



11930 Cyrus Way
Mukilteo, WA 98275
(425) 263-8000

Notice of Decision

61st Place West Culvert Improvement Project

North end of 61st Place W at 88th Street SW

SUMMARY OF DECISION:

The City of Mukilteo issues this Notice of Decision as required by Revised Code of Washington (RCW) 36.70B.130 and Mukilteo Municipal Code (MMC) 17.13.080, and has made the following decision:

- DECISION:** Approved, subject to conditions
- NOTICE DATE:** Friday, March 11, 2022
- APPEAL PERIOD:** Ends Friday, March 25, 2022 (4:30 p.m.)
- EXPIRATION:** March 11, 2026

PROJECT NAME: 61st Pl W Culvert Improvement Project (File Nos. PPR-2021-003 / ENG-2021-005 / CAR-2021-003 / SEPA-2021-004)

PROPONENT: City of Mukilteo Public Works Department

DESCRIPTION OF PROPOSAL: Proposal is to replace a 54-foot long, 24-inch diameter multi-sloped corrugated metal pipe culvert, with a new 40-foot long, 8-foot wide, 6.8-foot tall box culvert. The existing culvert is located underneath the north end of 61st Pl W at 88th Street SW (private road) and is 650 feet upstream from the Smuggler's Gulch Creek outlet to Puget Sound and is a complete fish passage barrier. Smuggler's Gulch Creek is a Type 4 stream as regulated by the City of Mukilteo.

The culvert will be repositioned south of its original location, 325 linear feet of stream channel will be recreated, and the existing road will be raised a maximum of 2 feet to accommodate the new culvert's size, the site's steep topography, and an existing 8-inch diameter sanitary sewer line running along the roadway under the existing culvert.

Areas of the stream bank and streambed within 75 feet upstream and 250 feet downstream of the roadway will be stripped of harmful material. Imported streambed fill will be placed so that these portions of the stream are restored consistent with a historical meandering stream channel. The streambed will be lined with original- and locally-sourced streambed materials to a two-foot minimum and five-foot maximum depth. Boulders will be placed at the new culvert's inlet and outlet to control displacement of the streambed.

The existing culvert and portion of road directly over the culvert would be removed. A foundation for the new box culvert would be installed and the new concrete culvert placed on the foundation. Gabion basket wingwalls will be installed to reinforce the culvert ends and to support the raised roadway. The road would be rebuilt and paved, and traffic barriers on the downstream and upstream sides of the culvert will be installed. Concrete gutters and vegetated roadway ditches will be built along the roadways edges to manage roadway runoff.

Plants will be installed in three geographic zones as identified on Sheets P1-P3 (“Upland Planting Plan”) of the plans submitted May 17, 2021. The plantings identified for each zone are as follows:

- **Zone 1** depicts areas directly adjacent to the stream that are proposed to be planted with red alder, Douglas fir, western red cedar, willows, twinberry, salmonberry, Indian plum, vine maple, and sword fern;
- **Zone 2** depicts the areas farther from the stream that are proposed to be planted with red alder, Douglas fir, western red cedar, salmonberry, and snowberry, Indian plum, vine maple, and sword fern; and
- **Zone 3** is the drainage channel from 88th St SW (private road) to the stream that and is proposed to be hydroseeded with grass and clover species.

The plantings and work outside of the stream channel shall occur during the City’s regulated dry season of May through September. Any work within the stream channel will occur during the in-water work window of July 16th through September 15th when the stream is expected to be dry.

State Environmental Policy Act (SEPA) review was required for the grading quantities in excess of 1,000 cubic yards and work within the creek. A Mitigated Determination of Non-Significance (MDNS) was issued on February 4, 2022. No comments or appeals were filed.

LOCATION: North end of 61st Place W. at 88th Street SW on the following parcels:

- **9025 61st Place W**, Mukilteo WA, otherwise known as Snohomish County Assessor Parcel No. 00536900001101, and legally described as:

Section 17 Township 28 Range 4 Quarter NE OLYMPUS TERRACE ASSR PLAT OF BLK 000 D-01 - LOT 11 EXC PTN DAF: BEG SW COR SD LOT 11 TH N ALG W LN 117.69FT TO INT ELY MGN CO RD TH N57*06 29E 171.46FTT

- **6026 88th Street**, Mukilteo WA, otherwise known as Snohomish County Assessor Parcel No. 00464800001200, and legally described as:

HARGREAVES & BAIR W F TRACTS BLK 000 D-00 - TR 12 INCL PRIV RD SUBJ TO ESE PUD 1LESS TH PTN LOT 12 ENCOMPASSING AN EXST RDWY APPROX 30FT IN WIDTH THE C/L OF WH M/L FOL THE FOLG DESC LN BEG SE COR PLAT OF HARGREAVES & BAIR WATERFRONT TRTH N85*49 30W 204.32FT TPB TH ANG R 48*02 30 FOL ARC OF CRV TO L HAVING RAD OF 66.76FT CONS AN ANG OF 5*28 30 AN ARC DIST OF 6.38FT TH N48*42 52W 130. 76FT TH ANG L 180* FOL ARC OF A CRV TOR HAVING RAD OF 46.39FT CONS AN ANG OF 135*54 22 AN ARC DIST OF 110.04FT TH S85*49 30E 136.77FT TPB

- **Smuggler's Gulch HOA Private Road**, Mukilteo WA, otherwise known as Snohomish County Assessor Parcel No. 00464800001201, and legally described as:

HARGREAVES & BAIR W F TRACTS TH PTN LOT 12 ENCOMPASSING EXST RDWY APPROX 30FT IN WIDTH THE C/L OFWH M/L FOL THE FOLG DESC LN BEG SE COR PLAT OF HARGREAVES & BAIR WATERFRONT TR TH N85*49 30W 204.32FT TPB TH ANG R 48* 02 30 FOL ARC OF CRV TO L HAVING RAD OFCONS AN ANG OF 5*28 30 AN ARC DIST OF 6.38FT TH N48*42 52W 130.76FT TH ANG L 180* FOL ARC OF A CRV TO R HAVING RAD OF 46.39FT CONS AN ANG OF 135*54 22 AN ARC DIST OF 110.04FT TH S85*49 30E136.77FT TPB

- **8926 61st Place W**, Mukilteo WA, otherwise known as Snohomish County Assessor Parcel No. 00536900001200, and legally described as:

OLYMPUS TERRACE ASSR PLAT OF BLK 000 D-00 - LOT 12 TGW 1/20TH INT IN LOT 14 & TGW 1/20 INT IN FDT S 660FT OF FDT ALL TDLNDS OF 2ND CLASS SITUATED IN FRONT OF ADJ TO OR UPON TH PTN OF GOVT MEA LN DAF BAAP ON MEA LN IN FR OF GOVT LOT 1 SEC 17-28-4 FR WH THEMEA COR TO SEC 16 & 17 BEARS N37*30 00E 2 CH & N31*45 00E 2.23 CH DIST TH FR SD POB RUN S37*30 00W 16.19CH TO TERMINAL PT OF THIS DESC BEING TOTAL OF 16.19CH

- **Smuggler's Gulch Vacant Parcel**, Mukilteo WA, otherwise known as Snohomish County Assessor Parcel No. 00536900001300, and legally described as:

Section 17 Township 28 Range 04 Quarter NE OLYMPUS TERRACE ASSR PLAT OF BLK 000 D-00 - TH PTN LOTS 13 & 16 OF SD PLAT EXC TH PTN LY SLY OF FDL BEG SW COR SD LOT 15 TH N02*51 00E ALG W LN SD LOT 187.72FT & BEG OF AFORMND LN TH S72*30 35E 169.39FT TO E LN SD LOT 16 & TERM SD LN DESC ALSO EXC W 3.00FT OF SD LOT 16 LY N OF SD LN ALSO EXC FDT BEG NW COR LOT 15 TH ELY ALG S LN LOT 13 100FT THNLY ALG A LN PLT E LN LOT 16 TO INT WITH N BDY LOT 13 TH WLY ALG N BDY LN LOT 13 TO TPB PER CITY MUK LLA NO 85-3 REC AFN 8502280324 TGW A PORPORTIONATE INT IN UND 2/20 INT IN LOT 14 & ALSO TGW APORPORTIONATE UND 2/20 INT IN FDP S 660FT OF TLDS OF 2ND CLASS TO EXTREME LOW TIDE SIT IN FRONT OF ADJ TO OR ABTG ON TH PTN GOVT LOT 1 SEC 17-28-4 DAF BAAP ON MEA LN IN FRONT OF SD LOT 1 FR WH MEA COR OF SECS 16 & 17 BEARS N37 30 00E 132FT (2 CHS) & N31 30 00E 147.18FT (2.23 CHS) DIST FR SD POB TH S37 30 00W 1068.54FT (16.19 CHS) TO TERM PT THIS DESC

PROJECT DECISION:

Staff administratively reviewed this project for consistency with the policies, standards, and regulations of the City of Mukilteo. After considering comments by the public and/or other agencies, the project permit is hereby **approved with conditions** based on the following:

FINDINGS OF FACT

Consistency with Mukilteo Development Regulations and Permitting Procedures:

1. The existing culvert at 61st Place W, south of 88th Street SW, has become blocked during periods of high rain, resulting in stormwater overflowing the road.
2. As part of a legal settlement in mid-2014, the City of Mukilteo (“City”) agreed to program the improvement of the existing culvert in the 2015 City budget. During project design, the City encountered several unanticipated obstacles, including poor soil conditions and a fish passage requirement by the Washington Department of Fish and Wildlife (WDFW), the U.S. Army Corps of Engineers (USACE), and the Tulalip Tribes.

3. Redesign of the project began in 2018 to include a fish passable culvert and stream enhancements both upstream and downstream of the culvert. The design was approved by the USACE in July 2020 and by WDFW in May of 2021. Both reviews included input from the Tulalip Tribes.
4. The City also received approval from the USACE on July 20, 2020, to excavate 200 cubic yards of material, place 50 cubic yards of fill, place 200 cubic yards of streambed gravel, replace the culvert and relocate a segment of the stream in Smuggler's Gulch Creek.
5. Removing, excavating, disturbing or dredging soil, sand, gravel, minerals, organic matter or materials of any kind is a regulated activity as described in Mukilteo Municipal Code (MMC) Section 17.52C.040.
6. The applicant received a Hydraulic Permit Approval (HPA) permit from the WDFW on May 26, 2021. WDFW HPA permit conditions include that work below the ordinary high-water line shall occur between July 16th and September 15th of a given year and that work under its permit shall be completed by May 25, 2026.
7. The supporting documents listed below have been submitted for review by the City:
 - Environmental Checklist, prepared by Connie Bowers, P.E., City of Mukilteo, dated April 2, 2021, and submitted to the City on April 6, 2021
 - 61st Place W Culvert Replacement Plans prepared by Tuttle Engineering and Management, dated April 12, 2021, and submitted to the City on May 17, 2021
 - 61st Place W Culvert Improvement Project Stormwater Report prepared by Matt Randall, P.E., of Tuttle Engineering and Management, dated March 29, 2019, and submitted to the City on April 28, 2021
 - 61st Place W Culvert Improvement Surface Exploration and Geotechnical Assessment prepared by Tuttle Engineering and Management, dated April 16, 2015, and submitted to the City on May 14, 2021
 - 61st Place W Culvert Improvement Project Gabion Wall Design Technical Memorandum prepared by Matt Miller, P.E., Associated Earth Sciences Inc., dated September 17, 2015, and submitted to the City on April 28, 2021
 - 61st Place W Culvert Improvement Project Critical Areas Report, prepared by Northwest Environmental Consulting, LLC, dated February 2019 and submitted to the City on April 28, 2021
 - U.S. Army Corps of Engineers Permit NWS-2019-249, issued on July 20, 2020, and submitted to the City on April 6, 2021
 - Washington State Department of Fish and Wildlife Permit Number 2021-4-344+01 issued on May 26, 2021 and submitted to the City on September 13, 2021
8. A Notice of Application was issued on June 18, 2021, with a 14-day comment period that closed on July 2, 2021.
9. The City of Mukilteo received two (2) comments in response to the Notice of Application.
 - The first comment was from the Mukilteo Water and Wastewater District stating *"the District has secured funds to upgrade the portion of gravity sewer main, in the project area, via Participation Agreement with the City. The District utilizes an easement, just south of the project, through the driveway at 8926 61st Place W. to access our Lift*

Station No. 5 site for both routine maintenance and emergency purposes. Maintaining this access 24/7 is of the utmost importance to the District.

The District has awarded the Lift Station 5 Upgrade Project to McClure & Sons Inc. They are scheduled to mobilize to the site the first week of July 2021. The project is anticipated to be complete early 2022. The District and our contractor will coordinate any conflicts with the City and their contractor for the project, should any arise.”

- The second comment is from Snohomish County Public Utility District No. 1 (PUD) requesting the City identify any potential conflicts with existing Snohomish PUD electrical facilities and work with Distribution Engineering for any required relocations.
10. The project will impact Smuggler’s Gulch Creek which is a City regulated Type 4 stream. The project must comply with the requirements of MMC Chapter 17.52C entitled “Fish and wildlife habitat conservation areas (outside shoreline jurisdiction)” including but not limited to the preparation of a Biological/Habitat Report (i.e. critical areas report).
 11. The 61st Place W Culvert Improvement Project Critical Areas Report, prepared by Northwest Environmental Consulting, LLC, documents critical areas in the project area, critical area impacts, proposed mitigation, mitigation goals, performance standards and proposed monitoring, reporting and contingency actions. The City finds the Critical Areas Report acceptable; except that, the report incorrectly recommends a monitoring period and a monitoring report submittal date that does not meet Mukilteo Municipal Code requirements. Monitoring periods and report submittals shall instead meet the requirements of MMC section 17.52C.150 (“Monitoring and contingency plan”).
 12. The 61st Place W Culvert Improvement Project Critical Areas Report states that Smuggler’s Gulch Creek is “...seasonal, and is usually dry during summer months” and that critical areas mitigation plantings are to occur during the dry season when the stream will not be flowing to avoid impacts to the stream’s water. The Mukilteo Municipal Code provides for a dry season of May 1 through September 30 (outside of the wet season of October 1 to April 30). The project’s HPA permit establishes more restrictive time frames for that portion of the project work below the ordinary high-water line (see Finding #6 above).
 13. The Mitigated Determination of Significance (MDNS) is issued in accordance with the substantive authority described in MMC 17.84.160 on February 4, 2022.
 14. No appeal of the SEPA determination was submitted and the threshold determination stands as issued.
 15. Staff administratively reviewed this project for consistency with all applicable requirements of Mukilteo’s 2019 Development Standards, including but not limited to drainage, clearing, grading, erosion control, access and street standards.
 16. This property lies inside the 55 Decibel Day-Night Average Sound Level (DNL) noise contour of Paine Field Airport. Federal Aviation Administration (FAA) approval is not required for this project as no structures are being proposed.

Consistency with Mukilteo Comprehensive Plan:

17. The property is designated single-family residential low-density in the City’s 2019 Comprehensive Plan.

18. Staff administratively reviewed this project for consistency with the goals, objectives and policies of the Comprehensive Plan. Based on this review, staff has determined that development of the project will conform to the following applicable Comprehensive Plan policies:

- LU9: The City shall manage and regulate development in critical areas and the shoreline to allow reasonable and appropriate uses in those areas while protecting them against adverse effects and shall regularly evaluate these regulations and programs to ensure they continue to use the best available science to protect environmentally sensitive areas from negative impacts associated with development.
- LU9a: These wetlands and other critical areas which contribute to the City's stormwater management program should be protected by delineating their locations, adopting relevant land use regulations, purchasing of development rights, and other protective techniques.
- LU9b: Maintaining the natural hydrological functions of each watershed, and where appropriate and possible, restoring them along with freshwater and marine habitats to a more natural state and ecological functionality should be a consideration of all City of Mukilteo actions.
- UT7: Surface water management planning and operations shall comply with City, State, and Federal surface water regulations and be consistent with the City of Mukilteo Comprehensive Plan.
- UT7d: Drainage, flooding, and stormwater run-off impacts shall be minimized to the maximum extent practical in land use development proposals and City operations.
- UT8: Streams and wetlands should be an integral part of the stormwater management program, provided they are protected from the negative impacts created by altered flow regimes and pollutant sources.

CONDITIONS OF PROJECT APPROVAL

The City may attach conditions to the approval of permits as necessary to ensure consistency of the project with the City regulations and the comprehensive plan (MMC 17.13.080).

When permit approval is based on conditions, such conditions shall be satisfied prior final approval of the construction, use or activity (MMC 17.13.030(F)). Any violation of the conditions below are considered a violation of the permit and may be subject to the City's code enforcement procedures.

General

1. All improvements shall be constructed in accordance with the Site Plan submitted on October 13, 2021 and approved on February 2, 2022. Minor modifications of the plans submitted may be approved by the Community Development Director if the modifications do not change the Findings of Fact or the Conditions of Approval.
2. Final engineering drawings depicting the street improvements and drainage design shall be submitted to the City's Public Works Director for final review and approval before issuance of any engineering permits. The street and drainage improvements shall be designed in accordance with the City's Development Standards.

Mitigated Determination of Non-Significance (MDNS)

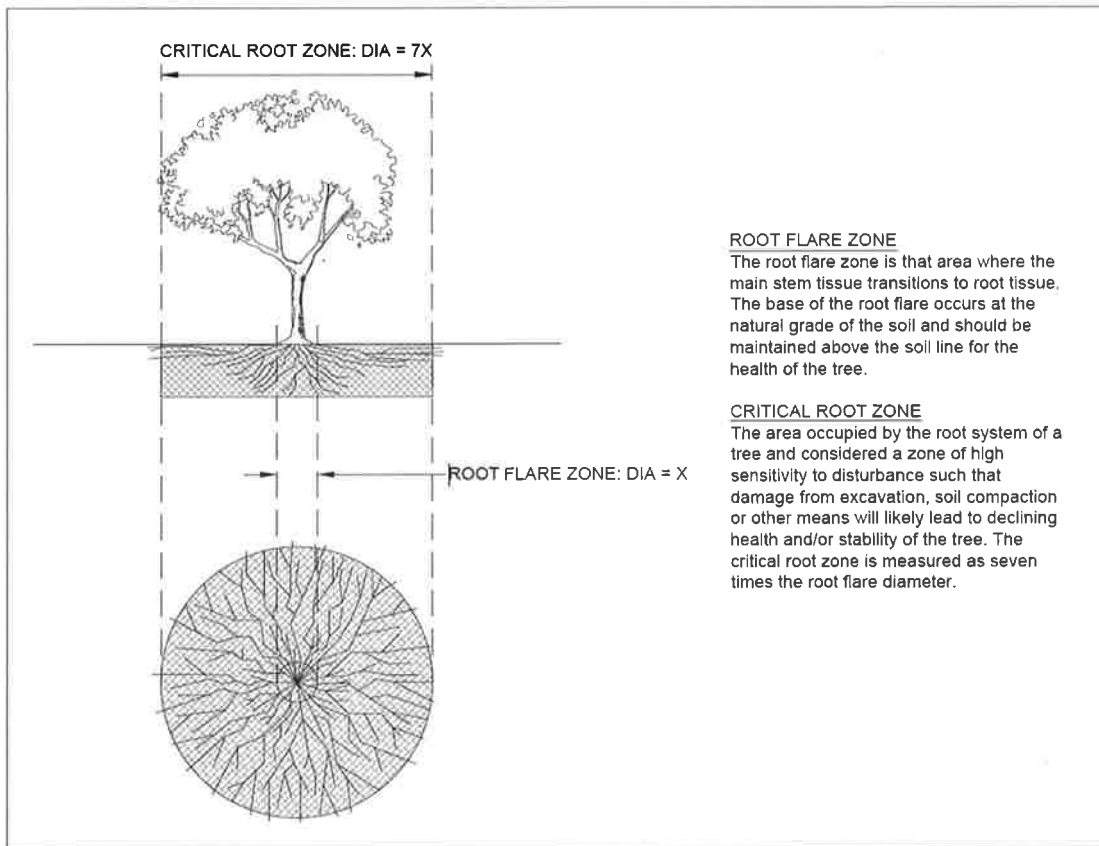
3. The planting and other recommendations of the Critical Areas Report prepared by Northwest Environmental Consulting, LLC dated February 2019 shall be met; except that, the monitoring period and monitoring report submittal date shall instead meet the requirements of MMC section 17.52C.150 ("Monitoring and contingency plan). Other Mukilteo Municipal Code critical areas requirements not specifically addressed in the Critical Areas Report including, but not limited to, acceptable surety devices and long-term maintenance shall also be met.
4. All development shall proceed in accordance with the recommendations listed in the Geotechnical Report dated April 16, 2015, prepared by Associated Earth Sciences Incorporated.
5. All development shall proceed in accordance with the HPA permit number 2021-4-344+01 issued by the WDFW on May 26, 2021.
6. Work below the ordinary high-water line shall occur between July 16th and September 15th of a given year.
7. Work under this permit shall be completed by May 25, 2026.
8. Work shall be done in accordance with the approved USACE Permit NWS-2019-249. If the authorized work has not been completed by March 18, 2022, and the applicant has commenced or is under contract to commence this activity before March 18, 2022, the applicant has until March 18, 2023, to complete the activity under the terms and conditions of the USACE Permit NWS-2019-249.
9. The applicant shall comply with other applicable codes and requirements.

Stormwater

10. Prior to issuance of the Engineering Permit, submit for review and approval the following:
 - a. Clearly mark on the civil plan set which trees shall be retained and call out plan for tree and tree root system protection for retained trees that uses these methods (found on page 86 of 2019 MDS):
 - i. Reducing soil compaction during the construction phase by protecting critical tree root zones; and
 - ii. Prohibiting the stockpiling or disposal of excavated or construction materials in the vegetation retention areas to prevent contaminants from damaging vegetation and soils; and
 - iii. Avoiding excavation or changing the grade near trees that have been designated for protection. If the grade level around a tree is to be raised, a dry rock wall or rock well shall be constructed around the tree. The diameter of this wall or well should be at least equal to the diameter of the tree canopy plus five feet; and
 - iv. Restricting trenching and excavation in critical tree root zone areas (See Figure 3 – Tree Protection During Construction); and

- v. Encountering roots over three (3) inches in diameter during excavation. If during construction/excavation, tree roots are encountered which are over three (3) inches in diameter that need to be cut, a licensed arborist and certified tree risk assessor shall evaluate and provide direction to the contractor on what steps to take, and a report on the evaluation shall be provided to the City.
- vi. Preventing wounds to tree trunks and limbs during the construction phase. In the event that a tree is damaged during construction, a licensed arborist shall conduct a risk assessment and determine if replacement is needed.

Tree Protection During Construction



- 11. Detailed plan for erosion and sediment control BMPs, including project sequencing (i.e. according to phases such as bridge/roadwork versus in-channel construction or restoration work). Plan shall address all elements of Minimum Requirement No. 2 of the Stormwater Management Manual for Western Washington (2014), which may include but not be limited to:
 - a. A dewatering plan in the erosion control plan. Even if the project anticipates a dry channel, contingency for dewatering shall be included
 - b. Address instream work in the erosion control plan
 - c. Include sequencing information for the road/bridge work and the instream restoration work.

Utilities

12. The cost of any work, new or upgrade, to the existing electric system and facilities that is required to connect the project to the Snohomish County PUD electric system shall be in accordance with applicable Snohomish County PUD policies.
13. Access to and from Lift No. 5 shall be maintained at all times for the Mukilteo Water and Wastewater District.

Access to the Project Site

14. Use of the private roadway for access to the project site is prohibited. Access to the construction site shall be from 92nd St SW to 61st Pl W only.
15. Access to the existing homes in the area shall be maintained at all times during construction.

Miscellaneous

16. Construction noise is not allowed between the hours of six (6) p.m. to seven (7) a.m. on weekdays, and no construction is allowed on weekends and holidays.
17. All contractors and subcontractors working on the project described herein shall obtain a business license from the City before initiation of any site work.
18. If at any time during clearing, grading and construction the streets are not kept clean and clear, all work will stop until the streets are cleaned and maintained in a manner acceptable to the Public Works Director.
19. The applicant shall have a licensed Civil Engineer prepare and/or supervise the preparation of As-Built drawings to be reviewed, approved and signed by the City Engineer upon satisfactory installation of the constructed infrastructure improvements and site work. One (1) reproducible, one (1) signed Mylar drawing and one (1) 11"x17" reduced copy of the drawings shall be submitted prior to final approval of the proposed project.

EXPIRATION

1. A grading permit must be obtained within four (4) years from the date of this Notice of Decision (MMC 17.030.030(G)).
2. If a grading permit is not obtained within this period, the project permit shall become null and void, and a new project permit application is required.
3. The Community Development Director may grant an extension to the approval date for a period of one (1) year if such is requested prior to the expiration of the project permit.

APPEALS

Any Party of Record may appeal this project decision by filling out the appeal form and submitting it with the appeal fee to the City of Mukilteo Community Development Department, 11930 Cyrus Way, Mukilteo, WA 98275 by mail, personal delivery to the drop box outside City Hall, or other method, during normal business hours by **4:30 p.m., Friday, March 25, 2022.**

Parties of record include the applicant, any person who testified at the open record hearing on the application (if a public hearing was held), and/or any person who submitted written

comments concerning the application (excluding persons who have only signed petitions or mechanically produced form letters).

City Hall is currently open Monday through Thursday from 7:30 AM-5:00 PM. The building is closed for lunch from 12-1 PM and closed to the public on Fridays. Comments must be delivered in person, by mail, personal delivery to the drop box outside City Hall or by email to lr Ritter@mukilteowa.gov. City Hall is located at 11930 Cyrus Way, Mukilteo, WA 98275. Please call City Hall (425) 263-8000 during regular business hours and arrangements can be made to submit an appeal.

All supporting documents are available on the City of Mukilteo website at <https://mukilteowa.gov/land-use-action-notices/> or by request from the City of Mukilteo Community Development Department via email (permittech@mukilteowa.gov) or phone (425) 263-8000.

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation. For information regarding property valuations and/or assessments, contact the Snohomish County Assessor's Office at (425) 388-3433.

Contact Person: Linda Ritter

(425) 263-8043


Linda Ritter, Senior Planner, Planning & Community Development

3-7-22

Date


Matt Nienhuis, Director, Public Works

3/7/2022

Date



Location Map

pc: Applicant/Representative
 Reviewing Agencies
 Interested Parties

CDD Director
 Permit Services Coordinator
 Permit Services Assistants (2)

Property File
 Property Owners (300')

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