# OFFICE OF THE HEARING EXAMINER KING COUNTY, WASHINGTON

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REPORT AND DECISION OF THE KING COUNTY HEARING EXAMINER ON APPLICATION FOR SHORELINES SUBSTANTIAL DEVELOPMENT PERMIT AND REPORT AND RECOMMENDATION TO THE KING COUNTY COUNCIL ON APPLICATION FOR SPECIAL USE PERMIT AND PUBLIC AGENCY AND UTILITY EXCEPTION FROM THE SENSITIVE AREAS CODE.

SUBJECT: Department of Development and Environmental Services File Nos. L98UU001, L98UT009, and L98SH016 Proposed Ordinance No. 1999-0440

#### BEULAH PARK AND COVE WASTEWATER COLLECTION/TREATMENT FACILITY

Applications for Special Use Permit (SUP), Public Agency and Utility Exception (PAUE), and Shorelines Substantial Development Permit (SDP)

- Location: Beulah Park & Cove Community on the west side of Vashon Island, between Southwest 160th Street and Southwest 172nd Street and west of 135th Avenue Southwest
- Applicant: Vashon Sewer District Attn: Mark Salkind PO Box 122 Vashon, WA 98070 (206) 463-2494

#### SUMMARY OF RECOMMENDATIONS and DECISION:

#### Shoreline Substantial Development Permit:

Department's Preliminary Recommendation:	Approve, subject to conditions
Department's Final Recommendation:	Approve, subject to conditions (modified)
Examiner's Decision	Approve, subject to conditions (modified)
Special Use Permit:	
Department's Preliminary Recommendation:	Approve, subject to conditions
Department's Final Recommendation:	Approve, subject to conditions (modified)

Examiner's Recommendation: <u>Public Agency and Utility Exception</u> :	Approve, subject to conditions (modified)
Department's Preliminary Recommendation:	Approve, subject to conditions
Department's Final Recommendation:	Approve, subject to conditions (modified)
Examiner's Recommendation:	Approve, subject to conditions (modified)
PRELIMINARY MATTERS:	
Applications submitted:	December 4, 1998
Complete application:	April 12, 1999
EXAMINER PROCEEDINGS:	
Hearing Opened:	August 23, 1999, 9:34 AM
Hearing Closed:	August 23, 1999, 2:15 PM

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

# ISSUES/TOPICS ADDRESSED:

- Steep slopes
- Landslide hazard
- Compatibility
- Water quality
- Road stability

# SUMMARY:

Applications for Shoreline Substantial Development Permit, Public Agency and Utility Exception to the Sensitive Areas Code, and Special Use Permit for construction of a sanitary sewer collection system, treatment facility and effluent disposal are approved, subject to conditions.

FINDINGS, CONCLUSIONS & RECOMMENDATION/DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

# FINDINGS:

1. General Information:

Proponent:

Vashon Sewer District Attn: Mark Salkind PO Box 122 Vashon, WA 98070 (206) 463-2494

Engineer:	John C. Wilson, Jr. Earth Tech 10800 NE 8th Street, 7th Floor Bellevue, WA 98004
Location:	Beulah Park & Cove Community on the west side of Vashon Island, between Southwest 160th Street and Southwest 172nd Street and west of 135th Avenue Southwest
STR:	26-23-2
Zoning:	RA
Proposed Use:	Wastewater collection/treatment facilities-including vacuum sewer collection system (625 feet of 4-inch main and 3,800 feet of 6-inch main) plus side connections to approximately 50 single family homes and one apartment building; a recirculating sand filter treatment system, and drip irrigation disposal field.
Sensitive Areas	
Designations:	Wetlands, Streams, Steep slope, Landslide hazard, Erosion hazard, and Flood hazard
Permits requested in	
this application:	Special Use Permit for wastewater treatment facility; Public Agency and Utility Exception from Sensitive Areas Code (wetlands, streams, steep slope, erosion hazard, and flood hazard); and Shorelines Substantial Development Permit to construct facilities within and within 200 feet of Puget Sound.
Shoreline Waterbody and Environment	
Designation:	Puget Sound/Conservancy

- 2. Except as modified below, the facts set forth in the King County Land Use Services Division's Preliminary Report to the King County Hearing Examiner for the August 23, 1999, public hearing are found to be correct and are incorporated herein by this reference. The said report is Exhibit No. B-4 in the record of the public hearing, and copies thereof will be attached to the copies of this report submitted to the County Council.
- 3. Frequent slides have occurred within the project area over an extended period of time, including as recently as within the past two years. The proposed treatment facility will be located on a bench created by an historic slide. Geotechnical evaluation of the site has determined that this area, although subject to risk, is sufficiently stable to provide a suitable location for the treatment facility, if recommendations of the geotechnical engineer are followed.

All of the proposed sewage collection lines, the mains conveying sewage to the treatment facility, and pipe conveying effluent to the disposal site, are sited so as to have no impact upon the stability of roads or housing within or adjacent to the project area.

4. Class 3 streams, for which the Sensitive Areas Code requires a 25-foot buffer from the ordinary high water mark, are located east and west of the sewage disposal site. Disposal of effluent will be by a drip irrigation system installed as close as ten feet to both of these streams, which are the

east and west forks of a Class 2 stream which forms north (downstream) of the disposal site. This Class 2 stream then flows to the north, on the east side of the proposed treatment facility, and into Puget Sound. Some impact to the water quality of the stream system may occur. However, such impact would be far less than the current adverse impacts to water quality occurring from the discharge of effluent into Puget Sound from failing septic systems at the residences which will be served by the proposed development. In addition, the conditions of approval of the public agency and utility exception to the Sensitive Areas Code require adoption of a plan to monitor water quality downstream of the effluent disposal site. The monitoring plan is required to include critical thresholds and adaptive measures to be implemented if the thresholds are exceeded.

- 5. The King County Department of Transportation will be requested to determine if load limits are necessary and appropriate for 137th Avenue Southwest and Southwest 160th Street, which roads will be utilized to provide access to the site and to transport equipment to and from the work areas. If load limits are imposed by the Department, construction activities will be required to comply with those limits.
- 6. The King County Office of Cultural Resources has recommended that a condition of the proposed permits should require an archaeological survey, and the implementation of a discovery plan if historic resources are found during that survey or the construction of the project. The King County Department of Development and Environmental Services and the Vashon Sewer District have agreed to that condition, which is Exhibit No. 22 in the record of the public hearing.

# CONCLUSIONS:

The Examiner adopts and incorporates herein by this reference the analysis/conclusions set forth at pages 15-16 (Section "H") of the DDES preliminary report to the Hearing Examiner (Exhibit No. B-4).

# DECISION:

#### Shorelines Substantial Development Permit

Shorelines Substantial Development Permit application No. L98SH016 is approved, subject to the following conditions:

- a. Nothing in this permit shall be construed as excusing the applicant from compliance with any federal, state, or local statutes, ordinances, or regulations applicable to this project other than the permit requirements of the Shoreline Management Act of 1971.
- b. This permit may be rescinded pursuant to Section 14(7) of the Shoreline Management Act of 1971 in the event the permittee fails to comply with any conditions thereof.
- c. Construction pursuant to this permit may not begin or be authorized until twenty-one (21) days from the date of filing the final order of King County with the Department of Ecology or the

Attorney General; or until all review proceedings initiated within twenty-one (21) days from the date of such filing have been terminated.

- d. This permit shall be subject to the time requirements of (WAC 173-27-090). The following time limits shall apply:
  - Construction shall be commenced or, where no construction is involved, the use or activity shall be commenced within two years of the effective date of a shoreline permit. Provided, that local government may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and the department.
  - Authorization to conduct development activities shall terminate five years after the effective date of a shoreline permit. Provided, that local government may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and the department.
  - The effective date of a shoreline permit shall be the date of the last action required on the shoreline permit and all other government permits and approvals that authorize the development to proceed, including all administrative and legal actions on any such permit or approval. It is the responsibility of the applicant to inform the local government of the pendency of other permit applications filed with agencies other than the local government and of any related administrative and legal actions on any permit or approval. If no notice of the pendency of other permits or approvals is given to the local government prior to the date established by the shoreline permit or the provisions of this section, the expiration of a permit shall be based on the shoreline permit.
  - When permit approval is based on conditions, such conditions shall be satisfied prior to occupancy or use of a structure or prior to commencement of a nonstructural activity: *Provided*, That an alternative compliance limit may be specified in the permit.
  - Revisions to permits under WAC 173-27-100 may be authorized after original permit authorization has expired under subsection (2) of this section: *Provided*, That this procedure shall not be used to extend the original permit time requirements or to authorize substantial development after the time limits of the original permit.
  - Local government shall notify the department in writing of any change to the effective date of a permit, as authorized by this section, with an explanation of the basis for approval of the change. Any change to the time limits of a permit other than those authorized by this section shall require a new permit application.
- e. Construction shall occur in conformance to the plans and information received by King County on December 4, 1998, and as modified by PAUE approval L98UT009

- f. Subject to the additional conditions of the Clearing and Grading (C/G) permit and the PAUE L98UT009.
- g. Revisions resulting from the PAUE or C/G permit may be allowed provided they are within the scope and intent of this permit and no substantial adverse environmental impact will be caused by the project revision. Any subsequent changes to the approved shoreline plans may require the applicant to obtain a new shoreline permit or a revision to this shoreline permit pursuant to WAC 173-14-064.
- h. Copies of other approved state and federal permits from the Washington St. Department of Fish and Wildlife (HPA), US Army Corps of Engineers, Washington St. Department of Ecology (Water Quality Standards Modification), and National Pollutant Discharge Elimination System (NPDES), as may be required, shall be submitted to LUSD Shorelines prior to construction.
- i. During construction, the applicant must use materials and construction methods which prevent toxic materials, petrochemicals, and other pollutants from entering the waters of the Puget Sound. The Applicant shall document at the time of grading permit that the piping will be placed at a depth to assure scouring and tidal action will not expose the piping.
- j. Through the C/G permit process, the precise limits of clearing and grading shall be established. Furthermore, construction staging areas shall be located outside of sensitive areas and their buffers if feasible. The exact location of staging areas shall be determined under the C/G permit.
- k. Prior to construction, silt fences shall be placed, as appropriate, along the perimeter of the construction zone.
- 1. Through the C/G permit process, the applicant shall comply with all water quality standards of the 1998 King County Surface Water Design Manual during and after construction.
- m. A copy of the approved shoreline plans and any necessary revisions shall be kept on-site at all times during construction.
- n. An archaeological survey shall be conducted by a State-certified archaeologist and a discovery plan developed prior to any ground disturbances. Relevant tribal organizations shall be informed of the project by the archaeologist. The discovery plan shall follow commonly accepted professional practice and shall include, at a minimum:
  - i. Cessation of site disturbance until the archaeologist can adequately determine the nature and significance of the resources;
  - ii. Immediate notification and consultation with the State Archaeologist, the Office of Cultural Resources and relevant tribal organizations;
  - iii. Completion of a State archaeological site inventory form and excavation permit if appropriate; and

iv. Appropriate subsequent tasks which may include preservation in place, data recovery, artifact curation and disposition, disinterment and reinterment, etc.

The archaeologist shall monitor all excavation or other site disturbance where, in his professional judgment, there is a reasonable likelihood of encountering prehistoric or significant historic resources. If such resources are discovered during survey or monitoring, the discovery plan shall be followed. Copies of the discovery plan, forms and any letters, reports or other survey or site information prepared by the archaeologist shall be promptly provided to the King County Office of Cultural Resources and the State Office of Archaeology and Historic Preservation.

#### **RECOMMENDATIONS:**

#### Public Agency and Utility Exception

It is recommended that the Public Agency and Utility Exception requested by application No. L98UT009 be approved, subject to the following conditions:

- a. Development shall be in accordance with the development plans received by DDES on December 4, 1998 except with the modifications listed below and as approved and finalized through the Clearing and Grading (C/G) permit review process or Building Permit process, whichever is requested and issued first.
- b. All work shall be conducted according to the conditions/requirements set forth in the Department of Army's, Corps of Engineers Nationwide Permit (NWP), dated February 11, 1999, and the Washington State Department of Fish and Wildlife's Hydraulic Permit Approvals (HPA's), dated May 20, 1999 and July 26, 1999.
- c. As per Condition Nos. 2, 3, and 21 of the HPA, King County DDES, Senior Ecologist, Nick Gillen shall also be contacted for the pre-construction meeting, start date, and any fish kills or observed fish in distress. Nick Gillen can be reached (206) 296-7141.
- d. Special care shall be taken during the excavation of the trench within the beach environment. Prior to excavation some type of matting material shall be placed on the beach on the upland side of the proposed trench. The sand/gravel layer shall be excavated first and piled separately from the clay layer that resides under the sand/gravel layer.
- e. Crossing of Class 3 streams when dry may be made with open cuts. Once the installation is complete the stream and banks shall be restored and planted with native vegetation.
- f. Mitigation measures shall be required. Mitigation shall include minimizing wetland and stream buffer impacts whenever possible during the design and construction/improvements to the access road for the wastewater treatment facility and the effluent disposal site.
- g. Mitigation shall include native plantings between the access road and lower Cove Creek after the construction is completed.

- h. All non-native vegetation shall be removed from the ten-foot buffer at the effluent disposal site between the two forks of Cove Creek. To reduce bank erosion, the banks may be pulled back, where appropriate, to create a slope from the OHWM. Once the bank has been re-graded and/or all non-native vegetation is removed, this area shall be replanted with native vegetation.
- i. To ensure long-term survival of vegetation and improvements installed pursuant to the mitigation plan, a monitoring plan shall be required with the submittal of the mitigation plan.
- j. Mitigation shall include the adoption of a water quality and channel erosion-monitoring plan downstream of the effluent discharge. The plan shall include critical thresholds for water quality and adaptive measures to be implemented if the thresholds are exceeded. A Final Mitigation/ Restoration/ Enhancement Plan shall be approved by DDES prior to approval and issuance of the C/G or Building permit.
- k. The Geotechnical Engineer of record shall monitor and approve all soil related construction work for the Vacuum pump station and the Wastewater treatment facility, including the installation of horizontal drains and piles.
- 1. A comprehensive sedimentation and erosion control plan to meet or exceed conditions in Chapter 5 of the KCSWM Design Manual shall be submitted and approved prior to issuance of the C/G or building permit.
- m. The mitigation plans/measures can be submitted for review during the review of the clearing & grading and/or building permit, whichever is earlier. The mitigation plans/measures shall need to be approved prior to issuance of the C/G or Building permit.
- n. PAUE approval for this project shall be implemented through issuance of a clearing and grading permit within two years of the effective date of this approval. Failure to obtain a clearing and grading and/or building permit within the prescribed time period shall be cause for this approval to become null and void, unless the permit(s) is extended or renewed by DDES.
- o. A copy of the PAUE decision shall be kept on-site during construction at all times.

# Special Use Permit

It is recommended that the Special Use Permit requested by application No. L98UU001 be approved, subject to the following conditions:

a. Development shall be in accordance with the development plans received by DDES on December 4, 1998 except with the modifications listed below and as approved and finalized through the Clearing and Grading (C/G) permit review process or Building Permit process, whichever is requested and issued first.

- b. The Environmental Health Division of the Seattle-King County Health Department shall assure best practices are used to minimize noise through review of the proposed method for insulating the generator.
- c. The district shall create a log of complaints filed regarding any odors emitted from the facility and coordinate with the King County Health Department to address any ongoing problems associated with such.
- d. Should access roads to the site be damaged during the construction process, the district shall be responsible for repairs to bring roads up to a pre-construction state.
- e. The treatment facility shall be landscaped in accord with the development plan received December 4, 1998
- f. The SUP is subject to the additional conditions of the PAUE L98UT009, SDP L98SH016, and the Clearing and Grading (C/G) permit and /or building permit.
- g. Revisions resulting from the PAUE or other county permits may be allowed provided they are within the scope and intent of this permit and no substantial adverse environmental impact will be caused by the project revision.
- h. The Applicant shall contact the King County Department of Transportation to determine if any load limits apply to 137th Avenue Southwest/Southwest 160th Street. If any load limits (seasonal or otherwise) exist, the Applicant shall provide to DDES, not later than ten (10) days prior to the pre-construction meeting, equipment transport and construction staging plans which demonstrate compliance with load limits.

ORDERED this 26th day of August, 1999.

James N. O'Connor King County Hearing Examiner

TRANSMITTED this 26th day of August, 1999, to the following parties and interested persons:

Don Abel Patty Daughtry Richard Janke Lota Lucas Debbie Maroon Linda Matlock Jeri E. Nickell Mark Salkind Jocelyn Savoie Bill Slaughter John C. Wilson, Jr. Craig Comfort Nick Gillen Ronaldo Hoelscher Michaelene Manion Mark Mitchell Karen Scharer Larry West

# NOTICE OF RIGHT TO APPEAL AND ADDITIONAL ACTION REQUIRED

# Special Use Permit and Public Agency and Utility Exception

In order to appeal the recommendation of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$125.00 (check payable to King County Office of Finance) **on or before September 9, 1999**. If a notice of appeal is filed, the original and 6 copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council **on or before September 16, 1999**. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 403, King County Courthouse, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the Clerk of the Council shall place a proposed ordinance which implements the Examiner's recommended action on the agenda of the next available Council meeting. At that meeting, the Council may adopt the Examiner's recommendation, may defer action, may refer the matter to a Council committee, or may remand to the Examiner for further hearing or further consideration.

Action of the Council Final. The action of the Council approving or adopting a recommendation of the Examiner shall be final and conclusive unless a proceeding for review pursuant to the Land Use Petition Act is commenced by filing a land use petition in the Superior Court for King County and serving all necessary parties within twenty-one (21) days of the date on which the Council passes an ordinance acting on this matter.

# Shoreline Substantial Development Permit

The Shoreline Development Permit decision may be appealed to the State Shoreline Hearings Board. Information on appeal procedures may be obtained from the Shoreline Hearings Board at (360) 459-6327 or the Washington State Department of Ecology Shoreline Appeals Coordinator at (360) 407-6528. Requests for review by the Hearings Board must be received by the Shoreline Hearings Board within twenty-one (21) days of the "date of filing." The "date of filing" is the date the local decision on the permit is received by the Department of Ecology.

# MINUTES OF THE AUGUST 23, 1999, PUBLIC HEARING ON DDES FILE NOS. L98UU001, L98UT009 AND L98SH016 -BEULAH PARK AND COVE WASTEWATER COLLECTION/TREATMENT FACILITY:

James N. O'Connor was the Hearing Examiner in this proceeding. Participating at the hearing were Mark Mitchell, Larry West, Craig Comfort, Charlie Sundberg, John Wilson, Dave Maertens, Betty Wyss, Arthur Campbell, Bill Slaughter, Mark Salkind and Patty Daughtry.

The following exhibits were offered and entered into the hearing record:

#### Spring Beach - L99UU001, L99UT001, and L99SH001

Exhibit No. 1	DDES File No. L99UU001	
Exhibit No. 2	DDES File No. L99UT001	
Exhibit No. 3	DDES File No. L99SH001	
Exhibit No. 4.	Department of Development and Environmental Services preliminary report dated	
Exhibit No. 5	SUP application received January 3, 1999	
Exhibit No. 6	PAUE Application received January 3, 1999	
Exhibit No. 7	SDP Application received January 3, 1999	
Exhibit No. 8	it No. 8 Determination of Nonsignificance (DNS) issued by the Seattle/King County Health	
	Department, November 1, 1993, and the supporting Environmental Checklist	
Exhibit No. 9	Affidavit of Posting indicating February 5, 1999, as date of posting and February 10,	
	1999, as date the affidavit was received by Department of Development and	
	Environmental Services	
Exhibit No. 10	Revised SUP/PAUE/SDP site plan received April 14, 1999	
Exhibit No. 11	Assessors map Sec. 34-22-02	
Exhibit No. 12	Sewage Facilities Plan for the Vashon Public Health Hazard Areas (Earth Tech)	
	November 1998	
Exhibit No. 13	Decision of the King County Board of Sewage Review, Waiver of Title 13, dated July	
	30, 1999	
Exhibit No. 14	Alternative Analysis for multi-flow system with chlorinator by the Seattle-King	
	County Health Department, dated March 18, 1999	
Exhibit No. 15	Fish Habitat Analysis by Associated Earth Sciences received May 13, 1999	
Exhibit No. 16	Geotechnical Report (Terra Associates, Inc.) dated February 9, 1998	
Exhibit No. 17	Supplemental Geotechnical Report (Terra Associates, Inc.), received May 5, 1999	
Exhibit No. 18	Technical Information Report by Earth Tech, Inc. received March 10, 1999	
Exhibit No. 19	Wetland/Stream Evaluation by Terra Assoc., Inc. received march 10, 1999	
Exhibit No. 20	Hydraulic Project Approval, WS F & W, issued April 26, 1999 (Log No. 00-D8938-	
	01)	
Exhibit No. 21	Letter received February 17, 1999, from Raymond Olson	
Exhibit No. 22	Additional condition submitted by staff requiring archaeological survey	

#### Beulah Park and Cove - L98UU001, L98UT009, and L98SH016

Exhibit No. B-1	DDES File No. L98UU001
Exhibit No. B-2	DDES File No. L98UT009

Exhibit No. B-3	DDES File No. L98SH016
Exhibit No. B-4	DDES preliminary report dated August 9, 1999
Exhibit No. B-5	SUP application received December 4, 1998
Exhibit No. B-6	PAUE application received December 4, 1998
Exhibit No. B-7	SDP application received December 4, 1998
Exhibit No. B-8	
.a	Determination of Nonsignificance (DNS) issued by the Seattle/King County Health Department, October 1992 and the supporting environmental checklist.
.b	Revised DNS issued by the Seattle/King County Health Department, November 1997, and the supporting environmental checklist
Exhibit No. B-9	Affidavit of Posting indicating May 4, 1999, as date of posting and February 10, 1999, as the date the affidavit was received by Department of Development and
	Environmental Services
Exhibit No. B-10	SUP/PAUE/SDP site plan received December 4, 1998
Exhibit No. B-11	Assessors maps NR & SE Sec 26-23-02
Exhibit No. B-12	Sewage Facilities Plan for the Vashon Public Health Hazard Areas (Earth Tech)
	November 1998
Exhibit No. B-13	Marine Habitat Assessment (Polaris Applied Sciences)
Exhibit No. B-14	Alternative Analysis as part of the Sewage Facilities Plan (11/98)
Exhibit No. B-15	Fish Habitat analysis by Associated Earth Sciences dated May 5, 1999, and received May 13, 1999, Geotechnical Report (Terra Associates, Inc.) dated December 12, 1997
Exhibit No. B-16	Geotechnical Report (Terra Associates, Inc.) dated December 12, 1997
Exhibit No. B-17	Nationwide Permit 9NWP) 12, Army Corps of Engineers, issued February 11, 1999
Exhibit No. B-18	Technical Information Report by Earth Tech, Inc., February 4, 1999, and revised April 1, 1999
Exhibit No. B-19	
.a	Hydraulic Project Approval, WS F & W, issued May 20, 1999, for installing sewer pipe (00-D9828-02)
.b	Hydraulic Project approval, WS F & W, issued July 26, 1999, for installing conduit
	and construction of a pedestrian bridge to support the conduit (Log No. 00-D8984-01).
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