



City of Mukilteo Appeal Form

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CITY OF MUKILTEO *PMC*

Time 1:48 pm

Project/Permit/Decision Information

Project/permit number associated with appeal:

- SEPA 2021-010
- SD 2021-001
- ENG 2021-019

Date the decision/order/determination being appealed was issued: August 30, 2023

Description of decision: Determination of Non-Significance – Harbor Grove Sudivision Preliminary Plat. Determination by the City that the proposed development would not have a probable significant adverse impact on the environment.

Appealing:

- ☐ Administrative Decision
- ☐ Hearing Examiner Decision
- ☒ SEPA Determination
- ☐ Other

Appellant Information

Name: *See below*

Address:

Phone:

Email:

<u>NAME</u>	<u>ADDRESS</u>	<u>EMAIL</u>	<u>PHONE</u>
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3. Sylvia Kawabata	6031 88 th St SW, Mukilteo, WA 98275	Sylvia6031@comcast.net	425-750-9893
4. Emmi Brant-Zawadzki	9107 Hargreaves Pl, Mukilteo, WA 98275	enishizawa@yahoo.com	801-520-0517
5. Jon Boyce	9011 53rd Ave. W, Mukilteo, WA 98275	swisslife@gmail.com	425-625-5278
6. Marilyn Strand	9011 53 rd Ave. W, Mukilteo, WA 98275	Helgahalvorson3@gmail.com	425-610-5731

Submittal Requirements

The following information must be submitted with the appeal form for the City to process the appeal request:

1. Appeal fee*
2. Detailed statement of grounds for the appeal and the fact(s) upon which the appeal is based
3. Description of relief sought, including the specific nature and extent of the relief

Authentisign
David D. Tyler

Signature of Appellant/Authorized Agent

09/26/23

Date

Authentisign
Sylvia Kawabata

Signature of Appellant/Authorized Agent

09/26/23

Date

Authentisign
Jon Boyce

Signature of Appellant/Authorized Agent

09/26/23

Date

Authentisign
Marilyn Strand

Signature of Appellant/Authorized Agent

09/26/23

Date

Authentisign
Erich Volkstorf

Signature of Appellant/Authorized Agent

09/26/23

Date

Authentisign
Emmi Brant-Zawadzki

Signature of Appellant/Authorized Agent

09/26/23

Date

* See City's most current Fee Resolution for applicable appeal fee.

September 27, 2023

Introduction:

This statement of appeal identifies the issues by which the undersigned are appealing the City of Mukilteo's SEPA Determination that the Harbor Grove subdivision would not generate any significant adverse impacts. We believe the City's determination is flawed for the reasons listed below. We will be submitting additional information in support of these issues once a schedule and procedures have been identified by the Hearing Examiner.

Issues of Appeal:

I. The Harbor Grove application is incomplete and contains insufficient information for the City of Mukilteo and the public to complete the analysis of impacts under SEPA and city code. The applicant is required to submit the following additional information:

1. Variance Application. Variances are required under MMC Chapter [17.20.080.A.2.a](#). for retaining wall height within the 25-foot rear setback and [MMC 17.20.020](#) for future building height potentially exceeding the allowable maximum of 30 feet. The proposed project design conflicts with these requirements.
2. Slope and Vegetation Removal Data under [MMC 15.12.050.C](#). – Table 1 – Clearing Matrix - to evaluate impacts on topography, vegetation, or hydrology under this section and SEPA.
3. Missing information in the applicant's project description on page 3 of the environmental checklist and the DNS. These documents do not provide a complete description of the project proposal. The following major elements of the proposal are not included in the project documentation on file with the City, which makes it impossible for the public to understand the true scope and scale of the project:
 - Over 500 linear feet of retaining walls proposed along the property's west and south property lines. The combined height of the retaining walls would be up to 20 feet and the walls would be located within the 25' rear setback;
 - The elevation of the site would be raised by 20' above the existing ground level along the property's west and south boundaries, immediately adjacent to existing single-family development. This would be accomplished by placement of up to 10,000 cubic yards of fill material;
 - Placement of a stormwater pump system with 160 lineal feet of force main piping and a drainage swale immediately adjacent to developed residential properties along the project's western boundary; and

- Applicant's design goals and objectives stating why the project elements described above are necessary for reasonable development of the property when other design options with fewer impacts are feasible.

II. The DNS does not identify or analyze impacts on the abutting property owners on the west side of the project site.

This includes impacts identified in public comments submitted previously on the project. These impacts will result in material damage to the abutting properties, including short- and long-term impacts on surface water, earth and topography, groundwater, visual impacts and aesthetics (land and shoreline use) and light/shadow impacts created by excessive grade changes, building height and retaining wall height. The impacts described herein are site-specific impacts based on the detailed plans and specifications in the application; they have not been identified or mitigated through any previous SEPA review or by the City's Comprehensive Plan.

It is worth noting that many of the impacts of the project are directly related to the part of the project proposal (i.e., grading in excess of 1,000 cubic yards) that triggered the requirement for a SEPA review in the first place under MMC [17.84.070](#).

III. The DNS does not identify mitigation measures or conditions necessary to address the environmental impacts of the proposal.

It concludes that no mitigation measures are required because the application complies with existing development regulations. It also states the proposal has been clarified and changed by the applicant:

"...as necessary include necessary mitigation measures to avoid, minimize or compensate for probable significant adverse impacts."

However, the DNS does not describe the impacts in question, nor does it identify mitigation measures. The DNS also fails to consider alternative designs that could have been implemented with fewer impacts.

IV. There is significant new information on the project that changes the analysis in the plans and studies submitted by the applicant.

Appellant(s) hired a professional hydrogeologist (Landau Associates) who prepared a hydrogeological assessment of the project, including a review of the drainage and hydrological studies on file. This report was submitted to the City during the 14-day comment period on the DNS. The report demonstrates that some of the assumptions used in the applicant's studies were flawed, resulting in stormwater calculations that underestimate the amount of stormwater that will be sent to the stormwater pump system in the southwest corner of the site. The larger volume of stormwater within this area increases the risk of property and structure damage to the adjacent properties in Rugosa Ridge in the event of a

pump system failure. The City and Applicant provided no response to this report. Under WAC [197-11-340\(3\)\(a\)\(ii\)](#) the DNS should have been withdrawn based on disclosure of this new information.

V. The Harbor Grove application conflicts with the development regulations contained in the Mukilteo Municipal Code (MMC) and other adopted standards.

- Title 15 (Buildings and Construction);
- Title 17 (Zoning);
- Chapter 17.84 (Implementing the State Environmental Policy Act); and
- City of Mukilteo 2017 Development Standards (amended 2019).

By failing to comply with these code provisions, the proposed project generates impacts on the environment and abutting properties that have not been mitigated—either by SEPA or by existing codes and ordinances.

Additionally, the DNS provides no information as to how the City’s existing development regulations apply to the project, or what must be done to comply with them (i.e., list of conditions/requirements). The lack of such information makes it impossible for the public to know whether or how any of the project’s impacts will be addressed.

VI. Procedural Errors. The City’s review of the project includes errors of procedure under MMC 17.13 that should have resulted in the application being terminated as incomplete within the specific time frames in the ordinance. The City also failed to disclose information to the public that was a critical part of its review.

- A. [MMC 17.13.040.E](#). – **Submittal of Additional Application Information by Applicant – Timeline.** The City allowed review of the application to proceed when the review should have been terminated resulting from failure of the applicant to submit information requested by the City in a timely manner. The application should have been terminated as incomplete in November 2022. This is just one example of a larger pattern of the City not adhering to any of the time frames required by MMC 17.13. The City’s failure to observe these time frames has resulted in unnecessary delays and a review process that is unpredictable for the applicant and the public.
- B. **Third Party Review of Application Documents by Independent Consultant.** In 2022, the City hired a consultant to perform a technical review of the application documents for the Harbor Grove subdivision. However, it did not make publicly available any of the information regarding this review. It should have advised all parties of record and made files immediately available for public review. By not making any of the above information immediately available to the public, the City effectively withheld information that was vital to the review of the project by the public. This is not how the public process is supposed to work.

Requested Relief:

The appellants request the following relief from the Hearing Examiner:

1. Prior to consideration of the land use permit for the subdivision of the property, we request that the Hearing Examiner first determine the following:
 - A. Whether the application is complete and includes the necessary information to perform a full review of the project under the City's development regulations in MMC Titles 15, 17 and SEPA; and
 - B. Whether the City committed errors of procedure that invalidate the DNS.
2. If the Hearing Examiner determines that either of the above (or both) apply, we request the Examiner overturn the SEPA DNS (SEPA 2021-010) for the reasons stated herein and either reject and return the application, or remand to the Planning Department for further review and consideration.
3. We request a pre-hearing conference as provided in the Interim Rules of Procedure for land use hearings.