indicate the city has been funding parks and recreation with the use of impact fees in violation of state law since the end of 2016. It appears the Mountain View Park project has been a recipient of many of those impact fees. As recently as last month the Sultan City Council Bill No. 21-36, dated 1/11/2024 proposed the expenditure of \$422,492.00 of impact fees funds toward the Park.

The city updated their comprehensive plan, capital facilities element in 2021 and 2022 as a result of citizen concerns over the lapse of all mandatory six-year financing plans for all public facilities, which had lasted a period of over five years. The 2021 update was a failure. Due to a "scrivener's error" the city failed to correct any of the defective six-year financing requirements. The 2022 update may have corrected some shortcomings but once again failed to adopt a mandatory six-year plan that would finance identifiable Parks and Recreation capital facilities and failed to clearly identify sources of public money for such purposes. **The 2022 update did not include an update to the six-year sewer capital facilities plan element of their comprehensive land use plan to address the city's intention to provide sewer to the park.**

From Washington State Auditor's Report No. 1000014:

"One required element of a city's comprehensive plan is a capital facilities plan. The following is an excerpt from RCW 36.70A.070(3), which discusses the capital facilities plan element: **"A capital facilities plan element consisting of: (a) An inventory of existing capital facilities owned by public entities, showing the locations [emphasis added] and capacities of the capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the proposed locations and capacities of expanded or new capital facilities [emphasis added]; (d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes;...**

"RCW 82.02.050 states that impact fees "may be collected and spent only for public facilities defined in RCW 82.02.090 which are addressed by a capital facilities plan element of a comprehensive land use plan."

SEE: <https://portal.sao.wa.gov/ReportSearch/Home/ViewReportFile?arn=1000014&isFinding=false&sp=false>

See 2011-2021 CFE with six-year finance plans 2011- 2016 **missing years 2017-2021** on pages 266- 302;

<https://www.ci.sultan.wa.us/DocumentCenter/View/5448/Sultan-Comprehensive-Plan-2011-15-pdf>

See 2021- 2022 CFE **missing all six-year finance plans**;

https://ci.sultan.wa.us/DocumentCenter/View/5724/Ordinance-1359-21_Comprehensive-Plan---Chapter-9-Update-PDF

See 2022 CFE **missing six-year finance plan for parks and recreation**;

https://ci.sultan.wa.us/DocumentCenter/View/6302/Ordinance-1384-22_Comprehensive-Plan---Chapter-9-Update-PDF

3. The city currently has an application for a NPDES permit submitted to Ecology. The permit application indicates the city's intention to discharge stormwater from construction activities into the "Daisy Landing storm system". Per a legal agreement signed by the city, it appears the city has no outfall rights to Daisy Landing's storm system. See Snohomish County Auditor recording numbers 201708250512 and 201901045016.

4. In addition, See page 14 (h) of the Applicant's SEPA checklist response to the Question "Has any part of the site been classified as a critical area by the City or County? "No part of the site has been classified as a critical area by the City or the County although identified wetlands, wetland buffers and stream buffers are located on the site."

The City's Environmental Consultant studied only the 4 acre site where the park is to be located. The Consultant excluded the remaining portion of the 22 acre parcel. The obfuscation limited the size and scope of the study to the northern portions of the city's parcel and failed to include the impacts on fish bearing Wagley's Creek that cuts across the southern portion; the cumulative impacts of the proposed development cannot be determined. Per RCW 36.70A.172 Critical areas-Designation and Protection "Counties and cities shall give special consideration to conservation and protection measures necessary to preserve or enhance anadromous fisheries. The obfuscation becomes clear when one reads and compares the conclusions and conditions of approval recommended by the City Hearing Examiner in 2007. See attachment.

5. There are multiple other legal issues that must be addressed prior to NPDES permitting. Please review the issues raised in the attachment. Please include the attachment as part of the record for the NPDES comments.

Sincerely,

Ron Kraut, Judy Heydrick and Genny Smith

On Wednesday, February 7, 2024 at 01:48:37 PM PST, cohobanger@aol.com <cohobanger@aol.com> wrote:

Hello Elena,

It appears the staff member that copied the documents I provided for today's public hearing may have only provided the council with every other page. When I got home I realized that is what was returned to me. The following documents are what I sent on Monday and Tuesday of this week for the record for today's public hearing

As we discussed at today's meeting, it appears county email system refused my original testimony because it will not accept more than one attachment at a time. These attachments are crucial as they appear to document the process which resulted in the proposed park parcel never being legally subdivided or platted.

I will provide one attachment herein and send 3 subsequent emails with attachments. Please respond with verification of receipt of this email and attachment. Upon receipt of your confirmation, I will send the remaining 3.

Sincerely,

Ron Kraut

From: cohobanger@aol.com

To: contact.council@snoco.org, auditor@snoco.org, contact.prosecutor@snoco.org, Ryan.Countryman@co.snohomish.wa.us

Cc: Judy Heydrick, COLLEEN RUPKE, Genny Smith, Mr E.

On Monday, February 5, 2024 at 03:32:07 PM PST, cohobanger@aol.com <cohobanger@aol.com> wrote:

Dear Snohomish County Council, Snohomish County Prosecutor and Snohomish County Auditor,

We urge the Snohomish County Council to amend PROPOSED ORDINANCE NO. 24-005 to include language which will require the Snohomish County Auditor and Prosecutor to confirm the legal platting and lot status of parcel 28083300300200 prior to authorizing the transfer of funds authorized by the proposed ordinance.

A new park in Sultan may be a good idea. But not on the parcel of land the city has chosen. At least not until it can be proven the proposed site is legally platted.

The available evidence appears to show that the proposed Mountain View Park Parcel 28083300300200 is UNPLATTED, and was created in 2019 by means other than that allowed by Chapter 58.17 RCW PLATS—SUBDIVISIONS—DEDICATIONS, or the Sultan Municipal Code.

It appears there was no public notice of any permitting process that created the parcel as it is currently configured. The parcel is by definition, not a buildable lot. Until the parcel is legally subdivided and platted, a building permit cannot be issued.

See SMC 16.04.120. 26. "Lot, legal building" [16.04.120](#) - ["L" definitions](#).

See: SMC 19.02.020 [Sultan Municipal Code](#)

A brief history that leads us to our conclusion:

In 2017, the city recorded a legal agreement, regarding the 34 acre parcel 28083300300200, the agreement states the parcel is jointly owned by both the City of Sultan and "the Estate".

See Snohomish County Auditor recording # 201708250512. or [attachment cityhammerplatagreement](#)

That legal agreement was signed by the Mayor of Sultan. Signatories to the agreement, the City and the Estate, agreed to segregate and plat parcel 28083300300200, into four parcels. The four parcels were to be platted per the legal descriptions contained in the agreement. The four parcels are identified as:

PARCEL 1- CITY and PARCEL 2- CITY;

PARCEL 1- ESTATE and PARCEL 2- ESTATE.

The agreement further states:

The city is under contract to buy the following described real property:

PARCEL-1 CITY (legal description follows)

PARCEL 2- CITY (legal description follows)

hereinafter collectively referred to as the "City Property"

The Estate is the Owner of the following described real property:

PARCEL 1- ESTATE (legal description follows)

PARCEL 2- ESTATE (legal description follows)

hereinafter collectively referred to as the "Estate Property"

The agreement explains the process required for parties to the agreement to legally segregate parcel 28083300300200:

PROPERTY SEGREGATION

"The City Property and the Estate Property comprise a single parcel. The City and the Estate, or the Estate's successors and assigns, shall jointly cooperate in the plat of the City Property and the Estate Property (the "Plat") in compliance with all applicable Federal, State and City, statute, code, rules and regulations, at the expense of the Estate or its successors and assigns. The Plat shall segregate the City Property from the Estate Property, consistent with the agreed legal descriptions such that both the City Property and the Estate Property are legal parcels."

There does not appear to be a record of the 4 parcels identified in the legal agreement ever being platted.

The proposed site of Mountain View Park is identified in city documents and in the County interlocal agreement documents as parcel number 28083300300200. The current configuration of that parcel can not be found within any recorded plat that we are aware of.

The Snohomish County Auditor shows that a portion of parcel 28083300300200 was subdivided and platted into 60 building lots in 2019. That Final Plat also shows that the proposed Mountain View Park parcel remains UNPLATTED.

See page 3 of Snohomish County Auditor recording number 201901045016 or [attachment auditordaisylanding](#)

It appears that parcel 28083300300200 is subject to the provisions of RCW 58.17.200. As such, **it further appears, the Snohomish County Prosecutor is required to compel that the proposed Mountain View Park parcel be legally platted to assure compliance with all provisions of Chapter 58.17.**

See RCW 58.17.200,

Injunctive action to restrain subdivision, sale, transfer of land where final plat not filed---

"Whenever any parcel of land is divided into five or more lots, tracts, or parcels of land and any person, firm or corporation or any agent of any of them sells or transfers, or offers or advertises for sale or transfer, any such lot, tract, or parcel without having a final plat of such subdivision filed for record, the prosecuting attorney shall commence an action to restrain and enjoin further subdivisions or sales, or transfers, or offers of sale or transfer and compel compliance with all provisions of this chapter. The costs of such action shall be taxed against the person, firm, corporation or agent selling or transferring the property."

The proposed Mountain View Park parcel has not been platted. It appears that pursuant to RCW 58.17.205, and legal agreement recording # 201708250512, no payment could have been made for either the "City Property" or the "Estate Property". It appears that payment cannot be made until parcel number 28083300300200 has been platted.

See RCW 58.17.205

Agreements to transfer land conditioned on final plat approval—

Authorized. If performance of an offer or agreement to sell, lease, or otherwise transfer a lot, tract, or parcel of land following preliminary plat approval is expressly conditioned on the recording of the final plat containing the lot, tract, or parcel under this chapter, the offer or agreement is not subject to RCW 58.17.200 or 58.17.300 and does not violate any provision of this chapter. All payments on account of an offer or agreement conditioned as provided in this section shall be deposited in an escrow or other regulated trust account and no disbursement to sellers shall be permitted until the final plat is recorded.

It appears that pursuant to RCW 58.17.210, the City, as the transferee of parcel 28083300300200, must bring the Mountain View Park parcel into compliance with the provisions of Chapter RCW 58.17. The parcel must be platted.

See RCW 58.17.210

Building, septic tank or other development permits not to be issued for land divided in violation of chapter or regulations—Exceptions—Damages—Rescission by purchaser.

No building permit, septic tank permit, or other development permit, shall be issued for any lot, tract, or parcel of land divided in violation of this chapter or local regulations adopted pursuant thereto unless the authority authorized to issue such permit finds that the public interest will not be adversely affected thereby. The prohibition contained in this section shall not apply to an innocent purchaser for value without actual notice. All purchasers' or transferees' property shall comply with provisions of this chapter and each purchaser or transferee may recover his or her damages from any person, firm, corporation, or agent selling or transferring land in violation of this chapter or local regulations adopted pursuant thereto, including any amount reasonably spent as a result of inability to obtain any development permit and spent to conform to the requirements of this chapter as well as cost of investigation, suit, and reasonable attorneys' fees occasioned thereby. Such purchaser or transferee may as an alternative to conforming his or her property to these requirements, rescind the sale or transfer and recover costs of investigation, suit, and reasonable attorneys' fees occasioned thereby.

Based on the above facts, it appears to be obvious, the proposed Mountain View Park Parcel is "UNPLATTED" and was created by means other than

those allowed by Chapter RCW 58.17 RCW or those in the Sultan Municipal Code. There was no public notice of any permitting process that created it. The parcel is by definition, not a buildable lot.
See SMC 16.04.120. 26. "Lot, legal building" [16.04.120 - "L" definitions.](#)

To further confound the situation, the city never issued a notice of application for the Mountain View Park permit application as required by RCW 36.70B.110, and the city did not acquire a title report for the proposed Mountain View Park parcel as required by Sultan Municipal Code 16.80.050 C.6.

Parcel 28083300300200 has even more concerning legal land use history issues:

It appears the city previously failed to provide any required public notice of application, threshold determination, notice of decision and notice of right to appeal, throughout the earlier "administrative approval" of the application for a "minor preliminary plat modification" to the Hammer PUD.

It appears that as a result of the administrative plat changes, which lacked any required public notice, the Hammer PUD became the recorded Final Plat of Daisy Landing, and the 22 acre Mountain View Park parcel was segregated for tax purposes, but never platted.

Timeline: Hammer PUD/Daisy Landing and UNPLATTED Mountain View Park Parcel:

SEPA: 200602721 - Sultan Issued SEPA on April 7, 2006. 34 acres into 72 single family residential lots on parcel. **See:** <https://apps.ecology.wa.gov/separ/Main/SEPA/Record.aspx?SEPANumber=200602721>

On August 2, 2007, Hearing Examiner recommended approval of the Hammer 72 lot PUD with conditions, on the 33.82 acre parcel 28083300300200.
See attachment: Hammer- Recommended Revision on Remand or
https://www.dropbox.com/sh/dgxl0vj4etjfsi7/AACugzYw6TcjKeHEWQLHOK38a/Kraut%20-%20Hammer%20-%20204.24.2023%20-%20Cyd?dl=0&preview=Hammer+-+Recommended+Revision+on+Remand+8.2.2007.pdf&subfolder_nav_tracking=1

On August 23, 2007, the city council adopted Resolution 07-19 affirming the Hearing Examiner's recommendation and conditions, for a 72 lot PUD to be constructed on a 33.82 acre parcel.

See attachment: Hammer Ordinance 07-19 or
https://www.dropbox.com/sh/dgxl0vj4etjfsi7/AACugzYw6TcjKeHEWQLHOK38a/Kraut%20-%20Hammer%20-%20204.24.2023%20-%20Cyd?dl=0&preview=Hammer+Ordinance+07-19+5.23.2007.pdf&subfolder_nav_tracking=1

Preliminary Plat Map of the 33.82 Hammer PUD

See:
https://web.archive.org/web/20170125053836/http://ci.sultan.wa.us/wp-content/uploads/City_Hall/City_Council/Agendas_Minutes/2007/2007-08-23/attachments/Hammer_Attachment_2.pdf

On November 16, 2017, the Sultan Planning Director signed a "Minor Preliminary Plat Modification" for parcel 28083300300200 without any Notice of Application, Threshold Determination, Notice of Decision, or Notice of Right to appeal. On page 5 of the decision, the Planning Director clearly (and incorrectly) states, that public notice is not required. The Hammer PUD application receives it's name change to Daisy Landing.

See: attachment Daisy Landing Minor Mod Decision 11.11.17 or
https://www.dropbox.com/sh/dgxl0vj4etjfsi7/AADV6Mb1y6qWhxUGq2_3c1Z9a/Kraut%20-%20Daisy%20Landing%20-%20204.24.2023%20-%20Cyd?dl=0&preview=Daisy+Landing+Minor+Mod+Decision-11.17.17.pdf&subfolder_nav_tracking=1

On January 4, 2019, Mayor Seehuus and Planning Director Andy Galuska certified the signature block of the Final Plat of Daisy Landing. There is no reference to the "Minor Preliminary Plat Modification". The certification indicates the Final Plat is in substantial conformance with the Hearing Examiner's recommendation of August 2, 2007 and City Council Resolution 07-19 of August 23, 2007.

Inexplicably, the Final Plat recorded with the County Auditor, is missing a vast amount of land and an array of requirements and conditions contained in Council Resolution 07-19 and the Examiner's recommendation. This, despite assurances of substantial conformance implied by the signatures of the Mayor and City Planner.

The Auditor's Recorded Final Plat of Daisy Landing notes the "UNPLATTED" designation of the Mountain View Park parcel in upper right corner of page 3.
See attachment: auditordaisylanding

It appears that the Final Plat is:

Missing: approximately 9 acres of parks and open space.

Missing: critical area mitigation including plantings of over 500 saplings.

Missing: 60' street ROW for residential lots. Instead a 50' ROW was constructed.

Missing: a new WDFW approved bridge over Wagleys Creek, a salmon bearing stream.

Missing: an access route from the residential area to a new bus stop on SR 2.

Missing: 12 homes. 60 homes were constructed instead of the 72, ordered by council.

Missing: 22 acres of tracts, lots, designated park area, critical areas and open space.

Missing: 22 acres of platted land.

Missing: a Developer provided park in the same location as the proposed new Mountain View Park

Altered: every lot, tract, and parcel. 22 acres remain UNPLATTED.

It appears the City Planner failed to recognize, when approving the "administrative" plat modification in 2017, that the Hammer PUD vested in 2006, and as such, it was ineligible for any adjustment or modification.

TITLE 19 LAND DIVISION CODE of the SMC, allows adjustments to approved preliminary plats. Title 19 was adopted in 2012. Therefore, Title 19 only vests to approved preliminary plat applications submitted in 2012, after Title 19 was approved with Ordinance 1144-12.

"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]" Sultan Hearing Examiner JohnGalt.

In response to a public records request, the city provided us with an email containing document links and analysis of the Hammer PUD/Daisy Landing and Mountain View Park parcel. The email also contained information regarding another project, the "Cascade RV Park". The email explains there was no Public Hearing or Notice of Application required by the city for the Daisy Landing 60 unit housing development/22 acre Mountain View Park parcel or the 160 stall Cascade RV Park on 28 acres

The Dropbox hyperlink in the city email contains links to many original city documents with conditions of approval as recommended by the Hearing Examiner and ordered by the City Council for the original Hammer PUD.

See attachment: AOL Mail - Fw PRR 04242023

Because the city has chosen not to provide any required statutory notice of application or Title Report documents for the Mountain View Park proposal, it seems impossible for a reasonable person to believe that parcel 28083300300200 has been legally subdivided, or that parcel is a legal building lot.

See SMC 19.02.020 <https://www.codepublishing.com/WA/Sultan/#!/Sultan19/Sultan1902.html#19.02.020>

See RCW 58.17 PLATS-SUBDIVISIONS-DEDICATIONS

Specifically: [RCW 58.17.033: Proposed division of land—Consideration of application for preliminary plat or short plat approval—Requirements defined by local ordinance.](#)

Based upon these areas of concern, we urge the Council to exercise discretion and implement their option to require an amendment to the ordinance. At a minimum, please require the County Auditor and Prosecuting Attorney to review the history of parcel 28083300300200 and certify that the parcel was created by the implementation of Chapter 58.17 RCW PLATS—SUBDIVISIONS—DEDICATIONS. If it is found that the parcel was created and ownership was transferred in violation of any provision of the chapter, please compel the responsible parties involved to comply with all provisions of the law.

Sincerely,

Ron Kraut
801 Bryant Road
Sultan WA 98294

Judy Heydrick
PO Box 352
Sultan WA 98294

Genny L. Smith
32624 Marguerite LN.
Sultan WA. 98294

Jeff Estes
Startup WA 98294

Addendum to our comments for the record regarding the 02/07/2024 Public Hearing regarding PROPOSED ORDINANCE NO. 24-005.

From: cohobanger@aol.com

To: Dave.Somers@co.snohomish.wa.us

Somers,contact.council@snoco.org,auditor@snoco.org,contact.prosecutor@snoco.org,ryan.countryman@co.snohomish.wa.us

Cc: Judy Heydrick, Mr E., Genny Smith

Dear Snohomish Snohomish County Executive, Snohomish County Council, Snohomish County Prosecutor, Snohomish County Auditor and Washington State Attorney General,

Please incorporate these comments into the record for the Public Hearing:

Please note that we failed to cite a relevant statute which we feel directly relates to the Mountain View Park parcel. Specifically, possible remedies to what appears to be the failure of the Final Plat of Daisy Landing, to comply with any conditions of approval recommended by the Hearing Examiner and approved by the City Council Resolution 07-19.

This statute also seems to directly address potential remedies to fact that the 22 acre Mountain View Park parcel #28083300300200, was excluded from the final plat contrary to the conditions of approval and also resulted in an UNPLATTED 22 acre parcel in the process.

See:

RCW 58.17.320

Compliance with chapter and local regulations—Enforcement.

*Whenever land within a subdivision granted final approval is used in a manner or for a purpose which violates any provision of this chapter, any provision of the local subdivision regulations, or any term or condition of plat approval prescribed for the plat by the local government, **then the prosecuting attorney, or the attorney general if the prosecuting attorney shall fail to act, may commence an action to restrain and enjoin such use and compel compliance with the provisions of this chapter or the local regulations, or with such terms or conditions.** The costs of such action may be taxed against the violator.*

Sincerely,

Ron Kraut
801 Bryant Road
Sultan WA 98294

Judy Heydrick
PO Box 352
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Genny L. Smith
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Jeff Estes
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