

**BEFORE the HEARING EXAMINER for the
CITY of SULTAN**

DECISION

FILE NUMBERS: 21-000363 & 21-000364

APPLICANT: City of Sultan
Public Works Department
319 Main Street
Sultan, WA 98294

TYPE OF CASE: Consolidated: 1) Shoreline Management Act Conditional Use Permit (21-000363); and 2) Floodplain Development Permit (21-000364); both for a major upgrade of the City's Wastewater Treatment Plant

STAFF RECOMMENDATION: Approve subject to conditions

EXAMINER DECISION: GRANT both requested permits subject to conditions

DATE OF DECISION: April 11, 2022

INTRODUCTION ¹

The City of Sultan Public Works Department ("Public Works") seeks a Shoreline Management Act ("SMA") Conditional Use Permit ("SCUP") and a Floodplain Development Permit ("FDP"), both for a major upgrade of the City's Wastewater Treatment Plant ("WWTP"). Public Works submitted an application to the Sultan Department of Community Development ("DCD") on November 18, 2021, for a SCUP, FDP, and Commercial Building Permit ("BP").² (Exhibit 14³) The project will also require an SMA Substantial Development Permit ("SSDP"). Public Works and DCD opted to consolidate the SCUP and FDP applications for processing; the SSDP application will be processed by DCD separately after conclusion of the SCUP/FDP process; the BP application review will be completed when the land use entitlement application process has been concluded. The DCD deemed the SCP, FDP, and BP applications complete as

¹ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

² The record contains no formal application paperwork.

³ Exhibit citations are provided for the reader's benefit and indicate: 1) The source of a quote or specific fact; and/or 2) The major document(s) upon which a stated fact is based. Citations to exhibits that are available electronically in PDF use PDF page numbers, not source document page numbers. While the Examiner considers all relevant documents in the record, typically only major documents are cited. The Examiner's Recommendation is based upon all documents in the record.

of December 13, 2021. (Exhibit 13) DCD issued a Notice of Application on December 17, 2021. ⁴ (Exhibit 14)

The WWTP site is located at 303 W Stevens Ave (aka US-2 or SR 2). The WWTP site consists of two Snohomish County tax parcels: 00472100700100 and 00472100800100, both located in Township 27 N, Range 08 E, Section 06, WM. (Exhibit 14)

The Sultan Hearing Examiner (“Examiner”) is generally familiar with the WWTP site and also viewed Google Earth imagery of the WWTP site and surroundings: Aerial imagery dated July 23, 2018; street view imagery dated November 2021 and January 2022.

The Examiner held a hybrid open record hearing on April 4, 2022: In-person participation was available at Sultan City Hall; remote participation was available through the “Zoom” platform. DCD gave notice of the hearing as required by the Sultan Municipal Code (“SMC”). (Exhibit 15)

The following exhibits were entered into the hearing record during the hearing:

- Exhibits 1 - 18: As enumerated on the DCD-prepared Exhibit List available on the City’s web site.
- Exhibit 19: Email comments from Judy Heydrick, April 3, 2022
- Exhibit 20: Letter (with enclosures) from Ron Kraut, April 4, 2022

The action taken herein and the requirements, limitations and/or conditions recommended for imposition by this recommendation are, to the best of the Examiner’s knowledge or belief, only such as are lawful and within the authority of the Examiner to take pursuant to applicable law and policy.

FINDINGS OF FACT

1. The WWTP site is bordered on the south by US-2, on the north by the right bank ⁵ of the Sultan River, on the east by Albion Street, and on the west by Marcus Street. The WWTP site is a reverse “L”-shaped site with its long “leg” running north-south, and its stubby “foot” running east-west along the north side of US-2. (Exhibits 2, PDF 8; 4) For ease of reference, the “leg” will be referred to as the “Albion parcel” and the “foot” will be referred to as the “Marcus parcel.” Virtually all of the Albion parcel lies within the density fringe portion of the regulatory floodplain of the Sultan River; none of the Marcus parcel lies within the Sultan River regulatory floodplain. (Exhibit 5) The berm on which Albion Street is constructed provides some protection to the Albion parcel from flood waters. (Exhibit 2)

⁴ The Notice of Application was posted on the City’s web site on December 23, 2021. (Exhibit 14)

⁵ River banks are identified from the perspective of a viewer looking downstream.

2. The WWTP currently operates at up to 85% of its rated treatment capacity. In accordance with the National Pollutant Discharge Elimination Permit (“NPDES”) under which the WWTP operates, the City must upgrade the WWTP to avoid exceeding its rated capacity. The MurraySmith firm prepared a sewer system facility plan for the City; Gray & Osborne prepared plans for the necessary WWTP upgrades. (Testimony)

The current WWTP is entirely located on the Albion parcel; the Marcus parcel is vacant land. (Exhibits 2, PDF 8; 4) The major elements of the upgrade will: replace the current headworks with a new headworks facility on the Marcus parcel; add a second oxidation ditch and a third secondary clarifier on the Albion parcel; enlarge and extend the effluent outfall farther into the Skykomish River;⁶ convert an aerobic sludge holding tank into an aerobic digester and add two additional aerobic digesters on the Albion parcel; and construct a new bio-solids handling facility on the Marcus parcel. (Exhibit 2, PDF 6 – 23, 31 – 34, and 87 – 96)

The following is a more complete listing of the numerous elements of the upgrade:

- Construction of a new headworks which includes screening, grit removal, a splitter box to split flows equally between the two oxidation ditches, and a screenings/grit dumpster storage building.
- Extension of the existing force mains from the Main Sultan Pump Station to the new headworks.
- Construction of a new pump station and associated force main serving West Sultan.
- Construction of a second oxidation ditch with diffused aeration.
- Modifications to the existing oxidation ditch to include replacement of the existing brush rotors with diffused aeration.
- Construction of a new secondary clarifier splitter box designed to split flows between the four secondary clarifiers (one clarifier will be constructed in the future).
- Construction of a third secondary clarifier and installation of new launder covers on all three clarifiers.
- Construction of new dedicated return activated sludge pumping systems for each secondary clarifier.
- Modifications to the existing Plant Drain Pump Station.
- Construction of a new waste activated sludge pumping systems at Secondary Clarifiers No. 2 & 3.

⁶ The existing 12” diameter outfall pipe runs approximately 930 feet underground to the shore of the Sultan River and then an additional 75 feet attached to the river bottom beneath the Sultan and Skykomish Rivers. At that point it becomes a 6” diameter pipe and extends an additional 42 feet anchored to the river bottom in a more or less southeasterly direction further into the Skykomish River. (Exhibit 2, PDF 31) No changes will be made to the 12” diameter portion of the outfall pipe (other than alterations in the WWTP itself to connect to the upgraded piping). The upgrade will replace the 42-foot 6” diameter end segment with a 76-foot long 12” diameter segment which will angle more or less south on the Skykomish River bed. (Exhibit 2, PDF 32) Thus, the new outfall will have a constant diameter, a longer length, and will “point” more downstream at its discharge point in the Skykomish River. The new outfall terminus will be about 100 feet downstream of the Sultan/Skykomish confluence.

- Modifications to the existing Equipment Building required to house the new aerobic digester and oxidation ditch blowers.
- Expansion of the existing effluent pump station to accommodate projected year 2039 peak flows.
- Modifications to the existing effluent pump station wet well to allow installation of two new non-potable water pumps and tablet chlorination system.
- Construction of a new outfall into the Skykomish River to accommodate 2039 flows.
- Construction of two new aerobic digesters to provide additional solids treatment.
- Construction of a new solids handling/biosolids storage building to house the biosolids processing equipment and store biosolids for up to three months. The building is initially being construction to allow installation of the additional equipment required to and produce Class A biosolids in the future.
- Construction of a new odor control system to serve the headworks and solids handling/biosolids storage building.
- Installation of new power distribution equipment and a new standby generator to serve all critical loads at the WWT[P].

(Exhibit 12, PDF 1)

3. The Sultan and Skykomish Rivers and shorelands within 200 feet of the rivers' ordinary high water mark ("OHWM") are within the jurisdictional area of the SMA. The Skykomish River is a designated Shoreline of Statewide Significance under the SMA; the Sultan River is a Shoreline of the State under the SMA. The City's Shoreline Master Program ("SMP") designates the WWTP site as an Urban Conservancy Environment; the two rivers themselves are designated as Aquatic Environments. The proposed project requires issuance of an SSDP because its fair market value exceeds the threshold for such permits and a SCUP because utility facilities are conditional uses in both applicable SMA Environments. (Exhibit 1; SMP, Ch. 5, p. 12) Section 17.20.010 SMC adopts the SMP.

While only the northern portion of the Albion parcel and the outfall are within 200 feet of the Sultan or Skykomish Rivers' OHWM, most of the Albion parcel is within 200 feet of the Sultan River's regulatory floodway and is thus also within the SMA jurisdictional area. (Exhibits 5; 6) Because all elements of the upgrade are closely interrelated, the entire project will be reviewed against SCUP criteria.

4. As previously noted, virtually all of the Albion parcel (but none of the Marcus parcel) lies within the density fringe of the regulatory floodplain; the outfall, being within the Skykomish River itself, is within the river's floodway. (Exhibit 5) Floodplain regulations are contained in Chapter 17.08 SMC. All of the work, except that on the Marcus parcel, is subject to the floodplain regulations.
5. Impacts within the regulatory floodplain will be a combination of temporary (mostly related to grading) and permanent (construction of structures). (Exhibit 1, PDF 6)

The project's engineers have calculated the volume of flood water that would be displaced by the WWTP upgrades and have identified an area within the floodplain on City property across the Sultan River which can be excavated to provide compensatory flood water storage. The depth of excavation required on the two City-owned parcels to provide required compensatory storage is not more than six inches (6"). (Exhibit 10)

6. The in-water work will require Hydraulic Project Approval from the Department of Fish and Wildlife, an Aquatic Use Permit from the Department of Natural Resources, and a Section 404 permit from the U.S. Army Corps of Engineers. (Exhibit 1, PDF 5) A Joint Aquatic Resources Permit Application has been submitted to these agencies (Exhibit 7) and a Hydraulic Project Approval has already been issued by the Department of Fish and Wildlife (Exhibit 8).
7. The WWTP site is bordered on the east by Sportsman Park. The Park is roughly a square site, bordered on the north and east by the right bank of the Sultan River and on the south by US-2. (Exhibits 2, PDF 2; 4) The upgrade project will not disturb the Park. (Exhibit 2)
8. Sultan's State Environmental Policy Act ("SEPA") Responsible Official issued a threshold Determination of Nonsignificance ("DNS") for the WWTP upgrade project on October 4, 2021. (Exhibit 12) The DNS was not appealed. (Exhibit 1, PDF 4)
9. The record contains written comments from two persons: Two comments from Judy Heydrick ("Heydrick"); and one comment from Ron Kraut ("Kraut").

Heydrick's initial January 27, 2022, comment asserted that the increased size of the outfall would likely harm Bull trout and the Oregon spotted frog, both of which are protected species. Heydrick also cited a study which concluded that fish downstream of a treatment plant outfall are harmed by pharmaceuticals which the public disposes of via their toilets. (Exhibit 16, PDF 3 & 4)

Public Works responded to Heydrick's comment. Public Works noted that the Oregon spotted frog no longer inhabits Snohomish County, so it would not be harmed by the WWTP. Public Works said that the upgraded WWTP will meet all requirements of its NPDES permit. Finally, with respect to pharmaceuticals in waste water, Public Works said:

Source control through public education is a common approach advocated by EPA and Ecology to reduce the discharge of pharmaceuticals to wastewater treatment plants by encouraging their proper disposal. To assist with public education, the City will be including a flyer in the upcoming monthly bills outlining the importance of properly disposing of pharmaceuticals and point out that there is a location within[] the city limits to properly dispose of pharmaceuticals at the police station.

(Exhibit 16, PDF 2)

Heydrick’s second comment (April 3, 2022) and Kraut’s comment (April 4, 2022) address essentially the same issue. They assert that the City’s Comprehensive Plan is defective in that it allegedly lacks a 6-Year Capital Improvement Plan and that the City has no plan in place to fund the proposed upgrades. (Exhibits 19; 20) Kraut also cites various provisions of Titles 16 and 19 SMC for the proposition that approval criteria listed therein have not been met, thus obligating the Examiner to deny the permits. Finally, Kraut lists some 18 goals/policies of the adopted Comprehensive Plan with which Kraut asserts the proposal is inconsistent. (Exhibit 20)

10. The WWTP site and Sportsman Park are both designated by the adopted Comprehensive Plan and zoned Public & Institutional Overlay. (Exhibit 1, PDF 2)
11. The record contains the following documents submitted by Public Works: Full construction plan set (Exhibit 2); Conditional Use criteria compliance memorandum (Exhibit 3); JARPA application (Exhibit 7); Hydraulic Project Approval (Exhibit 8); Geotechnical analysis (Exhibit 9); Floodplain “No Rise” analysis (Exhibit 10); and SEPA checklist (Exhibit 11).
12. Planning recommends approval of both requested permits subject to 11 special conditions. (Exhibit 1, PDF 10 & 11)

Public Works has no objection to any of DCD’s recommended conditions. (Testimony)

13. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

LEGAL FRAMEWORK ⁷

The Examiner is legally required to decide this case within the framework created by the following principles:

Authority

A SCUP application is subject to an open record hearing before the Examiner. The Examiner makes a final decision for the City on the application which is subject to the right of reconsideration. The City’s final decision is subject to approval by the State Department of Ecology as provided by law, whose decision may be appealed to the State Shorelines Hearings Board, a state quasi-judicial review board. [SMP 7.III.F]

Floodplain development regulations are administered by the Public Works Director who “ may delegate authority to implement these provisions.” [SMC 17.08.070(A)] Public Works elected to refer the Floodplain Development Permit application to the Examiner. (Exhibit 1, PDF 3) Section 17.08.070 SMC, the administrative procedures section of Chapter 17.08 SMC, lacks specificity as to the procedures that would apply to the Public Works Director’s action on a Floodplain Development Permit. However, SMC 17.08.090

⁷ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

provides that requests for variances from Chapter 17.08 SMC's floodplain regulations shall be decided by the Examiner following the procedures found in SMC 2.26.090 - .140. Those code sections require a pre-decision hearing before the Examiner who makes a final decision for the City on the application which is subject to the right of reconsideration and appeal to Superior Court. The Examiner will apply that process to this Floodplain Development Permit application.

Review Criteria

The review criteria for SCUPs are set forth at SMP 7.IV.B.3:

Criteria for Granting Shoreline Conditional Use Permits. Uses classified as conditional uses may be authorized provided that the applicant can demonstrate all of the following:

- a. That the proposed use will be consistent with the policies of RCW 90.58.020 and the policies of the Master Program;
- b. That the proposed use will not interfere with the normal public use of public shorelines;
- c. That the proposed use of the site and design of the project will be compatible with other permitted uses within the area and with goals and policies of the Comprehensive Plan;
- d. That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and
- e. That the public interest will suffer no substantial detrimental effect.

In the granting of all 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.

Uses that are specifically prohibited by this Master Program may not be authorized pursuant to this section.

[Bold in original]

A Floodplain Development Permit is issued when a proposal shows compliance with all applicable standards contained within SMC 17.08.110 - .190.

Vested Rights

“Vesting” serves to “fix” the regulations against which a development application is judged. [*Potala Village Kirkland, LLC v. City of Kirkland*, 183 Wn. App. 191 (2014), *review denied*, 182 Wn.2d 1004, 342 P.3d (2015)] In 2014 the State Supreme Court flatly declared: “While it originated at common law, the vested rights doctrine is now statutory.” [*Town of Woodway v. Snohomish County*, 180 Wn.2d 165, 173, 322 P.3d 1219 (2014)] The *Potala* court rejected a contention that the filing of a complete shoreline substantial development permit application vested development rights because no statutory provision established vested rights for shoreline permits. [*Supra*, at 196-206]

If Sultan had a local vesting ordinance applicable to land use applications, the Examiner would be obliged to follow it as enacted. [*Erickson & Associates v. McLerran*, 123 Wn.2d 864, 872 P.2d 1090 (1994); *Abbey Rd. Grp., LLC v. City of Bonney Lake*, 167 Wn.2d 242, 250, 218 P.3d 180 (2009)] But the City has no such local ordinance. Thus, the Examiner must follow the most current case law. Under the most current case law, there is no vesting for shoreline permits because there is no statutory provision providing vesting for such permits.

Standard of Review

The standard of review is preponderance of the evidence. The applicant has the burden of proof. [SMP 7.III.F.6]

Scope of Consideration

The Examiner has considered: all of the evidence and testimony; applicable adopted laws, ordinances, plans, and policies; and the pleadings, positions, and arguments of the parties of record.

CONCLUSIONS OF LAW

1. A land use permit pre-decision hearing is not the proper forum in which to challenge legislative actions or the content of policies and plans adopted by the legislative branch. The Examiner simply has no legal authority under the regulatory system in place in the State of Washington to entertain any challenge to a legislative enactment. Thus, objections to the content of adopted City plans, policies, and regulations cannot be brought before the Examiner. [See RCW 36.70B.030(1) and (3).]
2. The criteria for review of a SCUP are set out at SMP 7.IV.B.3 and have been quoted in full in “Legal Framework: Review Criteria,” above. The WWTP upgrade proposal meets Criterion (a). Before an SMP may be approved by the State it must be found to be consistent with the SMA’s basic policies in RCW 90.58.020. The City’s SMP was approved by the State. Therefore, *a priori*, it is consistent with RCW 90.58.020. The record contains no challenge to the project’s compliance with any provision within the SMP.

3. The WWTP upgrade proposal meets Criterion (b). The visible upgrades will all occur within the Albion parcel (the area presently occupied by the WWTP) and the Marcus parcel (outside of the SMA jurisdictional area). No part of the project will affect the right bank (Sportsman Park) or any part of the left bank of the Sultan River.
4. The WWTP upgrade proposal meets Criterion (c). Virtually all, if not all of the Comprehensive plan goals/policies cited by Kraut are directives to the City to undertake certain legislative actions; they are directives to the City, not criteria against which to evaluate a permit application.

Further, it is worth noting that this criterion, even though approved by the state as part of the City's SMP, reads substantively different from the mandatory criterion as set forth in WAC 173-27-160(1)(c) which reads as follows: "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". The difference is that the WAC criterion requires compatibility with existing and planned uses in the area, not with policies within a planning document. That approach is consistent with state Supreme Court jurisprudence which holds that comprehensive plans are only guides which are trumped by regulatory enactments which implement the plans. [*Citizens v. Mount Vernon*, 133 Wn.2d 861, 947 P.2d 1208 (1997), *reconsideration denied*] There is no evidence nor even an assertion that upgrading the existing WWTP will not be compatible with current and planned uses in the area. In fact, the evidence shows that the new biosolids handling facility is expected to reduce odor issues, making the WWTP more compatible, not less.

5. The WWTP upgrade proposal meets Criterion (d). No part of the upgrade will be any closer to the right bank of the Sultan River than are current elements of the WWTP. In fact, all of the WWTP site upgrades will be within the current plant area (except for the outfall extension which will be on the bed of the Skykomish River).
6. The WWTP upgrade proposal meets Criterion (e). The public interest will be served by the WWTP upgrade: The upgraded facility will be able to handle the flows expected as the City grows, thus greatly reducing the chance of any release of untreated sewage into the Sultan River. Extending the outfall farther into the Skykomish River will improve dilution of discharged effluent into the river water.
7. There is no need to worry about "the cumulative impact of additional requests for like actions in the area" as it is extremely unlikely that anyone else would propose a WWTP in the area.
8. Utilities are allowed upon issuance of a SCUP, so this SCUP is not permitting that which is prohibited by the SMP.
9. DCD's point-by-point analysis of floodplain regulatory compliance has not been challenged. The key point is that the City will off-set flood water displacement caused by the new oxidation trench

and clarifier by making a shallow excavation on City-owned properties on the left bank of the Sultan River within the river's regulatory floodplain. These two properties are also in very close proximity to the WWTP, so the compensatory storage is very close to the lost storage.

10. Provisions in Titles 16 and 19 SMC have no relevance to either of the applications now before the Examiner. Title 16 SMC is the City's Zoning Code. Both the SMP and floodplain regulations are regulated under Title 17 SMC: Chapters 17.20 SMC and 17.08 SMC, respectively. Zoning regulations do not apply to activities regulated under Title 17 SMC.

Similarly, Title 19 SMC is the City's Land Division Code. There is no land division proposed in either of the current applications. Chapters 19.22, 19.24, 19.26, and 19.28 SMC set forth four different "Land Division Review Procedure[s]". Those procedures do not apply to anything but land division actions. For example, SMC 19.22.020 SMC opens with the following sentence: "Level I development authorization applications are required for the following actions processed under this title". [Emphasis added] The reference to "this title" is to Title 19 SMC, the Land Division Code. The "catch-all" entry in this section is "All other land division proposals determined by the director to be most closely similar to Level I uses." [Emphasis added] By its own unambiguous language the provision applies only to land division actions. Similar wording is found in the other listed chapters. The unambiguous language in Title 19 SMC cannot be boot-strapped into an overarching procedural regulation for all land development actions throughout the SMC.⁸

11. The recommended conditions of approval as set forth in Exhibit 1 are reasonable, supported by the evidence, and capable of accomplishment with the following changes:
 - A. Recommended Condition 6. The citation to "August 2008 Technical Bulletin 2" is an incomplete reference: By itself the reader has no idea whose Technical Bulletin is being cited. In response to the Examiner's question during the hearing, DCD stated that it is a FEMA [Federal Emergency Management Agency] document. With that information in hand, the Examiner has identified the full name of the document: "Flood Damage-Resistant Materials Requirements for Buildings Located in Special Flood Hazard Areas in accordance with the National Flood Insurance Program / Technical Bulletin 2 / August 2008." [https://www.fema.gov/sites/default/files/2020-07/fema_tb_2_flood_damage-resistant_materials_requirements.pdf, last visited April 9, 2022] The full title will be used in the condition.
 - B. Recommended Condition 7. As written, this condition would require that "All structures shall be constructed three feet above the base flood elevation." That is not what the code requires for a critical facility, which the WWTP is. Section 17.08.140 SMC requires that

⁸ The Notice of Application erroneously states that the SCUP and Floodplain Development Permit applications are "Level III" applications under Title 19 SMC. (Exhibit 14, PDF 1) That error is immaterial procedurally since the Level III subdivision process requires a pre-decision open record hearing followed by a written decision by the Examiner – the exact process which was advertised and which is being followed.

“Critical facilities constructed within the [100-year floodplain] shall have the lowest floor elevated three feet or more above the base flood elevation (100-year) at the site or to the height of the 500-year flood, whichever is higher.” [Emphasis added] The distinction may seem minor, but a requirement to construct something “three feet above the base flood elevation” is significantly different from a requirement to “have the lowest floor elevated” in that fashion. The condition will be revised to require compliance with SMC 17.08.140.

- C. The words “applicant” and “developer” are used interchangeably in the recommended conditions. The Examiner prefers to not use the word “applicant” in conditions as, to many readers, it would refer only to the applicant for the permit being issued. Since land use permits “run with the land,” the Examiner prefers to use a word that clearly refers to the holder of the permit. The Examiner typically uses the word “permittee” or “developer.” In this case, the Examiner will use “permittee” in Recommended Conditions 3 and 11.
- D. A few minor, non-substantive structure, grammar, and/or punctuation revisions to Recommended Conditions 1, 3, 4, 5, 7, and 10 will improve parallel construction, clarity, and flow within the conditions. Such changes will be made.

12. Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

DECISION

Based upon the preceding Findings of Fact and Conclusions of Law, the testimony and evidence submitted at the open record hearing, and the Examiner’s site view, the Examiner:

- A. **GRANTS** City approval of Shoreline Management Act Conditional Use Permit, City file number 21-000363 ; and
- B. **GRANTS** Floodplain Development Permit, City file number 21-000364,

BOTH for for a major upgrade of the City’s Wastewater Treatment Plant and **BOTH SUBJECT TO THE CONDITIONS ON THE ATTACHED SHORELINE CONDITIONAL USE PERMIT.**

Decision issued April 11, 2022.

/s/ John E. Galt

John E. Galt,
Hearing Examiner

HEARING PARTICIPANTS ⁹

Cyd Donk
Doug Welch
Andy Galuska

Nate Morgan
James Dougherty

NOTICE OF RIGHT OF RECONSIDERATION

This Decision, dated April 11, 2022, is subject to the right of reconsideration pursuant to SMP 7.III.F.7 and SMC 2.26.125. Reconsideration may be requested by the applicant, a party of record, or the City. Reconsideration requests must be filed in writing with the City Clerk/Treasurer not later than 5:00 p.m., local time, on the seventh calendar day after the date of mailing of this Recommendation. Any reconsideration request shall specify the error of law or fact, procedural error, or new evidence which could not have been reasonably available at the time of the hearing conducted by the Examiner which forms the basis of the request. Any reconsideration request shall also specify the relief requested. See SMC 2.26.125 for additional information and requirements regarding reconsideration.

SHORELINE CONDITIONAL USE PERMIT- NOTICE of RIGHT of APPEAL

The ultimate decision by the Washington State Department of Ecology on the Shoreline Management Conditional Use Permit portion of this Decision is final subject to the right appeal to the State Shorelines Hearings Board. Please see RCW 90.58.180 and Chapter 173-27 WAC for guidance regarding appeal procedures.

FLOODPLAIN DEVELOPMENT PERMIT- NOTICE OF RIGHT OF APPEAL

The Floodplain Development Permit portion of this Decision becomes final and conclusive as of the eighth calendar day after the date of mailing of the Decision unless reconsideration is timely requested. If reconsideration is timely requested, the Examiner's order granting or denying reconsideration becomes the final and conclusive action for the City. The final action may be reviewed in Superior Court pursuant to the procedures established by Chapter 36.70C RCW, the Land Use Petition Act. Section 36.70C.040 RCW requires that any appeal be properly filed with the Court within 21 days of the issuance of the final action. Please refer to Chapter 2.26 SMC and Chapter 36.70C RCW for further guidance regarding judicial appeal procedures.

⁹ The official Parties of Record register is maintained by the City's Hearing Clerk.

HEARING EXAMINER DECISION
RE: 21-000363 & 21-000364 (WWTP Upgrade)
April 11, 2022
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The following statement is provided pursuant to RCW 36.70B.130: “Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.”

CITY of SULTAN

**SHORELINE MANAGEMENT ACT
CONDITIONAL USE PERMIT**

File No.: 21-000363

Applicant: City of Sultan
Public Works Department
319 Main Street
Sultan, WA 98294

A Shoreline Conditional Use Permit is granted pursuant to the Shoreline Management Act of 1971 [Chapter 90.58 RCW] for a major upgrade of the City's Wastewater Treatment Plant.

This permit applies to the property legally described in Exhibit 7, PDF 2, and depicted in Exhibit 2 which is generally located between US-2 and the right bank of the Sultan River in Section 6, Township 27N, Range 8E, W.M.

This permit is subject to all applicable regulations of the Sultan Shoreline Master Program. In addition, this permit is subject to the following **SPECIAL CONDITIONS**:

1. Exhibit 2 is the approved preliminary site plan for development of the upgraded wastewater treatment plant. Any discrepancies between the approved preliminary plan and the SMP/SMC shall be resolved in favor of the SMP/SMC. All improvements shall be constructed in accordance with Exhibit 2. Minor adjustments of the approved preliminary plans may be approved by the Planning Director if the modifications are substantially in compliance with the approved plans and do not present any possible additional impacts.
2. Final engineering drawings depicting plant buildings, structures, civil improvements, and grading shall be submitted to the City's Community Development Director for final review and approval prior to issuance of any administrative permits.
3. Where applicable and required by the City, the Permittee shall implement the provisions and recommendations within the latest versions of any referenced reports, plans, or supporting documents made record as exhibits accompanying this Decision or subsequent versions approved by the City.
4. No work shall begin in water until the applicable state and federal permits have been issued, including, but not limited to, the Hydraulic Project Approval from the Department of Fish and

Wildlife, the Aquatic Use Authorization from the Washington Department of Natural Resources, and the Section 404 permit from the Army Corps of Engineers. The conditions of these approvals shall be followed at all times.

5. The required flood capacity to be added on the east side of the Sultan River to offset the impacts of improvements shall be completed before the import of fill or construction of new structures on the west side of the Sultan River.
6. All construction and improvements shall comply with the flood resistant material requirements set out in FEMA's "Flood Damage-Resistant Materials Requirements for Buildings Located in Special Flood Hazard Areas in accordance with the National Flood Insurance Program / Technical Bulletin 2 / August 2008."
7. All structures shall comply with the provisions of SMC 17.08.140. Prior to issuance of a Certificate of Occupancy an elevation certificate as required by SMC 17.08.070(D) shall be issued by a licensed surveyor to attest to this fact.

CLEARING AND GRADING

8. A comprehensive erosion and sedimentation control plan to ensure appropriate on-site and off-site water quality control shall be developed and implemented for all construction activities. The Best Management Practices outlined in the 2019 DOE Stormwater Management Manual for Western Washington shall be incorporated into the design. At a minimum, the plan shall include the following elements.
 - a. Exposed soils shall be stabilized and protected with straw, hydro-seeding or other appropriate materials to limit the extent and duration of exposure.
 - b. Disturbed areas shall be protected from stormwater runoff impacts through the use of silt fence. Other means of filtration of stormwater runoff and for limiting erosion/sedimentation such as check dams, and sediment traps may be required and are recommended.
 - c. Clearing and grading activities shall not be performed in the winter-wet season when soils are unstable unless determined suitable by the Public Works Director.

STORM DRAINAGE IMPROVEMENTS

9. The stormwater system design and stormwater discharge shall utilize the Best Management Practices of the 2019 DOE Stormwater Management Manual for Western Washington.
10. Stormwater pollution prevention measures shall be employed pursuant to the approved Stormwater Pollution Prevention Plan and as necessary to ensure appropriate on-site and off-site water quality control. Site runoff during construction shall be handled and treated as to quantity and quality

impacts by utilizing Best Management Practices, as defined in the 2019 DOE Stormwater Management Manual for Western Washington.

- 11. The Permittee shall obtain a General Construction Stormwater NPDES Permit from the Washington Department of Ecology (DOE) prior to beginning construction.

EXCEPT AS PROVIDED IN RCW 90.58.140(5)(a) AND (b), CONSTRUCTION PURSUANT TO THIS PERMIT SHALL NOT BEGIN AND IS NOT AUTHORIZED UNTIL TWENTY-ONE DAYS FROM THE DATE THIS PERMIT IS FILED WITH THE WASHINGTON STATE DEPARTMENT OF ECOLOGY AND ATTORNEY GENERAL AS REQUIRED BY 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.

PERMIT issued April 11, 2022.

John E. Galt

John E. Galt, Hearing Examiner

DEPARTMENT OF ECOLOGY REVIEW

The above permit is **APPROVED** _____ / **APPROVED WITH ADDITIONAL CONDITIONS** _____
DENIED _____ pursuant to WAC 173-27-200.

COMMENTS/ADDITIONAL CONDITIONS: _____

HEARING EXAMINER DECISION
RE: 21-000363 & 21-000364 (WWTP Upgrade)
April 11, 2022
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(Name)

(Title)

(Date)