



**FINAL DECISION of the
SNOHOMISH COUNTY HEARING EXAMINER**

Millie Judge
Hearing Examiner

M/S 405
3000 Rockefeller Ave.
Everett, WA 98201

(425) 388-3538
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DECISION DATE: February 23, 2012

PROJECT NAME: **City of Everett Lift Station No. 24**

**APPLICANT/
LANDOWNER:** City of Everett
3200 Cedar Street
Everett, Washington 98201

FILE NO.: 11-101327 LU

TYPE OF REQUEST: **CONDITIONAL USE PERMIT (CUP)**
For replacement of a municipal sewage lift station

DECISION (SUMMARY): APPROVED, SUBJECT TO CONDITIONS

GENERAL LOCATION: 332 – 120th Street SE, Everett, Washington
Section 30, Township 28, Range 5 East, W.M., Snohomish County

ZONING: R-7,200

COMPREHENSIVE PLAN: Urban Medium-Density Residential

PDS RECOMMENDATION: Approve, subject to the recommended conditions.

Based on a preponderance of the evidence of record, the following Findings of Fact, Conclusions of Law and Decision are entered:

I. FINDINGS OF FACT

A. BACKGROUND INFORMATION

1. The Record. The official record for this proceeding consists of the Exhibits entered into evidence (Exhibits A.1 through H), as well as the testimony of witnesses received at the open record hearing. The entire record was admitted into evidence and considered by the Examiner in reaching the decision herein.

NOTE: For a complete record, an electronic recording of the hearing in this case is available in the Office of the Hearing Examiner.

2. Parties of Record. The Parties of Record are set forth in the Parties of Record Register and include interested parties who testified at the Open Record Hearing.
3. Public Hearing. The Hearing Examiner held an Open Record Hearing on February 15, 2012. Witnesses were sworn, testimony was presented, and exhibits were entered into the record at the hearing. Notice of the application and public hearing were made according to the provisions of SCC 30.70.050(5). (Exhibits F.1, F.2, F.3) Tom Barnett, Principle Economic Development Officer, and Frank Scherf, Senior Environmental Planner appeared and testified on behalf of Snohomish County Department of Planning and Development Services (PDS). For the Applicant, Paul Crane and Dave Boyd appeared and testified. No members of the public attended the public hearing.
4. Application Request. The Applicant is requesting a CUP to replace a 3,600 gallon per minute wastewater lift station, known as Lift Station No. 24. The lift station is at least 30 years old, and has been identified in the City of Everett's 2006 Comprehensive Sewer Plan as having the highest priority for replacement of all of the city's lift stations. The original construction of the lift station occurred prior to any zoning code requirement for a CUP. The project will include a lift station, a standby generator, odor control facility and visual screening walls. All existing structures will be demolished. (Exhibit A.2) The project will provide habitat enhancements to Park Place Creek.
5. Site Description. The subject property is a 0.84 acre site which is currently developed with the existing Lift Station No. 24. The remainder of the site is a combination of grassy areas and second-growth Douglas fir. A single-family residence that formerly was on the property was demolished in late 2010, under demolition permit number 10-107634 DR.
6. Adjacent uses. The vicinity of the site to the north and west is developed with single-family dwellings. A multi-family development was constructed in the past several years adjacent to the north (the "Silver Way LDMR" project, 06-100733 LU). An electrical substation operated by the Snohomish County Public Utility District exists to the southwest, and the paved Interurban pedestrian / bicycle trail shares the property line to the southeast. The edge of the Interstate 5 right-of-way is approximately 60 feet away to the southeast.
7. State Environmental Policy Act Compliance. A revised SEPA Checklist was submitted by the Applicant on September 12, 2011. (Exhibit E.1) A Final Mitigated Determination of Non-Significance (MDNS) was issued by the City of Everett as the Lead Agency on December 2, 2011. (Exhibit E.5) Notice of the decision was made according to the County's regulations. (Exhibits F.1, F.2 and F.3) No appeal of the SEPA determination was filed. Accordingly, the Examiner finds that compliance with the substantive and procedural requirements of SEPA have been met. In issuing a MDNS, the City imposed three (3) conditions pursuant to its SEPA substantive authority. Those conditions are:
 1. Any grading/fill on the site shall be done so as not to impact the surrounding properties.
 2. In order to minimize erosion, any spoil piles must be covered with plastic sheeting or other impervious covering staked to the ground or anchored with rocks or sandbags. Berms, earthen or otherwise, should be constructed at the perimeter of excavated areas to prevent adjacent site runoff from entering excavations.

Grading. PDS determined that grading quantities are in excess of 100 cubic yards, which results in the need for a Land Disturbing Activity (LDA) permit. A full stormwater site plan in accordance with SCC 30.63A.815 shall be required.

Drainage. The applicant proposes to construct approximately 13,900 square feet of new impervious surfaces, of which 12,066 square feet will be classified as pollution generating. For flow control and treatment, polluted stormwater runoff will be routed to the new lift station, where it will be pumped with the sanitary wastewater to Everett's treatment plant. As such, no onsite stormwater detention or retention is required. (Exhibit C.1) Site runoff will decrease from pre-construction to post-construction.

The City estimates that stormwater from approximately 0.26 acres of pollution generating impervious surface will be routed to the pump station and conveyed to the City of Everett's sewer lagoon. Water quality treatment will occur in the lagoon. This new plan will divert .3 percent of the 100-year peak flow (which is an established drainage pattern) away from Park Place Creek. Accordingly, the City has requested a modification of SCC 30.63A.520(1), which requires that natural and established drainage patterns shall be maintained. The Chief Engineering Officer granted the modification on October 19, 2011, based on the fact that the existing stream is enclosed in a pipe and will be converted to an open stream channel. (See, Exhibit H, and Appendix G to Exhibit C.1) Extensive landscaping is proposed along the stream buffer which will provide shading and an improvement to the hydrologic cycle. The upstream basin is a developed urban basin which often results in flashy hydrology for streams. There is also documented downstream flooding and the removal of some portion of peak flows at the site will help reduce downstream flooding. (Exhibits C.1 and C.3)

Runoff from the remaining impervious surfaces will be routed to the stream. Given that the applicant proposes greater than 5,000 square feet of new impervious surfaces, the City must comply with all minimum requirements 1 thru 9 (SCC 30.63A400 through 30.63A.525) for new impervious surfaces and replaced impervious surfaces and shall submit for an LDA permit. Id.

Construction easements for work on adjacent properties will need to be recorded prior to approval of the Storm Water Site Plan. Based on the preliminary findings made by the staff of PDS's Engineering Section relating to drainage and grading, PDS has determined that the project will meet the requirements of Chapters 30.63A and 30.63B SCC. (Exhibit H)

(C). Critical Areas Regulations (Chapters 30.62, 30.62A, 30.62 B, and 32.62C SCC)

A Critical Area Study was performed on September 2, 2011 and a Conceptual Stream Buffer Mitigation Plan has been proposed. (Exhibit C.3) A Category 2 wetland was identified off-site associated with Park Place Creek (Type F). In addition, Park Place Creek flows through the site and is largely confined in a 24-inch underground pipe. County staff has reviewed the reports and on-site environmental conditions and concurs with the critical area assessment. (Exhibit H) The applicant proposes to accomplish the project utilizing the innovative development design section under SCC 30.62A.350. SCC 30.62A.350 allows deviation from the standards of Part 300 of Chapter 30.62A SCC as related to the treatment of wetlands, fish and wildlife habitat conservation areas or buffers. The applicant has demonstrated to the satisfaction of Snohomish County staff that the criteria in SCC 30.62A.350(1) for approval under the innovative development design has been met, as contained in Exhibits B.3, C.3, and C.4. The innovative development design approach involves daylighting 280 linear feet of Park Place Creek, and installing habitat features in the

3. If contamination of the surrounding soils is discovered, and remediation will take place, an erosion control plan must be submitted for approval by the Public Works Department.

These conditions shall be incorporated into the required conditions of this CUP. (SCC 30.61.120(4))

8. Issues of Concern.

A. Public Agency Review. The Muckleshoot Indian Tribe Fisheries Division submitted comments and concerns relating to the water typing determination made for Park Place Creek. They believe it is a Type F (fish-bearing) stream. They also sought daylighting more existing piped portions of the stream and adjacent habitat enhancements to the riparian areas of the Creek. (Exhibit G.1) The City of Everett revised its proposal, and agreed that the Creek is a Type F stream, and proposes to provide an innovative design under the County's Critical Areas Regulations, further described below, which addresses the Tribe's concerns. The Tribes responded to the revised proposal, stating that it is a "substantial improvement." (Exhibit G.1) No other agencies stated concerns about the proposed project.

B. Citizens. No citizen comments were received.

B. APPLICABLE REGULATIONS

The Applicant must meet the requirements of the CUP regulations found in SCC 30.42C.100, as well as the required mitigation imposed pursuant to SEPA. The Hearing Examiner enters the following Findings of Fact as to the Applicant's compliance with those applicable regulations.

9. Conditional Use Permit. SCC 30.42C.100 provides that the Hearing Examiner may approve, or approve with conditions, a CUP only when all the following criteria are met:

- The proposal is consistent with the comprehensive plan;
- The proposal complies with applicable requirements of [Title 30 SCC];
- The proposal will not be materially detrimental to uses or property in the immediate vicinity; and
- The proposal is compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing or intended character, appearance, quality of development, and physical characteristics of the site and surrounding property.

The Hearing Examiner considers each applicable criterion in turn.

10. Consistency with the Comprehensive Plan (SCC 30.42C.100(1))

The subject property is designated Urban Medium Density Residential (UMDR: 6-12 DU/ac) on the General Policy Plan (GPP) Future Land Use Map, and is located within an Urban Growth Area (UGA). According to the GPP, the Urban Medium Density Residential designation "covers various sub-area plan designations which allow a combination of detached homes on small lots, townhouses, and apartments in low density, multifamily

residential developments. Land in this category may be developed up to a maximum density of twelve dwelling units per acre. Implementing zones include the LDMR, PRD-LDMR, Townhouse, R-7,200, PRD-7,200 and WFB zones.” The GPP provides only those policies cited under GMA Comprehensive Plan, below, which provide little direction for the instant application. There are no policies or objectives that prohibit or restrict the proposed lift station reconstruction. The proposal is in conformance with the City of Everett’s 2006 Comprehensive Sewer Plan. Therefore the proposed CUP is considered to be consistent with the comprehensive plan.

Utility Policies. The GPP includes a section titled “Wastewater Collection and Treatment”, beginning on page UT-4. The goal, objectives, and policies regarding wastewater collection and treatment are focused on coordination at the comprehensive plan level, and provide no specific direction for review and approval of individual construction-level projects. The reconstruction of Lift Station 24 is promoted within the City of Everett’s 2006 Comprehensive Sewer Plan, and therefore is considered to be in compliance with the county’s GPP.

Natural Environment Policies. The Natural Environment section of the GPP includes the goals, objectives, and policies set forth below. The proposed CUP site plan is in conformance with all of the pertinent goals, objectives, and policies, including:

Objective NE 1.C: Protect and enhance natural watershed processes, wetlands, fish and wildlife habitat conservation areas, shorelines, and water resources with the long-term objective of protecting ecological function and values.

NE Policy 1.C.1: The county shall continue to protect water resources and natural watershed processes by maintaining the quality, rates and supplies of water, sediment, and woody debris through the use of a variety of strategies, such as:

- (a) maintaining the natural hydrologic cycle and minimizing alterations of natural drainage patterns;*
- (b) encouraging alternative impervious surface techniques;*
- (c) providing for the retention of natural vegetation; and*
- (d) developing and implementing watershed management plans that protect water quality and address non-point pollution and the cumulative effects of land management on ecological systems.*

GOAL NE 2: Provide for the protection and encourage restoration of ecological functions and values across the landscape by coordinating planning efforts among jurisdictions and citizens.

NE Policy 2.A.4: The county should coordinate with the state department of fish and wildlife and other agencies and tribes to protect, manage, and monitor habitat for fish and wildlife.

NE Policy 3.A.6: The county should generally require that mitigation for impacts to the natural environment be located in the following sequential order of preference: on-site, in the same sub-basin,

Objective NE 3.B: *Designate and protect fish and wildlife habitat conservation areas and wetlands pursuant to the Growth Management Act.*

NE Policies 3.B.1: *Vegetated areas in and adjacent to wetlands and fish and wildlife habitat conservation areas shall be established to protect their eco-logical functions and values and include special consideration for the protection of water-dependent and riparian-dependent fish and wildlife.*

Objective NE 8.C: *Minimize the exposure of citizens to the dangers of excessive noise.*

NE Policy 8.C.2: *County regulations may require, where appropriate, buffering or other noise mitigation measures to be incorporated into development proposals.*

Finally, the state Growth Management Act (GMA) Chapter 36.70A RCW, requires that the County's development regulations be consistent with its comprehensive plan. The plans submitted for the project have been deemed to be in compliance with County GMA development regulations relating to fire safety, traffic, drainage, and zoning, subject to recommended conditions of approval.

11. Compliance with Chapter 30.42C.100(2) The proposal has been found to comply with the applicable provisions of Title 30 SCC, as described below.

A. Zoning Regulations. This project meets zoning code requirements for lot size, bulk regulations and other zoning code requirements, including:

(1) Parking. Table 30.26.030(1) requires one stall for utility uses. The site plan shows adequate paved area to accommodate this requirement.

(2) Building height. The maximum building height in the R-7,200 zone is 30 feet. The height of the proposed lift station building will be approximately 21'-10", well below the 30 foot maximum.

(3) Zoning Setbacks. The minimum building setback in the R-7,200 zone for a utility structure is 20 feet, per SCC 30.23.110(25). The proposed lift station building is to be 40 feet from the southeast property line, and approximately 110 feet from the property line at the ROW.

(4) Landscaping. The landscaping for the project as proposed (Exhibit B.1, Sheets L1 – L4) shows a 20-foot-wide, Type 2 buffer around the perimeter of the site. In addition, the mitigation plan for Park Place Creek will provide significant additional landscaping. (Exhibit C.3) The undeveloped portions of the site will be landscaped with species native to the region to provide wildlife habitat and ecological productivity pursuant to SCC 30.62A.360. The proposed development is set back from the right-of-way and will be screened from view to persons using the County road by the existing and proposed vegetation.

Based on the totality of the facts in the record, the Hearing Examiner finds that the proposal meets Zoning Code requirements for building height, parking, perimeter landscape buffers, parking area landscaping, building setbacks and other zoning code regulations and requirements, subject to the recommended conditions of approval.

12. Development Regulations. Finally, the Applicant must demonstrate that they have met all other applicable development regulations applicable to the proposed use. Each applicable regulation is reviewed below. The Applicant is vested to the regulations in effect on March 28, 2011. (Exhibit J)

(A). Traffic Mitigation and Road Design Standards (Title 13 SCC & Chapter 30.66B SCC)

PDS Traffic has reviewed the proposal for compliance with Title 13 and Chapter 30.66B SCC, Snohomish County Engineering Design and Development Standards (EDDS), and the appropriate policies and procedures. The subject property is located within Transportation Service Area (TSA) "D."

1. Road System Impacts [SCC 30.66B.310] A development must mitigate its impact upon the future capacity of the Snohomish County road system by paying a road system impact fee reasonably related to the impacts of the development on arterial roads located in the same transportation service area as the development, at the rate identified in SCC 30.66B.330 for the type and location of the proposed development. A development's road system impact fee will be equal to the development's new average daily traffic (ADT), based on the latest edition of the ITE Trip Generation report published by the Institute of Transportation Engineers, times the per trip amount for the specific transportation service area identified in SCC 30.66B.330 or acceptable specific trip generation information provided by the Applicant or their Traffic Engineer.

Here, PDS Transportation has concluded that this project will generate approximately one trip per week for maintenance. Trip generation credit can be given for the existing home on the site to be removed. Therefore, there would be fewer trips than previously existing on the site when the home was occupied. Accordingly, no mitigation is required for impacts to the County road system pursuant to SCC 30.66B.310, SCC 30.66B.120 (concurrency), and SCC 30.66B.210 (inadequate road conditions) and SCC 30.66B.420.

2. Frontage Improvement Requirements [SCC 30.66B.410] All developments are required to make frontage improvements along the parcel's frontage on any opened, constructed, and maintained public road. The City of Everett proposes to construct standard urban frontage improvements along the property frontage with Silver Way to connect with the recently constructed frontage improvements adjacent to the north of the site (PFN 06-100733).

3. Right-of-Way Requirements [SCC 30.66B.510, and .520] A development shall be required to dedicate, establish or deed right-of-way to the County for road purposes as a precondition of approval of the development, when to do so is reasonably necessary as a direct result of a proposed development, for improvement, use or maintenance of the road system serving the development. The department has determined that there is adequate right-of-way existing along the property frontage to construct improvements matching the adjacent improvements. No additional right-of-way is needed. PDS has recommended that a condition of approval be included stating that prior to any work occurring with the right-of-way, a Title 13 SCC Right-of-Way Use Permit shall have been obtained from PDS.

The Hearing Examiner has reviewed the analysis and finds that there is substantial evidence in the record to support the required road and transportation improvements recommended by PDS.

4. Impacts to State Highways [SCC 30.66B.710] When a development's road system includes a state highway, mitigation requirements will be established using the County's SEPA authority consistent with the terms of the interlocal agreement between the County and the Washington State Department of Transportation (WSDOT). This is consistent with the County's SEPA policy SCC 30.61.230(9), through which the county designates and adopts by reference the formally designated SEPA policies of other affected agencies for the exercise of the County's SEPA authority. Here, the proposal does not affect any state highway. Therefore, no mitigation is required.

5. Impacts to City Streets and Roads in Another County [SCC 30.66B.720] Mitigation requirements for impacts on streets inside cities and roads in other counties will be established consistent with the terms of a Reciprocal Traffic Mitigation Interlocal Agreement (ILA) between the County and the other jurisdiction(s). The subject proposal does not impact any City streets.

6. Transportation Demand Management (TDM) [SCC 30.66B.630] All new developments in the urban area shall provide TDM measures. Sufficient TDM measures shall be provided to indicate the potential for removing a minimum of five (5) percent of the development's P.M. peak hour trips from the road system. The Examiner finds that this project does not generate any peak hour trips and, therefore, is not required to provide TDM measures.

(B). Drainage, Clearing and Grading – (Ground Disturbing Activity) (Chapters 30.63A, 30.63B, and 30.63C SCC)

The site is made up of two properties. One is the existing Lift Station 24 site and the other is the west neighboring residential property. The residential site is vegetated with lawn and large conifers. The site adjoins Interstate-5 (I-5) and the Interurban Trail on the east. The site slopes gradually from northeast to southeast. Soils are reported to be Alderwood urban land complex and Everett gravelly sandy loam in the preliminary geotechnical assessment by GeoEngineers Inc. dated January 8, 2009. Neither are high erosion hazard classifications and it was reported that landslide hazard conditions do not exist onsite.

Park Place Creek flows thru the Lift Station No. 24 site prior to crossing I-5 and draining into North Creek. The Snohomish County North Creek DNR (Appendix D Figure 8-1c) classifies the existing on-site storm drain system as a flooding problem location.

The applicant proposes demolition of the existing lift station building, impervious surfaces, residential house, and outbuildings. The proposal includes construction of a new lift station building, asphalt access road, and asphalt parking area. The new lift station will be built on the residential property. It is also proposed to reroute Park Place Creek in a constructed steam channel through the property to alleviate flooding concerns. It is reported that the site currently floods.

The preliminary application for the City of Everett was reviewed by the Engineering Section within PDS for compliance with Chapter 30.63A SCC, the Snohomish County Drainage Manual, and Chapter 30.63B SCC, drainage and grading respectfully. Their review was based on the Master Permit Application (Exhibit A.1), Full Drainage Report (Exhibits C.1 and C.2), and Amec Earth and Environmental Report (Exhibit C.3).

Grading. PDS determined that grading quantities are in excess of 100 cubic yards, which results in the need for a Land Disturbing Activity (LDA) permit. A full stormwater site plan in accordance with SCC 30.63A.815 shall be required.

Drainage. The applicant proposes to construct approximately 13,900 square feet of new impervious surfaces, of which 12,066 square feet will be classified as pollution generating. For flow control and treatment, polluted stormwater runoff will be routed to the new lift station, where it will be pumped with the sanitary wastewater to Everett's treatment plant. As such, no onsite stormwater detention or retention is required. (Exhibit C.1) Site runoff will decrease from pre-construction to post-construction.

The City estimates that stormwater from approximately 0.26 acres of pollution generating impervious surface will be routed to the pump station and conveyed to the City of Everett's sewer lagoon. Water quality treatment will occur in the lagoon. This new plan will divert .3 percent of the 100-year peak flow (which is an established drainage pattern) away from Park Place Creek. Accordingly, the City has requested a modification of SCC 30.63A.520(1), which requires that natural and established drainage patterns shall be maintained. The Chief Engineering Officer granted the modification on October 19, 2011, based on the fact that the existing stream is enclosed in a pipe and will be converted to an open stream channel. (See, Exhibit H, and Appendix G to Exhibit C.1) Extensive landscaping is proposed along the stream buffer which will provide shading and an improvement to the hydrologic cycle. The upstream basin is a developed urban basin which often results in flashy hydrology for streams. There is also documented downstream flooding and the removal of some portion of peak flows at the site will help reduce downstream flooding. (Exhibits C.1 and C.3)

Runoff from the remaining impervious surfaces will be routed to the stream. Given that the applicant proposes greater than 5,000 square feet of new impervious surfaces, the City must comply with all minimum requirements 1 thru 9 (SCC 30.63A400 through 30.63A.525) for new impervious surfaces and replaced impervious surfaces and shall submit for an LDA permit. Id.

Construction easements for work on adjacent properties will need to be recorded prior to approval of the Storm Water Site Plan. Based on the preliminary findings made by the staff of PDS's Engineering Section relating to drainage and grading, PDS has determined that the project will meet the requirements of Chapters 30.63A and 30.63B SCC. (Exhibit H)

(C). Critical Areas Regulations (Chapters 30.62, 30.62A, 30.62 B, and 32.62C SCC)

A Critical Area Study was performed on September 2, 2011 and a Conceptual Stream Buffer Mitigation Plan has been proposed. (Exhibit C.3) A Category 2 wetland was identified off-site associated with Park Place Creek (Type F). In addition, Park Place Creek flows through the site and is largely confined in a 24-inch underground pipe. County staff has reviewed the reports and on-site environmental conditions and concurs with the critical area assessment. (Exhibit H) The applicant proposes to accomplish the project utilizing the innovative development design section under SCC 30.62A.350. SCC 30.62A.350 allows deviation from the standards of Part 300 of Chapter 30.62A SCC as related to the treatment of wetlands, fish and wildlife habitat conservation areas or buffers. The applicant has demonstrated to the satisfaction of Snohomish County staff that the criteria in SCC 30.62A.350(1) for approval under the innovative development design has been met, as contained in Exhibits B.3, C.3, and C.4. The innovative development design approach involves daylighting 280 linear feet of Park Place Creek, and installing habitat features in the

new stream channel, creating and/or enhancing approximately 2,395 square feet of the Park Place Creek channel, and planting 22,360 square feet of new stream buffer on-site. In addition, the City will implement low impact development (LID) techniques to minimize the impacts of the new Lift Station on Park Place Creek. A small portion of the stream will continue to pass through a culvert bridging the creek. The existing culvert will be replaced with a box culvert that will bridge the creek, allowing for fish passage. The action will result in beneficial effects to Park Place Creek and is supported by both the Washington Department of Fish and Wildlife and the Muckleshoot Indian Tribe. The Hearing Examiner concludes that the proposed project and enhancements will provide a benefit to the adjacent critical areas. The application is consistent with Chapter 30.62A SCC, subject to the conditions that include marking of the Critical Areas Protection Areas, recording of a Critical Areas Site Plan, and submittal and approval of a detailed mitigation plan as part of the future submittal of a LDA permit application.

(D). International Fire Code (Chapter 30.53A SCC)

The application was reviewed and approved by the County's Fire Marshal's Office.

(E). Utilities

1. Water. Water is available from the City of Everett water system. The applicant is the local purveyor of water for domestic use.

2. Sewer. The proposal is to reconstruct an existing sewage lift station. The Snohomish Health District has recommended approval of the CUP, provided that the existing septic tank is abandoned in accordance with state law; a condition of approval is recommended regarding abandonment of the tank. (Exhibit G2)

3. Electricity. The Snohomish County PUD did not provide comments in response to the proposal. Staff believe that the District can serve the updated lift station as it does today.

(F). School Impact Mitigation (Chapter 30.66C SCC)

The project is not subject to fees associated with Chapter 30.66C SCC. (Exhibit H)

(G). Park and Recreation Impact Mitigation (Chapter 30.66A SCC)

The proposal is not subject to Chapter 30.66A SCC since the proposal will not have any documented impacts upon the capacity of the County parks system

(H). Land Use Permit Binder (SCC 30.42C.200)

The Applicant is required to file a Land Use Permit Binder (LUPB) prior to the initiation of any site work. While there is an existing LUPB on file for the current facility, PDS has included a recommended condition of approval to ensure that an updated Land Use Permit Binder is recorded.

Based on the foregoing facts set forth in Paragraph 11 and 12, the Hearing Examiner finds that the proposal complies with the County's zoning and development regulations, as set forth in Title 30 SCC.

13. The proposal will not be materially detrimental to uses or property in the immediate vicinity.

(A). The proposal is compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing or intended character, appearance, quality of development, and physical characteristics of the site and surrounding property.

(1) Design. The provisions of the County's development standards and regulations have been applied to the subject application and the Hearing Examiner finds that the resulting design and proposed improvements are compatible with, and responds appropriately to, the existing character, appearance and quality of development of the surrounding neighborhood, and the physical characteristics of the site and surrounding properties. The scale and exterior design of the proposed lift station is compatible with the existing neighborhood. The proposal will expand the overall facility, but the setbacks, architecture, site design, and wetland planting plan mitigate any aesthetic impacts of the new facility.

(2) Noise. The only remaining issue to be resolved that is not dealt with through the County's development regulations is noise. The County's regulations restrict the transmission of noise from a steady source across property boundaries above 55 dBA during daytime hours and 45 dBA during evening hours. The odor control system must meet a standard that is 5 dBA lower than these standards because the noise generated from the system is a pure tone component. (Exhibit C.5 at p. 2)

The applicant's Noise Study was updated on August 29, 2011. (Exhibit C.5) The noise analysis considered the pump station building, the emergency generator and the odor control system. It concluded that the noise standards can be met for the pump station during daytime hours with the recommended noise mitigation mentioned therein. Evening noise levels will slightly exceed the County's noise standards when the heat removal fans are operating. The standards cannot be met for the odor control blower, which is located on the outside of the pump station building, without providing some level of noise control. Finally, the emergency generator may periodically exceed the County's noise ordinance during routine testing, and it does not meet the emergency exemption provided in the County Code.

A major mitigating factor in this case is that the proposed new lift station is located immediately adjacent to Interstate 5, a major freeway. The ambient noise levels in the area from the freeway are never below 55 dBA during daylight hours and prior to 10 p.m. in the evening. In addition, the hourly average noise level never drops below 59 dBA at any time of the day or night. (Exhibit C.5 at p. 5) SCC 10.01.050(d) exempts noise from "[s]ounds created by the normal operation, on public highways, of motor vehicles regulated under SCC 10.01.030(4) pertaining to maximum permissible sound levels for motor vehicles." The Hearing Examiner finds that the freeway noise generated from I-5 has created a permanent, artificially high ambient noise background condition that exceeds the County's noise standards. Based on the existing background noise conditions, it is unreasonable to conclude that the applicant should be required to expend considerable funds to provide additional mitigation to offset noise from its equipment. Such mitigation would do nothing to reduce the ambient noise level of I-5. Additionally, the facts in the record do not support a conclusion that the Applicant's equipment will result in a cumulative effect that increases the noise level in the immediate area. Accordingly, the Hearing Examiner finds that under these unique facts, the Applicant is not required to provide additional noise mitigation measures.

Based on the foregoing facts, the Hearing Examiner finds that the proposed CUP, subject to recommended conditions of approval, is consistent with the Comprehensive Plan and complies with the applicable requirements of the Snohomish County Code.

14. Based on the foregoing Findings of Fact, the Hearing Examiner finds that the proposal meets all of the requirements of the County's CUP regulations and should be approved, subject to the recommended conditions.
15. Any Finding of Fact which should be deemed a Conclusion of Law in this Decision is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Examiner has original jurisdiction over the CUP application pursuant to Chapter 2.02 SCC and SCC 30.72.020.
2. In issuing a CUP, the Hearing Examiner has broad discretion to impose conditions of approval. The Hearing Examiner may:
 - (a) Increase requirements in the standards, criteria, or policies established by [Title 30 SCC];
 - (b) Stipulate the exact location as a means of minimizing hazards to life; limb, property damage, erosion, landslides, or traffic;
 - (c) Require structural features or equipment essential to serve the same purpose set forth in 30.42C.100 (2)(b);
 - (d) Impose conditions similar to those set forth in items 30.42C.100(2)(b) and 30.42C.100(2)(c) as may be deemed necessary to establish parity with uses permitted in the same zone in their freedom from nuisance generating features in matters of noise, odors, air pollution, wastes, vibration, traffic, physical hazards, and similar matters. The hearing examiner may not in connection with action on a CUP, reduce the requirements specified by [Title 30 SCC] as pertaining to any use nor otherwise reduce the requirements of [Title 30 SCC] in matters for which a variance is the remedy provided;
 - (e) Assure that the degree of compatibility with the purpose of this title shall be maintained with respect to the particular use on the particular site and in consideration of other existing and potential uses, within the general area in which the use is proposed to be located;
 - (f) Recognize and compensate for variations and degree of technological processes and equipment as related to the factors of noise, smoke, dust, fumes, vibration, odors, and hazard or public need;
 - (g) Require the posting of construction and maintenance bonds or other security sufficient to secure to the county the estimated cost of construction and/or installation and maintenance of required improvements; and
 - (h) Impose any requirement that will protect the public health, safety, and welfare.
3. Based upon the entire record and the Findings of Fact herein, the Examiner concludes that the application has met all of the required approval criteria for an amendment to a CUP, subject to the proposed conditions of approval.

4. The CUP should be granted subject to the proposed conditions and MDNS conditions as recommended by PDS and the City of Everett as the SEPA lead agency.
5. The proposal is consistent with the GMACP; GMA-based county codes, the type and character of land use permitted on the project site, the permitted density and applicable design and development standards.
6. The proposal complies with applicable requirements of Title 30 SCC.
7. As conditioned, the proposal is compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing or intended character, appearance, quality of development, and physical characteristics of the site and surrounding property.
8. Adequate public and/or private utilities exist to serve the proposal.
9. If approved with the recommended conditions, the proposal will make adequate provisions for the public health, safety and general welfare.
10. The Examiner concludes that the major revision to the CUP should be granted.
11. Any Conclusion of Law in this Decision which should be deemed a Finding of Fact is hereby adopted as such.

DECISION AND ORDER

1. **A CONDITIONAL USE PERMIT is GRANTED** to the Applicant for the operation of a sewage lift station and related appurtenances on the subject property as described in the application, subject to the following **CONDITIONS:**
CONDITIONS
 - A. The CUP site, landscape, and floor plans received by PDS on September 30 10, 2011 (Exhibit B.1) shall be the approved site configuration. Changes to the approved site plan are governed by SCC 30.42C.110.
 - B. Any and all exterior lighting onsite shall be shielded so as not to cast any direct glare onto adjacent and nearby private properties and public roads.
 - C. Prior to initiation of any further site work and/or prior to issuance of any development/construction permits by the county:
 1. A Land Use Permit Binder shall have been completed, signed, and recorded with the County Auditor's Office.
 2. A land disturbing activity permit, to include a Storm Water Pollution Prevention Plan (SWPPP), issued pursuant to the Chapter 30.63B SCC shall have been obtained for any on-site grading.

3. A full drainage plan shall have been submitted and approved pursuant to the Chapter 30.63A SCC.
 4. Prior to any work occurring with the right-of-way, a Title 13 SCC Right-of-Way Use Permit shall have been obtained from PDS.
 5. All site development work shall comply with the requirements of the plans, landscape modification, and permits approved pursuant to Condition A, above.
- D. Prior to any development activity (e.g.: clearing, grading or filling) on the site and/or prior to issuance of any development permits by the County:
1. The project proponent shall mark with temporary markers in the field the boundary of all Critical Area Protection Areas (CAPA) required by Chapter 30.62A SCC, or the limits of the proposed site disturbance outside of the CAPA, using methods and materials acceptable to the county.
 2. A Critical Area Site Plan (CASP) shall be recorded with the Snohomish County Auditor that depicts critical areas and their buffers in a Critical Area Protection Area (CAPA) with the restrictive language as follows:

"All CRITICAL AREA PROTECTION AREAS shall be left permanently undisturbed in a substantially natural state. No clearing, grading, filling, building construction or placement, or road construction of any kind shall occur, except removal of hazardous trees."
 3. A detailed mitigation plan shall be submitted with the Land Disturbing Activity Permit based on the Amended September 2, 2011 Critical Areas Study and Conceptual Stream Buffer Mitigation Plan.
- E. Prior to final of the Land Disturbing Activity permit:
1. Critical Area Protection Area boundaries (CAPA) shall have been permanently marked on the site prior to final inspection by the County, with both CAPA signs and adjacent markers which can be magnetically located (e.g.: rebar, pipe, 20 penny nails, etc.). The City may use other permanent methods and materials provided they are first approved by the County. Where a CAPA boundary crosses another boundary (e.g.: lot, tract, plat, road, etc.), a rebar marker with surveyors' cap and license number must be placed at the line crossing.
 2. CAPA signs shall have been placed no greater than 100 feet apart around the perimeter of the CAPA. Minimum placement shall include one Type 1 sign per wetland, and at least one Type 1 sign shall be placed in any lot that borders the CAPA, unless otherwise approved by the County biologist. The design and proposed locations for the CAPA signs shall be submitted to PDS Permitting for review and approval prior to installation.
 3. The Stream and Buffer Mitigation Plan shall have been satisfactorily installed and approved by PDS.

F. SEPA MDNS Conditions:

1. Any grading/fill on the site shall be done so as not to impact the surrounding properties.
2. In order to minimize erosion, any spoil piles must be covered with plastic sheeting or other impervious covering staked to the ground or anchored with rocks or sandbags. Berms, earthen or otherwise, should be constructed at the perimeter of excavated areas to prevent adjacent site runoff from entering excavations.
3. If contamination of the surrounding soils is discovered, and remediation will take place, an erosion control plan must be submitted for approval by the Public Works Department.

Nothing in this permit shall excuse the Applicant, owner, lessee, agent, successor or assigns from full compliance with any other federal, state or local statutes, ordinances or regulations applicable to this project. In particular, no clearing, grading, filling, construction or other physical alteration of the site may be undertaken prior to the issuance of the necessary permits for such activities.

Decision issued this 23rd day of February, 2012.



Millie M. Judge, Hearing Examiner

EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

The decision of the Hearing Examiner is final and conclusive with right of appeal to the County Council. However, reconsideration by the Examiner may also be sought by one or more parties of record. The following paragraphs summarize the reconsideration and appeal processes. For more information about reconsideration and appeal procedures, please see Chapter 30.72 SCC and the respective Examiner and Council Rules of Procedure.

Reconsideration

Any party of record may request reconsideration by the Examiner **within 10 days** from the date of this decision. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2nd Floor, Robert J. Drewel Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S No. 405, 3000 Rockefeller Avenue, Everett WA 98201) **on or before MARCH 5, 2012**. There is no fee for filing a petition for reconsideration. "The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing." [SCC 30.72.065]

A petition for reconsideration does not have to be in a special form but must: contain the name, mailing address and daytime telephone number of the petitioner, together with the signature of the petitioner or of the petitioner's attorney, if any; identify the specific findings, conclusions, actions and/or conditions for which reconsideration is requested; state the relief requested; and, where applicable, identify the specific nature of any newly discovered evidence and/or changes proposed by the Applicant.

The grounds for seeking reconsideration are limited to the following:

- (a) The Hearing Examiner exceeded the Hearing Examiner's jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching the Hearing Examiner's decision;
- (c) The Hearing Examiner committed an error of law;
- (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by the record;
- (e) New evidence which could not reasonably have been produced and which is material to the decision is discovered; or
- (f) The Applicant proposed changes to the application in response to deficiencies identified in the decision.

Petitions for reconsideration will be processed and considered by the Hearing Examiner pursuant to the provisions of SCC 30.72.065. Please include the County file number in any correspondence regarding this case.

Appeal

An appeal to the County Council may be filed by any aggrieved party of record **within 14 days from the date of this decision**. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been disposed of by the hearing examiner. An aggrieved party need not file a petition for reconsideration but may file an appeal directly to the County Council. If a petition for reconsideration is filed, issues subsequently raised by that party on appeal to the County Council shall be limited to those issues raised in the petition for reconsideration.

Appeals shall be addressed to the Snohomish County Council but shall be filed in writing at the Public Assistance Counter of Planning and Development Services, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: 3000 Rockefeller Avenue M/S 604, Everett, WA 98201) **on or before MARCH 8, 2012**, and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00) for each appeal filed; PROVIDED, that the fee shall not be charged to a department of the County. The filing fee shall be refunded in any case where an appeal is summarily dismissed in whole without hearing under SCC 30.72.075.

An appeal must contain the following items in order to be complete: a detailed statement of the grounds for appeal; a detailed statement of the facts upon which the appeal is based, including citations to specific Hearing Examiner findings, conclusions, exhibits or oral testimony; written arguments in support of the appeal; the name, mailing address and daytime telephone number of each appellant, together with the signature of at least one of the appellants or of the attorney for the appellant(s), if any; the name, mailing address, daytime telephone number and signature of the appellant's agent or representative, if any; and the required filing fee.

The grounds for filing an appeal shall be limited to the following:

- (a) The decision exceeded the Hearing Examiner's jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;
- (c) The Hearing Examiner committed an error of law; or
- (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by substantial evidence in the record. [SCC 30.72.080]

Appeals will be processed and considered by the County Council pursuant to the provisions of Chapter 30.72 SCC. Please include the County file number in any correspondence regarding the case.

The Land Use Permit Binder, which must be executed and recorded as required by SCC 30.42C.200, will be provided by PDS. The Binder should **not** be recorded until all reconsideration and/or appeal proceedings have been concluded and the permit has become effective.

Staff Distribution:

Department of Planning and Development Services: Tom Barnett

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." A copy of this Decision is being provided to the Snohomish County Assessor as required by RCW 36.70B.130.

PARTIES OF RECORD REGISTER
11-101-327 LU CITY OF EVERETT
REPLACEMENT LIFT STATION
HG: 2/15/12

SNO CO PLANNING & DEV/LAND USE
BARNETT / WHEELER
3000 ROCKEFELLER AVE # 604
EVERETT WA 98201

SNOHOMISH HEALTH DISTRICT
BRENT RAASINA
3020 RUCKER AVE SUITE 104
EVERETT WA 98201

CITY OF EVERETT
PAUL CRANE
3200 CEDAR ST
EVERETT WA 98201

MUKLESHOOT INDIAN TRIBE
FISHERIES
KAREN WALTER
39015 172ND AVE SE
AUBURN WA 98092