



City of Mukilteo, Washington

Noise Variance Notice of Approval (VAR-ADMIN-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-ADMIN-2020-001) for work activities associated with the installation of structural steel components of the new Mukilteo Ferry Terminal Facility building, an Essential Public Facility (EPF). The work will occur during low tides between January 27, 2020 and February 15, 2020, except Sundays.

APPLICANT:

Monica Blanchard
Manson Construction
5209 E. Marginal Way S
Seattle, WA 98134

DESCRIPTION OF PROJECT:

Manson Construction, on behalf of the Washington State Ferries, is requesting a noise variance to conduct work from January 27, 2020, through February 15, 2020, that exceeds the noise limits established in Mukilteo Municipal Code (MMC) Chapter 8.18 (Noise Control) outside of the City's approved 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.

This request also is to allow work outside of the more restrictive construction work hours set forth in Condition #53 of the Hearing Examiner's April 1, 2014, decision of approval 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 Department of Ecology issued its approval of the Shoreline Substantial Development Permit (SDP) 2014-NW-1998 and the Shoreline Conditional Use Permit (CUP) 2014-NW-623 on May 19, 2014.

The Hearing Examiner's/Department of Ecology's decision provides that 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. Under Condition #53, WSF is to request exemptions from the no-work times for special and unusual circumstances with a 10-day advance notice.

A prior noise variance request (City File No. VAR-ADMIN-2019-002) from Manson Construction was approved November 19, 2019 and allowed for nighttime construction for 16 non-consecutive days beginning December 9, 2019 until January 25, 2020 only. A condition of that approval required a new noise variance application should there be any work requiring a noise variance after the January 25, 2020 date.

This request to work outside of the Municipal Code hours/Hearing Examiner approved hours from January 27, 2020 through February 15, 2020 is due to the continued need for overnight welding activities to occur. Manson Construction has verbally indicated that it has fallen behind schedule during the

holiday season. Welding activities still need to occur during extreme low tides. The tide will need to be several feet below the welding locations for an extended period of time for workers to access the location and ensure welds meet WSDOT specifications.

Low tides are projected to occur between the hours of 6:00 p.m. and 4:00 a.m. during the January 27, 2020 through February 15, 2020 time period. The applicant is not proposing to work on Sundays.

LOCATION OF PROPOSAL:

The work is in the City of Mukilteo, 910 Front Street, which is the location of the new Mukilteo ferry terminal construction site. 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.

FINDINGS OF FACT:

1. Ms. Monica Blanchard of Manson Construction submitted a noise variance application request on behalf of the Washington State Ferries (WSF) to the City of Mukilteo on January 6, 2020.
2. Manson Construction will conduct work during extreme low tides beginning Monday January 27, 2020, through February 15, 2020, to perform welding and supporting work activities associated with the installation of structural steel components of the new Mukilteo Ferry Terminal Facility building, an Essential Public Facility (EPF). No work will be conducted on Sundays.
3. Manson Construction requested the additional days as the contractor fell behind schedule during the holiday season. Welding activities still need to occur during extreme low tides before the in-water work is suspended. No in-water work can occur from February 16, 2020 through the end of July 2020.
4. Some of the work is planned during nighttime and early morning, as the tide will need to be several feet below the welding locations for an extended period of time for workers to access the location and ensure welds meet WSDOT specifications. During the January 27, 2020, through February 15, 2020, time period, low tides will occur between approximately 6:00 p.m. and 4:00 a.m.
5. The welding machines are expected to be the loudest noise from the construction activities. The noise will range from 70-80 dBA within five (5) feet of the machine. Residents on the bluff south of the work area are approximately 600 feet away. The Silver Cloud Inn is approximately 1,500 feet away from the work area. Noise will naturally dissipate and decrease to 7-25 dBA at 600-1,500 feet away from the welding machines.
6. To mitigate or reduce noise Manson Construction will minimize the use of any loud equipment and shut it off when not in use. All work performed will be located in a small area offshore and noise will be partially shielded by the ferry terminal building that is currently under construction.
7. Manson Construction anticipates the source of noise will be from the following:
 - Welding operations and the welding machines
 - Use of hand-tools hitting steel
 - Engine of the Derrick Crane
 - Small power tools, such as grinders and cutters
8. MMC Subsection 9.46.080 (“Construction Noise”) states:

(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.”

11. 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 the information necessary to review the request.
- b) The variance is necessitated by the need to physically work during extreme low tides. The tides will need to be several feet below the welding locations for an extended period of time for workers to access the location and ensure welds meet WSDOT specifications. During the January 27, 2020, through February 15, 2020, time period, low tides will occur between 6:00 p.m. and 4:00 a.m.
- c) The noise variance is being granted between the dates of January 27, 2020 through February 15, 2020 only. Sunday work is not allowed.

12. Manson Construction has proposed the following mitigation measures during construction:

- a) Minimize the use of loud equipment to complete work as necessary.
- b) Equipment will be shut off when not in use.
- c) All work performed will be located in a small area off-shore and noise will be partially shielded by the ferry terminal building that is currently under construction.

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.

PROJECT 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 new Ferry Terminal property with at least ten (10) calendar days 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 case they have questions or complaints.
 - b. The City shall have the opportunity to review and comment on the form and content of the notification identified prior to distribution.

“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).

- 9. In addition to the requirements of MMC 9.46.080 “Construction noise”, on April 1, 2014, the Mukilteo Hearing Examiner issued a decision on an Essential Public Facilities Permit and Shoreline Conditional Use Permit request to replace the Mukilteo Ferry Terminal with a new terminal and multimodal facility. The Department of Ecology issued its approval of the Shoreline Substantial Development Permit (SDP) 2014-NW-1998 and the Shoreline Conditional Use Permit (CUP) 2014-NW-623 on May 19, 2014.

That 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 that decision 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.”

The WSF request was received January 6, 2020, which more than 10 days prior to the start of the work necessitating the noise variance/exemption.

- 10. 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. The noise variance is only applicable to the work described in the application.
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. The public shall be provided with a WSDOT-WSF complaint number as well as a list of designated contact persons for the purpose of forwarding or responding to questions or complaints.
5. 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.
6. All equipment will be shut off when not in use.
7. No work shall be permitted on Sundays.
8. This noise variance approval shall be valid until February 15, 2020 only. Any work requiring a noise variance after that date shall require a new noise variance application.
9. Should an appeal of this decision be filed, work shall stop immediately 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.

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.

Copies of the Notice of Approval are available from the City of Mukilteo, Community Development Department, 11930 Cyrus Way, Mukilteo, WA 98275. Contact: Linda Ritter, Senior Planner (425) 263-8043.

CONTACT PERSON:


Linda Ritter, Senior Planner
 City of Mukilteo
 11930 Cyrus Way
 Mukilteo, WA 98275
 (425) 263-8043

MANSON CONSTRUCTION CONTACT:

Monica Blanchard, P.E., Project Manager
 Manson Construction Company
 5209 E. Marginal Way S.
 P.O. Box 24067
 Seattle, WA 98124
 (206) 913-7498

DATE OF ISSUANCE:

January 16, 2020

Signature:  Date: 1/16/20
 David Osaki
 Community Development Director

PC: Applicant Parties of Record Community Development Director Fire Chief Police Chief Permit Services File Copy (2)