



# CITY OF EDMONDS

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HEARING EXAMINER

MIKE COOPER  
MAYOR

**RECEIVED**  
MAR - 7 2011  
PLANNING DEPT.

In the Matter of the Application of	)	NOS. PLN 2010-0078
	)	
<b>City of Edmonds</b>	)	
	)	
	)	FINDINGS, CONCLUSIONS,
For a	)	AND DECISION
<u>Substantial Conditional Use Permit</u>	)	

### SUMMARY OF DECISION

The request for a shoreline conditional use permit to remove existing Pump Station No. 2 from Shell Creek and to replace it outside the creek, including work within the creek and associated wetlands, on privately owned property at 929 Cary Road in Edmonds, Washington is **APPROVED**, subject to conditions.

### SUMMARY OF RECORD

Request:

The City of Edmonds (Applicant) requested a shoreline conditional use permit to remove and replace existing Pump Station No. 2 at 929 Cary Road in Edmonds. The project would include work in Shell Creek and associated wetlands to install new water and sewer lines.

Hearing Date:

The Edmonds Hearing Examiner held an open record hearing on the request on February 17, 2011.

Testimony:

At the open record hearing the following individuals presented testimony under oath:

- Keren Lien, Planner, City of Edmonds
- Pamela Lemcke, City of Edmonds Capital Projects Manager
- Steven Quarterman
- Alvin Rutledge

Exhibits:

The following exhibits were admitted in the record:

Exhibit 1 Planning Division's Report and Recommendation, dated February 8, 2011, with the following attachments:

1. Land Use application
2. Application Compliance Letter
3. JARPA Cover Letter, dated December 15, 2010
4. JARPA Application Form, dated received December 15, 2010
5. Sixty Percent Construction Plans, dated October 2010
6. Agency Review Draft, Critical Areas Report and Mitigation Plan, dated December 2, 2010
7. ESA No Effects Technical Memorandum
8. Landau Geotechnical Report dated February 25, 2009
9. Zoning and Vicinity Map
10. Edmonds SMP Plate #2 (Shoreline Environment Map)
11. SEPA Checklist
12. SEPA Mitigated Determination of Non-Significance
13. Declaration of Mailing
14. Declaration of Posting
15. Affidavits of Publication
16. Engineering Comments
17. Hearing Examiner Public Project Advisory Report to City Council
18. Excerpt from Archaeological Investigation Report prepared by ERCI, dated December 6, 2010
19. FEMA Flood Map FM53061C1305E

Exhibit 2 Letter from Alvin Rutledge, dated February 11, 2011

Exhibit 3 Hydraulic Project Approval, issued February 17, 2011

Upon consideration of the testimony and exhibits submitted in the record, the Hearing Examiner enters the following findings and conclusions:

**FINDINGS**

1. The City requested a shoreline conditional use permit to remove and replace existing Pump Station No. 2 at 929 Cary Road in Edmonds. The project would include work within Shell Creek and associated wetlands to install new water and sewer lines and decommission the old pump station.<sup>1</sup> *Exhibit 1, Attachment 1, Application, and Attachment 2, Technical Memorandum.*

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<sup>1</sup> The subject property is comprised of three tax parcels: 27032400210800, 27032400210900, and 27032400212000, all three located within a portion Section 24, Township 27 North, Range 3 E, W.M. *Exhibit 1, Attachment 1.*

2. The subject property is privately owned and developed with a single-family residence, several residential accessory structures, and the existing pump station and utility lines. The site and all surrounding parcels are zoned Single-Family Residential RS-12. The single-family neighborhood is located just north of downtown Edmonds. The subject property generally slopes down to Shell Creek, which bisects the site. Wetlands occupying a relatively flat area along the on-site portion of the creek drain into Puget Sound approximately 600 feet north of the project site. Typical residential vegetation surrounds the home and outbuildings, while the area along the creek on-site is forested. *Exhibit 1, pages 2-3; Exhibit 1, Attachment 9.*
3. When it was built in approximately 1960, existing Pump Station No. 2 was placed in the on-site portion of Shell Creek. The pump station equipment is obsolete, rendering replacement parts expensive or unavailable, and it is in jeopardy of failure. During extremely high rain events, Pump Station No. 2 releases raw sewage. Due to its placement, City utility personnel must stand in five feet of water to address needed repairs. The pump station is a high on the City's list of utility upgrades due the health/safety concerns, environmental concerns, and the projected costs of actual failure of the station. *Exhibit 1, Attachment 2; Lemcke Testimony; Exhibit 1, Attachment 17.*
4. Consistent with its adopted Capital Facilities Plan and its Sanitary Sewer Comprehensive Plan, the City proposes to relocate Pump Station No. 2 east of Shell Creek, in the eastern portion of the site near the end of Melody Lane. The existing pump station would be decommissioned and modified to function as a manhole. At the same time, the following utility improvements are proposed on-site: 1) approximately 564 linear feet of six-inch diameter water line installed from the existing water line in Cary Road near the western terminus of Melody Lane; 2) approximately 210 linear feet of eight-inch sanitary sewer gravity line installed between the existing and new pump stations; and 3) approximately 240 linear feet of four-inch diameter sanitary sewer force main would be installed between the new pump station and an existing sewer manhole in Melody Lane. The proposal includes a ten-foot easement for the pipelines proposed within shoreline jurisdiction. *Exhibit 1, Attachment 2; Lemcke Testimony; Exhibit 1, Attachment 17; Exhibit 1, page 5.*
5. A portion of the proposed water line and sanitary sewer lines upgrades would occur within Shell Creek and the associated wetland. The wetland is designated as Natural Environment by the City of Edmonds Shoreline Master Program (SMP) and protected pursuant to the Shoreline Management Act. Because the portions of the project outside shoreline jurisdiction cannot be developed without the work in the shoreline area, the entire project was reviewed for compliance with the criteria for shoreline conditional use permit. *Exhibit 1, Attachments 2 and 10; Lien Testimony; Exhibit 1, pages 2, 9 Edmonds Community Development Code (ECDC) 23.10.215.*
6. All improvements within the shoreline jurisdiction would be placed underground. The only impacts to the shoreline area would be temporary disturbance of land surface and vegetation, including removal of the minimum necessary number of trees. All disturbed

areas would be restored/revegetated to pre-project conditions or better. *Exhibit 1, Attachment 2; Lemcke Testimony.*

7. Utility projects are allowed in the Natural Shoreline Environment subject to shoreline conditional use permit review and approval. *ECDC 23.10.120.B.* Local public utility facilities included in the capital facilities plan are allowed in the RS-12 zone. *ECDC 16.20.010.A.*
8. The City has received a signed easement from property owner, Mr. Strickland. *Lemcke Testimony.*
9. The Applicant submitted a professionally prepared critical areas report, which surveyed the project site for potential critical areas. The report identifies four critical areas identified the following critical areas within the proposed project site: W1, a 3.3-acre Category 3 wetland adjacent to Shell Creek in the east portion of the subject property; Shell Creek, a Type F (fish bearing) stream; and the buffer of W1 and the creek (which overlap); and frequently flooded areas. These critical areas are protected pursuant to the City's critical areas ordinance and are located within the Natural Shoreline Environment. *Exhibit 1, Attachment 6.*
10. Shell Creek has been identified by Washington Department of Fish and Wildlife (WDFW) as containing Coho salmon and resident cutthroat trout. The Edmonds Stream Inventory (2002) reported observations of spawning Coho and Chum salmon in the creek's lower reaches. Because it is an anadromous fish bearing stream, the standard buffer for Shell Creek is 100 feet pursuant to *ECDC 23.90.040.D.1.* *Exhibit 1, page 4; Exhibit 1, Attachments 6 and 7.*
11. The Applicant proposes to minimize impacts to the Natural Shoreline Environment and critical areas through sensitive site design. Construction staging areas and site access would be located away from the wetland and the interior section of the buffers to the extent possible. Where conditions allow, underground directional drilling trench construction methods will be used. Where underground drilling is not possible, trenches have been designed near perpendicular to the waterways. *Exhibit 1, Attachment 6; Quarterman Testimony.*
12. As proposed, the project would have the following unavoidable impacts: 3,867 square feet of temporary impacts and zero permanent impacts to W1; 762 square feet of temporary and zero permanent impacts to Shell Creek; and 499 square feet of temporary and 476 square feet of permanent impacts to the overlapping wetland/creek buffer. *Exhibit 1, Attachment 6.*
13. Pursuant to *ECDC 23.90.040.D.3,* standard stream buffers may be reduced by averaging buffer widths. Buffering averaging may be allowed when a qualified professional demonstrates that: a) the total area contained in the buffer area, or the total buffer area existing on a subject parcel for a stream extending off-site, after averaging is no less than that which would be contained with the standard buffer; b) the buffer width at any single

location is not reduced to less than 50 percent of the reduced or standard width; and c) the functions and values of the stream and associated buffer will not be diminished through the use of buffer averaging. *Exhibit 1, page 11.*

14. The buffer averaging proposal would add approximately 476 square feet located adjacent to the area of impact, in one to one replacement of the permanently impacted critical areas. The buffer impact occurs in the outer 40 feet of the standard 100 foot buffer, reducing the buffer width at its narrowest point to 60 feet or greater. The area added through buffer averaging has substantially similar characteristics to the impacted buffer and as a result, the proposed buffer averaging not diminish the functions and values of the stream. *Exhibit 1, pages 11-12; Exhibit 1, Attachment 6.*
15. In-stream work would be restricted to a Washington Department of Fish and Wildlife (WDFW) in-stream work window. Temporary wetland, stream, and buffer impacts would be mitigated by restoration, resulting in equivalent biologic and hydrologic functions. Construction of the new pump station, associated vaults, and concrete pads in the outer buffer area would result in permanent impacts, but they are expected to be minimal due to the use of buffer averaging, which would replace the lost function and value in another, contiguous location. The four trees to be removed would be replaced at a two to one ratio and all other plants were selected to provide forage/habitat and/or erosion control. According to the critical areas report, the proposed project mitigation would result in no net loss of wetland, stream, and buffer functions and values. *Exhibit 1, Attachment 6; Quarterman Testimony.*
16. The proposed new pump station and portions of the proposed utility line installation would be located within the 100-year floodplain of Shell Creek. Permanent items would include an at-grade concrete pad for a future odor control system and generator. These improvements would not affect floodplain capacity. *Exhibit 1, Attachment 6.*
17. The project was reviewed for potential impacts to essential fish habitat pursuant to the Endangered Species Act. The evaluation concluded as follows: that the project adds relatively minimal amounts of new impervious surface and all runoff would be infiltrated in the immediate area; that appropriate best management practices would be used to control erosion; that the effects of construction-related diversion of 30 linear feet of Shell Creek would be temporary and conducted during an approved in-stream work window. There are no federally listed species present in Shell Creek or the project area. A "No Adverse Effect" determination was made. *Exhibit 1, Attachment 7.*
18. The project area was surveyed for archeological evidence by a professional consultant, who submitted a summary report. No protected cultural or resources or historic properties were identified during site review. The report contained recommended management practices were proposed to address the discovery of archeological resources. *Exhibit 1, Attachment 18.*
19. The City of Edmonds only has two areas of Natural Shoreline Environment, which are the Edmonds Marsh and the historically contiguous wetland to the east of State Route

104, and the Shell Creek wetland and lower riparian zone, including the wetlands which are now isolated on the east of the railroad tracks. The proposed utility project would have no adverse impacts on the shoreline environment. Planning Staff submitted that it is not likely that similar actions would occur in any of the City's Natural Shoreline Environment. *Exhibit 1, page 13; Lien Testimony.*

20. The Applicant is required to obtain approval of a Section 404 Clean Water Act Permit from the US Army Corps of Engineers. *Exhibit 1, Attachment 7.*
21. WDFW grated the Applicant's request for hydraulic project approval on February 17, 2011. The HPA's required provisions include, but are not limited to, completion no later than December 31, 2012 and restriction of in-stream work to the period between July 1 and September 30 of 2011 and/or 2012. *Exhibit 3.*
22. Construction is proposed to begin by the end of June 2011. In-stream work is projected to take two weeks, and construction of the pump station and remaining utility line install should take 60 days. *Lemcke Testimony.*
23. Pursuant to the State Environmental Policy Act (SEPA), the City of Edmonds acted as lead agency for review of environmental impacts caused by the proposal. In reaching the environmental threshold determination, the City reviewed an environmental checklist and application materials submitted by the Applicant. Upon completion of review, the City issued a mitigated determination of non-significance (MDNS) was issued on January 11, 2011, which became final on February 1, 2011. No appeals were filed. Required mitigation includes (paraphrased): a) compliance with all city shoreline management regulations; b) compliance with recommended management practices in the case of unanticipated discovery of archeological materials; and c) compliance with any mitigation required in the WSFW's HPA approval. *Exhibit 1, page 3; Exhibit 1, Attachment 12; Lien Testimony.*
24. Notice of shoreline permit application and public hearing date were published in The Herald on January 11 and January 18, 2011, posted on-site and elsewhere, and mailed to adjacent property owners consistent with requirements of the City code. *Exhibit 1, Attachments 13, 14, and 15; Lien Testimony; Exhibit 1, page 3.*
25. The City received public comments posing informational questions about the proposal including but not limited to the following: whether a building permit was required; whether the old pump station parts were being removed and reused in the proposed new location; whether any variance was required; what the construction hours of operation would be; and the cost of the project. *Rutledge Testimony; Exhibit 2.*
26. Planning Staff and the Applicant representative responded to public concerns at hearing. No building permit or variance is required for the public project. Old pump station parts would be properly disposed of and not reused. The old pump station would be converted to a manhole cover. Hours of construction would be Monday through Friday, 7:00 am through 5:00 pm, excluding City-acknowledged holidays. The project will not go out to

bid until after necessary permits are secured. The present cost estimate is \$650,000. *Lien Testimony; Lemcke Testimony.*

## CONCLUSIONS

### **Jurisdiction:**

The Hearing Examiner has jurisdiction to hear and decide shoreline permit requests pursuant to Edmonds Community Development Code (ECDC) 20.01.003 and ECDC 20.55.030.

### **Criteria for Shoreline Conditional Use Permit Review:**

The criteria for review of an SCUP are set forth in Washington Administrative Code (WAC) 173-27-160(1) which states that uses that are classified in the applicable master program as conditional uses may be authorized provided that the applicant demonstrates all of the following:

1. That the proposed use is consistent with the policies of RCW 90.58.020 (the Shoreline Management Act) and the local master program;
2. That the proposed use will not interfere with the normal public use of public shorelines;
3. 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 shoreline master program;
4. That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and
5. That the public interest suffers no substantial detrimental effect.

Pursuant to WAC 173.27.160(2), in the granting of all shoreline conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.

### **Other Applicable Codes, Polices, and Regulations**

#### **ECDC 23.10.215 Special regulations – Authority of the city.**

A. Land Outside the Jurisdiction of the Shoreline Management Act. In addition to the authority described above, if a proposed use, development or activity includes areas both inside and outside the jurisdiction of the Shoreline Management Act, the city may impose conditions or restrictions on the use, development or activity outside the jurisdiction of the Shoreline Management Act if necessary to bring the areas of the development within the jurisdiction of the Shoreline Management Act into compliance with the Act, Chapters 173-16 and 173-27 WAC and Chapters 20.10 and 20.55 ECDC.

## **ECDC 23.10 Edmonds Shoreline Master Program**

The City of Edmonds Shoreline Master Program contains goals, policies, and regulations that are applicable to the proposed development. Pursuant to ECDC 23.10.040, the regulations are mandatory, whereas the goals and policies “are intended to form the policy for shoreline uses, developments, and activities, as the basis of the regulations ... and to assist the city in determining whether to grant, modify and grant, or deny each proposed use, development, or activity.” *ECDC 23.10.040*. The goals and policies of the Shoreline Master Program are established in ECDC 23.10.050 - .095. A complete list of the City’s shoreline goals and policies will not be included in this decision but can be read in full in ECDC 23.10. Following are the shoreline goals, policies, and regulations that apply to the instant application for shoreline conditional use permit.

### **A. ECDC 23.10.060 Shoreline Use Elements Goals and Policies**

#### **i. Relevant Goals**

- a. ECDC 23.10.060.A.5: Ensure that proposed shoreline uses are distributed, located and developed in a manner that will maintain or improve the health, safety and welfare of the public.
- b. ECDC 23.10.060.A.6: Ensure that proposed shoreline uses do not minimize the rights of others or infringe upon the rights of private ownership.

#### **ii. Relevant Policies**

- a. ECDC 23.10.060.B.1: “Environmentally sensitive areas” and “critical areas” are to be protected and regulated consistent with the city's environmental review and critical areas regulations contained in Chapters 20.15A and 20.15B ECDC.<sup>2</sup>
- b. ECDC 23.10.060.B.6: Uses in shoreline areas should not degrade water quality nor disrupt any more than is essential the land covered by water and the land area adjacent to the ordinary high water mark.
- c. ECDC 23.10.060.B.12.a: Shoreline use and development should be provided for through a process of review and analysis that give priority to:
  - i. The protection and enhancement of the shoreline natural system;
  - ii. The provision for shoreline dependent uses;
  - iii. The provision for shoreline-oriented uses; and
  - iv. The accommodation of necessary uses that are neither shoreline-dependent nor shoreline-oriented.

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<sup>2</sup> ECDC 20.15B is a reference to the City’s previously environmentally sensitive areas regulations which are now contained in ECDC 23.40 through 23.90. *Exhibit 1, page 5*.

- d. ECDC 23.10.060.B.12.b: The priority system will recognize, but not be limited to, the following criteria:
  - i. Protect and enhance natural systems:
    - (A)(1): Fish spawning, nursing, feeding areas, (beach, marshland, aquatic vegetation, submerged land) – critical area – for migrating fish;
- B. ECDC 23.10.085 Conservation Element Goals and Policies
  - i. ECDC 23.10.085.A: It is the goal of the city to protect and enhance unique and fragile areas of flora and fauna and scenic vistas to help assure the continued availability of these resources for future generations...
  - ii. ECDC 23.10.085.B.2: Development in shoreline areas should be managed so that adverse impacts on aquatic and land plants and animals are minimized.
- C. ECDC 23.10.130 General regulations – Environmentally Sensitive Areas and Critical Areas
  - i. ECDC 23.10.130.B Development Limitations. All uses, developments, and activities on sites containing environmentally sensitive areas and/or critical areas must comply with all applicable local, state, and federal laws pertaining to development in these areas. In addition, the site must be specifically designed so that the hazards from or impact on the environmentally sensitive area and/or critical area will be mitigated.
- D. ECDC 23.10.135 General Regulations – Historical and Archeological Resources
  - i. ECDC 23.10.135.A, General. Uses, developments, and activities on sites of historical or archeological significance or sites containing things of historical or archeological significance must not unreasonably disrupt or destroy the historical or archeological resource.
  - ii. ECDC 23.10.135.B, Resource Recovery. Whenever possible, things of historical or archeological significance should be properly explored, categorized, and recovered by qualified individuals prior to any disruptive development, use or activity occurring on the subject property. If items of historical or archeological significance are discovered after a use, development or activity has commenced, all activity must cease until proper disposition, including resource recovery, can be made of the significant items.
- E. ECDC 23.10.175 Use regulations – Utilities, Government Facilities, and Transportation Systems
  - i. ECDC 23.10.175.C Limitations on locations.

1. Except for public pedestrian access mandated or permitted by this chapter and utility lines, infrastructure, roadways and similar components necessary to serve development within the shoreline area, utilities, government services and facilities, and transportation systems may not be located within shoreline areas unless this location is reasonably necessary for the efficient operation of the utility, government facility or services or transportation system.

ii. ECDC 23.10.175.D Placement and Design

1. When permitted within shoreline areas, utilities, government services and facilities and transportation systems must be placed and designed to minimize negative aesthetic impacts upon shoreline areas.

2. Except where this would not be feasible, all utility lines, pipes, conduits, meters, vaults and similar infrastructures and appurtenances must be placed underground consistent with the standards of the serving utility.

F. ECDC 23.10.210 General regulations – Land Surface Modification

i. ECDC 23.10.210.B, Land Surface Modification Landward of the Ordinary High Water Mark. Land surface modifications landward of the ordinary high water mark may be permitted only if no unique or significant natural area of flora or fauna will be destroyed and only for the following purposes:

1. The land surface modification is proposed by a public agency to improve public safety, recreation or access, or is intended to improve a condition of the natural environment.

ii. ECDC 23.10.210.D Additional Regulations. All land surface modifications landward of the ordinary high water mark must comply with the following requirements:

1. The land surface modification must be the minimum necessary to accomplish the underlying reason for the land surface modification.

2. Care must be taken to not create any direct or indirect adverse impacts on any adjoining property or the shoreline of statewide significance.

3. All surfaces exposed during land surface modification must be revegetated or otherwise covered as quickly as possible to minimize erosion.

4. During land surface modification activities techniques should be employed to prevent erosion and runoff onto adjacent properties or into the shoreline of statewide significance.

5. Except as is necessary during construction, dirt, rocks, and similar materials may not be stockpiled on the subject property. If stockpiling is necessary

during construction, it must be located as far as possible from the shoreline and strictly contained to prevent erosion and runoff.

6. Materials that will be deposited on the subject property must be clean and not contain organic or inorganic substances that could pollute or otherwise be detrimental to water quality or aquatic or shoreline habitats.

7. The city may require that land surface modifications be engineered and/or supervised by an engineer or similarly qualified professional.

8. The city may require that land surface modifications be restricted to limited times of the year.

iii. ECDC 23.10.210.E Land Surface Modifications in Conservancy or Natural Shoreline Environments. Notwithstanding any other provision of this section, land surface modifications in conservancy or natural environments should not be allowed unless:

1. It is necessary to rehabilitate a stream, wetland, or otherwise improve or enhance the natural environment; or

2. It is proposed by a public agency as part of development or use of the subject property.

G. ECDC 23.10.215 Special regulations – Authority of the City of Edmonds

i. In addition to the authority described above, if a proposed use, development or activity includes areas both inside and outside the jurisdiction of the Shoreline Management Act, the city may impose conditions or restrictions on the use, development or activity outside the jurisdiction of the Shoreline Management Act if necessary to bring the areas of the development within the jurisdiction of the Shoreline Management Act into compliance with the Act, Chapters 173-16 and 173-27 WAC and Chapters 20.10 and 20.55 ECDC.

### **Critical Areas Ordinance**

A. ECDC 23.40 Environmentally Critical Area General Provisions

i. ECDC 23.40.160 Review criteria. Any alteration to a critical area, unless otherwise provided for in this title, shall be reviewed and approved, approved with conditions, or denied based on the proposal's ability to comply with all of the following criteria:

1. The proposal minimizes the impact on critical areas in accordance with ECDC 23.40.120, Mitigation sequencing;

2. The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site;
3. The proposal is consistent with the general purposes of this title and the public interest;
4. Any alterations permitted to the critical area are mitigated in accordance with ECDC 23.40.110, Mitigation requirements;
5. The proposal protects the critical area functions and values consistent with the best available science and results in no net loss of critical area functions and values; and
6. The proposal is consistent with other applicable regulations and standards.

B. ECDC 23.50 Wetlands

- i. 23.50.040 E. Category 3 and 4 Wetlands. Activities and uses that result in unavoidable and necessary impacts may be permitted in Category 3 and 4 wetlands and associated buffers in accordance with an approved critical areas report and mitigation plan.

C. ECDC 23.70 Frequently Flooded Areas: Development standards and provisions for protection of frequently flooded areas are provided as applicable to areas of special flood hazard in the current editions of the International Residential Code and International Building Code, as adopted in ECDC Title 19. Conformance with the provisions for flood hazard reduction of the current editions of the International Residential Code and International Building Code, as adopted in ECDC Title 19, shall constitute conformance with ECDC 23.40.050, Protection of critical areas, per the mandates of the Washington Growth Management Act and the purposes and objectives of this title.

D. ECDC 23.90 Fish and Wildlife Habitat Conservation Areas

- i. Pursuant to ECDC 23.90.040.A.1. No development shall be allowed within a fish and wildlife habitat conservation area or buffer with which state or federally endangered, threatened, or sensitive species have a primary association, except that which is provided for by a management plan established by the Washington Department of Fish and Wildlife or applicable state or federal agency.
- ii. ECDC 23.90.040.B.1. All activities, uses, and alterations proposed to be located in water bodies used by anadromous fish or in areas that affect such water bodies shall give special consideration to the preservation and enhancement of anadromous fish habitat, including, but not limited to, adhering to the following standards:

- a. Activities shall be timed to occur only during the allowable work window as designated by the Washington Department of Fish and Wildlife for the applicable species;
  - b. An alternative alignment or location for the activity is not feasible;
  - c. The activity is designed so that it will not degrade the functions or values of the fish habitat or other critical areas;
  - d. Shoreline erosion control measures shall be designed to use bioengineering methods or soft armoring techniques, according to an approved critical areas report; and
  - e. Any impacts to the functions or values of the fish and wildlife habitat conservation area are mitigated in accordance with an approved critical areas report.
- iii. Pursuant to ECDC 23.90.040.D.3, the standard stream buffer may be reduced by averaging buffer widths. Buffering averaging may be allowed when a qualified professional demonstrates that:
- a. The total area contained in the buffer area, or the total buffer area existing on a subject parcel for a stream extending off-site, after averaging is no less than that which would be contained with the standard buffer;
  - b. The buffer width at any single location is not reduced to less than 50 percent of the reduced or standard width; and
  - c. The functions and values of the stream and associated buffer will not be diminished through the use of buffer averaging.

**Other Applicable Regulations**

ECDC 20.55.060 states, "No construction authorized by an approved shoreline permit may begin until 30 days after the final city decision on the proposal."

WAC 173-27-190 requires "each permit for a substantial development, conditional use or variance, issued by local government to contain a provision that construction pursuant to the permit shall not begin and is not authorized until twenty-one days from the date of filing as defined in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within twenty-one days from the date of such filing have been terminated; except as provided in RCW 90.58.140 (5)(a) and (b)."

## Conclusions Based on Findings

1.

A. **With conditions, the proposed utility upgrade is consistent with the policies of the Shoreline Management Act.** The policy of the SMA, as set forth in RCW 90.58.020, is to “provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses.” This policy “contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto.” *RCW 90.58.020*. The utility upgrade project is a reasonable and appropriate use for the Natural Shoreline Environment. The project would remove the existing, failing pump station from the waters of the state and leave behind only underground utilities, removing a source of pollution with a history of adverse environmental effects to the waters of the state and potentially to public health. All disturbed areas would be returned to pre-project conditions or better. The project would not impact navigation. *Findings 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, and 23.*

B. **As conditioned, the project is consistent with the City of Edmonds Shoreline Master Program.** The project's location within shoreline jurisdiction is reasonably necessary for the efficient operation of the sewer and water systems. Careful project design has minimized impacts to the maximum extent possible. Replacement of the aging sewer lift station would improve the health, safety, and welfare of the public, as well as protect habitat functions and values along Shell Creek and in the associated wetlands. The proposed project would not infringe on the rights of neighboring property owners. Conditions of approval would ensure that best management practices are employed during construction to prevent erosion and other damage to water quality. No protected cultural resources or historic properties were identified during an archaeological investigation within the projects area of potential effect. Conditions require work to stop and that appropriate authorities are contacted if any cultural resources are discovered during the course of construction. All project components within the shoreline area would be placed underground, minimizing adverse aesthetic and ecological impacts to the critical areas and floodplain. All disturbed areas would except for 476 square feet of stream buffer would be revegetated. Conditions would ensure the construction window is limited to the WSWF work window. All temporarily impacted areas would be restored to existing conditions or improved following construction. Conditions would ensure that all trees removed are replaced at a two to one ratio. Proposed mitigation is consistent with the requirements in ECDC 23.50.050.A. The project would not affect floodplain capacity and would not degrade the functions and values of the fish habitat and the other critical areas identified. The buffer averaging proposal is consistent with City Code requirements. *Findings 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, and 23.*

2. The proposed utility upgrade would not interfere with the normal public use of public shorelines. The entirety of the project covered by the instant permit will be located on private property that does not afford access to public shorelines. *Findings 2 and 8.*
3. The utility upgrade project is identified in the City's Sanitary Sewer Comprehensive Plan, an adopted element of the City's Comprehensive Plan. With conditions, the project would be compatible with other authorized uses within the zone and with uses planned for the area under the comprehensive plan and shoreline master program. The proposed project would serve and benefit the single family residences in the area, as well as the public at large. *Findings 3, 4, 5, 6, and 7.*
4. The utility upgrade project will cause no significant adverse effects to the Natural Shoreline Environment. SEPA review was conducted and an MDNS was issued and not appealed. *Findings 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, and 23.*
5. By removing a known threat to public and environmental health, the project as conditioned would enhance and benefit the public interest. *Findings 4, 5, 6, and 23.*
6. No other failing utility projects are known to exist in the City's Natural Shoreline Environment. Even if additional conditional use permits were granted for similar utility projects in the same shoreline designation, the cumulative effect of all such conditional uses would remain consistent with the policies of RCW 98.58.020 and would not create substantial adverse effects to the shoreline environment. *Findings 3, 4, 5, 6, and 19.*

### **DECISION**

Based on the preceding findings and conclusions, the request for a shoreline conditional use permit to remove existing Pump Station No. 2 from Shell Creek and to replace it outside the creek, including work within the creek and associated wetlands, on privately owned property at 929 Cary Road in Edmonds, Washington is **APPROVED**, subject to the following conditions:

1. No construction authorized by the instant permit may begin until 30 days after the final city decision on the proposal and/or until DOE reviews and approves the SCUP.
2. All work pursuant to the SCUP shall be consistent with the mitigation measures identified in the SEPA Mitigated Determination of Non-Significance, including:
  - i. The project must comply with all City of Edmonds critical areas regulations (Edmonds Community Development Code Title 23 "Natural Resources"). Specifically, the mitigation measures identified in the Agency Review Draft Critical Areas Report for the Pump Station No. 2 Replacement Project prepared by Landau Associates dated December 2, 2010 must be implemented. Any trees that are removed in conjunction with the project must be replaced at a ratio of 2:1. Any proposed changes to the Agency Review Draft of the Critical Areas Report

or mitigation measures must be approved by the City of Edmonds Planning Division.

- ii. In the event that any ground-disturbing activities during the project uncover protected cultural materials or human remains, all work in the immediate vicinity should stop, the area should be secured, and any equipment moved to a safe distance. The contractor should then contact the appropriate agency and tribe as identified in the Unanticipated Discoveries Protocol (UDP) included as Appendix 3 of the Archaeological Investigation Report prepared for the project. A copy of the UDP in Appendix 3 shall be provided to the contractor and the UDP must remain on site at all times during the implementation of the project.
- iii. The project must comply with hydraulic project approval (HPA) from the Washington State Department of Fish and Wildlife and any other federal, state, or local permits required for the project.

DECIDED this 4th day of March 2011.



Sharon A. Rice  
City of Edmonds Hearing Examiner



# CITY OF EDMONDS

121 5TH AVENUE NORTH • EDMONDS, WA 98020 • (425) 771-0220 • fax (425) 771-0221

HEARING EXAMINER

MIKE COOPER  
MAYOR

## RECONSIDERATION AND APPEAL

The following is a summary of the deadlines and procedures for filing requests for reconsideration and appeals. Any person wishing to file or respond to a request for reconsideration or an appeal should contact the Planning Division of the Development Services Department for complete procedural information.

## REQUEST FOR RECONSIDERATION

Section 20.06.010 of the Edmonds Community Development Code (ECDC) allows the Hearing Examiner to reconsider his or her decision or recommendation if a written request is filed within ten (10) calendar days of the date of the initial decision by any person who attends the public hearing and signs the attendance register and/or presents testimony, or by any person holding an ownership interest in a tract of land which is the subject of such decision or recommendation. Reconsideration is limited to allegations of: errors of procedure; errors of law or fact; errors of judgment; or the discovery of new evidence that was not known and could not, in the exercise of reasonable diligence, have been discovered at the time of public hearing. Reconsideration is not a condition precedent to any appeal.

## APPEALS

Pursuant to Section 20.01.003(B), Hearing Examiner decisions on shoreline conditional use permits may be appealed to the City Council in a closed record appeal proceeding. Pursuant to ECDC 20.07.004, persons entitled to appeal include (1) the Applicant; (2) anyone who has individually submitted a written document to the City of Edmonds concerning the application prior to or at the hearing; or (3) anyone testifying on the application at the hearing. Appeals must be in writing and include (1) the decision being appealed, the name of the project applicant, and the date of the decision; (2) the name and address of the person (or group) appealing the decision, and his or her interest in the matter; and (3) the reasons why the person appealing believes the decision to be wrong. Appeals must be filed with the Director of the Development Services Department no later than 4:00 pm on the 14th calendar day after the date of the decision being appealed and must be accompanied by any required appeal fee.

## TIME LIMITS FOR RECONSIDERATION AND APPEAL

The time limits for Reconsideration and Appeal run concurrently. If a request for reconsideration is filed before the time limit for filing an appeal has expired, the time clock for filing an appeal is stopped until a decision on the reconsideration request is completed. Once the Hearing Examiner has issued his or her decision on the reconsideration request, the time clock for filing an appeal continues from the point it was stopped. For example, if a reconsideration request is filed on day five of the appeal period, an individual would have nine more days in which to file an appeal after the Hearing Examiner issues his decision on the reconsideration request.

## NOTICE TO COUNTY ASSESSOR

The property owner may, as a result of the decision rendered by the Hearing Examiner, request a change in the valuation of the property by the Snohomish County Assessors Office.



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MIKE COOPER  
MAYOR

HEARING EXAMINER

## OFFICE OF THE HEARING EXAMINER CITY OF EDMONDS, WASHINGTON

RECEIVED  
MAR - 7 2011  
PLANNING DEPT.

Regarding the request of )  
 )  
**City of Edmonds** )  
 )  
 )  
For a Shoreline Conditional Use Permit )  
\_\_\_\_\_ )

Case No. PLN-2010-0078

### DECLARATION OF SERVICE

I, Sharon A. Rice, the undersigned, do hereby declare:

1. That the "Offices of Sharon Rice Hearing Examiner PLLC" maintains a professional services agreement with the City of Edmonds, Washington for the provision of Hearing Examiner services, and I make this declaration in that capacity; that I am now and at all times herein mentioned have been a citizen of the United States, a resident of the State of Washington, over the age of eighteen (18), and competent to be a witness and make service herein; and that on March 4, 2011, I served a copy of the decision in case PLN-2010-0078 upon the following individuals at the addresses below by first class US Mail:

Pam Lemcke, Capital Projects  
121 Fifth Avenue North, First Floor  
Edmonds, WA 98020

Edmonds Development Services  
121 Fifth Avenue North, First Floor  
Edmonds, WA 98020

Clerk of the Edmonds City Council  
121 Fifth Avenue North, First Floor  
Edmonds, WA 98020

Rex Strickland  
929 Cary Road  
Edmonds, WA 98020

Alvin Rutledge  
7101 Lake Ballinger Way  
Edmonds, WA 98026

Steve Quarterman, Landau Assoc.  
130 - 2nd Avenue South  
Edmonds, WA 98020

I hereby declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct, this 4th day of March 2011 at Edmonds, Washington.

Sharon A. Rice