



City of Mukilteo, Washington

Noise Variance Notice of Approval (VAR-NOISE-2021-002) for IMCO 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-2021-002) for IMCO General Construction on behalf of the Washington State Ferries (WSF) for a maximum of six (6) overnight work shifts between 9:00 PM on March 15, 2021 to 7:00 AM on May 1, 2021. To minimize impacts to local and ferry traffic in the vicinity of State Route (SR) 525 and Front Street, IMCO plans to complete work on Monday, Tuesday or Wednesday nights to the maximum extent possible.

APPLICANT:

Nick Miller, Project Manager
IMCO General Construction
2116 Buchanan Loop
Ferndale, WA 98248

DESCRIPTION OF PROJECT:

IMCO General Construction is requesting a noise variance to install underground electrical conduit beneath SR 525, remove asphalt, repave portions of SR 525 between the railroad bridge and the intersection of SR 525 and Front Street, and stripe the new asphalt.

This overnight work noise variance request seeks to minimize interruptions to local and ferry traffic.

LOCATION OF PROPOSAL:

All work will be within Section 33 Township 29 Range 04 E.W.M. in Snohomish County, Washington (see **Exhibit 1**). All work is located between the SR 525 bridge over the BNSF railway and the former ferry terminal location at the north end of the intersection of Front Street and SR 525. Specific work will occur at the following locations:

Electrical Cross Over: Two trenches will be dug perpendicular to SR 525, approximately 25 ft. north of the north end of the bridge over the BNSF railway.

Asphalt Removal: Asphalt removal will occur for a portion of the northbound right-turn only lane within SR 525 adjacent to the location of the former ferry terminal toll booths.

Paving and Striping: Paving and striping will occur for the entire width of SR 525 from the north end of the SR 525 bridge over the BNSF railroad to the northern edge of the SR 525 and Front Street intersection.

This work is permitted under City of Mukilteo Permit No. ENG-2017-035 for work under Phase 2D of the Mukilteo Multimodal Ferry Terminal project, including traffic control. Access for businesses, residents and visitors will be provided during work hours.

FINDINGS OF FACT:

1. On February 4, 2021, Nick Miller of IMCO General Construction (“IMCO”) submitted a noise variance application to the City of Mukilteo on behalf of the Washington State Ferries (WSF).
2. IMCO’s noise variance request seeks to perform work between 9:00 PM and 7:00 AM for a total of six (6) weeknights between the dates of March 1, 2021 and April 30, 2021. Overnight work will minimize interruptions to local traffic and to scheduled ferry runs by preventing cancellation or delay of sailings.

This overnight work request is to:

- a. Install underground electrical conduit beneath SR 525: March 2021 (1-2 nights)
- b. Remove asphalt in the northbound right-turn lane of SR 525: Late March 2021 (1 night)
- c. Repave portions of SR 525 between the railroad bridge and the intersection of SR 525 and Front Street: Mid- to Late April 2021 (2 nights)
- d. Stripe the new asphalt: Late April 2021 (1-2 nights)

IMCO has stated that weather may delay work and that any such delay would not require additional shifts. To the maximum extent possible, IMCO plans to complete the work on Monday, Tuesday, or Wednesday evenings.

3. IMCO’s original request was to allow work as early as March 1, 2021; however, this would not allow adequate time to provide notice to impacted properties. The first date work can begin has been adjusted to March 15, 2021.
4. IMCO also requested to allow work through April 30, 2021; however, an overnight shift starting at 9:00 PM would typically go into the following day to maximize use of resources and to minimize the overall number of nights impacting neighboring properties. Approval through 7:00 AM on the following day, or May 1, 2021, is appropriate, so long as the final number of overnight work periods does not exceed the six (6) overnight shifts allowed.
5. In 2019, the General Manager of Silver Cloud Inn submitted written comment on a different noise variance request involving work on the SR 525 bridge deck and near the former Mukilteo Ferry holding lanes (City File No. VAR-2019-001). The comment was regarding the Silver Cloud Inn’s ability to provide a comfortable and restful overnight stay for any of their guests with construction noise occurring so near to their property. A condition is added to address this ongoing concern.
6. MMC Section 9.46.080 (“Construction Noise”) states:

“9.46.080 Construction noise.

1. 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.
2. “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.

3. 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).

7. In addition to the requirements of MMC Section 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 Section 9.46.080.

Condition No. 53 of the 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.”

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.

8. 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.”

9. IMCO anticipates sources of noise will be from the following:

- Asphalt trucks
- Compactor
- Concrete truck
- Mini Excavator
- Paver
- Saw

- Striping sprayer
- Truck / trailer

10. IMCO states that the pavers are expected to be the loudest noise from the construction activities, with noise expected to be approximately 50 decibels (dBA) within five (5) feet of the machines. Saws, if needed, are expected to be 85 dBA within five (5) feet of the source. This is equivalent to a busy residential road at the source.

The proposed work will be a minimum of 40 ft. away from the residents at Losvar and a minimum of 175 ft. away from the guests at the Silver Cloud Inn. Noise will naturally dissipate to 32 dBA (pavers) and 67 dBA (saw) at 40 ft. away. This is equivalent to a loud conversation for residences and guests closest to the source.

11. To mitigate and reduce noise IMCO will:

- Shut off equipment when not in use;
- Shut off backup alarms;
- Complete saw cutting during the day to the maximum extent possible; and
- Restrict all work to the area shown in **Exhibit 1**.

12. LED light plants will be used during overnight work and be directed over the work area.

13. In accordance with WAC 173-60-080, the City finds that:

- a. IMCO 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 to install underground electrical conduit beneath State Route (SR) 525, saw cut and remove asphalt, repave portions of SR 525 between the railroad bridge and the intersection of SR 525 and Front Street, and stripe the new asphalt. Overnight work minimizes disruptions to local traffic and to the ferry schedule.
- c. The noise variance is being granted for a maximum of six (6) overnight periods, which is less than 30 work days. Notice to the public with opportunity to comment is not required.

14. 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 Washington Administrative Code and is hereby **APPROVED** subject to the following conditions:

1. The City will closely monitor impacts associated with the noise variance. This includes, but is not limited to, noise, lighting, traffic, and the work location. Based on identified impacts, the City may, at its sole discretion, impose additional conditions and restrictions, up to and including revoking some or all of the work hours authorized by this noise variance.
2. The noise variance approval is only applicable to install underground electrical conduit beneath State Route (SR) 525, remove asphalt, repave portions of SR 525 between the railroad bridge and the intersection of SR 525 and Front Street, and stripe the new asphalt, as described in this decision. No other overnight construction activity is authorized.

3. This noise variance approval shall be valid for a maximum of six (6) nights between 9:00 PM on March 15, 2021 through 7:00 AM on May 1, 2021, excluding Saturday and Sunday evenings. Any work requiring a noise variance outside of these hours or dates shall require a new noise variance application.
4. IMCO and/or WSF shall provide residents and businesses within 1,000 feet of the work area identified in Exhibit 1 with at least ten (10) calendar day notification prior to the beginning of night 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.
5. Prior to the initiation of any nighttime work authorized by this decision, WSF shall reach out to the General Manager of Silver Cloud and discuss options to minimize the impact of the nighttime construction. WSF shall provide in writing to the City the results of their outreach efforts with the General Manager of Silver Cloud.
6. All equipment and lights shall be shut off when not in use. All backup alarms on equipment shall be shut off during overnight work periods.
7. Construction lighting shall be directed towards the work area and shall not be turned towards residential and hotel uses, including the Losvar Condominiums, residential areas on the hill (i.e. "Old Town") and the Silver Cloud Inn.
8. WSF/IMCO shall provide the City with advance notice of overnight work seven (7) calendar days in advance by sending an email to lrutter@mukilteowa.gov.
9. 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.
10. 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.
11. The applicant shall comply with all other applicable codes, regulations and conditions of approval.

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 <http://www.mukilteowa.gov/land-use-action-notices> (File No. VAR-NOISE-2021-002).

CONTACT PERSON:

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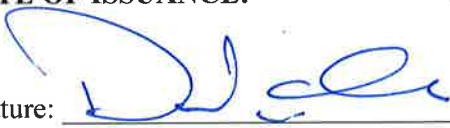
**MANSON CONSTRUCTION
CONTACT:**

Nick Miller, Project Manager
IMCO General Construction
2116 Buchanan Loop
Ferndale, WA 98248
(360) 303-6559
nmiller@imcoconstruction.com

DATE OF ISSUANCE:

March 5, 2021

Signature: _____



Date: 03.05.2021

David Osaki
Community Development Director

PC:

Applicant
Parties of Record

Community Development Director
Fire Chief

Police Chief
Permit Services

File Copy

EXHIBIT 1: MAP OF WORK AREA

SR525 Repave (RR-Bridge to Northside of Front Street (Est.))

Length 366 LF

Width 45 LF

Planning / Paving Depth 0.15'

Planning (est.) 1830 SY (+237 SY per plan sheet C10.10)

Paving HMA > 188 Tons (+24 tons per plan sheet C10.10)

Quantities in Original Scope

Added Quantities

-  Asphalt removal
-  Paving and striping
-  Electrical trenching

