



Kitsap County Hearing Examiner

ADMINISTRATION BUILDING, 619 DIVISION ST, MS-36
http://www.kitsapgov.com/dcd/lu_env/he/

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NOTICE OF HEARING EXAMINER DECISION

May 3, 2016

To: Interested Parties and Parties of Record

RE: Project Name: Manchester Pump Stations #45, #46, and #47
Applicant: Kitsap County Public Works
614 Division Street MS-36
Port Orchard, WA 98366
Application: Shoreline Substantial Development Permit and Shoreline
Conditional Use Permit
Permit Number: 16 00278 and 16 00291

Enclosed is the Decision issued by the Kitsap County Hearing Examiner in the above-referenced matter.

The applicant is encouraged to review the Kitsap County Office of Hearing Examiner Rules of Procedure found at: http://www.kitsapgov.com/dcd/lu_env/he/HE%20Rules%20for%20Kitsap%20County%20-%206-23-09.pdf

The Decision of the Hearing Examiner is final, unless appealed, as provided under Washington law.

Please note affected property owners may request a change in valuation for property tax purposes, notwithstanding any program of revaluation. Please contact the Assessor's Office at 360-337-5777 to determine if a change in valuation is applicable due to the issued Decision.

The complete case file is available for review at the Department of Community Development, Monday through Thursday, 8:00 AM to 4:00 PM and Friday 9:00 AM to 1:00 PM, except holidays. If you wish to view the case file or have other questions, please contact Constance Blackburn at cblackburn@co.kitsap.wa.us or (360) 337-5777.

Cc Applicant and/or Rep:

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Interested Parties:

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David Kimble: cndkimble@wavecable.com
Jerry Clark: cookie@wavecable.com
Jon & Melinda Daeley: 8222 E Caraway Rd Port Orchard, WA 98366

**BEFORE THE HEARING EXAMINER
FOR KITSAP COUNTY**

In the Matter of the Application of)	Nos. 16-00278 & 16-00291
)	
Kitsap County Wastewater Division)	Pump Stations 45, 46, and 47 Upgrades
)	
For Approval of a Shoreline Substantial)	
Development Permit and Shoreline)	FINDINGS, CONCLUSIONS,
<u>Conditional Use Permit</u>)	AND DECISION

SUMMARY OF DECISION

The request for a Shoreline Substantial Development Permit and Shoreline Conditional Use Permit to replace and upgrade Pump Stations 45, 46, and 47, with associated beach line and manhole rehabilitation, is **APPROVED**. Conditions are necessary to mitigate specific impacts of the proposed development and to ensure compliance with existing County ordinances.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held an open record hearing on the request on April 14, 2016.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

Steve Heacock, County Senior Environmental Planner
Barbara Zaroff, PE, Kitsap County Public Works, Applicant Representative
Jerry Clark

Exhibits:

The following exhibits were admitted into the record:

1. Project Application, received January 25, 2016
2. Submittal Checklist, received January 25, 2016
3. Submittal Waiver, received January 25, 2016
4. Joint Aquatic Resources Permit Application, dated January 11, 2016
5. Preliminary Project Plans (13 sheets), dated January 2016
6. Site Photographs, dated January 12, 2016

Findings, Conclusions, and Decision
Kitsap County Hearing Examiner
Pump Stations 45, 46, & 47 Upgrade Project
SSDP & SCUP, Nos. 16-00278 & 16-00291

7. Technical Memorandum and Shoreline Master Program Compliance Evaluation, Landau Associates, Inc., dated January 11, 2016
8. SEPA Checklist, dated December 4, 2015
9. Geotechnical Report, dated July 28, 2015
10. Notice of Complete Application, dated January 25, 2016
11. Notice of Application, dated February 17, 2016
12. Comments from Candy Mursell, County Development Services and Engineering, dated February 22, 2016
13. Email from Paul Nuchims to Steve Heacock, dated February 25, 2016, with email string
14. Letter from Jerry Clark, dated March 1, 2016
15. Email from David Kimble to Steve Heacock, dated March 18, 2016, with email string
16. Mitigated Determination of Nonsignificance, dated March 17, 2016
17. Staff Report, dated April 6, 2016
18. Certification of Public Notice, dated April 6, 2016
19. Letter from Steve Heacock, dated April 6, 2016
20. Email from Barbara Zaroff to Steve Heacock, dated April 12, 2016
21. Staff PowerPoint presentation, dated April 14, 2016

The Hearing Examiner enters the following Findings and Conclusions based upon the testimony and exhibits admitted at the open record hearing:

FINDINGS

Application and Notice

1. Kitsap County Wastewater Division (KCWD) (Applicant) requests a Shoreline Substantial Development Permit (SSDP) and Shoreline Conditional Use Permit (SCUP) to replace and upgrade Pump Stations (PS) 45, 46, and 47 in the Manchester Village community. The project includes conveyance upgrades to redirect flows from the current pump stations, located in the intertidal zone, to new stations located upland within existing public rights-of-way. Approximately 3,330 feet of existing transport beach lines would be restored using cured in-place pipe (CIPP) liner. Nine existing beach-line manholes would be repaired and retrofitted as necessary. New rock revetments would extend approximately 35 linear feet and 50 linear feet along the shoreline in the area formerly occupied by PS 45 and 46, respectively, and would serve to protect residential areas, roadways, and new facilities landward of the shoreline.¹ The proposal would produce a net increase of approximately 477 square feet of intertidal habitat following the removal and relocation of PS 45 and 46, which currently jut into the Puget Sound.² *Exhibit 1; Exhibit 5; Exhibit 7; Exhibit 17, Staff Report, pages 1 and 2; Exhibit 21.*

¹ In response to a request from a neighbor living near PS 45, the Applicant may extend the shoreline armoring by an additional 10 feet if it is deemed necessary during construction. *Exhibit 20.*

² If the rock revetments near PS 45 are extended an additional 10 feet, the Applicant expects the net intertidal habitat gain would be approximately 447 square feet. *Exhibit 20.*

2. Kitsap County (County) determined the application was complete on January 25, 2016. The County mailed notice of the application to the Applicant, Applicant Representative, interested parties, and owners of property within 800 feet of the subject property on February 17, 2016. The County published notice in the County's publishing newspaper of record the same day. On March 31, 2016, the County published notice of the open record hearing associated with the application in the County's publishing newspaper and mailed notice to the Applicant, Applicant Representative, interested parties, and owners of property within 800 feet of the property. The next day, the County posted notice of the hearing at the site. *Exhibit 10; Exhibit 11; Exhibit 18; Exhibit 19.*
3. The County received three public comments from area residents in response to its notice materials. Dave Kimble initially expressed concern about the potential for extensive beach line excavation during the project. After connecting with Chris Waldbillig from Washington State Department of Fish and Wildlife (WDFW) and learning that the beach transport lines would be repaired with CIPP technology, as opposed to being excavated and replaced, Mr. Kimble wrote the County again, noting that his concerns about beach disruption were resolved. Jerry Clark expressed concern about design elements of the project, especially the manholes. Paul Nuchims requested additional information related to existing drainage facilities near his residence. After multiple interactions with Mr. Nuchims, including an office visit where the Applicant detailed the project design and plans, the Applicant determined that a retrofit of Mr. Nuchims private drainage facilities could not be incorporated into the scope of this public project. Chris May and Chuck Smiley of Clean Water Kitsap, however, both informed Mr. Nuchims they would continue to work with him outside the scope of this project to solve drainage problems on his property from seasonal flood events. *Exhibit 13; Exhibit 14; Exhibit 15; Exhibit 17, Staff Report, page 5.*

State Environmental Policy Act

4. The County acted as lead agency and analyzed the environmental impacts of the proposal, as required by the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW).³ The County reviewed the Applicant's SEPA checklist and other available information on file, and determined that the proposal would not have a probable significant adverse impact on the environment. The County issued a Mitigated Determination of Nonsignificance (MDNS) on March 17, 2016. Mitigation measures require that the Applicant adhere to WDFW requirements to limit habitat impacts, as established through the Hydraulic Project Approval process; that shoreline construction activity be conducted so that private properties adjacent to project areas are not impacted; and that the Applicant enhance and restore portions of the project area as

³ The County used the optional DNS process under Washington Administrative Code (WAC) 197-11-355. *Exhibit 16.*

outlined in the Technical Memorandum prepared by Landau Associates, Inc. (discussed more fully below). The SEPA appeal period ended on March 31, 2016, and no appeals were filed. *Exhibit 7; Exhibit 8; Exhibit 16; Exhibit 17, Staff Report, page 3.*

Comprehensive Plan, Zoning and Surrounding Property

5. The areas affected by the project are in the Manchester Limited Area of More Intensive Rural Development (Manchester LAMIRD) under the County Comprehensive Plan.⁴ County staff has specifically identified the following Comprehensive Plan policies as relevant to this application: Policy SH-1 (supporting shoreline diversity through planned and coordinated development); Policy SH-3 (uses and activities along shorelines should not have a significant adverse affect on water quality); Policy SH-8 (land use activities shall be sited and designed to minimize impacts on the shoreline environment); and Policy UT-2 (encourage the designation and development of utility corridors and facilities in a manner consistent with the needs and resources of Kitsap County). *Exhibit 17, Staff Report, page 4.*
6. Work on PS 45 and PS 47 would occur in areas zoned Manchester Village Residential. The area associated with work performed on PS 46 is zoned Manchester Village Low Residential. Surrounding areas are similarly zoned. *Exhibit 17, Staff Report, page 3.*
7. The shoreline area spanned by the approximately 3,300 linear feet of transport pipeline that would be restored is densely developed with residences and a public boat launch. Duncan Creek, a fish-bearing stream, discharges into Puget Sound within the project area. The intertidal zone associated with the project area is not vegetated and consists of a gravel substrate with sand, cobbles, and boulders. The shoreline is armored with concrete and boulder riprap, concrete bulkheads, and some soft shore armoring, such as logs. A U.S. Navy marine fueling facility is located north of the project area. *Exhibit 7.*

Shoreline Management Act

8. The primary goal of the State Shoreline Management Act (SMA) is to protect the public interest in the state's shorelines through a coordinated development process. The SMA contemplates protecting against adverse effects to public health, the land, vegetation, wildlife, and waters, and preserving the public's opportunity to enjoy the physical and aesthetic qualities of the natural shoreline to the greatest extent feasible. Permitted uses in the shorelines must be designed and conducted in a manner that minimizes damage to

⁴ The new pump stations would be located at the end of existing rights-of-way adjacent to residential properties within the Manchester community. PS 45 would be located on East Daniels street, adjacent to tax parcel 4522-003-001-0004. PS 46 would be located on East Caraway Street, adjacent to tax parcel 222402-2-045-2003. PS 47 would be located on East Hemlock Street, adjacent to tax parcel 4524-005-008-0000. A legal description of the areas affected by the proposal is included with the staff report. *Exhibit 7; Exhibit 17, Staff Report, page 2.*

the ecology and environment of the shoreline area and minimizes any interference with the public's use of the water. *RCW 90.58.020*.

9. The purpose of the County Shoreline Master Program (SMP) is to guide the future development of the shorelines in Kitsap County in a manner consistent with the Shoreline Management Act. *KCC 22.100.110*. The SMP establishes six shoreline environment designations, policies applicable to each designation, and policies applicable to all shoreline environments. *KCC 22.200.105*. Policies applicable to all shoreline environments encourage uses consistent with the character of the specific shoreline environment. *Exhibit 7; Exhibit 17, Staff Report, page 3*.
10. The County SMP provides that no substantial development will be undertaken on shorelines of the state without first obtaining a shoreline substantial development permit (SSDP). *KCC 22.500.100.B*. The SMA defines *substantial development* as any development that materially interferes with the normal public use of the water or shorelines of the state. *RCW 90.58.030(3)(e)*. Because work on this project would cause some interference with public use of the shoreline, an SSDP is required. Regulations implementing the SMA construe exemptions from the shoreline substantial development permit process narrowly. *Washington Administrative Code (WAC) 173-27-040(1)(a)*. If any part of a proposed development is not eligible for exemption from the shoreline substantial development permit process, then an SSDP is required for the entire proposed development project. *WAC 173-27-040(1)(d)*.
11. The proposed project would be located within the Urban Conservancy and Shoreline Residential environments. The purpose of the Urban Conservancy environment is to “protect and restore ecological functions of open space, floodplain and other sensitive lands where they exist in urban and developed settings, while allowing a variety of compatible uses.” *KCC 22.200.120.A*. The purpose of the Shoreline Residential environment is to “accommodate residential development and appurtenant structures that are consistent with [the SMP] and to provide appropriate public access and recreational uses.” *KCC 22.200.115.A. Exhibit 17, Staff Report, page 3*.

Shoreline Substantial Development Permit

12. A Utility Development occurs for services that carry electric power, gas, sewage, water, communications, or oil, including drainage conveyances and swales. *KCC 22.150.630*. Utilities are a permitted use in both the Urban Conservancy and Shoreline Residential environments with an SSDP, subject to the provisions of *KCC 22.600.185*, discussed more fully below. *KCC 22.600.105; KCC 22.600.185.A.2*. This proposal involves retrofitting and upgrading existing utilities within the shoreline (the beach transport lines and manholes) and replacing and upgrading the associated pump stations. *Exhibit 1; Exhibit 4; Exhibit 5; Exhibit 7; Exhibit 17, Staff Report, page 1; Exhibit 21*.

13. The SMA policies for Utility Developments within the shoreline include: locating utilities where they will have the least possible adverse effect on shoreline ecological functions and existing or planned water-dependent uses (Policy SH-41); locating essential facilities in areas that do not require shoreline stabilization, such as within existing rights-of-way or outside the shoreline jurisdiction when possible (Policy SH-43); locating utilities in a manner that does not impede public access to the shoreline (Policy SH-44); and maintaining existing utility facilities such that a net loss of shoreline ecological functions is avoided and unavoidable impacts are mitigated (Policy SH-46). *KCC 22.300.140.*

The County analyzed the proposal for consistency with KCC 22.300.140 and determined that the project would satisfy the policy requirements of the SMA. Specifically, the County determined that the proposal would not impact any existing or planned water-dependent uses, would generally be located in existing rights-of-way and utility corridors, would not significantly modify public access to the shoreline, and would cause a net gain in shoreline ecological function with the removal of PS 45 and 46 from the shoreline area, and determined that all unavoidable impacts would be mitigated through beach nourishment and restoration. *Exhibit 17, Staff Report, pages 5 and 6.*

14. KCC 22.600.185.B dictates that all proposals for utility facilities subject to the SMA must include, at a minimum, the following: an explanation of why the facility must be located in the shoreline jurisdiction; the reason for rejecting alternative locations; the location of other facilities near the proposed project; the proposed method of construction and plans to control erosion and turbidity during construction; plans for restoration of areas disturbed during construction; whether proposed facilities could be sited within existing utility rights-of-way; and a geotechnical report when a project is proposed within a geologically hazardous area. The Applicant provided a detailed Technical Memorandum, prepared by Landau Associates, addressing each of these requirements. *Exhibit 7.*
15. The Technical Memorandum determined that:
 - The proposed project involves rehabilitation of existing facilities. The existing pump stations would be relocated, but are required to be within the shoreline jurisdiction due to the proximity of the existing sewer line along the beach.
 - Alternative locations for beach line rehabilitation are not feasible and CIPP rehabilitation is the least intrusive method. Alternatives for siting the pump stations were limited to existing rights-of-way within relatively close proximity to the existing beach sewer line.
 - A U.S. Navy marine fueling facility is located north of the project area. The existing Manchester Wastewater Treatment Plant is located near the proposed project but outside the shoreline jurisdiction. The proposal would not include any additional facilities.

- CIPP liner is a rehabilitative measure that provides a new interior surface to an existing pipe while minimizing impacts. Access to the beach line manholes would only be available during low tides, unless water was effectively kept out of manholes during higher tides by means of a cofferdam or structure above the tide level. CIPP liner installation typically involves multiple large, heavy trucks and a scaffolding tower, although portable CIPP equipment may also be used. To access the sewer line, a temporary crossing of the Duncan Creek channel below the Puget Sound ordinary high water mark at low tide would be required, which could result in temporary impacts to the creek channel and bed. The channel, however, would be restored to existing conditions as necessary following construction.
- Temporary bypass systems would be installed during both beach line CIPP repair and pump station construction.
- The finished floor elevation of the proposed pump station structure at each project site would be located above the 100-year flood level. The elevated structures would allow pump station equipment to remain in operation and be accessible to operation and maintenance staff during high Puget Sound flood events. The elevated structures would be equipped with guard railing around perimeters for staff safety and pump station security. All elevated concrete structures would include textured concrete on the outside walls for improved visual appearance.
- The proposed location for the electrical equipment serving PS 45 would be upland approximately 50 feet from the elevated structure, next to a tall row of arborvitae. A cedar fence or similar screening structure would be placed south of the pump station to provide additional screening if requested by adjacent property owners.
- The proposed location for the electrical equipment for PS 46 would be upland approximately 60 feet from the elevated structure, near existing pump station electrical equipment.
- The electrical equipment for PS 47 would be housed on the elevated structure. To screen the facility, natural looking shrubbery on the south and west sides of the structures would be planted, and the Applicant would coordinate with adjacent property owners prior to finalizing the design of the screening materials.
- It is anticipated that temporary excavation for the new valve vault and wet well, beach manhole, and gravity pipeline connecting the counterparts of the proposal would be completed as a single, shored excavation.
- The wet well and valve vault proposed for each pump station would be precast concrete structures with design features that would counteract buoyancy uplift forces.
- Given the location of the existing pump station influent manhole and the proposed location of the new wet well at each project site, a new influent manhole located in the beach would be required to intercept the existing beach sewer pipeline and divert flow through a new 8-inch diameter sewer pipeline to each new pump

station. The existing stations would remain in service during construction of the beach manholes.

- Each existing pump station pumps through a 4-inch diameter force main that free discharges into an existing manhole within close proximity to the project sites. The force mains for PS 45 and PS 46 would be replaced.
- The existing pump stations would be partially or fully demolished after the new pump stations are placed in operation. The existing pump station facilities and cemented rock jetties projecting into Puget Sound at PS 45 and 46 would be removed. Existing deep pump station structures, however, would be removed to 3 feet below grade, filled with sand, and abandoned in place. The existing PS 47 facility would be removed and existing deep pump station structures would be removed to 3 feet below grade, filled with sand, and abandoned in place.
- Work would occur in the intertidal zone, but only during low tides. A temporary erosion and sediment control (TESC) plan would be implemented prior to construction activity.
- A net increase of approximately 477 square feet of intertidal habitat would be reclaimed following the removal of PS 45 and PS 46.
- Two small areas of the pump station rehabilitations would require new permanent sewer easements, which would be obtained prior to construction.
- The Applicant prepared a geotechnical report for the proposal.
- The proposal provides mitigation in excess of that required by the County SMA and achieves no net loss of ecological function in both the shoreline and areas waterward of the buffer.

Exhibit 7.

16. County Senior Environmental Planner Steve Heacock testified that County staff reviewed the Technical Memorandum and concurred with its assessment that the proposal would satisfy the requirements of KCC 22.600.185.B. *Testimony of Mr. Heacock.*

Shoreline Conditional Use Permit

17. Hard shoreline stabilization, like the proposed rock revetments, requires a Shoreline Conditional Use Permit (SCUP).⁵ KCC 22.600.175(C) dictates that applications for hard shoreline stabilization must include information on: upland, on-site improvements and any existing shoreline structures; a description of the proposed shore protection and any alternative to hard approaches where proposed, including a discussion of the environmental impacts of each approach alternative; a habitat survey prepared by a qualified professional biologist; a description of any proposed vegetation removal and plans to revegetate following construction; tidal elevations and field verified lines of the ordinary high water mark; established ownership of the tidelands, shorelands, and/or

⁵ Conditional use permits for hard shoreline stabilization projects are normally processed administratively. KCC 22.600.175.A.2, KCC 22.500.100.A.3 and KCC 22.500.100.D.2, however, provide for consolidated permit review.

bedlands; the purpose of the shore protection; the direction of net longshore drift for the marine shoreline; the plan and profile of the existing bank and beach; the profile of adjacent existing bulkheads; the need to prevent potential damage to primary structures through use of shoreline stabilization measures; the urgency associated with the need for stabilization; and any other information demonstrating compliance with the SMA and the guiding provisions of WAC 173-26-231(3)(a). The Applicant provided a detailed Technical Memorandum, prepared by Landau Associates, addressing each of these requirements. *Exhibit 7.*

18. The Technical Memorandum specifically noted that:
- The area of the existing PS 45 and PS 46 would be regraded and restored to match adjacent intertidal habitat.
 - Anchoring large wood is not a feasible shoreline stabilization strategy for the project. With existing conditions and the project objectives, rock revetments are the most feasible shoreline strategy.
 - Data from WDFW identifies the project area as estuarine intertidal aquatic habitat and identifies surf smelt breeding habitat within the project area. Intertidal habitat would be reclaimed following removal of PS 45 and 46, resulting in a net increase of approximately 477 square feet of intertidal habitat for surf smelt spawning.
 - The purpose of the proposed shoreline protection is to maintain upland infrastructure, which includes the proposed pump stations and existing roadways within the County rights-of-way that provide access to adjacent residences.
 - High wave energy from the Puget Sound occasionally impacts the project shoreline. Shore protection associated with the relocated pump stations 45 and 46 would account for wave heights in the offshore area and diminished wave height at the shore. The shore protection features are designed to survive a 100-year return period or a 2 percent annual chance wave event, and are located at tidal elevation. The revetments would include a scour apron to minimize loss of backfill due to overtopping.

Exhibit 7.

19. Mr. Heacock testified that County staff reviewed the Technical Memorandum and concurred with its assessment that the proposal would satisfy the requirements of KCC 22.600.185.B. *Testimony of Mr. Heacock.*

Additional Regulations

20. Chapter 22.400 KCC provides additional, general regulations applicable to projects occurring within the shoreline jurisdiction. These regulations relate generally to: water quality and quantity (KCC 22.400.125); historic, archeological, cultural, scientific, and educational resources (KCC 22.400.130); view blockage (KCC 22.400.135); bulk and dimension standards (KCC 22.400.140); public access KCC 22.400.145); flood hazard reduction (KCC 22.400.150); and no net loss analysis (KCC 22.400.110, -.115, and -

.200). The Applicant provided a detailed Technical Memorandum, prepared by Landau Associates, addressing each of these requirements. *Exhibit 7*.

21. The Technical Memorandum specifically notes:

- The project does not require stormwater mitigation through a Site Development Activity Permit because the Planning Director determined the project is strictly a utility project, with work being performed primarily within existing rights-of-way, and does not involve true above ground structures, such as a building.
- Historic and cultural resources review is being coordinated with the Department of Ecology. Consultation with Ecology would be completed to fulfill requirements of Section 106 of the National Historic Preservation Act.
- The new facilities are not anticipated to result in view blockage to adjacent principal buildings. Similarly, raising the elevation of manholes would not result in view blockage to adjacent buildings.
- The height of structures associated with the project are below the 35-foot maximum allowed in KCC 22.400.140.A.
- The pump stations would be at the end of existing road rights-of-way perpendicular to the shoreline and would maintain or improve shoreline access.
- All three pump stations are currently located within the 100-year floodplain of Puget Sound. The new pump stations would be moved landward, elevated above the 100-year flood elevation.
- Impacts within the shoreline jurisdiction would include: a net gain of approximately 30 cubic yards of floodplain volume, primarily from removal of PS 45 and 46; protection to residential areas and roadways landward of the shoreline provided by the new rock revetments; a net increase of approximately 477 square feet of intertidal habitat; a temporary stream crossing over Duncan Creek would be required for construction access to two manholes and may result in temporary impacts to the creek channel and bed; some vegetation removal would occur landward of the shoreline as a result of construction of the relocated pump stations; mitigation sequencing would be used, as required by KCC 22.400.110.A, to minimize construction impacts; the proposed revegetation plan would include replanting native vegetation within the shoreline buffer beyond mitigation requirements; and the mitigation sequence would achieve no net loss of ecological function from the development and no net loss of shoreline ecological function.

Exhibit 7.

22. County staff reviewed the Technical Memorandum's assessment of the general regulations and concurred with its assessment that the proposal would satisfy the additional requirements of Chapter 22.400 KCC. *Exhibit 17, Staff Report, page 6*.

Testimony

23. Area resident Jerry Clark, who submitted a letter in response to the County's notice materials (see Finding 3), testified at the open record hearing. Mr. Clark reiterated the concerns expressed in his letter, specifically noting that the manhole structures would be in place for many years and, because of this, aesthetic concerns should be addressed. In response to Mr. Clark's testimony, Applicant Representative Barbara Zaroff noted that the Applicant met with residents on three separate occasions to address design concerns.⁶ She noted that the Applicant is concerned about mitigation costs because all such costs would be borne by ratepayers but that, as appropriate, aesthetic concerns are being addressed. *Testimony of Mr. Clark; Testimony of Ms. Zaroff.*
24. Mr. Heacock testified generally about the project. He specifically noted that the SCUP related only to the rock revetments and that any impacts from the armoring would be offset. He testified that, under the County's recently updated SMA, "no net loss" of ecological function is the highest priority. Mr. Heacock noted that an eelgrass study was not required for this application because it has been well documented that there are no eelgrass beds in the area. He stated that he was unsure of the status of the Applicant's Hydraulic Project Approval (HPA) but that the proposal would have to comply with any permit conditions of the HPA required by WDFW. He testified that the Navy was notified of the proposal and had no comments, and that an Army Corps permit would be required for work performed below mean high tide. Mr. Heacock also briefly touched on the public concerns expressed in response to the County's notice materials. He noted that Mr. Nuchims concerns related to a private stormwater facility could not be properly combined with a project upgrading the public sewer system. In relation to Mr. Clark's concerns, Mr. Heacock testified that there is no requirement in the SMP for addressing aesthetic concerns but that mitigation components of the proposal would address landscaping. He also noted that the manholes need to be elevated to provide safe access for maintenance. *Testimony of Mr. Heacock.*

Staff Recommendation

25. Mr. Heacock testified that the County recommends approval of the proposal, with conditions. The conditions generally include complying with all requirements of the HPA, ensuring that construction activities do not impact private property adjacent to the project sites, that all recommendations of the geotechnical report are followed, that mitigation conforms to the recommendations in the Technical Memorandum, and that the project commences and is completed within a specific timeframe. Ms. Zaroff did not indicate that the Applicant had any issues with the County's conditions. *Exhibit 17, Staff Report, page 10; Testimony of Mr. Heacock; Testimony of Ms. Zaroff.*

⁶ Ms. Zaroff specifically referred to Sheets 26, 33, 34, and 35 of the plans submitted with the Applicant's JARPA (Exhibit 4) to illustrate how aesthetic concerns and visual buffering would be used to screen the pump stations and associated facilities. She stressed that plans for visual buffering would be implemented. *Testimony of Ms. Zaroff.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner has jurisdiction to hear and decide Shoreline Substantial Development Permit and Shoreline Conditional Use Permit applications as a Type III permit decision. *Kitsap County Code (KCC) Table 21.04.100; KCC 22.500.100; KCC 22.500.105.*

Criteria for Review

Shoreline Substantial Development Permit

The SMA provides that no substantial development shall be undertaken on the shoreline of the state without first obtaining an SSDP. *KCC 22.500.100.B.* Regardless of whether a development constitutes a substantial development, a development must comply with the requirements contained in the SMA and the County SMP, and other permits or approvals under the County SMP may be required. Permits may be issued with conditions or limitations that ensure consistency with the SMA and SMP. *KCC 21.04.080.H; KCC 22.500.100.B.4.*

The Applicant has the burden of proof to establish that the development is consistent with the SMA, the SMP, and any other applicable County policies and regulations. *KCC 22.500.100.B.3.* Upon consideration of the evidence offered at the public hearing, the Hearing Examiner will issue a decision containing findings of fact and conclusions describing the manner in which the decision is consistent with the SMA and SMP. *KCC 22.500.105.E.1.*

Shoreline Conditional Use Permit

The criteria for a Shoreline Conditional Use Permit provide are provide:

- a. That the proposed use is consistent with the policies of RCW 90.58.020 and this program;
- b. That the proposed use will not interfere with the normal public use of public shorelines and does not conflict with existing water-dependent uses;
- c. That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and this program;
- d. That the proposed use will not result in significant adverse effects or a net loss to the shoreline ecosystem functions in which it is to be located;
- e. That the public interest suffers no substantial detrimental effect;
- f. That consideration has been given to the cumulative impact of additional requests for like actions in the area and shall not result in substantial adverse effects or net loss of shoreline ecosystem functions...
- g. Other uses which are not classified or set forth in this program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the master program;

- h. Uses which are specifically prohibited by this master program may not be authorized pursuant to this section.

KCC 22.500.100.D.3

Shoreline Management Act, Chapter 90.58 RCW

The SMA is codified at RCW 90.58.020. Applicable policies of RCW 90.58.020 include those to foster “all reasonable and appropriate uses”; protect against adverse effects to the public health, the land, vegetation, and wildlife; and give priority to single-family residences and appurtenant structures in authorizing alternations to the natural condition of the shoreline. Permitted shoreline uses must be designed to “minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public’s use of the water.” *RCW 90.58.020.*

Shoreline Management Act Regulations

The Department of Ecology shoreline regulations are located in Chapters 173-26 and 173-27 of the Washington Administrative Code (WAC). Chapter 173-26 WAC sets forth procedures and guidelines for local adoption of shoreline master programs that are not applicable to the Applicant’s permit request. Chapter 173-27 WAC sets forth permitting procedures and permit criteria. The Hearing Examiner reviews the application under the following criteria:

- (1) A substantial development permit shall be granted only when the development proposed is consistent with:
 - (a) The policies and procedures of the act;
 - (b) The provisions of this regulation; and
 - (c) The applicable master program adopted or approved for the area. Provided, that where no master program has been approved for an area, the development shall be reviewed for consistency with the provisions of chapter 173-26 WAC, and to the extent feasible, any draft or approved master program which can be reasonably ascertained as representing the policy of the local government.
- (2) Local government may attach conditions to the approval of permits as necessary to assure consistency of the project with the act and the local master program.

WAC 173-27-150.

Thus, the Hearing Examiner must review the relevant Kitsap County SMP goals and policies.

The criteria for review adopted by the Kitsap County Board of Commissioners are designed to implement the requirement of Chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with County development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

*Findings, Conclusions, and Decision
Kitsap County Hearing Examiner
Pump Stations 45, 46, & 47 Upgrade Project
SSDP & SCUP, Nos. 16-00278 & 16-00291*

Conclusions Based on Findings

- 1. With conditions, the proposed project would be consistent with the Kitsap County Shoreline Management Master Program (SMP) and other applicable County policies and regulations.** Utility developments are permitted in the Urban Conservancy and Residential Shoreline environments with an SSDP. The County analyzed the environmental impacts of the proposed development and determined that, with mitigation conditions, the proposal would not have a probable significant adverse impact environment. The County's determination was not appealed. The County provided reasonable notice and opportunity to comment on the application. The proposed project would be consistent with the County Comprehensive Plan designations, the area zoning classifications, and the SMP shoreline designations. The project would involve decommissioning and burying two pump stations (PS 45 and 46) that currently jut into the Puget Sound and replacing them with stations upland in existing rights-of-way, and moving a third station (PS 47) further upland, as well. In addition, the project would restore approximately 3,300 linear feet of existing transport beach lines and repair and retrofit existing beach-line manholes to ensure public safety.

The project would produce a net increase of approximately 477 square feet of intertidal habitat and would produce no net loss of ecological function to the shoreline or its buffers. The proposal would comply with all requirements for siting/repairing utilities within the shoreline, as required by KCC 22.600.185.B, and with general regulations for all shoreline projects, as delineated in Chapter 22.400 KCC. The expected short-term shoreline impacts of the proposed project would be minimal compared to the long-term benefits of decommissioning outdated pump stations and ensuring the viability of existing beach transport lines and manholes.

Conditions are necessary to ensure that the Applicant follows all requirements of the HPA, does not impact private property adjacent to the project sites during construction, follows all recommendations of the geotechnical report and Technical Memorandum, and commences and completes the proposal within the timeframe allowed by the County code. *Findings 1 – 16, 20 – 25.*

- 2. With conditions, the proposed project would be consistent with state Shoreline Management Act policies, guidelines, and rules.** The SSDP request is evaluated individually for compliance with the County SMP, based on facts in the record consistent with SMA regulations. The proposed development would have minimal shoreline impacts and, ultimately, would provide a net gain of intertidal habitat and produce no net loss of ecological function to the shoreline or its buffers. Conditions are necessary to ensure that the Applicant follows all requirements of the HPA, does not impact private property adjacent to the project sites during construction, follows all recommendations of

the geotechnical report and Technical Memorandum, and commences and completes the proposal within the timeframe allowed by the County code. *Findings 1 – 25.*

- 3. With conditions the proposed project would be consistent with the specific Shoreline Conditional Use Permit criteria of KCC 22.500.100.D.3.** The area of the existing PS 45 and 46 stations would be regraded and restored to match adjacent intertidal habitat. Anchoring large wood is not a feasible shoreline stabilization strategy for the project: rock revetments are the most feasible shoreline stabilization strategy. The revetments would maintain upland infrastructure, including the proposed pump stations and existing roadways within the County rights-of-way that provide access to adjacent residences. The shore protection features are designed to survive a 100-year return period or a 2 percent annual chance wave event, and would be located at tidal elevation.

Conditions are necessary to ensure that the Applicant follows all requirements of the HPA, does not impact private property adjacent to the project sites during construction, follows all recommendations of the geotechnical report and Technical Memorandum, and commences and completes the proposal within the timeframe allowed by the County code. *Findings 1 – 25.*

DECISION


Based on the preceding Findings and Conclusions, the request for a Shoreline Substantial Development Permit and Shoreline Conditional Use Permit to upgrade and replace wastewater Pump Stations 45, 46, and 47, with associated beach line and manhole rehabilitation, is **APPROVED**. Conditions are necessary to mitigate specific impacts of the proposed development and to ensure compliance with existing County ordinances:⁷

1. If any work is to be done below the ordinary high water mark, a Hydraulic Project Approval permit is required from the Washington Department of Fish and Wildlife.
2. Project work shall be subject to the conditions of the Washington Department of Fish and Wildlife Hydraulics Project Approval (HPA).
3. Shoreline construction activities shall be conducted in a manner such that private properties adjacent to the project area are not impacted.
4. All recommendations of the July 28, 2015 Geotechnical Report by Landau Associates, prepared for Kitsap County Department of Public Works Wastewater Division must be followed.

⁷ This decision includes conditions required to reduce project impacts as well as conditions required to meet County Code standards.

5. Upon final permit issuance, all construction for the project must commence within two years and be complete within five years. A one time one-year extension is available but only if requested on or before ninety days of original permit expiration. No exceptions are allowed unless provided for by law.
6. This project is located within a Critical Drainage area as defined in Title 12.28.020 of the Kitsap County Code. As the project will be located in its entirety with County right-of-way and secured easements, a Site Development Activity Permit (SDAP) will not be required.
7. Mitigation shall conform to the Technical Memorandum SMP Compliance Evaluation and Mitigation Plan, prepared by Landau and Associates, and dated January 11, 2016, shall guide all construction activities.

DECIDED this 28th day of April 2016.



THEODORE PAUL HUNTER
Hearing Examiner
Sound Law Center