# City of Mukilteo, Washington



Noise Variance
Notice of Approval
(VAR-NOISE-2020-001)
for
Manson Construction on behalf of the

**Washington State Ferries** 

The City of Mukilteo has **APPROVED**, with conditions, a Noise Variance application (City File No. VAR-NOISE-2020-001) for Manson Construction (Manson) on behalf of the Washington State Ferries (WSF) to relocate the concrete floating dolphin from the existing Mukilteo Ferry Terminal to the new Mukilteo Ferry Terminal. The work will occur during certain overnight hours from December 28, 2020 to December 30, 2020.

# **APPLICANT:**

Kelli Rider, Project Engineer Manson Construction Company 5209 E Marginal Way South Seattle, WA 98134

# **DESCRIPTION OF PROJECT:**

Manson is requesting a noise variance to conduct up to two consecutive nights of work between 9:00PM December 28, 2020 through 7:00AM December 30, 2020. The specific hours authorized by this decision, by date, is as follows:

- December 28, 2020: 9:00PM to Midnight
- December 29, 2020: Midnight to 7:00AM and 9:00PM to Midnight
- December 30, 2020: Midnight to 7:00AM

This overnight work request seeks to minimize interruptions to scheduled ferry runs when relocating the concrete floating dolphin from the existing Mukilteo Ferry Terminal to the new Mukilteo Ferry Terminal. WSF is planning to open the new Mukilteo Ferry Terminal on December 29, 2020.

The request for a second day of overnight work (from 9:00PM December 29, 2020 to 7:00AM on December 30, 2020) will only occur if work cannot be completed the prior overnight period. If needed, this second overnight work period would only be conducted at the new Mukilteo Ferry Terminal location.

Only the relocation of the concrete floating dolphin will occur during these overnight hours. The floating dolphin will be disconnected from its anchor chains and towed in water from the existing Mukilteo Ferry Terminal approximately 1/3 of a mile to the new Mukilteo Ferry Terminal. The transport will not be closer to shore than where the existing dolphin is located.

The applicant states that there will be no persons onshore for this work at the existing Mukilteo Ferry Terminal site. The barge boarding will occur at the new Mukilteo Ferry Terminal location. A tugboat will be moving the dolphins between the existing Mukilteo Ferry Terminal and back.

#### LOCATION OF PROPOSAL:

The work will occur at the following in-water locations:

- 700 Front Street Existing Mukilteo Ferry Terminal. Work will be within Section 04 Township 28 Range 04 E.W.M. in Snohomish County, Washington, also known as Snohomish County Assessor Parcel Number 28040400200100 (see Exhibits 1and 2).
- 910 Front Street New Mukilteo Ferry Terminal. Work will be within Section 33 Township 29
  Range 04 E.W.M. in Snohomish County, Washington, also known as Snohomish County
  Assessor Parcel Number 29043300401900 (see Exhibit 3).

A derrick barge will be tied to the existing dolphin and a tugboat will then move the dolphin and barge in water from the existing Mukilteo Ferry Terminal to the new Mukilteo Ferry Terminal location.

#### FINDINGS OF FACT:

- 1. On November 12, 2020, Kelli Rider of Manson Construction (Manson) submitted a noise variance application to the City of Mukilteo on behalf of the Washington State Ferries (WSF).
- 2. Manson is requesting a noise variance to conduct up to two consecutive nights of work between 9:00PM December 28, 2020 through 7:00AM December 30, 2020. This overnight work request is to relocate the concrete floating dolphin from the existing Mukilteo Ferry Terminal to the new Mukilteo Ferry Terminal. Overnight work will minimize interruptions to scheduled ferry runs. WSF intends to open the new Mukilteo Ferry Terminal facility on December 29, 2020.
- 3. The second overnight work period, from 9:00AM December 29, 2020 to 7:00AM on December 30, 2020, will only occur if work cannot be completed the prior overnight. If needed, this second overnight work period would only be conducted at the new Mukilteo Ferry Terminal location.
- 4. MMC Subsection 9.46.080 ("Construction Noise") states:

# "9.46.080 Construction noise.

- A. Prohibited. It is unlawful for any person, firm or corporation to cause, or for any person, firm or corporation in possession of real property to permit, construction noise which is audible on residential, mixed use or retirement home property beyond the property lines of the property on which the construction activity is conducted as follows:
  - 1. Monday through Friday, prohibited before seven a.m. and after nine p.m.
  - 2. Saturdays/Sundays/holidays (defined in RCW 1.16.050), prohibited before nine a.m. and after seven p.m.
- B. "Construction noise" means any sound caused by construction activity including but not limited to site preparation, mobilization, clearing, grading, assembly, erection, demolition, substantial repair, alteration or similar action.
- C. Exemptions shall be in accordance with WAC 173-60-050 and 173-60-080 as adopted in Chapter 8.18."

The applicant proposes to conduct construction activities outside of the hours permitted in MMC subsection 9.46.080(A).

5. In addition to the requirements of MMC 9.46.080 "Construction noise", on April 1, 2014, the City of Mukilteo Hearing Examiner issued a decision for the Washington State Ferries (WSF) to

replace the existing Mukilteo Ferry Terminal with a new terminal and multimodal facility (EPF-2013-001, SH-2013-001). The Washington State Department of Ecology issued its approval of the Shoreline Conditional Use Permit (CUP) on May 19, 2014 (2014-NW-623). The Hearing Examiner/Department of Ecology decision included a condition that placed more restrictive construction noise requirements over that identified in MMC 9.46.080.

# Condition No. 53 of the decisions states:

"53. Construction noise is not allowed between the hours of six (6) p.m. and seven (7) a.m. on weekdays, and five (5) p.m. to nine (9) a.m. on Saturdays. No construction is allowed on Sundays and holidays. WSF may request exemptions from the no-work times for special and unusual circumstances. The City requires a 10-day notice for such a request."

These hours are more restrictive than the City's normal construction hours of seven (7) a.m. to nine (9) p.m. weekdays and nine (9) a.m. to seven (7) p.m. weekends/holidays.

- 6. A conditional approval for alternate construction hours was granted to Manson on October 29, 2020 for work beginning on November 11, 2020 and ending February 15, 2021, with an extension to March 1, 2021 only if applicable regulatory agencies approve an extension of the fish window. Manson's request and the City's October 29, 2020 conditional approval did not authorize construction beyond the City's normal approved construction hours (MMC Subsection 9.46.080), including authorizing any overnight work.
- 7. WAC 173-60-080 "Variances and implementation schedules" states:

#### "WAC 173-60-080

#### Variances and implementation schedules.

- (1) Variances may be granted to any person from any particular requirement of this chapter, if findings are made that immediate compliance with such requirement cannot be achieved because of special circumstances rendering immediate compliance unreasonable in light of economic or physical factors, encroachment [encroachment] upon an existing noise source, or because of non-availability of feasible technology or control methods. Any such variance or renewal thereof shall be granted only for the minimum time period found to be necessary under the facts and circumstances.
- (2) An implementation schedule for achieving compliance with this chapter shall be incorporated into any variance issued.
- (3) Variances shall be issued only upon application in writing and after providing such information as may be requested. No variance shall be issued for a period of more than 30 days except upon due notice to the public with opportunity to comment. Public hearings may be held, when substantial public interest is shown, at the discretion of the issuing agency.
- (4) Sources of noise, subject to this chapter, upon which construction begins after the effective date hereof shall immediately comply with the requirements of this chapter, except in extraordinary circumstances where overriding considerations of public interest dictate the issuance of a variance."
- 8. Manson Construction anticipates sources of noise will be from the following:
  - Welding machines
  - Generators
  - Hand-tools and small power tools

- Engine of the derrick crane
- Engine of the tugboat
- 9. Manson states that the welding machines and generators are expected to be the loudest noise from the construction activities. The noise will range from 70-80 decibels (dBA) within five (5) feet of the machine.

Manson's application also states,

- When working at the existing Mukilteo Ferry Terminal facility, residents of the Losvar Condominiums are approximately 300 feet away and guests at the Silver Cloud Inn are 600 feet away. Noise naturally dissipates and decreases to 25-50 decibels at 300-600 feet away. This sound is expected to be equivalent to rustling leaves at the low end and rain at the high end.
- When working at the new Mukilteo Ferry Terminal facility, residents on the bluff south of the work area are approximately 600 feet away and the Silver Cloud Inn is approximately 1,500 feet away. Noise will naturally dissipate and decrease to 7-25 dBA at 600-1,500 feet away. From the bluff, this sound is expected to be equivalent to rustling leaves. The noise will be partially shielded by the new Mukilteo Ferry Terminal building.
- 10. To mitigate and reduce noise Manson Construction will:
  - Shut off equipment when not in use.
  - Restrict all work to small areas offshore (See Exhibits 1, 2 and 3)
  - Conduct work in such a manner that noise will be partially shielded by the new Mukilteo Ferry Terminal building.
- 11. The derrick crane and tugboat lights are the only lights proposed during this phase of construction. To mitigate lighting impacts, Manson states it will:
  - Position the lights to face the work being performed and will not be turned towards the Losvar Condominiums.
  - Lights not in use will be turned off.
- 12. In accordance with WAC 173-60-080, the City finds that:
  - a. Manson Construction on behalf of WSF has requested the construction noise variance and has submitted an application and information necessary to review the request.
  - b. The variance is necessitated due to the need to relocate the concrete floating dolphin from the existing Mukilteo Ferry Terminal to the new Mukilteo Ferry Terminal for the new Mukilteo Ferry Terminal's scheduled December 29, 2020 opening. Overnight work minimizes disruptions to scheduled ferry service and ridership.
  - c. The variance request identifies that the overnight work will begin at 9:00PM December 28, 2020 and end at 7:00AM on December 30, 2020. The second overnight period is only necessary in case work cannot be completed the first night. This second overnight work period, if needed, will only be at the new Mukilteo Ferry Terminal location.

- d. The noise variance is being granted for specific hours between the dates of December 28, 2020 through December 30, 2020. This is less than a period exceeding 30 days. Notice to the public with opportunity to comment is not required.
- 13. The Mukilteo Community Development Director may grant a variance to the construction noise regulations in accordance with MMC 9.46.080(C) and finds the improvements to the new Mukilteo Ferry Terminal to be essential to the operation of the overall highway system.

#### **DECISION:**

The project was reviewed for consistency with the standards and regulations of the City of Mukilteo and State of Washington Administrative Code and is hereby **APPROVED** subject to the following conditions:

- 1. Manson Construction and/or Washington State Ferries shall provide residents and businesses within 1,000 feet of the existing Mukilteo Ferry Terminal and new Mukilteo Ferry Terminal properties with at least ten (10) calendar day notification prior to the beginning of nighttime work authorized by this variance.
  - a. The notification shall provide a name and contact number for residents/businesses to call in advance of the work should they have questions or comments.
  - b. The notification shall provide a name and contact number for residents/businesses to call and that will be answered during the time the overnight work is taking place in order to respond to questions or comments.
  - c. The City shall have the opportunity to review and comment on the form and content of the notification identified prior to distribution.
- 2. The noise variance is only applicable to the work described in the application. In this case, it is specific to relocation of the floating concrete dolphin from the existing Mukilteo Ferry Terminal to the new Mukilteo Ferry Terminal. No pier demolition or any other construction activity is permitted.
- 3. A copy of this noise variance decision shall be kept on the project site at all times, and available for inspection by City and other regulatory officials upon request.
- 4. Stationary equipment, such as light plants, generators, and compressors shall utilize approved noise mitigation shields, noise blankets, skirts or other means available as approved by the WSF engineer.
- 5. All equipment will be shut off when not in use.
- 6. Lights shall be directed towards the work area and shall not be turned towards residential and hotel uses, including the residential areas on the hill (i.e. "Old Town), Losvar Condominiums and the Silver Cloud Hotel.
- 7. Lights shall be turned off when not in use.
- 8. This noise variance approval shall be valid from 9:00PM December 28, 2020 to 7:00AM on December 29, 2020 and, if needed, from 9:00 PM on December 29, 2020 through 7:00 AM on December 30, 2020. Any work requiring a noise variance outside of these hours or dates shall require a new noise variance application.

9. Should an appeal of this decision be filed, work authorized under this decision is not permitted until such time the appeal is decided. Any work done prior to the end of the appeal period shall be at the applicant's own risk and shall cease if an appeal is filed.

# **APPEALS:**

Any person aggrieved by the granting of this variance may appeal the decision to the Pollution Control Hearings Board, pursuant to RCW 43.21B under the procedures of WAC 371-08.

A copy of the Notice of Approval is available for public to view on the City's website at <a href="http://www.mukilteowa.gov/land-use-action-notices">http://www.mukilteowa.gov/land-use-action-notices</a> (File No. VAR-NOISE-2020-001).

**CONTACT PERSON:** 

Linda Ritter, Senior Planner

City of Mukilteo 11930 Cyrus Way Mukilteo, WA 98275 (425) 263-8043 Iritter@mukileowa.gov

MANSON CONSTRUCTION CONTACT:

Kelli Rider, Project Engineer Manson Construction Company 5209 E. Marginal Way S.

P.O. Box 24067 Seattle, WA 98124 (206) 516-9576

krider@mansonconstruction.com

**DATE OF ISSUANCE:** 

December 11, 2020

Signature: David Osaki

Community Development Director

PC:

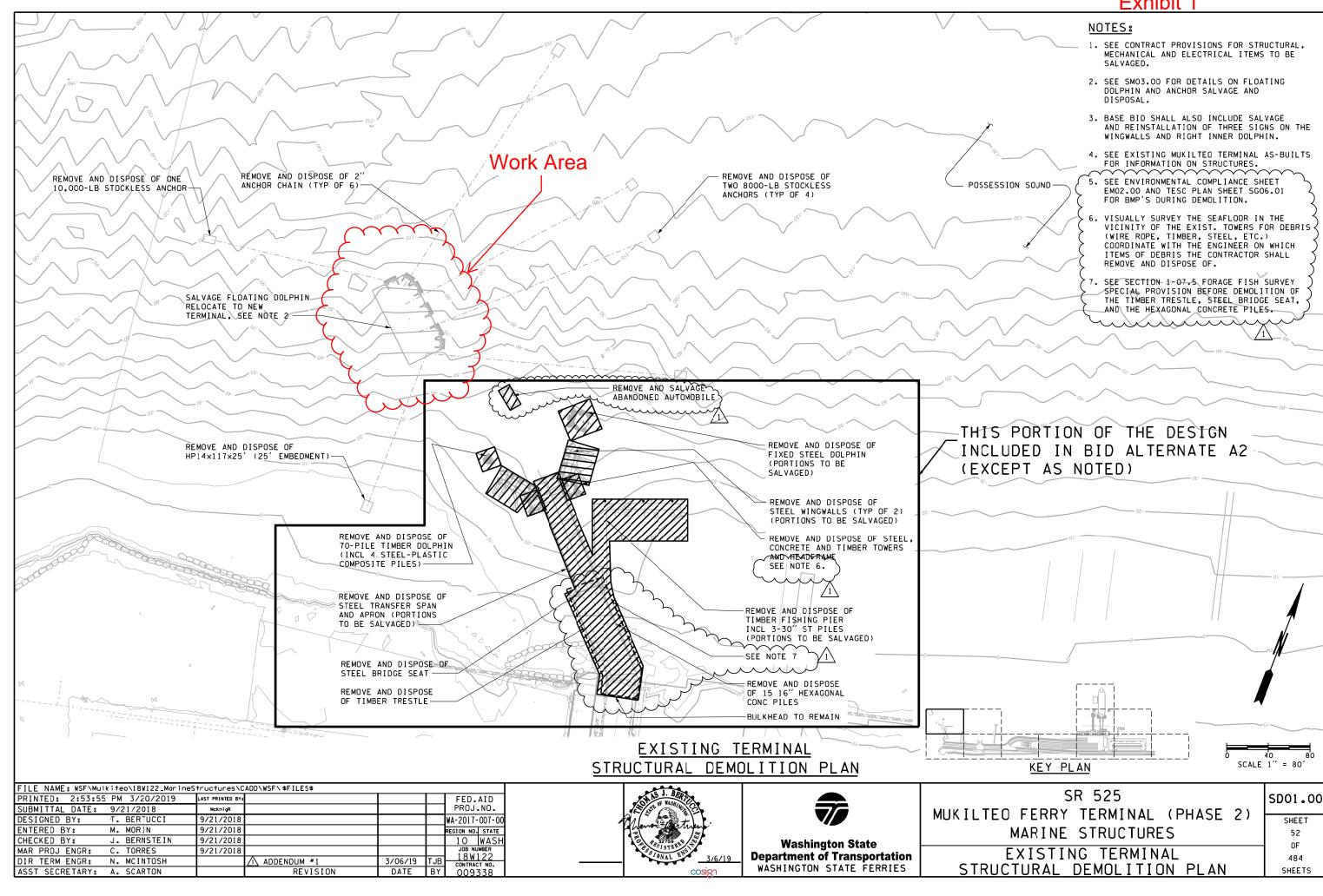
Applicant Parties of Record Community Development Director

Police Chief Permit Services File Copy (2)

Date:

12/0/2020

# Exhibit 1



# Exhibit 2



