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BEFORE THE HEARING EXAMINER FOR THE CITY OF RENTON

RE: Sediment Deposition Mitigation)
Special Grade/Fill Permit and Shoreline)
Substantial Development Permit)
LUA16-000977, ECF, SM)
FINAL DECISION

Summary

The applicant has applied for a Special Fill and Grade Permit and a Shoreline Substantial Development Permit to do up to three phases of dredging over a ten-year period in Lake Washington near the May Creek Delta to clear away sediment deposition from May Creek that is blocking access to a boathouse and dock serving four homes in Eagle Cove. The permits are approved subject to conditions.

Testimony

Clark Close, City of Renton Senior Planner, summarized the staff report.
Michael Lloyd, applicant representative, noted that the applicant has recently acquired approval from the Army Corps of Engineers for the option of disposing dredge materials in Elliot Bay. However, the preferred disposal option is beneficial re-use in road projects and the like as opposed to dumping the dredge materials into Elliot Bay. Mr. Lloyd explained the dredging is necessary to access the boathouse. It's difficult to estimate the amount of material that needs to be dredged because of the unpredictability of May Creek and what it will deposit near the boathouse. The name of the permit is misleading because no fill is involved. The applicant has a self-interest in minimizing the amount of

1 dredging.

2 **EXHIBITS**

3 Exhibits 1-22 of the exhibits identified at Page 2 of the April 18, 2017 staff report were all
4 admitted into the record.

- 5 Exhibit 23: Staff Power Point.
6 Exhibit 24: City of Renton COR maps
7 Exhibit 25: Google Maps
8 Exhibit 26: Email from Charles Taylor

9 **FINDINGS OF FACT**

- 10 1. Applicant. Michael Lloyd, Lloyd & Associates, Inc., 255 Camaloch Dr, Camano Island, WA,
11 98282
12 2. Hearing. A hearing on the applications was held on April 18, 2017 in the City of Renton City
13 Council meeting chambers at Renton City Hall.

14 **Substantive:**

15 3. Description of Proposal. The applicant has applied for a Special Fill and Grade Permit and a
16 Shoreline Substantial Development Permit to do some dredging in Lake Washington near the May
17 Creek Delta to clear away sediment deposition from May Creek that is blocking access to a
18 boathouse and shared use dock serving four homes in Eagle Cove. Approximately 2,500 to 4,000
19 CY would be dredged during each dredging event. In recent history, the area was dredged in 1994,
20 1997, 2001/2002, and 2011. The proposed dredging project is estimated to be required every 3-5
21 years. The proposed project site is located from 3905 Lake Washington Blvd N to the boat house
22 just north of 3979 Lake Washington Blvd N (APN's 3342700011, -0009, -0007, -0005, and
23 0518501150) in Renton, WA. The dredging and mitigation work is anticipated to be conducted in
24 two phases and potentially a third, beginning in 2017. The applicant is proposing to continue
25 periodic dredging of depositional sediments that have accumulated within Lake Washington, near
26 the May Creek Delta, for a period of 10 years for a maximum of three phases of dredging. The
proposed profile is not anticipated to reach depths that would encounter sediments that are older
than dredging work completed in 2011 or in previous dredging events. Dredge work would require
approximately 80 hours over a 10-day period.

4. Adverse Impacts. There are no significant adverse impacts associated with the proposal as
mitigated. Pertinent impacts are individually addressed as follows:

A. Ecological Function. The proposal will result in no net loss of ecological function. This

1 conclusion was reached in a lake study, Ex. 13, prepared by Meridian Environmental,
2 Inc.. The conclusions of the lake study were based upon a detailed and thorough review
3 of environmental impacts and application of numerous studies based upon best available
4 science.

4 As to background conditions, numerous salmonid species have been documented at or
5 near the proposed project site, including coho, Chinook, and sockeye salmon. The
6 salmonids are listed in the Washington State Department of Wildlife Priority Habitats and
7 Species data base. Other fish such as bass perch, rainbow trout/steelhead and cutthroat
8 trout have also been documented near the project site. Six species of aquatic
9 macrophytes have also been documented in the project vicinity.

8 With recommended mitigation measures, the study concluded that the proposal would
9 maintain and possibly improve water quality; enhance aquatic habitat and hydraulic
10 functions in lower May Creek; slightly increase primary productivity and near-shore
11 habitat quality in Lak Washington; and reduce predation in the project area. Based on
12 these factors, the lake study concluded that the proposal would create no net loss of
13 shoreline ecological functions.

12 A biological assessment was also prepared for the project, Ex. 12. The biological
13 assessment identified that the chinook salmon, steelhead and bull trout are documented at
14 the project area and are listed as threatened under the ESA and that the coho salmon are
15 classified as a species of concern. The biological assessment concluded that with
16 recommended mitigation the proposal “may affect,” but is “not likely to adversely affect”
17 Chinook, steelhead, and bull trout. As to impacts to fish habitat, the study concluded that
18 with recommended mitigation that water quality would improve; primary productivity
19 and fish forage base would be improved; and shoreline and instream habitat quality
20 would be improved.

18 There is no evidence in the record that is contrary to the conclusions and analysis of the
19 lake study and biological assessment. The two studies were very thorough, based upon
20 best available science and professionally done. The mitigation measures recommended in
21 the studies are imposed by the MDNS. From these studies and the mitigation measures it
22 is concluded that the proposal will not result in a net loss of ecological function.

22 B. Stormwater. There will be no unpermitted runoff, including stormwater at the project
23 dredge area. The proposal would not alter or otherwise affect drainage patterns in the
24 vicinity of the site.

24 C. Noise. The applicant has indicated that operation of dredging equipment and upland
25 heavy equipment (frontend loaders, etc.) would generate expected noise levels during
26 construction of up to 80 to 90 decibels on a short-term basis only during construction. No
long-term noise levels would be created. Construction noise would only occur during

1 daylight hours. The short 10-day dredging period dictates the impacts would be
2 temporary. No unusual noise impacts are proposed, which would require further levels of
3 noise mitigation. To ensure that the public is notified of the proposed dredging activities
4 in a timely manner, a condition of approval requires that the applicant develop a public
5 notification plan complete with temporary signage, subject to approval of staff.

6 D. Aesthetics. The staff report does not identify the aesthetic impact of the proposal. It
7 appears from the staff report that the equipment will be limited to a barge. Considering
8 the short ten day dredging period, it is determined that the presence of a barge along the
9 shoreline will not create any unreasonable unsightliness or significant adverse aesthetic
10 impacts.

11 E. Traffic. As mitigated, the proposal will not create any significant traffic impacts. The
12 applicant has specified that the disposal of the excavated sediment would be transported
13 one of three ways: hauled off-site, off-loaded at a site on Lake Washington, or open
14 water/ocean disposal. If either of the first two ways are selected for handling sediments, a
15 detailed Traffic Control Plan would need to be submitted and approved by the City of
16 Renton prior to the start of construction.

17 F. Navigation/Public Access/Recreation. The proposal will significantly improve
18 navigation, recreation and public shoreline access near the applicant's boathouse and
19 community dock by removing sedimentary obstacles to boat passage, consistent with its
20 purpose.

21 **Conclusions of Law**

22 **Procedural:**

23 1. Authority of Hearing Examiner. RMC 4-9-080(F)(1)(a) provides that the hearing examiner is
24 responsible for granting permits for fill and grade that involves excavation of more than 500 cubic
25 yards. The proposal dredging will involve at least 2,000 cubic yards. Shoreline substantial
26 development permits are classified by RMC 4-8-080(G) as Type II permits (subject to staff as
opposed to hearing examiner review). The shoreline permit of this case has been consolidated with
the special grade and fill permit review as Type III review overall pursuant to RMC 4-8-080(C).

27 **Substantive:**

28 2. Applicable Standards. RMC 4-9-080(F)(4) governs the criteria for special fill/grade permits.
29 The criteria for shoreline substantial development permits is set by RMC 4-9-190(B)(7), which
30 requires compliance with all City of Renton Shoreline Master Program ("SMP") use regulations and
31 SMP policies. Applicable standards are quoted below in italics and applied through corresponding
32 conclusions of law.

1
2 **Fill and Grade Permit**

3 **RMC 4-9-080(F)(4):** ...*To grant a special permit, the Hearing Examiner shall make a determination*
4 *that.. the proposed activity would not be unreasonably detrimental to the surrounding area. The*
Hearing Examiner shall consider, but is not limited to, the following:

- 5 *i. Size and location of the activity.*
6 *ii. Traffic volume and patterns.*
7 *iii. Screening, landscaping, fencing and setbacks.*
8 *iv. Unsightliness, noise and dust.*
9 *v. Surface drainage.*
10 *vi. The length of time the application of an existing operation has to comply with nonsafety*
11 *provisions of this Title.*

12 3. The primary impact of concern would be impacts to sensitive environmental resources. As
13 determined in Finding of Fact No. 5, the proposal will not result in a net reduction of shoreline
14 ecological function. Other pertinent impacts are also addressed in Finding of Fact No. 5 to the extent
15 relevant to the criterion quoted above. Since none of the impacts qualify as significantly adverse, the
16 criterion is met.

17 **Shoreline Permit**

18 **RMC 4-9-190(B)(7):** *In order to be approved, the Administrator of the Department of Community*
19 *and Economic Development or designee must find that a proposal is consistent with the following*
20 *criteria:*

21 *a. All regulations of the Shoreline Master Program appropriate to the shoreline designation*
22 *and the type of use or development proposed shall be met, except those bulk and dimensional*
23 *standards that have been modified by approval of a shoreline variance.*

24 *b. All policies of the Shoreline Master Program appropriate to the shoreline area*
25 *designation and the type of use or development activity proposed shall be considered and substantial*
26 *compliance demonstrated. A reasonable proposal that cannot fully conform to these policies may be*
permitted, provided it is demonstrated to the Administrator of the Department of Community and
Economic Development or designee that the proposal is clearly consistent with the overall goals,
objectives and intent of the Shoreline Master Program.

c. For projects located on Lake Washington the criteria in RCW 90.58.020 regarding
shorelines of statewide significance and relevant policies and regulations of the Shoreline Master
Program shall also be adhered to.

1 4. The proposal meets the criterion quoted above for the reasons identified in Finding No. 22 of
2 the staff report, adopted by this reference as if set forth in full. The staff report does not directly
3 address the shoreline of statewide significance policies of RCW 90.58.020, but those policies are
4 clearly met since as determined in Finding of Fact No. 5 of this decision the proposal will result in
5 no net loss of shoreline ecological function, the proposal will not adversely affect navigation or
6 shoreline public access and the proposal will not create any adverse impacts to the shoreline
7 environment.

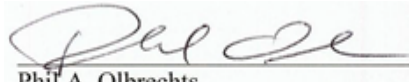
8 **DECISION**

9 The grade/fill permit and ssdp are in conformance with all applicable review criteria for the reasons
10 identified in the Conclusions of Law. The two permits are approved subject to the following
11 conditions:

- 12 1. The applicant shall comply with the mitigation measures issued as part of the
13 Determination of Non-Significance Mitigated, dated March 6, 2017.
- 14 2. To ensure that the public is notified of the proposed dredging activities in a timely
15 manner, the applicant shall develop a public notification plan complete with temporary
16 signage. The Plan shall be reviewed and approved by the Current Planning Project
17 Manager prior to the commencement of the maintenance dredge work.
- 18 3. The applicant shall submit existing topography of the lake bed prior to each dredging
19 event and final dredging contours and cross-sections of the lake bed after each dredging
20 event. The plan shall be reviewed and approved by the Current Planning Project Manager
21 prior to construction permit approval.
- 22 4. The applicant shall submit copies of any and all permits and associated documents issued
23 from other State and/or Federal permitting agencies to the Current Planning Project
24 Manager.
- 25 5. The applicant shall submit a restoration plan if off-site hauling results in any shoreline
26 bank impacts. The plan shall be reviewed and approved by the Current Planning Project
27 Manager prior to construction permit approval.
- 28 6. The Shoreline Substantial Development Permit and Special Fill and Grade Permit shall
29 remain effective for a permit not to exceed 10 years from the date of approval or until
30 such time as the City of Renton adopts new shoreline regulations.
- 31 7. The use of land vehicles for disposal of sediments shall be subject to a detailed traffic
32 control plan approved by the City of Renton prior to the start of construction.

Decision issued May 3, 2017.

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Phil A. Olbrechts

Hearing Examiner

Appeal Right and Valuation Notices

RMC 4-8-080(G) classifies the consolidated application(s) subject to this decision as Type III applications subject to closed record appeal to the City of Renton City Council. Appeals of the hearing examiner's decision must be filed within fourteen (14) calendar days from the date of the decision. A request for reconsideration to the hearing examiner may also be filed within this 14-day appeal period.

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.