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CITY OF TUMWATER
DEVELOPMENT SERVICES

# CITY OF TUMWATER

## OFFICE OF THE HEARING EXAMINER

## REPORT AND DECISION

**FILE NO:** SMA #3-06

**APPLICANT:** City of Tumwater Public Works Department

**SUMMARY OF REQUEST:**

A request for approval of a Shoreline Substantial Development Permit for a variety of sanitary sewer and water main improvements, more particularly described in Finding 1 herein.

**LOCATION:**

The project is located at Custer Way SW between Boston Street and Cleveland Avenue; Simmons Road and Grant Street SW between Deschutes Way and the Deschutes River; Old Olympia Brewery; Schmidt Place near Custer Way. The project is located in Tumwater within the west half of Section 26, Township 18 N, Range 2 WWM. City rights-of-way and Parcel #78100300000.

**DECISION OF THE EXAMINER:**

The request is approved, subject to conditions imposed in Conclusion 5.

**PUBLIC HEARING:**

After reviewing the City of Tumwater Staff report and viewing the site, the Examiner conducted a public hearing on the application on November 14, 2007.

## FINDINGS, CONCLUSIONS AND DECISION:

## FINDINGS:

1. The City of Tumwater Department of Public Works (hereinafter "applicant") is requesting approval of a Shoreline Substantial Development Permit (hereinafter "SDP") for a variety of sanitary sewer and water main improvements that are particularly described below:

A. Construct approximately 500 feet of new gravity sewer main in Custer Way;

B. Construct approximately 115 feet of new 12-inch-diameter sewer main from the existing manhole on Grant Street to the LOTT sewer trunk main in Deschutes Way;

C. Replace the existing damaged steel sewer pipe which passes down the slope from the Union Pacific Railroad near the Metal Kraft sewer lift station on the Old Brewery property with new eight-inch-diameter HDPE pipe;

D. Remove the existing Metal Kraft lift station and replace with a smaller lift station;

E. Install a small pump station near the intersection of Grant Street and Simmons Road;

F. Install a lift station in Schmidt Place;

G. Install a one or two two-inch-diameter HDPE force mains inside the existing 12-inch-diameter sewer main running beneath the Deschutes River; and

H. A latter phase of work is to replace the old water mains in Custer Way with a new larger pipe.

2. The purpose of the sanitary improvements is to route the sewer flows from the east side of Tumwater to the existing LOTT sewer trunk main in Deschutes Parkway via Custer Way and an existing main in Boston Street, and replace an existing 12-inch sewer trunk line that descends the hillside from the railroad track near the Old Olympia Brewery, which is severely corroded and at risk for immediate failure with a new HDPE pipe. Failure of the existing sewer line would likely result in a raw sewage spill into the Deschutes River and the

south basin of Capitol Lake. Also, being proposed is a latter construction phase for replacement of the old water main in Custer Way with a new and larger water main to improve fire flows in the City's looped water main system in this area of the City.

3. The portions of the improvements proposed (See Finding 1) are located with the regulated shorelines of the Deschutes River. Thus, a SDP is required.

4. The proposed project is located on both sides of the Deschutes River in an area that generally slopes downward in a northerly direction.

5. The proposed new sewer lift station on the west side of the Deschutes River would be located in Tumwater Historical Park, while the sewer lift station proposed east of the Deschutes River would be located near the Old Olympia Brewery. Land uses in the vicinity of the project include industrial, commercial, residential, and public recreational.

6. The project area is identified in the City's Comprehensive Plan as the "New Market Historic District."

7. Zoning of the project area includes Historical Commercial (HC), General Commercial (GC), Light Industrial (LI), Flood Plain (FP) Overlay, and an Aquifer Protection (AQP) Overlay. The proposed project, which is considered a Utility Support Facility under applicable land use regulations, is a permissible use under applicable zoning regulations.

8. The proposed developments within the proposed HC zone require a Certificate of Appropriateness. The Tumwater Historical Preservation Commission has issued a Certificate of Appropriateness with conditions on August 7, 2006.

9. Utility Support Facilities are permitted in the FT overlay zone, provided a requirements set forth at *Tumwater Municipal Code (TMC)* 18.38.050.B.1a through 1 (*See* Exhibit 1 at 3) are satisfied. The proposed utility facilities, as recommended to be conditioned by reviewing agencies, conform to the referred-to requirements.

10. In accordance with the City's Fish and Wildlife Habitat Protection Ordinance (*TMC* 16.32), the applicant has submitted the required Habitat Protection Plan.

11. The *Shoreline Master Program* for Thurston Region, which is the local *Shoreline Master Program (SMP)* applicable here, sets forth policies and general regulations governing utility facilities within shoreline areas. Exhibit 1 at 4 through 7. The subject utility project not only is consistent with the *SMP*

policies and regulations, if properly conditioned, it furthers certain policies by protecting the shoreline and waters of the State from environmental damage.

12. In addition to general *SMP* requirements, additional requirements for utility support facilities are set forth in the Deschutes River Special Area Management Plan (DRSAMP), which is a supplement to the *SMP* for the Deschutes River. Exhibit 1 at 7 and 8. Substantial evidence in the record establishes that the utility project, as represented in these proceedings and as recommended to be conditioned, is consistent with the policies and requirements of the DRSAMP.

13. The requested SDP has been reviewed by a number of governmental agencies. Exhibit 1 at Attachments X through AA. None object to the issuance f the SDP; however, certain conditions have been recommended. Exhibit 1 at 10.

14. The applicant concurs in the conditions recommended.

15. No one appeared at hearing in opposition to the granting of the requested SDP.

16. In accordance with the *State Environmental Policy Act (SEPA)* of 1971, as amended, and Chapter 16.04 of the *TMC*, the Development Services Department reviewed an Environmental Checklist, together with other available information. The Development Services Department determined tghat the proposal does not have a probable significant adverse impact on the environment. Accordingly, the responsible official prepared a Determination of Non-significance (DNS). The DNS was issued on September 5, 2007, with a 14-day comment period, which ended on September 19, 2007, and a 6-day appeal period, which ended on September 25, 2007. No appeal of the SEPA determination was filed.

17. The report of the Development Services Department, designated as Exhibit 1, to the extent that it sets forth the issues, general findings of fact, applicable policies and provisions and departmental recommendations of this matter, is incorporated herein by reference as though fully set forth.

18. A Notice of Application for the project was issued on July 26, 2007 and distributed to property owners within 300 feet of the project with a 30-day comment period that ended on August 27, 2007. . The Notice of Public Hearing was posted on site and distributed to surrounding property owners within 300 feet of the project on November 2, 2007. A Public Hearing Notice was published in the *Olympian* newspaper on November 4, 2007.

19. Any conclusion hereinafter stated which may be deemed to be a finding herein is hereby adopted as such.

**CONCLUSIONS:**

1. The Hearing Examiner has jurisdiction in the matter. *TMC* 2.58.090.5.

2. Requests for SDP's are reviewed for consistency with Tumwater's *SMP,* including applicable provisions of the DRSAMP.

3. The applicant bears the burden of establishing by a preponderance of the evidence that its request is consistent with the applicable legal standards for approval of the same.

4. Findings entered herein and based on substantial and unrebutted evidence in the hearing record, support a conclusion that the request satisfies all legal standards, provided the conditions set forth herein are imposed and complied with by the applicant.

5. Accordingly, the requested SDP is approved, subject to the conditions set forth below:

a. The applicant shall contact the Washington State Department of Archeology and Historic Preservation to determine the ownership of artifacts uncovered during the construction, if applicable.

b. A Habitat Protection Plan shall be submitted by the applicant that proposes mitigation measures specific to construction of the project near the Deschutes River. The Habitat Protection Plan must be approved by the Development Services Department prior to the project going out to bid, and the approved plan shall be included in the contract between the City and the selected contractor. Mitigation measures as specified in the approved Habitat Protection Plan shall be implemented prior to the completion of the project.

c. The project shall comply with the requirements as specified in *TMC* 18.38.050.B.I.

d. The project shall comply with the applicable regulations identified in Section 3.XX.C of the *SMP* for Thurston Region.

6. Any finding hereinbefore stated which may be deemed a conclusion herein is hereby adopted as such.

From these Conclusions is made the following:

**DECISION:**

The request is hereby approved, subject to the conditions set forth in Conclusion 5 above.

**DATED** this 28TH day of November 2007.

**RODNEY M. KERSLAKE**
**Hearing Examiner**

## POST-DECISION PROCEDURES

Reconsideration: A party may request reconsideration by filing a written request with the Department of Development Services within five working days of the Examiner's written decision. The request must state the grounds therefore. The Examiner has ten working days to render a final decision. TMC 2.58.135.

Appeals: The Examiner's decision will become final and conclusive in fourteen days unless appealed to the Tumwater City Council. The appeal must be in writing and contain all grounds on which error is claimed. TMC 2.58.150. TMC 2.58.150 provides in part:

> In cases where the examiner's jurisdictional authority is to render a decision (following an open record pre-decision hearing), the decision of the examiner shall be final and conclusive unless within fourteen days following rendering of such decision an appeal there from is filed with the Director of Development Services by the applicant, a department of the city, county, or other agency or a party of record defined in Section 2.58.140. Person not in attendance at the hearing but who submit written information prior to the hearing that becomes a part of the record of the hearing shall also have appeal rights. Such appeal shall be in writing, shall contain all grounds on which error is assigned to the examiner's decision and shall be accompanied by a fee as established by resolution of the city council; provided, that such appeal fee shall not be charged to a department of the city or to other than the first appellant.

The Examiner's decision that is timely appealed comes before the City Council within thirty days after the final day upon which an appeal may be filed. TMC 2.58.160 and 2.58.180 describe the time limits for appeals.