

FINDINGS, CONCLUSIONS AND DECISION
OF THE CITY COUNCIL OF THE CITY OF SEATTLE

In the matter of:) C.F. 312839
)
Council Conditional Use application of King) FINDINGS, CONCLUSIONS
County Department of Natural Resources and) AND DECISION
Parks, Wastewater Treatment Division, to)
install 1,200 square feet of tanks and)
equipment to upgrade a bio-gas fuel treatment)
system, located at 1400 Discovery Park)
Boulevard (DPD Project No. 3014631, Type)
IV)

Introduction

This matter involves the Council Conditional Use application of King County Department of Natural Resources and Parks, Wastewater Treatment Division, to install 1,200 square feet of tanks and equipment to upgrade a bio-gas fuel treatment system, located at 1400 Discovery Park Boulevard (DPD Project No. 3014631, Type IV). The new biogas treatment system is proposed for installation by King County in order to comply with the terms of a settlement agreement with the Puget Sound Clean Air Agency (PSCAA).

Currently, the methane gas generated onsite as a by-product of the wastewater treatment process is used as fuel for the engines that pump wastewater into the treatment plant. The proposed biogas treatment system will reduce emissions produced by the engines in compliance with the settlement with PSCAA. The new equipment will be located next to existing equipment, entirely within the existing footprint of the West Point Treatment Plant.

On January 28, 2013, King County as State Environmental Policy Act (SEPA) Lead Agency for the project, issued a determination that the project is categorically exempt under SEPA.

On June 6, 2013, the Director of the Department of Planning and Development (DPD) recommended approval of the Council Condition Use for the reconfiguration of the sewage treatment plant.

On, July 2, 2013, the City of Seattle's Hearing Examiner held an open record hearing on the petition. On July 8, 2013, the Hearing Examiner issued Findings and Recommendations recommending City Council approval of the requested Council Conditional Use. There was no appeal of the Hearing Examiner's recommendation to the City Council.

On September 25, 2013, the matter came before the Planning, Land Use, and Sustainability Committee (PLUS), which reviewed the Hearing Examiner's record and exhibits. At its September 25, 2013 committee meeting, PLUS voted to approve the Council Conditional Use and adopted these Findings, Conclusions and a Decision for this Clerk's File and referred the matter to full Council for a vote.

Findings of Fact and Conclusions

The Council hereby adopts the Hearing Examiner's Findings of Fact, Conclusions and Recommendation for C.F. 312839, dated July 8, 2013. All conditions in the Hearing Examiner's recommendation are adopted.

Decision

The Council hereby GRANTS the Council Conditional Use for the reconfiguration of the West Point sewage treatment plant.

Dated this 30th day of September, 2013.

City Council President



**Legislative Department
Seattle City Council
Memorandum**

Date: September 20, 2013

To: Richard Conlin, Chair
Tim Burgess, Vice Chair
Mike O'Brien, Member
Planning, Land Use and Sustainability (PLUS) Committee

From: Eric McConaghy, Council Central Staff

Subject: Clerks' File (CF) 312839 Council Conditional Use application of King County Department of Natural Resources and Parks, Wastewater Treatment Division, to install 1,200 square feet of tanks and equipment to upgrade a bio-gas fuel treatment system, located at 1400 Discovery Park Boulevard (DPD Project No. 3014631, Type IV)

1. Overview

This matter involves the Council Conditional Use application of King County Department of Natural Resources and Parks, Wastewater Treatment Division (King County), to install 1,200 square feet of tanks and equipment to upgrade a bio-gas fuel treatment system, located at 1400 Discovery Park Boulevard (DPD Project No. 3014631, Type IV). The new biogas treatment system is proposed for installation by King County in order to comply with the terms of a settlement agreement with the Puget Sound Clean Air Agency (PSCAA).

Currently, the methane gas generated onsite as a by-product of the wastewater treatment process is used as fuel for the engines that pump wastewater into the treatment plant. The proposed biogas treatment system will reduce emissions produced by the engines, in compliance with the settlement with PSCAA, by cleaning the gas before it is burned in the pump engines. The new equipment will be located next to existing equipment, entirely within the existing footprint of the West Point Treatment Plant (Plant).

On January 28, 2013, King County as State Environmental Policy Act (SEPA) Lead Agency for the project, issued a determination that the project is categorically exempt under SEPA, and, therefore, no further environment review was necessary.

On June 6, 2013, the Director of the Department of Planning and Development (DPD) recommended approval of the Council Condition Use for the reconfiguration of the sewage treatment plant.

On, July 2, 2013, the City of Seattle's Hearing Examiner held an open record hearing on the petition. On July 8, 2013, the Hearing Examiner issued Findings and Recommendations recommending City Council approval of the requested Council Conditional Use.

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On September 25, 2013, the matter is scheduled to come before the Planning, Land Use, and Sustainability Committee (PLUS), to review and discuss the Hearing Examiner's record and exhibits.

Both the Department of Planning and Development (DPD) and the Hearing Examiner find the proposal to be consistent with the City's Council Conditional Use criteria and recommend approval of the Conditional Use for the Plant, without conditions.

2. Type of Action – Standard of Review - No Appeal or Request to Supplement the Record

The Seattle Municipal Code (SMC) 23.51A.002.D provides that in a single-family zone "*(t)he decision on an application for the expansion or reconfiguration of a sewage treatment plant is a Type IV Council land use decision.*" The project is a reconfiguration of the sewage treatment plant. The Plant is located within Discovery Park, within single-family zoning. DPD reviewed the proposed improvements as a Type IV land use decision, a Council Conditional Use. Council Conditional Use decisions are quasi-judicial actions.

Quasi-judicial actions are subject to the Appearance of Fairness Doctrine prohibiting ex-parte communication and the Council's rules on quasi-judicial proceedings (Resolution 31375). The Hearing Examiner establishes the record for the decision at an open-record hearing. No public testimony was offered at the hearing.

After the hearing, the record may be supplemented through a timely request to Council only. No appeal of the Hearing Examiner's recommendation was filed, and there was no timely request to supplement the record.

Because there was no appeal or timely request to supplement the record, the Council's quasi-judicial rules require that the decision be based upon the record as submitted by the Hearing Examiner, and that no oral argument be presented by the parties to PLUS. The Council's quasi-judicial rules provide that the action by Council must be supported by substantial evidence in the record.

The record contains the substance of the sworn testimony provided at the Hearing Examiner's open record hearing and the exhibits entered into the record at that hearing. Those exhibits include but are not limited to:

- The recommendation of the Director of DPD;
- SEPA Determination for the proposed project ;
- King County's application for maintenance/repair upgrade at the Plant;
- Settlement Agreement between PSCAA and King County; and
- Minutes and audio recording of the Hearing Examiner's open record hearing.

The entire Hearing Examiner's record is kept in my office and is available for your review.

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3. Materials from the Record Reproduced in PLUS Notebooks

I have provided copies of the following exhibits from the Hearing Examiner's record:

1. The Hearing Examiner's Recommendation (Attachment A: green) and
2. DPD Director's Analysis and Recommendation (Attachment B: blue)

4. Summary of the record

The Hearing Examiner recommended that Council **APPROVE** the Council Conditional Use request, without conditions, following the same recommendation by DPD. The following is a brief summary of the description and history of the Plant, the proposed project, public comment, and the Hearing Examiner's conclusions.

A. Description and History of West Point Treatment Plant

The Plant is located at 1400 Discovery Park Boulevard, about four miles northwest of downtown Seattle in the far west end of Discovery Park on the shores of Puget Sound. It is part of King County's regional system that treats wastewater for about 1.5 million people and covers 420 square miles in the Puget Sound region. The Plant treats wastewater and stormwater from homes, offices, schools, agencies, businesses and industries in Seattle, north King County, south Snohomish County, and some areas of Lake Washington.

The history of the Plant actually began in 1958, when voters in Seattle and King County created Metro, an agency charged with developing and operating a regional wastewater treatment system. In 1966, construction of a primary treatment plant was completed at West Point. In 1994, following a voter-approved proposal to merge Metro with King County, King County assumed responsibility for the Plant.

In 1991, to comply with the 1972 federal Clean Water Act, Metro began an expansion of the Plant to provide secondary treatment. Expansion and upgrading to secondary treatment was completed in 1996. The average capacity for wet weather flow is 133 million gallons per day. The maximum capacity is 440 million gallons per day during peak storms.

The Plant is surrounded by retaining walls, berms, and extensive native landscaping to blend in with the surrounding Discovery Park. Note that the underlying zoning for the Park is single-family.

B. Proposed Project

In February 2012, PSCAA and King County agreed to the terms of a settlement agreement to resolve air quality violations at the Plant (Civil Penalty 12-020). This project is required to comply with that compliance settlement to improve air emissions.

The Plant must deal with biogas as a waste by-product of anaerobic digestion, a necessary part of the secondary wastewater treatment process. Instead of burning-off (known as flaring) the biogas at the Plant, the internal combustion pump engines burn the biogas as fuel.

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Biogas is inherently a "dirty" fuel. Consequently, the emissions produced from burning it as fuel are also dirty. The proposed project will clean the fuel, removing hydrogen sulfide, some moisture and particulates, and siloxanes¹. The cleaned fuel will burn with reduced emissions, in compliance with the PSCAA settlement agreement.

The proposed project will involve minimal excavation and will utilize existing equipment at the Plant with the addition of a single biogas treatment system, a new air-to-fuel ratio controller for each engine, and a 3-way catalyst for each engine. The new biogas treatment system will be constructed on 4 main skids with an approximate footprint of 1,200 square feet and the 3-way catalyst will be located in a housing attached in line to each raw sewage pump engine exhaust pipe.

The improvements require a short retaining wall to match roadway grade. The new and reconfigured equipment will be located adjacent to the existing digesters and within the Treatment Plant's perimeter fencing area next to the raw sewage pump engine.

C. Public comment

DPD issued public notice of the project on February 28, 2013 and the comment period ended on March 13, 2103. Seattle Parks and Recreation offered one comment requesting verification of the exact location of the proposed project. DPD responded to the Parks and Recreation request to the satisfaction of Parks staff. No written comments were submitted to the Hearing Examiner and no member of the public offered comments at the hearing.

D. Summary of the Hearing Examiner's conclusions

The following summarizes the conclusions of the Hearing Examiner, with regard to the criteria for the expansion or reconfiguration (reconfiguration) of a sewage treatment plant as provided in SMC 23.51A.002.D.

No feasible alternative location

The project proponent for reconfiguration shall demonstrate that there is no feasible alternative location in a zone where establishment of that use is permitted. The Hearing Examiner found that there is no feasible alternative on the Plant site for locating the proposed new biogas treatment equipment on the West Point site, since it must be located adjacent to the existing equipment.

The Hearing Examiner responded to the code requirement that the feasibility of alternative locations shall consider "the environmental, social and economic impacts on the community, and the intent to preserve and to protect the physical character of single-family areas, and to project single-family areas from intrusions of non-single family uses" by concluding that:

- Except for temporary construction impacts, no long-term negative environmental impacts are anticipated;

¹ Siloxanes are synthetic chemicals that are widely used to soften, smooth, and moisten in products such as shampoos and moisturizers and other products. They end up in organic wastes and wastewater and do not decompose.

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- The project is expected to improve air quality by improving the exhaust emissions generated by pump engines which burn biogas;
 - No social or economic impacts have been identified;²
 - The project would be located within the perimeter wall of the existing West Point Treatment Plant with the nearest residential housing is further than one-half mile from the plant;
 - The project would not change the current separation that exists between the treatment plant and the single family area and uses in the area; and
 - The site is physically isolated from other non-single family (uses).

No determination of feasibility required

The Hearing Examiner noted DPD's conclusion that the project does not require a separate determination of feasibility. A determination of feasibility may be the subject of a separate application for a Council land use decision prior to submission of an application for a project-specific approval, "if the Director determines that the expansion or reconfiguration proposal is complex, involves the phasing of programmatic and project-specific decisions or affects more than one site in a single-family zone."

Conditions for approval

Two of the conditions for approval of the proposal provided under the SMC are similar to the criteria for consideration of alternative locations: minimizing adverse impacts on residential areas and the prohibition of the concentration of institutions that would create or aggravate impacts that are incompatible with single-family uses.

The Hearing Examiner found that the above conditions were satisfied because:

- The project would be located within the interior of the existing West Point Treatment Plan, which is separated from the residential areas, and more than half-mile from the nearest residential housing; and
- No concentration of institution or facilities would be caused by the addition of the biogas treatment equipment.

The Hearing Examiner found that the remaining conditions for approval were also satisfied, as shown tabulated below:

² The SEPA determination did note that temporary economic effects in the form of construction jobs could be expected.

A facility management and treatment plan must be provided	The existing West Point Treatment Plant has a Facility Plan registered with the Department of Ecology, and a Transportation Plan developed as part of the 1996 secondary upgrade project. The project would not affect sludge transportation, hours of operation, long term traffic or noise. <i>Condition met.</i>
Facility must incorporate measures to minimize odor emission and airborne pollutants	The facility must incorporate measures in its design and operation to minimize potential odor emission and airborne pollutants, including methane, which meet the standards of, and are consistent with, best available technology as determined in consultation with the PSCAA. The proposal is designed to meet Best Available Control Technology (BACT) as approved by PSCCA and is a response to the timetable established by PSCCA and the County as part of the settlement agreement. <i>Condition met.</i>
Facility plan must address storing and transporting of chemicals	The project does not involve the storing or transport of chemicals. <i>Condition not applicable.</i>
Project must have suitable truck access	The existing truck access route via W. Government Way is not changed by this project. <i>Condition met.</i>
Bulk of the facility must be compatible with the surrounding community	The biogas treatment system would be located within the perimeter berm of the existing West Point Treatment Plant; the new equipment would not be visible from the outside of the plant, and would not create any incompatibilities on account of bulk. <i>Condition met.</i>
Measures to ensure compatibility of the use with the surrounding area shall be incorporated into the facility design and operation	The existing landscaping surrounding the Plant continues to screen noise and light generated by the Plant from the surrounding area. The project is located within the interior of the Plant and would not effectiveness of the existing compatibility measures. <i>Condition met.</i>
No demolition of residential structures without demonstrated need.	No residential structures would be demolished or modified for this project. <i>Conditional not applicable.</i>

All criteria satisfied

The Hearing Examiner concluded that the project would meet all of the SMC criteria, and recommended the City Council grant approval of the requested Council Conditional Use.

5. Recommendation

I recommend that PLUS move to **APPROVE** the Council Conditional Use request and adopt the Hearing Examiner's findings, conclusions and recommendation.

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6. Next Steps

At the September 25, 2013 committee meeting, PLUS may vote on the Council Conditional Use and to adopt the draft Findings, Conclusions and a Decision (F,C, and D) for this Clerk's File and refer the matter to full Council for a vote.

Alternatively, PLUS may continue discussion at a subsequent meeting, direct staff to make changes to the draft F, C, and D, or some combination thereof. This matter is next scheduled for consideration at the October 2, 2013 PLUS meeting. After PLUS has voted on the Council Conditional Use and to adopt a F, C, and D for the Clerk File, the Full Council will consider and vote on the matter.

**FINDINGS AND RECOMMENDATION
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE**

In the Matter of the Application of

CF 312839

**KING COUNTY DEPARTMENT OF NATURAL
RESOURCES, WASTEWATER TREATMENT
DIVISION**

For Council Conditional Use approval

DPD Project:
3014631

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CITY OF SEATTLE

Introduction

The applicant, King County Department of Natural Resources, Wastewater Treatment Division, has applied for Council Conditional Use approval for placement of new biogas treatment equipment and a retaining wall at the existing West Point Treatment Plant.

The public hearing on this application was held on July 2, 2013 before the undersigned Deputy Hearing Examiner. Represented at the hearing were the Director, Department of Planning and Development (DPD), by Marti Stave, Senior Land Use Planner; and the applicant King County, by Christopher Dew, King County Department of Natural Resources and Parks.

For purposes of this recommendation, all section numbers refer to the Seattle Municipal Code ("SMC" or "Code"), as amended, unless otherwise indicated. After due consideration of the evidence elicited during the hearing, the following shall constitute the findings of fact, conclusions and recommendation of the Hearing Examiner on this application.

Findings of Fact

1. King County Department of Natural Resources, Wastewater Treatment Division (King County) is proposing upgrades to the West Point Treatment Plant, which is located within Discovery Park, and addressed as 1400 Discovery Park Boulevard, Seattle.
2. The application is for installation of 1,200 square feet of tanks and equipment to upgrade a biogas fuel treatment system. The new biogas treatment system is being installed by King County in order to comply with the terms of a settlement agreement with the Puget Sound Clean Air Agency (PSCAA); Ex. 8. The agreement calls for the new system to be constructed in fall of 2014, as shown in Section A.1 ("Milestone Schedule") of the agreement.
3. Currently, the methane gas generated onsite as a by-product of the wastewater treatment process is re-used on-site, as fuel for the engines that pump wastewater into the

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King County West Point Treatment Plan
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plant. The settlement agreement calls for a reduction in the emissions produced by the engines which use the biogas, through installation of the proposed biogas treatment system.

4. The proposed project will add a single biogas treatment system, a new air-to-fuel ratio controller for each engine, and a three-way catalyst for each engine. The biogas treatment system will be constructed on four main skids with an approximate footprint of 1,200 square feet, and the three-way catalyst will be located in a housing attached in line to each raw sewage pump engine exhaust pipe.

5. The new treatment equipment will be located next to the existing digesters within the Treatment Plant's perimeter fencing area, next to the raw sewage pump engine.

6. On January 28, 2013, King County, as SEPA Lead Agency for the project, issued a determination that the project is categorically exempt under SEPA.

7. The construction activities associated with the project are expected to last approximately three months. During that period, delivery trucks would bring the equipment (which will be built off-site) to the plant location and the equipment would be bolted into place. Following installation, one or two new truck trips are anticipated per year, to change filter media. Some construction noise is expected during normal working hours, which will comply with the Noise Ordinance. The new equipment will operate within existing ambient noise levels.

8. The Director has reviewed the application, and recommends approval of the project.

Codes

9. SMC 23.51A.002.D provides that "*The decision on an application for the expansion or reconfiguration of a sewage treatment plant is a Type IV Council land use decision.*" SMC 23.51A.002D also sets forth the criteria for approval for an expansion or reconfiguration of an existing sewage treatment plant in a single-family zone.

Conclusions

1. The Hearing Examiner has jurisdiction to hold a public hearing and make a recommendation on this application pursuant to SMC 23.76.052.

2. Under SMC 23.51A.002.D.2, the project proponent shall demonstrate that there is no feasible alternative location in a zone where establishment of that use is permitted. The feasibility of alternative locations shall consider "*the environmental, social and economic impacts on the community, and the intent to preserve and to protect the physical character of single-family areas, and to project single-family areas from intrusions of non-single family uses;*" SMC 23.51A.002.D.2.a.

3. There is no feasible alternative to locating the proposed new biogas treatment equipment on the West Point site, since it must be located adjacent to the existing digester lines. The site is physically isolated from other non-single family homes. Except for temporary construction impacts, no long-term negative environmental impacts are anticipated, but the project is expected to improve air quality by improving the exhaust emissions generated by pump engines which burn biogas. No social or economic impacts have been identified. The project would be located within the perimeter wall of the existing West Point Treatment Plant; the nearest residential housing is further than one-half mile from the plant. The project would not change the current separation that exists between the treatment plant and the single family area and uses in the area.

4. SMC 23.51A.002.D.2.b provides that the determination of feasibility may be the subject of a separate application for a Council land use decision prior to submission of an application for a project-specific approval, *"if the Director determines that the expansion or reconfiguration proposal is complex, involves the phasing of programmatic and project-specific decisions or affects more than one site in a single-family zone."* The Director has concluded that the project does not require a separate determination of feasibility.

5. SMC 23.51A.002.D.3 sets out the conditions for approval of the project. The first condition is that adverse impacts on residential areas are minimized. The project would be located within the interior of the existing West Point Treatment Plant, which is separated from the residential areas, and more than half-mile from the nearest residential housing. This condition is met.

6. The next condition is that the expansion of a facility must not result in a concentration of institutions or facilities that would create or aggravate impacts that are incompatible with single-family residences. The project would not expand the facility or its capacity for wastewater treatment. No concentration of institution or facilities would be caused by the addition of the biogas treatment equipment. Therefore, this condition is met.

7. A facility management and treatment plan must be provided. The existing West Point Treatment Plant has a Facility Plan registered with the Department of Ecology, and a Transportation Plan developed as part of the 1996 secondary upgrade project. The project would not affect sludge transportation, hours of operation, long term traffic or noise. The project meets this condition.

8. Another condition is that a facility must incorporate measures in its design and operation to minimize potential odor emission and airborne pollutants, including methane, which meet the standards of, and are consistent with, best available technology as determined in consultation with the PSCAA. The proposal is designed to meet Best Available Control Technology (BACT) as approved by PSCCA and is a response to the timetable established by PSCCA and the County as part of the settlement agreement. The project will meet this condition.

9. The next condition addresses methods of storing and transporting chlorine and other hazardous and potentially hazardous chemicals; the project does not involve the transport of any of these materials.

10. Another condition requires availability of vehicular access suitable for trucks between the plant and a designated arterial; the existing access route via W. Government Way is not changed by this project, so this condition continues to be met.

11. The Code also addresses the bulk of facilities, which must be compatible with the surrounding community. The biogas treatment system would be located within the perimeter berm of the existing West Point Treatment Plant; the new equipment would not be visible from the outside of the plant, and would not create any incompatibilities on account of bulk. This condition is satisfied.

12. Measures to ensure compatibility of the use with the surrounding area, such as landscaping and screening, separation from less intensive zones, noise, light and glare controls, are to be incorporated into the facility design and operation. In this case, the existing landscaping surrounding the Plant continues to screen noise and light generated by the Plant from the surrounding area. The project is located within the interior of the Plant and would not effectiveness of the existing compatibility measures. This condition is met.

13. Finally, no residential structures would be demolished or modified for this project.

14. The project would meet all of the Code criteria, and should be approved.

Recommendation

The Hearing Examiner recommends the City Council grant approval of the requested Council Conditional Use.

Entered this 8th day of July, 2013.



Anne Watanabe
Deputy Hearing Examiner

CONCERNING FURTHER REVIEW

NOTE: It is the responsibility of the person seeking further review to consult appropriate Code sections to determine applicable rights and responsibilities.

Pursuant to SMC 23.76.054, any person substantially affected by a recommendation of the Hearing Examiner may submit an appeal of the Hearing Examiner's recommendation to the City Council. The appeal must be submitted within fourteen (14) calendar days following the date of the issuance of the Hearing Examiner's recommendation, and be addressed to: Planning, Land Use and Sustainability Committee, c/o Seattle City Clerk, 600 Fourth Avenue Floor, P.O. Box 94728, Seattle, WA 98124-4728. The appeal shall clearly identify specific objections to the Hearing Examiner's recommendation and specify the relief sought.