

**BEFORE THE LAND USE HEARING EXAMINER
FOR THE CITY OF LA CENTER, WASHINGTON**

Regarding a request by Tim Nutter for a approval of)	<u>REVISED FINAL ORDER¹</u>
Shoreline and Critical Areas permits for a stormwater)	File No. 2015-005-SMP
outfall west of W. 5 th Street, downslope to the Lewis)	(Kay's Subdivision
River, in the City of La Center, Washington)	Stormwater Outfall)

A. SUMMARY

1. Tim Nutter (the "applicant") requests approval of a portion of a proposed underground stormwater line serving the previously approved Kays Subdivision, a 37 lot single-family residential project approved in 2015 (See 2015-0016-SUB), located south of Pacific Highway and one block west of 'E' Street in the NW ¼ of Sec 3, T4N R1E, WM. PIN: 209488000. The applicant proposes to extend an underground stormwater line from the southern terminus of West G Street, across adjacent property to the south, then southwest (downhill) within the West 5th Street right-of-way to the East Fork of the Lewis River. The project is within the Urban Conservancy shorelands zone. The outfall will be located at the Ordinary High Water Mark (OHWM) of the Lewis River. The portion of the pipeline subject to City jurisdiction will cross shorelands, Riparian Habitat Conservation Areas, 440 square feet of a Category IV wetland, Oregon white oak stands, and steep slopes. The conveyance pipe and outfall will be located within the floodplain and floodway of the Lewis River. This Final Order is limited to those portions of the pipeline located within La Center shorelands and critical areas. The portion of the pipeline located on the Barnhart property, between West G and 5th Streets, is subject to Clark County review.

2. The City of La Center issued a Determination of Nonsignificance ("DNS") for the portion of the pipeline subject to City jurisdiction pursuant to the State Environmental Policy Act ("SEPA"). Hearing Examiner Joe Turner (the "examiner") conducted a public hearing to receive testimony and evidence about the application. City staff and consultants recommended that the examiner approve the application and preliminary plat subject to conditions. See the Staff Report dated June 15, 2015 (the "Staff Report"), as modified at the hearing. The applicant accepted those findings and conditions, as modified, without exceptions. No one else testified orally or in writing.

3. Based on the findings provided or incorporated herein, the examiner concludes that the applicant sustained the burden of proof that the proposed use does or can comply with the relevant approval standards of the La Center Municipal Code (the "LCMC"), RCW 90.58, WAC 173-27, and the La Center Shoreline Master Program, provided the applicant complies with conditions of approval recommended by City staff to ensure the proposed use does comply in fact with those standards. Therefore the examiner approves the Shoreline Substantial Development and Critical Areas Permits, and recommends

¹ The hearings officer issued a Final Order in this case on July 9, 2015. However that Final Order failed to address the Shoreline Substantial Development Permit. This Revised Final Order is intended to address that error. The public notice for this application did address the Shoreline Substantial Development Permit.

approval of the Shoreline Conditional Use Permit to the Department of Ecology, subject to the conditions at the end of this final order.

B. HEARING AND RECORD HIGHLIGHTS

1. Hearing Examiner Joe Turner (the "examiner") received testimony at the public hearing about this application on July 1, 2015. That testimony and evidence, including a recording of the public hearing and the casefile maintained by the City, are included herein as exhibits, and they are filed at City Hall. The following is a summary by the examiner of selected testimony and evidence offered at the hearing.

2. La Center consulting city planner Eric Eisemann summarized the Staff Report. He requested the examiner add a condition of approval requiring an arborist review and approve the portion of the pipeline located within the dripline of any Oregon white oak trees.

3. La Center city engineer Tony Cooper requested the examiner add a condition requiring the applicant's engineer examine the pipeline and submit a monitoring report to the city engineer prior to final plat approval as recommended by the applicant's geotechnical engineer.

4. Habitat biologist Kevin Grosz and the applicant, Tim Nutter, appeared and summarized the proposed project, its critical area impacts and proposed mitigation. They accepted the recommended conditions of approval in the Staff Report as modified at the hearing without exceptions.

5. No one else testified orally or in writing about the application. The examiner closed the record at the end of the hearing and announced his intention to approve the application subject to the conditions in the Staff Report.

C. DISCUSSION

1. City staff recommended approval of the application, based on affirmative findings and subject to conditions of approval in the Staff Report, as modified at the hearing. The applicant accepted those revised findings and conditions without exception.

2. The examiner concludes the Staff Report identifies the applicable approval standards in the LCMC for the application and contains affirmative findings showing that the proposal does or can comply with those standards, provided that the applicant complies with the recommended conditions of approval. The examiner adopts the affirmative findings in the Staff Report as his own, except to the extent they are inconsistent with the following findings.

3. This application is also subject to Subsection B of the La Center Shoreline Master Program, which provides:

B. Shoreline Substantial Development Permit Required

1. *Substantial development as defined by this program and RCW 90.58.030 shall not be undertaken by any person on the shorelines of the state without first obtaining a substantial development permit from the Shoreline Administrator, unless the use or development is specifically identified as exempt from a substantial development permit, in which case a letter of exemption is required.*
2. *The Shoreline Administrator may grant a substantial development permit only when the development proposed is consistent with the policies and procedures of RCW 90.58, the provisions of WAC 173-27, and this program.*
3. *Within an urban growth area, a shoreline substantial development permit is not required on land that is brought under shoreline jurisdiction due to a shoreline restoration project creating a landward shift in the OHWM.*

□□ Subsection B does not add any additional approval criteria. The shoreline issues for this application are identical for the SDP and SCUP. The examiner finds that the proposed Shoreline Substantial Development and Shoreline Conditional Use permits comply with the applicable provisions of the La Center Shoreline Master Program and Municipal Code and state law, based on the affirmative findings in the Staff Report.

D. CONCLUSION

Based on the findings and discussion provided or incorporated herein, the examiner concludes that File No. 2015-005-SMP (Kays Subdivision Outfall) should be approved, because the application does or can comply with applicable standards of the LCMC, provided it is subject to conditions that ensure timely compliance in fact with the LCMC. The examiner can approve the Shoreline Substantial Development Permit and the Critical Areas Permit. The proposed Shoreline Conditional Use Permit must be reviewed and approved by the proper state and federal agencies, in this instance, the Washington State Department of Ecology.

E. ORDER

1. The Hearings Examiner hereby revokes the July 9, 2015 Final Order in this and replaces it with this Revised Final Order.

2. The Hearings Examiner recommends APPROVAL of the proposed Shoreline Conditional Use permit to the Department of Ecology, subject to the following conditions of approval; and

3. The Hearing Examiner APPROVES the Shoreline Substantial Development and Critical Areas Permits subject to the following conditions of approval:

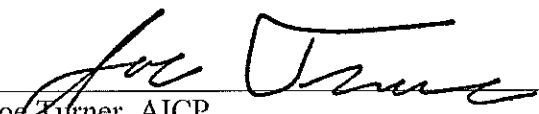
Conditions of Approval:

1. The applicant, at time of engineering approval, shall demonstrate compliance with all applicable La Center regulations, goals and policies contained herein.

2. The design and construction of storm drainage shall be in accordance with the LCMC and applicable city engineering standards for public works.
3. Construction shall not proceed without an approved erosion control plan.
4. Prior to site disturbance, the applicant shall consult with the City Public Works Director and Public Works Engineer to incorporate the recommendations made by Columbia West Engineering into the site grading, erosion control plans, structural fills, and suitable crushed aggregate trench backfill.
5. As-constructed drawing(s) will be provided in '*.dwg' electronic format as well as Mylar and paper.
6. Construction plans shall identify staging areas for all equipment, contractors, deliveries, and supplies prior to construction plan approval.
7. Construction plans shall identify and show all utilities with trench and location details.
8. The findings and recommendations of the following reports shall be incorporated herein and considered as conditions of approval through final design of the outfall project except as otherwise noted herein:
 - a. Kays Subdivision Stormwater Outfall: Wetland Delineation and Assessment", The Resource Company, July 10, 2014;
 - b. "Kays Subdivision Wetland and Habitat Mitigation" The Resource Company, March 4, 2015;
 - c. "Geotechnical Recommendation for Proposed Stormwater Discharge", Columbia West, Inc., November 20, 2008;
 - d. "Cultural Resource Survey of the Kays Subdivision Stormwater Outfall Project Area" Archaeological Services, LLC, March 22, 2015; and
 - e. "Technical Information Report: Kays Subdivision, MacKay & Sposito, June 6, 2014Geotechnical Recommendations for Proposed Stormwater Discharge" Columbia West Engineering, Inc., November 20, 2008.
9. Prior to soil disturbance, the developer shall install flags, stakes, fencing and/or signs, consistent with LCMC 18.300.090 and -.110, along Wetland C and associated buffers, riparian habitat conservation area and shorelines.
10. Prior to soil disturbance within the dripline of any Oregon white oak trees, a professional arborist shall review the proposed excavation and confirm that the excavation will not cause adverse impacts to the trees.
11. The developer shall install permanent signs along the perimeter of Wetland C at the conclusion of advising the public of the presence of protected areas. Signage will read "Wetland Buffer to Remain in Natural Vegetated State" or an approved equal. An affidavit of posting will must be returned to the City prior to final

- platting. Codes, Covenants and Restrictions (CC&R's) shall include a provision requiring that such signs be permanently maintained.
12. Prior to final plat approval of the Kays Subdivision the applicant's engineer shall review the pipeline for leaks and proper water conveyance as recommended in the "Geotechnical Recommendation for Proposed Stormwater Discharge," Columbia West, Inc., November 20, 20008, and submit a report of the analysis to the City engineer.
 13. The applicant shall monitor all mitigation areas for a period of ten (10) years, and submit yearly monitoring reports to the City. The required yearly monitoring activity shall include a complete count (not transects) of all woody vegetation within the wetland and buffer enhancement areas.
 14. Watering of the mitigation area shall take place only between 6:00 am and 9:00 am.
 15. All erosion control measures shall be designed, approved, installed and maintained consistent with Chapter 18.320 LCMC. Where these standards differ, the more stringent shall apply. All erosion control measures shall be in place prior to removal of vegetation or any construction activity and shall be maintained during all phases of construction.
 16. Construction plans shall identify staging areas for all equipment, contractors, deliveries, and supplies prior to construction plan approval.
 17. Site development earthwork for site grading and construction of sewer, storm drain, water, and street systems within critical areas shall be limited to the dry weather season between May 1st and October 31st with planting and seeding erosion control measures completed by October 1st.

DATED this 4th day of August 2015.



Joe Turner, AICP
City of La Center Hearing Examiner