

1 **BEFORE THE HEARING EXAMINER FOR THE CITY OF LACEY**

2 Phil Olbrechts

3 RE: Lift Station No. 6 4 Rehabilitation 5 Conditional Use and Wetlands 6 Permit 7 File No. 23-0218	FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION FOR APPROVAL
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8 **SUMMARY**

9 The City of Lacey is requesting approval of a conditional use permit and a wetlands
10 permit to rehabilitate an existing sewer lift station located at 5611 32nd Court SE. The
11 wetlands permit is necessary because the development will take place within the buffer
12 of a Category II wetland adjacent to Hicks Lake. The permits are approved subject to
13 conditions.

14 Neighbors raised several concerns about the project, all of which have been well
15 addressed by City staff. The concerns are addressed in detail in Finding of Fact No. 5
16 below, pages 3-5. The concerns have resulted in two additional conditions. First,
17 Condition No. 2 requires the City's arborist to confirm that tree removal doesn't result
18 in a material increased risk in windthrow. Second, Condition No. 11 requires the
19 proposed generator to be obscured from the Dotson property by a site-obscuring line
20 of arborvitae trees.

21 **ORAL TESTIMONY**

22 A computer-generated transcript of the hearing has been prepared to provide an
23 overview of the hearing testimony. The transcript is provided for informational purposes
24 only as Appendix A. The transcript is not intended to provide a precisely accurate
25 rendition of testimony but generally identifies the subjects addressed during the hearing.

EXHIBITS

Exhibits 1-16 identified in the Exhibit List prepared by staff were admitted during the
public hearing.

FINDINGS OF FACT

Procedural:

1. Applicant. City of Lacey, 420 College Street SE, Lacey, WA 98503.
2. Hearing. A virtual Zoom hearing was held on the application on March 14, 2024 at 10 am, Webinar ID 846 7485 9269.

Substantive:

3. Site Proposal/Description. The City of Lacey is requesting approval of a conditional use permit and a wetlands permit to rehabilitate an existing sewer lift station located at 5611 32nd Court SE. The wetlands permit is necessary because the development will take place within the buffer of a Category II wetland adjacent to Hicks Lake. The project site is 0.12 acres in area. The existing Lift Station 6 site includes approximately 42% (1,450 square feet) of impervious surfaces, including HMA driveway, concrete pad, vaults and lift station support equipment. After construction the impervious surface will increase to 57.8% (1,996 square feet) to accommodate additional equipment and HMA driveway expansion.

The project includes the removal of the current sewer lift station, valve vault, and associated structures, along with the replacement of the water meter, wash hydrant, and water service. Additional upgrades include the replacement of the electrical panel, mechanical and electrical equipment, sewer manhole, and the diesel-powered emergency standby generator. The project also includes the conversion of the existing offline storage structure into a new wet well, featuring a duplex submersible station equipped with constant speed motor controls.

Additional site work includes onsite roadway grading and resurfacing, and the installation of a 4-foot chain-link fence and security gate. A new force main, the replacement of the waterline in 32nd Court SE, integration of two catch basins into the existing stormwater system, a new power feed, and the restoration of 32nd Court SE roadway are also included as project elements.

In terms of spatial impact, the rehabilitation work primarily targets previously disturbed areas, with the exception of 680 square feet of newly disturbed space. Excavation activities, estimated at approximately 125 cubic yards, will facilitate the installation of new sewer manholes, valve vaults, on-site piping, and minor grading.

1 4. Characteristics of the Area. Aerial photographs in the critical areas report, Ex. 10,
2 show the project site in single-family neighborhood surrounded by single family homes
3 on the east, west and across the street to the north. Undeveloped land with wetlands
4 extends southward.

5 5. Adverse Impacts. There are no adverse impacts associated with the development.
6 A SEPA Determination of Nonsignificance (DNS) was issued on October 20, 2023. .
7 Pertinent impacts are addressed as follows:

8 A. Critical Areas. As previously noted, the proposal involves work in a
9 Category II wetland buffer. As determined by staff, the proposal conforms to the
10 City's wetland protection regulations and for that reason is not found to create any
11 significant adverse impacts to wetland functions or values.

12 The project will add 680 square feet of impervious surface to the wetland. The
13 delineation of the wetland and its associated buffer was prepared by qualified
14 biologists and is uncontested. See Ex. 10. The Applicant has used the buffer waiver
15 process governed by LMC 14.28.350C to authorize development in the wetland.
16 Buffer impacts must be demonstrated to be unavoidable per the criteria of LMC
17 14.28.350C2. As outlined in the staff report, the impacts are unavoidable and meet
18 the LMC 14.28.350C2 criteria because there are no feasible alternative sites
19 available -- lift station #6 is integral to a larger wastewater system, the project site
20 is located entirely within the buffer and there are no city-owned parcels nearby
21 suitable for utility purposes.

22 To mitigate the impacts on the wetland buffer, the project will decommission and
23 consolidate lift station appurtenances, thereby minimizing long-term effects on the
24 buffer. Additionally, the initiative includes restoring a section of the current buffer
25 currently covered in pavement, amounting to approximately 265 square feet. The
calculation of the mitigation area involves subtracting the permanent wetland buffer
credit (265 SF) from the permanent wetland buffer impact (680 SF) and applying a
1.2:1 mitigation ratio to the sum. This results in 498 square feet of mitigation
planting. The minimum required planting area encompasses the mitigation of 415
square feet of impervious impacts at a 1.2:1 ratio and the restoration of 265 square
feet of impervious credit at a 1:1 ratio. The total minimum planting area required is
calculated as $(415 \text{ SF} \times 1.2) + (265 \text{ SF} \times 1) = 763$ square feet. According to Figure
5. of exhibit #8 the applicant proposes to mitigate and restore 823sf of the wetland
buffer.

The Applicant's wetland assessment and mitigation plan was prepared by a
qualified wetland professional as Exhibit 10, the Applicant's critical areas report.

1 Section 5.0 of that report concludes that with the recommended mitigation, imposed
2 by this decision as summarized above, the proposal will result in no net loss of
3 buffer function.

4 B. Trees. Neighbors Daubenspeck and Rockett were concerned about
5 windthrow from Tree 3 and 4 due to the removal of Tree 2. Mr. Brar from Public
6 Works responded that the City’s arborist had considered the issue and wasn’t
7 concerned. Further, Trees 3 and 4 could also be removed depending on precisely
8 where a proposed retaining wall will be located. A condition of approval requires
9 that the City’s arborist confirm that removal of Tree 2 and any other trees for the
10 project will not result in a material increased risk of windthrow.

11 C. Compatibility. As mitigated the proposal will be compatible with
12 surrounding development. Adjoining property owners have been very active in
13 ensuring that all potential impacts are addressed as identified elsewhere in this
14 Finding of Fact No. 5. For aesthetic impacts and to further reduce noise impacts, a
15 condition of approval requires arborvitae landscaping between the generator and
16 the Dotson property.

17 E. Noise. The proposal will reduce noise impacts over the current lift station.
18 Noise from the project is created by a generator. According to staff testimony the
19 proposed generator will be smaller than the current generator and it's going to
20 produce significantly less noise than the current generator.

21 F. Odor. City staff have assured that odor issues can be resolved if and when
22 they occur. The staff report identifies that the current lift station has had no history
23 of odor problems. However, Aretha Dotson, a neighbor, testified that there have
24 been odor problems, especially in the summer. She noted that the City has been
25 contacted about those problems. City staff testified that if odor should arise it can
be remedied. Staff just need to be notified of the problem. Staff noted that the lift
station will be of the same design as other lift stations in the City. For those other
lift stations, staff have been able to resolve odor problems by taking actions such
as sealing pipes with rubber gaskets.

G. Boundary Issue. Ms. Dotson is concerned about City assertions that her
fence is encroaching on City property. She has landscaping up to the fence. City
staff testified that the fence may have to be moved to accommodate the proposed
improvements. Resolving boundary issues is beyond the Examiner’s authority. *See*
Halverson v. Bellevue, 41 Wn. App. 457 (1985). However, it is clear in Washington
case law that adverse possession doesn’t operate against public property. *See Fame*
Developers, Ltd. v. City of Bainbridge Island, 154 Wn. App. 1021 (2010). If

1 Dotson improvements are trespassing upon City property the City has a right to
2 have those improvements removed.

3 H. Wildlife. Ms. Dotson testified about a reduction in wildlife since the lift
4 station was originally installed in 1992 or 1994. The critical areas report for the
5 project, Ex. 10, assesses whether any protected species could be affected by the
6 proposal and finds that no impacts are anticipated.

7 I. Pile Driving/Vibration. Mr. Dotson and Mr. Daubenspeck were concerned
8 about vibration from pile driving. Mr. Daubenspeck has a steep slope on his
9 property that could be affected by the vibration. Mr. Brar responded that there will
10 be no pile driving.

11 J. Stormwater. Mr. Dotson and Mr. Daubenspeck had concerns with
12 stormwater. The curbing along Mr. Dotson's driveway has deteriorated and his
13 property gets sheet flow. Stormwater flows from the project site to Mr.
14 Daubenspeck's property. As to the Dotson issue, that is an issue that is not caused
15 or affected by the proposal so it is beyond the scope of this proceeding. However,
16 Mr. Brar testified that it is being addressed in another public works project. As to
17 Mr. Daubenspeck's concern, most of the on-site stormwater will be collected and
18 diverted into an outfall in the wetland buffer.

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CONCLUSIONS OF LAW

Procedural:

1. Authority of Hearing Examiner. Section 1C.050 of the City of Lacey Development
Guidelines and Public Works Standards, as recently amended by Lacey Ordinance No.
1650, provides that the hearing examiner shall hold hearings and make final decisions
on quasi-judicial permit applications. LMC 16.66.070 provides that conditional use
permits are subject to examiner review. LMC 14.28.110 requires a wetland permit
pursuant to the quasi-judicial review procedures of Section 1C.050 for any regulated
activity within a wetland buffer. Given these latter two LMC provisions, both the
wetlands permit and the conditional use permit are found to be subject to hearing
examiner review.

Substantive:

1 2. Zoning. The primary zoning of the site is Low Density Residential; however, the
2 site is split- zoned with the southern portion of the western parcel zoned Shoreline
Natural.

3 3. Applicability and Review Criteria. A conditional use permit is required for the
4 improvements because the lift station qualifies as an essential public facility. LMC
5 16.66.060B requires conditional use permits for all essential public facilities. LMC
6 16.66.100 governs the review criteria for conditional use permits. A wetland permit
7 is required because regulated activity is proposed within a wetland buffer. LMC
14.28.110 requires a wetland permit for regulated activities within wetland buffers.
LMC 14.28.270 governs the criteria for wetland permits. Applicable review criteria
are quoted below in italics and applied through corresponding conclusions of law.

8 **Conditional Use**

9 **LMC 16.66.100:** *In reviewing a conditional use permit, the hearings examiner shall*
10 *impose all requirements for such use, as prescribed in this title and other conditions*
11 *and safeguards as are necessary to secure adequate protection for the locality in which*
12 *the use is to be permitted. The hearings examiner shall establish a time limit, within*
which action for which the conditional use is required shall be begun, completed, or
both.

13 4. Criterion met. The criterion quoted above can be divided into two general
14 requirements. The first is that conditions can be imposed to meet the requirements
15 “prescribed in this title.” That criterion has been met by the conditions recommended
16 in the staff report, all adopted by this decision. Section VII of the staff report ably
identifies when conditions have been found necessary to meet the requirements
prescribed in Title 16.

17 The second general requirement is assuring compatibility with surrounding uses, i.e.
18 “*other conditions and safeguards as are necessary to secure adequate protection for*
19 *the locality in which the use is to be permitted.*” That criterion is met for the reasons
identified in Finding of Fact No. 5.

20 **Wetland Permit**

21 **LMC 14.28.270A1:** *A proposed action avoids adverse impacts to regulated wetlands*
22 *or their buffers or takes affirmative and appropriate measures to minimize and*
23 *compensate for unavoidable impacts;*

1 5. Criterion met. The criterion is met. Impacts are unavoidable and appropriately
2 mitigated for the reasons identified in Finding of Fact No. 5A.

3 **LMC 14.28.270A2:** *The proposed activity results in no net loss;*

4 6. Criterion met. The criterion is met. The proposal will result in no net loss as
5 determined in Finding of Fact No. 5A.

6 **LMC 14.28.270A3:** *Denial of a permit would cause an extraordinary hardship on the
7 applicant.*

8 7. Criterion met. The criterion is met. As noted in Finding of Fact No. 5A, there are
9 no alternative sites for the sewer lift station. Denial of the permit would seriously
10 undermine the City's ability to feasibly provide a basic and essential utility service to
11 City residents and thus would qualify as an extraordinary hardship.

12 **DECISION**

13 The proposal meets the review criteria for conditional use and wetland permit approval
14 for the reasons identified in the conclusions of law above. The wetland and conditional
15 use permits are approved subject to the following conditions:

16 Community & Economic Development Department:

- 17 1. The project shall proceed in substantial conformance with the plans on file, received
18 August 3, 2023 except as may be modified by the conditions herein.
- 19 2. Tree removal on site shall be in performed in accordance with the recommendation
20 of the SUF report dated on 1/21/2023. City staff shall acquire written confirmation
21 from its arborist that the removal of any tree will not materially increase the risk of
22 windthrow from remaining trees.
- 23 3. Wetland buffer impacts and subsequent mitigation work shall be done in
24 accordance with the Critical Areas Report prepared by ESA on June, 2023.
- 25 4. All staging areas of construction equipment shall be located at the highest elevation
point on the property furthest from the protected wetlands and associated buffers. LMC
14.28.360.B.5.)
5. Erosion control measures shall be implemented prior to any activity on the site, in
a manner that eliminates potential erosion and/or sediments from disturbed areas from
entering the wetland buffer. Erosion control methods may be in the form of straw bales,
silt fences or other forms approved by the City of Lacey. Erosion methods shall be
identified on the grading and construction drawings submitted to the City of Lacey for
approval. (LMC 14.28.360.B.7.)

1 6. The approval for the wetland development permit shall be effective upon the
2 conclusion of the appeal period; Any decision of the city of Lacey in the administration
3 of this chapter may be appealed in accordance with Chapter 1D of the City of Lacey
4 Development Guidelines and Public Works Standards. (LMC 14.28.520)

5 7. The approval for the wetland development permit shall be valid for a period of 18
6 months from the date of approval. The City may grant one 6-month extension prior to
7 the expiration of the approval, if requested in writing thirty (30) days prior to the
8 expiration of the 18-month period in accordance with the provisions of LMC 14.28.160.

9 8. All landscaping installed in the buffers shall be irrigated with a temporary or
10 permanent irrigation system. An irrigation plan shall be submitted to the City of Lacey
11 Community Development Department for review and approval.

12 9. Prior to any site disturbing activities, the construction or clearing limits identified
13 in the approved plans shall be marked in the field with temporary “clearing limits”
14 fencing in such a way as to ensure that no unauthorized intrusion will occur. The
15 fencing shall be inspected by Community and Economic Development staff prior to the
16 commencement of permitted activities. This temporary marking shall be maintained
17 throughout construction and shall not be removed until permanent signs are in place.

18 10. Any site lighting shall be directed downward so as to ensure that lighting does not
19 cross property lines. This shall require installing a light shield to ensure that lighting is
20 directed downward.

21 11. A detailed landscaping plan shall be prepared by a licensed landscape architect,
22 nursery person, or landscaper and submitted to the Planning Department for review and
23 approval. The plan shall include the type, number, and location of the vegetative
24 improvements as well as a specific time line for completion of the improvements. The
25 plan shall include a site obscuring line of arborvitae trees to buffer the generator from
the Dotson property. A separate irrigation plan must also be submitted showing the
location of all irrigation lines, location of sprinkler heads, and approximate coverage
areas. The plans must include a note stating that the property owner is responsible for
maintaining all plants in a healthy growing condition for the life of the project. All
requirements of Chapter

16.80 of the Zoning Code shall be satisfied. (LMC 16.80)

12. A detailed estimate from a landscape installer must be submitted to the Planning
Department. The estimate should include all costs associated with installing
landscaping and irrigation as called out on the approved plans, including labor. (LMC
16.80)

13. A letter of credit or assignment of savings must be provided to the Planning
Department in the amount of 150 percent of the above mentioned landscape estimate.
The City shall release this financial security once the landscaping for the project is
installed and approved by the Planning Department and a financial security is in order
to ensure that all plant materials are properly maintained. This security device shall be

1 in the amount of 20 percent of the value of the vegetative improvements and shall be
2 held for a period of one year. (LMC 16.80)

3 14. A note shall be placed on the face of the landscaping and irrigation plans stating
4 that any irrigation lines placed within tree protection zones established for the project
5 must be installed in such a manner as to not cause damage to the root protection zone,
6 such as by cutting roots, digging trenches, operation of machinery, etc. Special care
7 must be taken (hand digging trenches, designing lines to stay out of these areas where
8 possible, etc.) to ensure damage to the trees does not occur. In the event damage to
9 these areas does occur, the city may require, at their discretion, replacement of the
10 comparable landscape value of the trees damaged or other means to make up that loss.
11 (LMC 16.80)

12 15. All applicable requirements of the City Zoning Code shall be satisfied (LMC Title
13 16).

14 16. The applicant/developer shall be responsible for obtaining all applicable permits
15 required for the project, including National Pollutant Discharge Elimination System
16 Permit (NPDES), Forest Practices Application, and any others. These permits will
17 require additional review time from the appropriate agencies.

18 17. All requirements of the international building and fire codes adopted by the City of
19 Lacey shall be met.

20 18. All permit requirements of the Olympic Region Clean Air Authority (ORCAA)
21 shall be satisfied.

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General Sewer Improvements:

19. In addition to all Federal and State requirements, any sanitary sewer improvements
associated with this project shall comply with the current City of Lacey Development
Guidelines and Public Works Standards Manual, City of Lacey Comprehensive
Sanitary Sewer Plan, Thurston County Health Department, Washington State
Department of Health (DOH), the LOTT Clean Water Alliance and Department of
Ecology. (DG&PWS, Sewer 7A.010 and Subdivisions and Short Plat 2-21)

General Stormwater Improvements:

20. In addition to all Federal and State stormwater requirements, this project shall
comply with the current City of Lacey Development Guidelines and Public Works
Standards Manual and the current City of Lacey Stormwater Design Manual (LMC
14.27).

21. Stormwater drainage and erosion control submittals shall be in conformance with
the formatting and content requirements described in Chapter 3 of the Stormwater
Design Manual.

1 22. This project shall retain, disperse, and infiltrate stormwater on-site to the maximum
2 extent feasible. Design of infiltration facilities requires site infiltration analysis, to
3 determine wet-season soil and groundwater conditions and to establish a long-term
4 design infiltration rate. (SDM 2.2.5 & 7.2)

5 23. In conformance with the City of Lacey Stormwater Design Manual, post-
6 construction soil quality and depth (BMP T5.13) shall be incorporated into the site
7 design and construction (SDM 2.2.5 & 7.4.1).

8 24. The following note shall be shown on the face of the civil engineering drawings
9 and is a condition for approval: "Roof downspout infiltration systems shall be placed
10 on the lot being developed and shall be sized to accommodate storm runoff per the
11 current City of Lacey Stormwater Design Manual"

12 25. If site conditions cannot support downspout infiltration or dispersion systems, a
13 note must be included on the civil drawings indicating that roof and foundation drains
14 shall be tied into stormwater system with perforated stub-out connections. (SDM 2.2.5
15 and 7.4.10)

16 26. A Construction Stormwater Pollution Prevention Plan (SWPPP) shall be submitted
17 to and approved by the City prior to beginning site work or construction of the project.
18 A complete SWPPP consists of both a narrative report and a temporary erosion and
19 sediment control plan drawing. Each of the 13 SWPPP Elements as identified in
20 Chapter 5 of the City of Lacey Stormwater Design Manual shall be addressed and
21 included in the construction SWPPP. If site conditions render any SWPPP elements
22 unnecessary, exemptions for each element shall be clearly justified in the narrative
23 report.

24 27. A Stormwater Facility Maintenance and Source Control Manual per chapter 3 of
25 the City of Lacey Stormwater Design Manual shall be submitted to and approved by
the City of Lacey. The maintenance manual shall be included with the drainage report
as part of the stormwater site plan.

26 28. The maintenance manual shall be prepared as a stand-alone document for the post-
27 development facility owner(s). The maintenance plan shall be submitted to and
28 approved by the City prior to civil drawing approval.

29 29. From October 1 through April 30, clearing, grading, and other soil disturbing
30 activities shall be prohibited unless shown to the satisfaction of the City of Lacey that
31 sediment- laden runoff will be prevented from leaving the site. (SDM 5.2.3, Element
32 #12)

33 General Surveying Requirements:

34 30. The City of Lacey Coordinate System is a ground scale coordinate system derived
35 from the Washington Coordinate System, NAD 83/91. Units are expressed in feet. Data

1 can be obtained from Lacey Public Works Department. Civil drawings shall be
2 submitted utilizing the City of Lacey Coordinate System. (DG&PWS 3.025)

3 31. City of Lacey Vertical Datum has elevations referenced to the National Geodetic
4 Vertical Datum of 1929 (NGVD29). Units are expressed in feet. A benchmark listing
5 can be obtained from Lacey Public Works Department. Civil drawings shall be
6 submitted utilizing the City of Lacey Vertical Datum. (DG&PWS 3.025)

7 Civil engineering drawings submitted the City of Lacey must be on National Geodetic
8 Vertical Datum 1929 (NGVD29). Civil drawings not on this datum will not be accepted
9 and routed for review.

10 Other Requirements:

11 32. All improvements shall satisfy City of Lacey Development Guideline Standards in
12 place at the time complete application is obtained (Complete application is determined
13 by the City of Lacey Community Development Department). (LMC)

14 33. All Public Works improvements must be designed by an engineer licensed in the
15 State of Washington and submitted to the City of Lacey Public Works Department for
16 review and approval. (DGPWS 3.040)

17 Dated this 25th day of March 2024.

18 *Phil Olbrechts*

19 _____
20 Lacey Hearing Examiner

21 **RIGHT OF APPEAL**

22 This decision is final unless appealed, pursuant to Section 1D “Appeals”, to Superior
23 Court within twenty-one days of the issuance of the decision. Any appeals shall be
24 filed no later than 4/19/2024. The complete case file, including findings,
25 conclusions and conditions of approval, is available for inspection. The file(s) may be
reviewed at Lacey City Hall, 420 College Street SE, Lacey, WA 98503. The file is
available during normal business hours, typically Monday through Friday, 8:00 am
through 5:00 pm. To arrange an appointment to review the file please contact Reace
Fant, Associate Planner, Community & Economic Development Department, at 360-
486-8710, or by email at Reace.Fant@cityoflacey.org, or in writing at 420 College St.
SE, Lacey, WA 98503.

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CHANGE IN VALUATION

Notice is given pursuant to RCW 36.70B.130 that property owners who are affected by this decision may request a change in valuation for property tax purposes notwithstanding any program of revaluation.