

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

Council Concept Approval for Seattle	)	C.F. 312624
Public Utilities to construct a 480,000	)	DPD Application #3013257
gallon underground Combined Sewer	)	
Overflow tank, including an underground	)	FINDINGS,
facility vault, flow diversion structure, and a	)	CONCLUSIONS
force main, in an environmentally critical	)	AND DECISION
area, located at 3939 Lake Washington		
Boulevard South. (Project No. 3013257,		
Type V).		

**Background**

Seattle Public Utilities (SPU) has proposed the construction and installation of a 480,000 gallon Combined Sewer Overflow (CSO) tank at 4608 Lake Washington Blvd S<sup>1</sup>. The proposed CSO tank and related infrastructure will be located beneath an existing paved parking lot to the west of the intersection of Lake Washington Blvd S. and 49<sup>th</sup> Ave S; piping and related infrastructure in adjacent rights of way will also be installed to support the facility.

The proposed CSO tank is approximately 25 feet wide, 40 feet long and 12 feet deep. The CSO tank and its related infrastructure (odor control facility, electrical and mechanical equipment) will also be located under the parking lot. The project site is zoned Single Family 7200 (SF 7200). Seattle Public Facilities (SPU) will own the CSO tank; the property is owned by Seattle Department of Parks and Recreation.

CSO tanks are a Utility Service Use as defined in the City’s land use code as a public facility; Seattle Municipal Code (SMC) Section 23.84A. New public facilities are permitted in SF 7200 zones by City Council concept approval. The facility is also subject to the City’s Shoreline regulations in SMC 23.60

This project is part of SPU’s strategy to protect public health and the environment by improving its existing wastewater system and complying with its 2010 National Pollutant Discharge Elimination System (NPDES) permit with the Washington State Department of Ecology (WSDOE). This CSO tank will store untreated stormwater and wastewater that would otherwise be discharged into Lake Washington during peak storm events. In this particular drainage basin, there have been a number of untreated discharges; this facility will help SPU meet a goal of no more than one such event in any year.

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<sup>1</sup> While the title of this action indicates that there is a 480,000 square foot CSO, the DPD evaluated the impacts of a 380,000 gallon tank

On February 14, 2013 the Department of Planning and Development (DPD) issued its Report and Recommendation and also published a Notice of Public Hearing for Council to consider the request for concept approval. DPD recommended approval of the project with 16 conditions to mitigate both construction and use impacts.

On March 19, 2013, the City Council's Libraries, Utilities and Seattle Center (LUC) Committee had a briefing and held a public hearing on DPD's recommendation. At its April 2, 2013 meeting, LUC further deliberated on the proposal, and then made its recommendation to the Full Council.

### **Findings of Fact**

The City Council hereby adopts the following Findings of Fact:

1. As reflected in Attachment A, the proposed CSO tank is located at 3939 Lake Washington Blvd. S. The project site is located near the Genessee neighborhood and abuts Lake Washington.
2. The project site is zoned Single Family 7200 (SF 7200) and is owned by Seattle Department of Parks and Recreation (DOPAR). The City Council recently authorized a partial transfer of jurisdiction, specifically the underground portions of this site, from DOPAR to SPU (Ordinance 124120); this Council land use action authorizes SPU to proceed with permitting on this project.
3. The project site is flat, paved, and is in use as a parking lot. The parking lot serves the related park trail system along Lake Washington Blvd (Lake Washington Trail). The surrounding areas to the south, west and north are marked by a variety of grade changes rising from Lake Washington, some of which are regulated steep slopes and potential slide areas. The surrounding areas are dominated by single family homes and recreation facilities along Lake Washington. The project site is also located in a Shoreline Overlay zone (SMC Chapter 23.60) and is subject to both a Substantial Shoreline Development Permit (shoreline permit) and a Shoreline Conditional Use Permit, due to its location within the Conservancy Recreation (CR) Shoreline Overlay zone and the cost of construction.
4. The project is subject to environmental review (SEPA). SPU issued a SEPA determination of non-significance (DNS) on May 23, 2011.
5. SPU submitted a Master Use Permit application in October 2012. The public comment period for the proposal ran from November 8, 2012 to December 7, 2012. DPD received 4 public comments from this notice; the comments focused on long-standing public safety concerns about the park and not the proposed use. SPU also held a series of public meetings and outreach on the proposal prior to submitting for a Master Use Permit.
5. In making a recommendation to Council, SMC 23.76.050 requires that the DPD Director draft an evaluation of the proposal based on the following standards and criteria:

- a. The written recommendations or comments of any affected City departments and other governmental agencies having an interest in the application;
- b. Responses to written comments submitted by interested citizens;
- c. An evaluation of the proposal based on the standards and criteria for the approval sought and consistency with applicable City policies;
- d. All environmental documentation, including any checklist, EIS or DNS; and
- e. The Director's recommendation to approve, approve with conditions, or deny a proposal.

6. The proposal also requires both a Shoreline Substantial Development Permit (shoreline permit) and a Shoreline Conditional Use permit (SCUP), as 1) the value of construction in the City's Shoreline Zone<sup>2</sup> exceeds \$2,500, and 2) the request to install a CSO tank and related infrastructure occurs in the Conservancy Recreation (CR) shoreline zone. Normally, DPD reviews and approves a shoreline permit as a Type II land use permit, and makes a recommendation to the Washington State Department of Ecology (WSDOE) on the SCUP. However, SMC Section 23.76.036 requires that Council approve a Master Use Permit application when it includes both Type II and a Type V requests; it will also make the recommendation to WSDOE.

7. Shoreline permits may be issued when the proposed development is consistent with:

- A. *The policies and procedures of Chapter 90.58 RCW;*
- B. *The regulations of this Chapter; and*
- C. *The provisions of Chapter 173-27 WAC*

Conditions may be attached to the approval of a shoreline permit, to assure consistency of the proposed development with the Seattle Shoreline Master Program and the State's Shoreline Management Act.

8. A SCUP may be recommended for approval when it meets criteria in SMC 23.60.365-D which are based on criteria in WAC 173-27-160. Conditions may also be attached to this approval.

9. The DPD Director recommends that the Council approve the request for a new CSO tank as well as approve the shoreline permit. DPD has recommended 16 conditions to address short and long-term impacts of the new use.

10. At the March 19, 2013 LUC meeting, the committee received a briefing from DOPAR, SPU and DPD staff. In addition, public testimony was provided, summarized below:

- There is an opportunity to restore the parking lot to a green area; this public access point is not needed.
- Creating a green space here would eliminate crime, reduce impervious surfaces and would be a better neighbor to adjacent properties

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<sup>2</sup> The Shoreline Zone extends 200 feet landward from the Ordinary High Water Mark of Puget Sound.

- The parking lots serves as a haven for activities that cause negative impacts on neighboring properties, including loud noise, fights, drug activity and other criminal activity and behavior
- Vegetation that invites criminal activity or behavior should be removed

### Conclusions

The City Council hereby adopts the following Conclusions:

1. The facility – a Utility Service Use - is a City facility as defined in SMC 23.84.006.
2. Utility Service Uses are public facilities that require Council approval when the use is established in a SF 7200 zone.
3. The Council adopts the following findings, included in DPD recommendation concerning the project’s compliance with criteria in SMC 23.76.050:
  - a. City departments and other governmental agencies provided input into the project. This included significant work with DOPAR to ensure that the parking lot design following construction did not encourage criminal activity, a concern raised by neighbors;
  - b. DPD received 4 public comments during the Master Use Permit comment period. These comments focused in on the impacts related to inappropriate activities in the park and not the impacts of the proposed CSO tank;
  - c. The project complies with land use code development standards; few development standards apply as the development occurs underground;
  - d. SPU’s SEPA determination for the project resulted in project impacts being mitigated with additional conditions imposed by DPD that are appropriate; and
  - e. DPD has recommended approval of the project.
4. The Council also acknowledges that SMC Section 23.76.036 requires that Council approve Master Use Permit application that includes both Type II (shoreline permit) and a Type V (council concept approval) requests. The Council has considered both the Shoreline Permit and SCUP requirements in SMC 23.60, DPD’s analysis as detailed on Pages 11-17 of its recommendation, and supporting documents. The Council concludes that the project, as designed meets the following requirements related to approval of a Shoreline Permit:
  - 1) the Policies and Procedures of R.C.W. Chapter 90.58,
  - 2) requirements in SMC 23.60 and
  - 3) the provisions of W.A.C. Chapter 173-27.

The Council also concludes that the project meets SCUP requirements in SMC 23.60.365-D that are based on criteria in WAC 173-27-160.

5. The Council acknowledges the concerns expressed by neighboring property owners about inappropriate activities that have occurred in the parking lot, and their desire to have SPU improve the parking lot in a manner that enhances the natural environment. While concerns about inappropriate activities in this parking lot are valid, they are not related to SPU's request to install a CSO tank under the parking lot. In addition, the Council also concludes that any significant reduction in the number of parking spaces to address the neighbors desire to reduce inappropriate behavior in the lot would also reduce the public's access to the Lake Washington Trail, thereby creating an impacts that was not analyzed by DPD and is not related to the installation and operation of the CSO tank.

6. The Council concludes that further landscape improvements are warranted in the areas of the parking lot that are being disturbed as a result of the CSO tank construction and operation, and that landscape improvements should be designed in a manner that addresses the neighbors concerns about safety and visibility of the parking lot. The Council further concludes that the landscape areas that are being disturbed should be replanted, to the extent that is feasible, with native plantings that are appropriate for a shoreline environment and consistent with the historic Olmsted character of Lake Washington Boulevard. As a condition of approval of the use, the Council will require that the landscape plan be made available to the public prior to commencing construction of the CSO tank.

Accordingly, The City Council now concludes that the land use action, and the related shoreline permits, should be approved.

### **Decision**

The City Council hereby **APPROVES** SPU's request to install a 380,000 square foot Combined Sewer Overflow tank at 3939 Lake Washington Blvd S. as reflected in C.F. 312624, and 1) **APPROVES** DPD's 16 recommended conditions and 2) adopts a separate condition to related to the landscape plan.

### **CONDITIONS – TYPE V COUNCIL LAND USE DECISION**

*Prior to the issuance of a building or construction permit, other than a grading or shoring permit*

1. SPU shall submit a landscape plan, to be approved by DPD, that incorporates (where feasible) native landscape plantings and landscape elements that enhance the safety and security of the parking lot and to neighboring properties while maintaining the historic Olmsted character of Lake Washington Boulevard. SPU shall makes this plan available for public comment prior to DPD's approval.

### **CONDITIONS – SHORELINE PERMIT**

*During Construction*

2. Any work water ward of ordinary high water shall be restricted to applicable work windows established by Washington Department of Fish and Wildlife.

3. Appropriate Best Management Practices (BMPs) shall be employed to prevent any debris or other deleterious material from entering Lake Washington, such as the use of a turbidity curtain and/or debris boom surrounding the project area during in-water and over-water work to contain any debris, suspended sediments, or spills caused by

construction activities. Materials to be disposed of shall be contained on site and then discarded at an appropriate upland facility.

4. Any debris that enters the water during the proposed work shall be removed immediately and contained until it can be disposed of at an appropriate upland facility.

For Life of the Project

5. No pesticides or fertilizers shall be applied within 50 feet of the stream, wetland or shoreline at this project location except as authorized by DPD.

**CONDITIONS – SHORELINE CONDITIONAL USE PERMIT**

NONE.

**CONDITIONS – SEPA**

Prior to Commencement of Construction

6. Execute the public outreach plan including: a website to provide project and progress updates, obtain email list-serve for project updates, and provide project contacts (with phone numbers) for the public. These contacts should also be mailed to nearby property owners (SPU should define the appropriate area of the mailings).

Prior to Issuance of the Master Use Permit – Council Land Use Decision

7. The project owner and/or responsible parties shall provide DPD with a statement that the contract documents for their general, excavation, and other subcontractors will include reference to regulations regarding archaeological resources and that construction crews will be required to comply with those regulations, including the following:

- Archaeological Sites and Resources (RCW 27.53)
- Indian Graves and Records (RCW 27.44)
- Archaeological Site Public Disclosure Exemption (RCW 42.56.300)
- Discovery of Human Remains (RCW 27.44)
- Archaeological Excavation and Removal Permit (WAC 25-48)
- Abandoned and Historic Cemeteries and Historic Graves (RCW 68.60)

During Construction

The following conditions to be enforced during construction shall be posted at each street abutting the site in a location on the property line that is visible and accessible to the public and to construction personnel from the street right-of-way. The conditions shall be affixed to placards. The placards shall be laminated with clear plastic or other waterproofing material and shall remain posted on-site for the duration of the construction.

8. In order to further mitigate the noise impacts during construction, SPU and/or responsible party(s) shall limit the hours of construction to the hours allowed by the noise ordinance (SMC 25.08) except no work shall occur on non-holiday weekdays or Saturdays past 6:00 pm and no work is permitted on Sundays. Work on Sundays or outside the above stated limits, but within the limits of the Noise Ordinance, may be permitted only with prior approval (3 days notice) by DPD when a Construction Management Plan is provided for the specific requested work (recommended SEPA conditions #7). Any requests to work outside the allowable hours of the Noise Ordinance require a noise variance per (SMC 25.08.560 -.655).

9. For the duration of grading activity, the contractor is required to cease weekday grading truck trips during weekdays from 4:00 pm and 6:00 pm.

10. During grading activities, watering of the site and uncovered materials in trucks shall be required to reduce construction dust.

11. The contractor shall make provisions to wash vehicle tires, wheels and exteriors leaving the site in order to prevent spillover of particulates into the adjacent rights of way.

12. Ensure the adequacy of sound-control devices that are at least as effective as those on the original equipment. No equipment would have un-muffled exhaust.

13. Minimize idling time of equipment and vehicle operation.

14. Conduct noise monitoring to ensure compliance with the SMC if noise complaints are received during construction.

15. Maintain as much of the existing vegetation around the site as possible to provide a vegetative buffer and visual screen to those residences nearest the site.

16. If resources of potential archaeological significance are encountered during construction or excavation, the owner and/or responsible parties shall:

Stop work immediately and notify DPD (Lucas de Herrera 206.615.0724) and the Washington State Archaeologist at The Department of Archaeology and Historic Preservation. Follow procedures outlined in Appendix A of Director's Rule 2-98.

17. If human remains are encountered during construction or excavation, the owner and/or responsible parties shall:

Stop work immediately and notify the Washington State Archaeologist at The Department of Archaeology and Historic Preservation. Course of action will be determined by the appropriate regulating agency.

Finally, the Clerk's File shall be amended to accurately reflect the scope of this project, as follows:

Council Concept Approval for Seattle Public Utilities to construct a ((480,000)) 380,000 gallon underground Combined Sewer Overflow tank, including an underground facility vault, flow diversion structure, and a force main, in an environmentally critical area, located at 3939 Lake Washington Boulevard South. (Project No. 3013257, Type V).

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

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City Council President

ATTACHMENT A

