

**CITY OF KIRKLAND HEARING EXAMINER  
FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION**

**Northshore Utility District Grinder Pump 4  
Process IIA Review, SHR21-00692**

**June 8, 2023**

**1. FINDINGS OF FACT**

**1.1 Proposal.** Project to complete repair and maintenance of an existing sewer grinder pump. Originally built in 1979, upgrades are necessary to bring the facility into compliance with current electrical and fire code requirements. Both the existing and proposed improvements are within stream and wetland critical area buffers and within the Lake Washington shoreline. If the project were outside the shoreline, the utility improvements would be exempt from Title 90 KZC critical area requirements. As it is within the shoreline, a variance is required.<sup>1</sup> The site is 1.67 acres and the project work area is 244 square feet.<sup>2</sup>

**Applicant.** Northshore Utility District, Stephen Dennehy, 6830 NE 185th St., Kenmore, WA 98028-2684.

**Location.** 13613 62<sup>nd</sup> Ave NE, Kirkland, WA; 13619 62<sup>nd</sup> Ave NE, Kirkland, WA. Parcel #3761700125 and #3761700130.

**1.2 Project.** Pump upgrades include replacing an existing submersible grinder pump, piping, instrumentation, control panels and other electrical components. A valve box will be added to help prevent accelerated deterioration of valves and piping and improve operations. A two-inch conduit will be bored underneath a stream to replace an existing electrical line. The project footprint is 244 square feet. Permanent critical areas buffer impacts are 21 square feet. The upgrade is essential for maintaining sewer flow transmission as topography prevents gravity conveyance. Failure to maintain and upgrade the equipment risks sewer backups and overflow.<sup>3</sup>

**1.3 Site.** The site is generally flat, gradually sloping east to west, toward Lake Washington. Site vegetation is mostly lawn and ornamental shrubs, with some native emergent vegetation around the stream. No invasive vegetation is present. There is one stream within the project area and two wetlands within 300 feet. The site is zoned Low Density Residential (RSA-4). The same zoning is to the north, east, and south. The shoreline designation is Low-density Residential (R-L). Surrounding properties are developed with single-family homes, driveways, and private docks, with Saint Edwards Park .25 miles north.<sup>4</sup>

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<sup>1</sup> KZC 83.490.4.

<sup>2</sup> Exhibit A (Staff Report) and Attachment 2 (Critical Areas Report), pp. 1-2 or AR 23-24.

<sup>3</sup> Exhibit A (Staff Report); Attachment 2 (Critical Areas Report), pp. 1, 2, 9, 11 or AR 2, 24, 31, and 33; Testimony, Department.

<sup>4</sup> *Id.*

**1.4 SEPA Review.** Northshore Utility District issued a Determination of Nonsignificance. It was not appealed.<sup>5</sup>

**1.5 Hearing.** An open record public hearing was held June 6, 2023. The hearing was conducted remotely, with the Examiner, City Planning and Building Department, and Applicant calling in. Access information was provided to the public to allow citizens to join via video link or telephone. There were no reported technical difficulties during the call or afterwards. At the hearing, the Department, through Kelly Wilkinson, provided detail on the project and presented a power point. Northshore Utility District, through Stephen Dennehy, supported the Department's analysis and provided testimony on public outreach. The Utility District's technical team was present for questions. No member of the public indicated a wish to comment.

**1.6 Administrative Record.** The Staff Report (Exhibit A), with Attachments 1-7, and the Department's power point presentation (Exhibit B), were admitted.

**1.7 Public Comment During Staff Review.** The applicant provided public outreach with neighboring property owners and public notice complied with code. No public comments were submitted.

**1.8 Shoreline, Stream and Wetlands.** The shoreline consists of rock armoring, rock steps to the waterfront, an existing dock, and a small sandy area with undercut banks. Vegetation is mowed lawn with a residence 30-feet from the lake's ordinary high-water mark and ten feet from the stream.<sup>6</sup> Stream banks are two to three feet wide with three to six inch depths, and intermittent flows. The banks and bed are lined with angular rock and concrete.<sup>7</sup> Two off-site wetlands are present. A peer reviewed report was submitted delineating the wetlands and stream.<sup>8</sup>

- Wetland A: Category III, 110-foot buffer
- Wetland B: Category IV, 40-foot buffer
- Stream A: Type F, 100-foot buffer<sup>9</sup>

Wetland A and its buffer are outside the project area and not impacted. Wetland B's buffer is entirely within the stream buffer and lake setback. For mitigation purposes, buffer impacts are quantified as stream, which requires no net loss of shoreline ecological functions.<sup>10</sup> The project was configured to minimize impact to the maximum degree feasible, leaving a 21 square foot buffer impact. To mitigate the impact, as onsite mitigation is infeasible, the Utility District will purchase mitigation credits from the Keller Farm Mitigation Bank.<sup>11</sup> The .0023 credits being purchased equate to 330 square feet, providing mitigation at a ratio exceeding 15:1. The 214 square foot area of temporary buffer disturbance will be restored to original conditions or enhanced.<sup>12</sup>

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<sup>5</sup> Exhibit A (Staff Report), p. 4 or AR 4, and Attachment 4 (Determination of Nonsignificance).

<sup>6</sup> Exhibit A (Staff Report), Attachment 2 (Critical Areas Report), p. 9 or AR 31.

<sup>7</sup> Exhibit A (Staff Report), Attachment 2 (Critical Areas Report), p. 9 or AR 31.

<sup>8</sup> Exhibit A (Staff Report), Attachments 2 and 6.

<sup>9</sup> Exhibit A (Staff Report), Attachment 2 (Critical Areas Report), p. 10 or AR 32.

<sup>10</sup> Exhibit A (Staff Report), Attachment 2 (Critical Areas Report), p. 10 or AR 32. Compare with Staff Report, p. 8 or AR 8.

<sup>11</sup> Exhibit A (Staff Report), Attachments 2 and 7; Testimony, Department.

<sup>12</sup> Exhibit A (Staff Report), Attachment 2 (Critical Areas Report), p. 12, AR 34.

**1.9 Staff Report Incorporation and Conditions.** Except as modified, the Staff Report is incorporated as supplemental findings. Staff Report conditions should be included without substantive revision to support the findings and ensure code requirements are met.

## **2. CONCLUSIONS OF LAW**

**2.1 Jurisdiction.** The Hearing Examiner conducts a public hearing and issues a decision in a Process IIA review.<sup>13</sup> Absent an appeal to City Council, that decision is transmitted to the Department of Ecology for final review and approval.

**2.2 Variance Criteria.** A variance is only granted if consistent with WAC 173-27-140 and 170;<sup>14</sup> with development regulations, or if no applicable development regulation, the Comprehensive Plan; and, with the public health, safety, and welfare.<sup>15</sup>

**2.3 WAC 173-27-140, SMA/SMP Consistency.** The project must be consistent with the Shoreline Management Act, Ch. 90.58 RCW (SMA) and the City's Shoreline Master Program (SMP), and not exceed 35 feet in height absent compliance with specified criteria. The project does not exceed six feet and is otherwise consistent with the SMA and SMP. As section 2.6 addresses, the project repairs and maintains previously permitted critical infrastructure to protect shoreline resources.

**2.4 WAC 173-27-170, Variance Criteria.** Variances from dimensional standards must meet these criteria:

Variance permits should be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances the applicant must demonstrate that extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.<sup>16</sup>

(a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes, or significantly interferes with, reasonable use of the property;

(b) That the hardship described in (a) of this subsection is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions;

(c) That the 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 and will not cause adverse impacts to the shoreline environment;

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<sup>13</sup> KZC 120.10, 150.40, and 150.65.

<sup>14</sup> KZC 141.70.3.d.

<sup>15</sup> KZC 150.65.3.

<sup>16</sup> WAC 173-27-170(1).

(d) That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;

(e) That the variance requested is the minimum necessary to afford relief;  
and

(f) That the public interest will suffer no substantial detrimental effect.<sup>17</sup>

In addition, in considering cumulative impacts, the project must “remain consistent with the policies of RCW 90.58.020 and shall not cause substantial adverse effects to the shoreline environment.”<sup>18</sup>

Denial would thwart RCW 90.58.020 policies, including those supporting shoreline protection, responsibly sited development, and residential use. Machinery replacement, which includes bringing the grinder pump up to code, is critical to maintain its function and continue to provide sewer service to the surrounding area. Relocating outside the shoreline and critical area buffers would require extensive connector pipeline relocation. This would disrupt wastewater collection and create added shoreline impacts. The proposal’s setback incursion is the minimum necessary to maintain this critical infrastructure and is fully mitigated.

Adherence to all shoreline critical area requirements would interfere with the Northshore Utility District’s mission to provide necessary services to the community in a safe, reliable, economical, and ecologically responsible manner.

The hardship is due to the location of existing improvements and existing critical areas. The grinder pump cannot be relocated. It was installed at its current location in 1979 when the area was developed, leaving no feasible locational alternative. The existing sewer system spans multiple properties, consisting of gravity-fed sewer pipes that lead to the grinder pump which pumps to the uphill sewer main. Locating outside critical areas and buffers is infeasible due to the area topography and need for gravity flow from incoming pipes (the pump station must be topographically lower than incoming pipes).

The replacement project is compatible with the existing and planned low density residential uses. The project will not change the area’s residential nature but will support its continuation. The project will maintain the existing sewer facilities to prevent environmental damage resulting from failed infrastructure. In alignment with the Comprehensive Plan Shoreline Area goals and policies, the project prevents adverse impacts to the shoreline environment.

The Northshore Utility District is the only utility agency providing sewer service in the Finn Hill neighborhood. To continue providing this essential service, the variance is necessary and not a grant of special privilege.

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<sup>17</sup> WAC 173-27-170(2).

<sup>18</sup> WAC 173-27-170(4).

The development plan is the minimum necessary to replace and repair the grinder pump. The project results in 21 square feet of unavoidable permanent impacts. The proposal serves the public by maintaining existing sewer facilities in an environmentally responsible manner. The project prevents rather than causes substantial detrimental effect. It is consistent with WAC 173-27-170.

**2.5 Development Regulations/Comprehensive Plan.** The project is consistent with City development regulations. No area was identified lacking regulatory coverage, but the project also follows the Comprehensive Plan, which supports appropriately sited public infrastructure and functioning sewer systems to protect public health and safety. As the Staff Report details, the required improvements are consistent and should be approved. Key Plan policies include:

- **Shoreline Utilities, Policy SA-25.2.** Minimize impacts from the location, design, and maintenance of utility facilities located within the shoreline.
- **Finn Hill Neighborhood, Public Services and Utilities, Policy FH-17.2.** Provide potable water, sanitary sewer and surface water management facilities to new and existing development in accordance with the Northshore Utility District Water and Sanitary Sewer Comprehensive Plans, the Kirkland Surface Water Master Plan, Kirkland Municipal Code, and adopted Kirkland Water Design Manual Requirements.
- **Utilities, Policy U-1.4.** Ensure that utility services are provided in a manner that is environmentally sensitive, safe and aesthetically compatible with surrounding land uses.
- **Utilities, Policy U-3.4.** Correct deficiencies and increase system efficiency. Emphasis should be placed on correcting deficiencies that present sewage overflow risks.

These policies overlap with the WAC criteria addressed above. The existing equipment has exceeded its expected functioning life span and is at risk of failing. The repairs will bring the facility into compliance with current requirements and maintain existing sewage service and prevent resulting environmental damage. The project has been thoughtfully designed and is fully mitigated. It is consistent with the Comprehensive Plan.

**2.6 Shoreline Master Program.** The planned utility repairs and maintenance are consistent with the SMP and SMA.

**KZC 83.170, Shoreline Environment.** Utility transmission facilities are allowed within the Low-Density Residential Shoreline Environment provided there are no other feasible routes or location and must be underground unless infeasible. The grinder pump improvements support an existing underground utility. The components which can be placed underground, such as electrical lines, will be.

**KZC 83.240, Utilities within Shoreline.** The grinder pump is already present within an existing utility easement and is being repaired. The permanently impacted buffer area is 21 square feet and the tallest structure is six feet. Elements that can be placed underground will be. Scenic views are not obstructed. Above ground utility elements will be painted to match existing landscaping. Landscaping disturbed during construction (primarily grasses and ornamental shrubs) will be replaced. Project relocation elsewhere is infeasible and the mitigation and no net loss

assessments (Staff Report, Attachment 2) ensure no net shoreline ecological function loss. Strict application of all critical area buffers would prohibit critical infrastructure repair and function.

**KZC 83.490, Critical Areas.** No other permitted type of land use with less critical area impact is feasible. The grinder pump has been located here since 1979 and cannot be located elsewhere. With a permanent buffer impact of 21 square feet, the minimum area of disturbance is proposed. No tree removal will occur. The design minimizes impacts to the greatest extent feasible. The design maintains sensitive area function and avoids ecological net loss. Temporary erosion and sediment control devices will be implemented to ensure construction sediment does not enter the shoreline or critical areas. The project is critical for public health and safety and addresses rather than creates a public health, safety and welfare threat. The project is fully mitigated consistent with Ch. 90 KZC requirements (Staff Report, Attachments 2 and 7). There is no special privilege. The City allows repair and maintenance of legally established structures within the shoreline jurisdiction and there is a critical need to maintain safe, working, sewer service.

**KZC 83.370, Permitting.** The project will obtain required permits, including from the Washington State Department of Ecology.

The variance should be approved. The necessary utility improvements were thoughtfully planned and are fully mitigated. The project is consistent with the SMA, including WAC 173-27-140 and 170; City development regulations, the SMP, and Comprehensive Plan; and, with the public health, safety, and welfare.

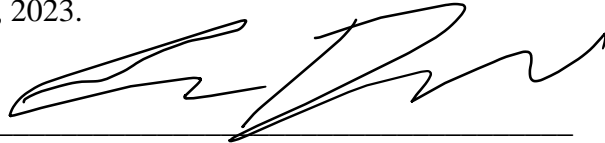
### **DECISION**

The Hearing Examiner, pursuant to the above Findings of Fact and Conclusions of Law, approves the requested shoreline variance, subject to these conditions:

1. This application is subject to the applicable requirements contained in the Kirkland Municipal Code, Zoning Code, and Building and Fire Code. It is the responsibility of the applicant to ensure compliance with the various provisions contained in these ordinances.
2. Prior to construction, the applicant shall install a temporary six-foot tall construction-phase chain link fence with silt screen fabric along the entire limits of construction area as proposed (*see* Staff Report, Conclusion II.G.3.b.f).
3. Prior to construction, the applicant shall finalize purchase of the Keller Farm Mitigation Bank credits and provide receipt to the Planning and Building Department (*see* Staff Report, Conclusion II.G.3.b.h)
4. Prior to the issuance of any building or land surface modification permit, the applicant shall submit the necessary approvals from state and federal agencies to the Planning and Building Department (*see* Staff Report, Conclusion II.G.4.b).

5. Prior to final inspection of required building permits, all above ground utilities will be painted to match existing landscaping (*see* Staff Report, Conclusion II.G.2.a.8).

Entered June 8, 2023.



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City of Kirkland Hearing Examiner Pro Tem  
Susan Drummond

## **Notices Re: Appeal, Ecology Review, and Timing of Work Commencement**

The applicant or a person who submitted testimony or comment to the Hearing Examiner may appeal this decision to the City Council, if code requirements are met. This includes filing a letter of appeal within 14 days of the Examiner's decision. The appeal must identify what is being appealed and the disputed findings and conclusions. The appeal fee must accompany the appeal. This is only a summary, so review the code to identify all requirements.<sup>19</sup>

After all local permit administrative appeals or reconsideration periods are complete and the approval is amended to incorporate any resulting changes, the decision will be forwarded to the State Department of Ecology for its review and approval/disapproval jurisdiction under WAC 173-27-200.<sup>20</sup> Construction shall not begin or be authorized until 21 days after the Department of Ecology transmits its decision under WAC 173-27-200; or until all review proceedings are terminated if the proceedings are timely initiated per RCW 90.58.140.<sup>21</sup>

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<sup>19</sup> KZC 150.80.

<sup>20</sup> KZC 141.70.3(e) and (f).

<sup>21</sup> KZC 141.70.3(e) and (f).