



## Notice of Decision

### Mukilteo Warehouse by Nelson 43, LLC

4301 78<sup>th</sup> Street SW

File No. PPR-2019-007 / ENG-2019-025

The City of Mukilteo has issued a Notice of Decision for a Land Use Development Permit as required by Regulatory Reform Act (RCW 36.70B.130) and Mukilteo Municipal Code (MMC) Section 17.13.080, for **APPROVAL** of the following project, subject to conditions:

**Project Name:** Mukilteo Warehouse  
**Proponent:** Greg Nelson on behalf of Nelson 43, LLC  
**Project Number:** PPR-2019-007 / ENG-2019-025

**Description of Proposal:** To construct a new, 55,820 sf light manufacturing/warehouse facility with associated grading (approximately 13,950 cubic yards cut; 17,200 cubic yards fill), parking, landscaping, right-of-way dedication and street frontage improvements. A small portion of a Category IV wetland, located on an abutting property, encroaches on the northwest corner of the site, and the applicant proposes buffer averaging to improve the protection of wetland functions. The applicant proposes access to the facility off 78th Street SW and anticipates traffic volumes will distribute between 78th Street SW and 44th Avenue W. Finished grade of the site will be flat with the parking lot approximately 12 feet below the roadway grade at the intersection of 78th Street SW and 44th Ave W.

**Location of Proposal:** 4301 78th Street SW, Mukilteo, Washington 98275

**Property Identification Number(s):** 28041000300100, 28041000300400, 28041000300500, 28041000300600

**Project Decision:** Approved  
**Notice of Decision Date:** Tuesday, June 1, 2021  
**End of Appeal Period:** Tuesday, June 15, 2021  
**Project Permit Expiration Date:** June 1, 2025

### 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 outside agencies, the project permit is hereby approved with conditions based on the following Findings of Fact.

## Findings of Fact

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### Permit Procedures

1. Applicant submitted a land use application, building permit application and engineering permit(s) application on November 7, 2019. The City of Mukilteo determined the application complete on December 5, 2019.
2. The applicant submitted a copy of a "Notice of Proposed Construction or Alteration" application to the Federal Aviation Administration (FAA) dated September 19, 2019. On February 21, 2020, the FAA issued a "Determination of No Hazard to Air Navigation" for the project.
3. In accordance with Mukilteo Municipal Code (MMC) Chapter 17.13, the City of Mukilteo issued a Notice of Application (NOA) on December 17, 2019 and invited the public and agencies to comment on the project. The City received two (2) comments during the NOA comment period.

### Property Information

4. Snohomish County Assessor's Office parcel identification number(s) for the subject properties are 28041000300100, 28041000300400, 28041000300500 and 28041000300600.
5. The Comprehensive Plan designation for subject property is "Industrial". The zoning designation for the subject property is PI (Planned Industrial).

### State Environmental Policy Act (SEPA)

6. The applicant submitted an SEPA Environmental Checklist dated June 13, 2019 with the initial applications.
7. The City of Mukilteo issued a Mitigated Determination of NonSignificance on September 11, 2020 and invited the public and agencies to comment on the determination.
8. The City of Mukilteo received six (6) comments in response to the environmental determination.
9. The appeal period for the environmental determination expired October 9, 2020. The City of Mukilteo did not receive an appeal of the environmental determination.

### Mukilteo Comprehensive Plan

10. 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.

**Applicable Review Criteria**

- 11. Development of the site will conform to all applicable zoning and development standards, and that, as conditioned, the project will have no adverse impacts to the public health, safety and general welfare.
- 12. The proposal complies with permitted use requirements specified in MMC Chapter 17.16.

Regulation <i>MMC</i>	Requirement	Proposal								
Use <i>17.16.040(A)</i>	Manufacturing, light and warehousing are both Permitted (P) uses in the PI (Planned Industrial) zone.	Proposal is for a 55,790 sf manufacturing and warehouse facility.  “Manufacturing, light” to occupy approximately 26,000 sf.  “Warehousing” to occupy approximately 24,760 sf.  “Office” to occupy approximately 5,000 sf.								
	<table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th></th> <th style="background-color: #cccccc;">Industrial</th> </tr> </thead> <tbody> <tr> <td style="background-color: #cccccc;">Use</td> <td style="text-align: center;">PI</td> </tr> <tr> <td>Manufacturing, light</td> <td style="text-align: center;">P</td> </tr> <tr> <td>Warehousing</td> <td style="text-align: center;">P</td> </tr> </tbody> </table>			Industrial	Use	PI	Manufacturing, light	P	Warehousing	P
			Industrial							
	Use		PI							
Manufacturing, light	P									
Warehousing	P									
Manufacturing, Light. “Light manufacturing” means a use engaged in the manufacture, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales and distribution of such products, but excluding basic industrial processing.										
“Warehousing” means a use engaged in storage, wholesale, and distribution of manufactured products, supplies, and equipment, but excluding bulk storage of materials that are flammable, explosive, or that create hazardous or commonly recognized offensive conditions.										

- 13. The proposal complies with building height, setback and coverage requirements for the PI Planned Industrial zone.

<b>Regulation MMC</b>	<b>Requirement</b>	<b>Proposal</b>
Building Height 17.20.020	35'	32'
Front Setback 17.20.020	10' w/o parking in front of building; 20' next to residential zone	10'
Rear Setback 17.20.020	20'	120'
Interior Setback 17.20.020	10', except 20' next to residential zone	138'
Corner Setback 17.20.020	10'	10'
Lot Coverage 17.20.020	40%	31.7%
Hard Surface Coverage 17.20.028	95%	82%

Note: PI (Planned Industrial) zone does not have minimum area or lot dimension requirements.

14. The proposal complies with the landscaping requirements for the PI (Planned Industrial) zone specified in MMC Chapter 17.58.

<b>Regulation MMC</b>	<b>Requirement</b>	<b>Proposal</b>
Landscaping 17.58.047	<p>Requirement:</p> <p>78<sup>th</sup> Street SW – 5 feet of Type III or 5 feet of Type V</p> <p>44<sup>th</sup> Avenue W – 10 feet of Type III or 10 feet of Type V</p> <p>Type III—Ornamental Landscaping. This landscaping shall consist of a combination of trees, shrubs and other landscaping materials, and shall be designed to improve the appearance of the development but not necessarily to obscure it; provided, that the planning director may approve additional sidewalk area, pedestrian paths, or pedestrian areas associated with a use or for the public within the required landscape area. Native vegetation is preferred.</p> <p>Type V—Street Frontage. A streetscape landscape zone shall be required for all streets. The purpose of these streetscape landscape improvements is to promote an aesthetic “urban” streetscape while screening parking fields from drivers and pedestrians.</p>	<p>Proposal includes a minimum of 5' Type III landscaping along 78<sup>th</sup> Street SW and a minimum of 10' Type III landscaping along 44<sup>th</sup> Avenue W.</p> <p>Proposal satisfies landscaping requirements for properties in the PI (Planned Industrial) zone.</p>

15. The proposal complies with the off-street parking requirements for the proposed use specified in MMC Chapter 17.56.

Regulation MMC	Requirement	Proposal
Parking 17.56.040	<p>Manufacturing and industrial uses of all types require 1.5 spaces per 1,000 square feet of gross floor area, or 1 per employee, whichever is greater. This includes associated office and retail space not exceeding 35% of the gross floor area.</p> <p>Warehouses, storage buildings or structures used exclusively for storage purposes require 0.5 space per 1,000 square feet of gross floor area, or 1 per employee, whichever is greater.</p> <p>Analysis:  Manufacturing – <math>26,000 / 1,000 \times 1.5 = 39</math> off street parking spaces  Warehousing – <math>24,760 / 1,000 \times 0.5 = 12.38</math> off- street spaces</p> <p>Requirement:  51 off-street parking spaces</p>	Proposal includes 92 off-street parking spaces.
Loading Space 17.56.090	<p>“... there shall be provided and maintained on the lot adequate space for standing, loading and unloading services in order to avoid undue interference with the public uses of the streets or alleys. The space, unless otherwise adequately provided for, shall include a ten foot by twenty-five foot loading space, with fourteen foot height clearance for every twenty thousand square feet, or fraction thereof, of gross building area used or land used for abovementioned purposes. The space shall be so situated that no part of a truck or van using the loading space will project into the public right-of-way.”</p> <p>Analysis:  <math>55,820 / 20,000 = 2.791</math> loading spaces</p> <p>Requirement:  Three (3) loading spaces</p>	Proposal includes at least 20 loading spaces/docks.

16. The proposal complies with the additional development regulations and performance standards for the PI (Planned Industrial) zone specified in MMC Section 17.20.130.

Regulation MMC	Requirement	Proposed
Outside Storage 17.20.130(A)(1)	All storage of materials and finished products shall either be completely enclosed or surrounded by a sight-obscuring barrier of at least six feet.	Conditioned on permit. Proposal did not include areas for outside storage. However, future tenants are subject to outside storage requirements.

Regulation <i>MMC</i>	Requirement	Proposed
Environmental Compatibility <i>17.20.130(A)(2)</i>	Uses within the PI zone shall not produce objectionable odors, noises, dust, smoke, light, glare or electronic interference beyond property boundaries.	<p>Conditioned on permit. Proposal did not identify a specific tenant. However, future tenants are subject to environmental compatibility requirements.</p> <p>Proposal includes lighting that is predominately located on the east side of the property, away from residentially zoned property west of the site. Proposal also provides landscaping that at maturity will provide additional mitigation for noise, light, glare, etc.</p>
Residential Compatibility <i>17.20.130(A)(3)</i>	Buildings and site features shall be designed and arranged with sensitivity toward adjacent residential areas.	<p>Sheets L1 and A4.1 submitted for the proposal includes vegetative screening from residential areas across 44<sup>th</sup> Avenue W. Loading areas are located on the east side of the building adjacent to an industrial zoned property. Finished grade for the building elevation is approximately 12' lower than the roadway grade at the corner of 78<sup>th</sup> Street SW and 44<sup>th</sup> Avenue W. Therefore, the effective building height (32') is much lower at the intersection compared to if it were built at a similar grade as the roadway.</p> <p>The proposal also includes the following building design features to promote residential compatibility (a minimum of three were requested by staff, four were provided by the applicant):</p> <ul style="list-style-type: none"> <li>▪ Roof modulation</li> <li>▪ Wall modulation</li> <li>▪ Color and material variation</li> <li>▪ Vertical trellis (8) on west facing building façade</li> </ul>
Traffic and Access <i>17.20.130(A)(4)</i>	Ingress and egress to the site shall be located as to cause the least disruption to adjacent residential areas. Roads serving the site shall be improved to city street standards as required by the Mukilteo Municipal Code and 2019 Public Works Development Standards.	<p>Proposal includes primary access to the facility off 78<sup>th</sup> Street SW and anticipates traffic volumes will distribute between 78<sup>th</sup> Street SW and 44<sup>th</sup> Avenue W. The proposal also includes a secondary access off 44<sup>th</sup> Avenue W for emergency services only. 78<sup>th</sup> Street SW is classified a Local Access and 44<sup>th</sup> Avenue W is classified an Urban Collector.</p> <p>The City reviewed the transportation impact analysis prepared by TENW for consistency with adopted development standards and found it acceptable.</p> <p>An Application for Alternate Material, Design, or Method of Construction was submitted to deviate from standards in MDS 4.6.4 Access Provisions. The request was required for the proposed secondary access provided for emergency services. Staff reviewed the deviation request for consistency with criteria specific in MDS 1.5.1.</p>
Clearing and Grading <i>17.20.130(B)</i>	No clearing or grading activity shall occur on the property prior to issuance of construction permits.	Conditioned on permit. Proposal included permit applications for clearing and grading.

17. The proposal complies with critical area regulations specified in MMC Chapter 17.52 and Chapter 17.52B.

Regulation MMC	Requirement	Proposal
Buffer Requirements 17.52B.100(D)	<p>The establishment of wetland buffer areas shall be required for all development proposals and activities adjacent to wetlands to protect the functions and integrity of the wetland.</p> <p><i>Wetland Rating: Category IV Standard Buffer: 40'</i></p>	<p>A Category IV wetland is located off site, north of the property. The 40' wetland buffer encroaches on the northwest corner of the site.</p> <p><i>Wetland Size: 1,528 sf HGM Class: Depressional</i></p> <p>Proposed 40' buffer satisfies buffer requirements for Category IV wetlands.</p>
Buffer Averaging 17.52B.100(G)(1)	<p>Averaging to improve wetland protection may be permitted when all of the following conditions are met:</p>	<p>Proposal includes buffer averaging to improve wetland protection. Staff reviewed the Critical Areas Study and Buffer Averaging Plan prepared by Wetland Resources, Inc. and determined the following:</p>
	<p>a. The wetland has significant differences in characteristics that affect its habitat functions, such as a wetland with a forested component adjacent to a degraded emergent component or a "dual-rated" wetland with a Category I area adjacent to a lower rated area.</p>	<p>Significant differences in characteristics affect habitat functions of this wetland. The south and southwest sides of the wetland are adjacent to a degraded buffer. Habitat functions of the wetland in this area are lower functioning and less sensitive. The southeast side of the wetland is adjacent to a mature forested buffer. Habitat functions of the wetland in this area are higher functioning and more sensitive.</p>
	<p>b. The buffer is increased adjacent to the higher-functioning area of habitat or more sensitive portion of the wetland and decreased adjacent to the lower-functioning or less sensitive portion.</p>	<p>Proposed buffer increase located on the southeast side of the wetland where mature forested buffer provides high-functioning habitat adjacent to more sensitive areas of the wetland.</p> <p>Proposed buffer decrease located on the south and southwest sides, adjacent to the low-functioning, less sensitive areas of the wetland.</p>
	<p>c. The total area of the buffer averaging is equal to the area required without averaging.</p>	<p>Proposed buffer averaging plan will provide a 234 sf larger buffer area than the standard requirement without averaging.</p>
	<p>d. The buffer at its narrowest point is never less than fifty percent of the required width.</p>	<p>Modified buffer will be 29' wide at its narrowest point (72% width of the required buffer). At no point is the proposed buffer less than 50% of the required width.</p>
<p>e. Mitigation sufficient to compensate for the impacts as determined by a qualified specialist is provided for all buffer averaging proposals.</p>	<p>The proposal will provide a buffer area that is higher in quality than the standard buffer area and will provide compensatory mitigation.</p>	

18. The applicant submitted a modification to clearing requirements on March 23, 2021 for consistency with International Building Code (IBC) Section 104.10.

Regulation <i>IBC</i>	Requirement	Proposed
Clearing <i>15.16.050(C)(5)</i>	<p>Applications for clearing or grading on sites or slopes less than fifteen percent (15%) shall be accepted if the plan retains twenty-five percent (25%) of all significant trees and groundcover.</p> <p>Requirement:  <math>124 \times .25 = 31</math> significant trees required for retention.</p>	<p>The proposal retains nine (9) significant trees abutting a forested area and mitigates for the loss of trees by planting 82 new trees consisting of 68 new trees onsite and 14 new trees within the portion of the site that will be dedicated as right-of-way along 78<sup>th</sup> St SW. Approximately 51 of the 82 new trees, as well as shrubs and groundcover, are proposed to be strategically placed to create a vegetated environment that screens adjoining streets and to shield the buildings from the view of the traveling public and adjacent uses. The proposed trees are not seedlings, but rather a mix of 6' tall Western Red and Alaskan cedars, 8' – 10' tall Vine Maples, and 2" trunk diameter Pacific Sunset Maples and Patmore Ash at the time of planting.</p>
Modifications <i>IBC Section 104.10</i>	<p>Where there are practical difficulties involved in carrying out the provisions of this code, the building official shall have the authority to grant modifications for individual cases, upon application of the owner or the owner's authorized agent, provided that the building official shall first find that special individual reason makes the strict letter of this code impractical, the modification is in compliance with the intent and purpose of this code and that such modification does not lessen health, accessibility, life and fire safety or structural requirements. The details of action granting modifications shall be recorded and entered in the files of the department of building safety.</p>	<p>Applicant submitted a modification request consistent with Section 104.10 of the IBC to modify requirements of MMC Chapter 15.16 (Appendix J of the IBC). Specifically, the applicant requested a modification of MMC 15.16.050(C)(5) to include replacement and enhancement of significant tree and groundcover retention requirements.</p> <p>City staff reviewed the modification request and found the following:</p> <ul style="list-style-type: none"> <li>▪ Given the number and location of significant trees and groundcover on site, strict letter of the clearing code renders development of the site impractical, and</li> <li>▪ The modification complies with the intent and purpose of the clearing code and does not lessen health, accessibility, life and fire safety or structural requirements.</li> <li>▪ Not including 14 new trees to be planted in the dedicated right-of-way, the proposal results in 2.5 times the minimum number of trees required to be retained by MMC 15.16.050(C)(5).</li> </ul>



19. Utilities are available to serve the subject property. Water and sewer are available from the Mukilteo Water and Wastewater District. Electricity is available from Snohomish County Public Utility District (PUD). Natural Gas is available from Puget Sound Energy.
20. Development of the site will be subject to the requirements of the 2015 International Building Code.
21. Staff administratively reviewed this project for consistency with applicable requirements of Mukilteo Municipal Code (MMC) Chapter 15.08 Fire Code, adopted 2015 International Fire Code and Mukilteo Fire Development Standards that apply to the subject property.
22. Staff administratively reviewed this project for consistency with all applicable requirements of Mukilteo's Development Standards Resolution #2016-19 and Amending Resolution #2019-014, including but not limited to drainage, clearing, grading, erosion control, access and street standards.
  - a. An Application for Alternate Material, Design, or Method of Construction was submitted for MDS 4.6.4 Access Provisions.
  - b. An Application for Alternate Material, Design, or Method of Construction was submitted for MDS 3.6.7 Rockeries/Retaining Wall Crossings.
  - c. An Application for Alternate Material, Design, or Method of Construction was submitted for MDS 3.4.8 Public Right-of-Way Storm Design for Private Property and 3.4.11 Separated Runoff.
  - d. An Application for Alternate Material, Design, or Method of Construction was submitted for MDS 3.6.3.9 Catch Basins and Junctions.
23. Staff administratively reviewed this project for consistency with Mukilteo Municipal Code Section 13.12.160 and the Washington State Department of Ecology's Stormwater Management Manual for Western Washington (2012) as amended in 2014.
24. Staff administratively reviewed the following Geotechnical reports related to the stormwater infiltration vault:
  - a. Earth Solutions NW LLC *Geotechnical Engineering Study Proposed Commercial Warehouse 4301 78<sup>th</sup> St Southwest ES 6384* dated December 27, 2018;
  - b. Associated Earth Sciences Inc. letter-report *Infiltration Assessment Mukilteo Industrial Development* dated November 4, 2019;
  - c. Associated Earth Sciences Inc. letter-report *Infiltration Feasibility Mukilteo Industrial Development (Nelson 43)* dated May 8, 2019;
  - d. Earth Solutions NW LLC letter *Response to Comments* dated April 13, 2020;
  - e. Associated Earth Sciences Inc. *Technical Memorandum* for Mukilteo Industrial Development (Nelson 43) dated April 23, 2020; and
  - f. Associated Earth Sciences Inc. *Technical Memorandum* for Mukilteo Industrial Development (Nelson 43) dated April 24, 2020.
25. The stormwater infiltration vault design qualifies as well under the Washington State Department of Ecology Underground Injection Control (UIC) Program. Department of Ecology has registered this well as UIC Site Number 35267.

## Lot Line Adjustment

26. Applicant submitted a land use application on August 28, 2020 for a lot line adjustment to consolidate the existing four (4) lots into one (1) lot.
27. Consistent with MMC Subsection 17.68.030(B), a lot line adjustment is required to consolidate the existing four (4) lots into one (1) lot in order to accommodate the proposed building and site improvements.
28. Staff administratively reviewed the lot line adjustment application for consistency with criteria specified in MMC Chapter 16.20 Lot Line Adjustments and determined the proposal satisfies criteria to consolidate the lots.

Regulation MMC	Requirement	Proposal
Criteria 16.20.020	A. If access to lots subject to a lot line adjustment application requires the creation of new streets or private roads; requires dedication of public right-of-way or creation of access easements; or requires improvements to existing streets or private roads in order to meet current development standards, then the lot line adjustment application shall be rejected. A lot line adjustment is not the appropriate mechanism to reconfigure lots if new or improved infrastructures are needed to serve the revised lot configuration.	Proposal includes an application for right-of-way dedication and street improvements to 78th Street SW and 44th Avenue W consistent with current development standards and the By the Way (BTW) Plan (adopted 2017).
	B. The orientation of existing developed parcels shall be preserved such that a front yard remains a front yard, side yards as side yards, and a rear yard as a rear yard.	Not applicable, all four (4) parcels are vacant.
	C. Lots that are reconfigured through the lot line adjustment process shall be designed in such a manner that there is sufficient area to construct all proposed structures, driveways, roads, parking areas and/or yards without encroaching on a critical area, buffer or any setback required to meet current code.	Consolidated lot provides sufficient area to construct all proposed structures, driveways, roads, parking areas and/or yards without encroaching on a critical area, buffer or any setback required to meet current code.
	D. No lot line adjustment shall be approved where the adjustment will result in a violation of a city or state code.	Proposed lot line adjustment does not result in a violation of city or state code.

## Conditions of Approval

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### General

1. All improvements shall be constructed in accordance with the Site Plan dated May 6, 2020 and approved May 28, 2021. Minor modifications to the plans submitted may be approved by the Community Development Director if the modifications do not substantively change the Findings of Fact, or change the Conditions of Approval. Upon expiration of permit(s) or any proposed major modification to the approved permit(s) will require compliance with the codes applicable at that time.
2. Prior to issuance of the engineering permit, final Civil Plans depicting the clearing and grading, right-of-way improvements, and stormwater design shall be submitted to the City for final review and approval. Clearing and grading, right-of-way and stormwater improvements shall be designed in accordance with the City's Development Standards.
3. Landscaping shall be installed in accordance with the approved landscaping plan dated May 8, 2020, as redlined by City staff to eliminate certain street trees on 44<sup>th</sup> Avenue West due to conflict with overhead power lines and the grass lined drainage swale. Landscaping shall be subject the following:
  - a. All landscaping associated with a project permit shall require the submittal of an acceptable warranty surety to warrant all required landscaping improvements against defects in labor and materials for a period of twenty-four (24) months after acceptance of those improvements by the City. The warranty amount shall be fifteen (15) percent of the costs of the improvements, as determined by the City. The surety shall be submitted to and approved by the City of Mukilteo and executed before occupancy of the site.
  - b. All landscaping shall be maintained in healthy growing condition. A final landscape inspection will be performed at the end of the two (2)-year period and any dead, dying or diseased plant material shall be replaced.
  - c. Minor modifications of the landscaping plans submitted may be approved by the Community Development Director if the modifications do not substantively change the findings of fact or change the conditions of approval.
  - d. Prior to final certificate of occupancy, "As-Built" landscaping plans shall be submitted to the City.
4. All development shall comply with the conditions specified in the "Determination of No Hazard to Air Navigation" issued on February 21, 2020, by the Federal Aviation Administration.
5. All storage of materials and finished products shall either be completely enclosed or surrounded by a sight-obscuring barrier of at least six feet. Barriers may consist of buildings, fences, landscaping or other means such that outdoor storage areas are not visible from adjacent residential areas.
6. All future tenants and uses shall not produce objectionable odors, noises, dust, smoke, light, glare or electronic interference beyond property boundaries.

7. Prior to building permit and engineering permit issuance, a lot line adjustment to consolidate the existing four (4) lots into one (1) lot to accommodate the proposed building and site improvements shall be recorded.

### **State Environmental Policy Act (SEPA)**

8. All development shall comply with the findings and conditions specified in the Mitigated Determination of NonSignificance (MDNS) issued September 11, 2020 and included below:
  - a. Construction shall be allowed between the hours of seven (7) a.m. to six (6) p.m. on weekdays and between the hours of nine (9) a.m. to six (6) p.m. on Saturdays. No construction shall be allowed on Sundays and holidays due to the proximity of residential areas.
  - b. Measures to support design and visual compatibility shall include the following:
    - i. Modulation of the building rooflines, cornices, and walls.
    - ii. Three (3) separate recessed wall panels located along the west wall.
    - iii. Variation of wall materials and colors.
    - iv. Eight (8) vertical wall trellises along the west wall that are approximately 4' x 12' for climbing vines.

Any additional, alternative, or substitute design measures shall be approved by the Community Development Director.

- c. Wetland buffer averaging shall comply with the findings and recommendations in the report prepared by Wetland Resources, Inc. dated August 4, 2020.
- d. Discarded materials (electrical transformers, several empty drums, a small "can" container, etc.) discussed in the Phase 1 Environmental Site Assessment dated December 5, 2018 shall be collected and lawfully recycled in a manner consistent with applicable governing laws and regulations.
- e. All development shall comply with the conditions specified in the "Determination of No Hazard to Air Navigation" issued on February 21, 2020 by the Federal Aviation Administration.
- f. The project must follow best management practices to retain the infiltration function for the stormwater facility. Best management practices for facility construction shall include the recommendations in the Associated Earth Sciences report dated November 4, 2019, including those items found on page 12 of the "Preliminary Infiltration Facility Construction Considerations".
- g. Long-term monitoring of the infiltration facility and submittal of monitoring reports for a period of two (2) years is required. Monitoring reports shall be provided to the City. Reports shall show that the design infiltration rate is being achieved. If the design infiltration rate is not achieved, the project applicant and/or property shall be required to restore the infiltration and/or meet the drainage requirements for flow control in an alternative method.
- h. The stormwater design shall meet the requirements of the 2014 Stormwater Management Manual for Western Washington.

- i. The stormwater injection design shall be registered by Department of Ecology's Underground Injection Control program.
- j. The applicant shall comply with other applicable codes and requirements.

### **Critical Areas**

9. Wetland buffer averaging, mitigation, and NGPA performance shall comply with the findings, conclusions and recommendations specified in the approved "Critical Areas Study and Buffer Averaging Plan" prepared by Wetland Resources, Inc. dated March 4, 2020.

### **Engineering**

10. Prior to issuance of the building permit, the applicant shall pay mitigation fees for transportation in accordance with MMC Title 3.

### **Clearing and Grading**

11. Prior to issuance of construction permits:
  - a. No clearing or grading activity shall occur on the property.
  - b. An off-site and an on-site pre-construction meeting is required. The on-site pre-construction meeting shall involve the City inspector and the contractor to review clearing limits and erosion control prior to installing erosion control measures.
12. If the project involves clearing or grading between October 1st and April 30<sup>th</sup>, then a Wet Weather Erosion Control Plan shall be submitted to the City for review and approval a minimum of 30 days in advance of grading activity. At a minimum, the Wet Weather Erosion Control Plan must meet the requirements of Mukilteo 2019 Development Standards, Section 3.5.4.2. Additional requirements may apply, as determined by the stage of work, protection of the infiltration facility, and additional conditions as provided by the Public Works Director.
13. Siltation and erosion control measures shall be employed per the approved Stormwater Pollution Prevention Plan and/or the Temporary Erosion and Sediment Control Plan and as necessary to ensure appropriate on-site and off-site water quality control. Site runoff during construction shall be handled and treated as to quantity and quality impacts by utilizing Best Management Practices, as defined in the current Department of Ecology (DOE) Stormwater Management Manual for Western Washington and the current Department of Ecology National Pollutant Discharge Elimination System (NPDES).
14. All work activity shall physically take place on the property. Any use of adjoining properties for construction work shall not be allowed unless the City is first provided with and approves a construction easement meeting the requirements of the City. Should field inspection find that work is taking place on adjoining properties, then work shall be required to cease immediately, and the adjoining property shall be restored to pre-construction conditions as soon as possible.
15. If at any time during clearing, grading and the entire duration of construction the streets are not kept clean and clear, all work shall stop until the streets are cleaned and maintained in a manner acceptable to the Public Works Director.
16. Reports shall be submitted to the City verifying that the Special Geotechnical inspections have been completed and that the items are constructed as designed for the following:

- a. Engineered retaining wall installation. The special inspections shall be required as specified on sheet R1 – Rockery Designs and Notes.
- b. All earthwork and foundation construction as specified in the Geotechnical Engineering Study prepared by Earth Solutions NW LLC on December 27, 2018.
- c. Compaction for new pavement placed in the Right-of-Way on 78<sup>th</sup> Street SW and 44<sup>th</sup> Avenue W.
- d. All backfill specifications found in Appendix E of Associated Earth Sciences incorporated letter-report dated November 4, 2019 were met.

### **Right-of-Way**

- 17. Prior to clearing or grading activity, the applicant shall provide a traffic control plan/haul route for review and approval by the City. The traffic control plan/haul route shall address, as applicable:
  - A. Proposed haul route for earthwork (grading cut and fill);
  - B. General location and type of warning lights, safety devices, signs and barricades intended to protect vehicular or pedestrian traffic at the site;
  - C. How emergency access will be maintained to the subject property and other properties served by the public road leading to the site.
- 18. A financial guarantee for performance of City owned stormwater facilities in the amount of 150% of the construction costs is required prior to permit issuance. Estimated construction costs shall be submitted by the applicant to the City for approval. A maintenance bond in the amount of 15% of the construction cost for the same stormwater facilities is required at the time of Punch List inspection for the Engineering Permit.
- 19. Prior to issuance of the engineering permit, the applicant shall provide a performance guarantee for the work in the Right-of-Way (“ROW”). This is 150% of the provided estimate for the ROW work, but does not include a cost estimate for City owned stormwater facilities.
- 20. 44<sup>th</sup> Avenue West is designated an Urban Collector street. Prior to final occupancy of the building, the applicant shall:
  - a. Dedicate right of way 18 feet in width along the full extent of the property’s 44<sup>th</sup> Avenue West street frontage. Dedication shall be in a form acceptable to the City.
  - b. Improve the property’s 44<sup>th</sup> Avenue West frontage with a shared use path, grasslined swale, and asphalt overlay per the approved ENG-2019-25 civil plans. This improvement is consistent with the City of Mukilteo By The Way Plan (Resolution 2017-01) which identifies a 10’-15’ wide shared use path on 44th Avenue West. Improvements shall comply with current ADA standards.
  - c. Have a financial guarantee for maintenance of the work identified in 20.b. above approved by the City. The form of the financial guarantee shall be acceptable to the City and shall apply to a period of twenty-four (24) months after acceptance of the improvements by the City. Estimated construction costs shall be submitted by the

applicant to the City for approval. The maintenance financial guarantee shall be at a rate of fifteen percent (15%) of the construction costs for the street frontage improvements.

Zoning setbacks shall be measured from the property line, after right-of way dedication.

21. 78<sup>th</sup> Street Southwest is designated as a local access road. Prior to final occupancy of the building, the applicant shall:
  - a. Dedicate right of way, 30 feet in width along the full extent of Snohomish County Parcel No. 28041000300600 78<sup>th</sup> Street SW frontage and 10 feet in width along the full extent of Snohomish County Parcel No.'s 28041000300500 and 28041000300400 78<sup>th</sup> Street SW frontage. Dedication shall be in a form acceptable to the City.
  - b. Improve 78<sup>th</sup> Street SW with curb, gutter, sidewalk, landscaping and asphalt overlay per the approved ENG-2019-025 civil plans. Improvements shall comply with current ADA standards.
  - c. Have a financial guarantee for maintenance of the work identified in 21.b. approved by the City. The form of the financial guarantee shall be acceptable to the City and shall apply to a period of twenty-four (24) months after acceptance of the improvements by the City. Estimated construction costs shall be submitted by the applicant to the City for approval. The maintenance financial guarantee shall be at a rate of fifteen percent (15%) of the construction costs for the street frontage improvements.

Zoning setbacks shall be measured from the property line, after right-of way dedication.

### **Stormwater**

22. If the project has not started construction prior to July 1, 2027, the applicant will be required to submit a new stormwater permit application that meets the then current stormwater design regulations for review and approval by the City, or to comply with the City's NPDES Phase II Permit, which may be amended from time to time. In this case, "started construction" shall be the definition in the City's NPDES Phase II Permit.
23. Prior to stormwater punch list inspection, the following shall be required:
  - a. A financial guarantee for maintenance of private stormwater facilities, including but not limited to, replacement of proprietary water quality filters and infiltration vault media shall be submitted to the City for review and if acceptable, approval. The maintenance guarantee shall be equivalent to 15% of the construction cost estimate provided by the applicant, and approved by the City.
  - b. The property owner shall sign and record a City-approved access easement allowing the City to access and inspect maintenance conditions of the stormwater improvements (BMPs). No certificate of occupancy shall be granted prior to City acceptance of the covenant.
  - c. The property owner shall sign and record a covenant for maintenance of stormwater improvements (BMPs). No certificate of occupancy shall be granted prior to City acceptance of the covenant.

24. The geotechnical professional for the project must be onsite for the preconstruction meeting to review all erosion control measures proposed for the project, especially as they relate to protection of the infiltration vault.
25. The following conditions relate to the infiltration component of the stormwater vault:
- a. Prior to placement of import materials ,geotechnical inspection and reports verifying that there was no compaction of subgrade and that scarification occurred for the infiltration trenches are required and shall be submitted to the City.
  - b. The project must follow best management practices to retain the infiltration function for the stormwater facility. Best management practices for facility construction shall include the recommendations in Associated Earth Sciences letter-report dated November 4, 2019, including, but not limited to, those items found on page 12 of the “Preliminary Infiltration Facility Construction Considerations”:
    - i. Over excavate infiltration facility bottom a minimum of 2 feet into the underlying Vashon advance outwash unit.
    - ii. Infiltrations trenches or pit drains be excavated from the base of the overexcavation, to approximate depth of 20’ below overexcavation subgrade. The bottom of the trenches must be a minimum of 5’ above the seasonal high groundwater elevation.
    - iii. If individual pits are employed, they should be placed with a minimum 25’ spacing, edge-to-edge. Trenches or pit drains can be a minimum of 4’ wide.
    - iv. After the infiltration trenches/pits are installed, the infiltration subgrade should be scarified a minimum of 8”, prior to the placement of additional import materials.
  - c. Piezometers shall be installed consistent with the recommendations in Associated Earth Sciences letter-report dated November 4, 2019.
  - d. Prior to stormwater punch list inspection, a geotechnical engineer, or their designee, shall conduct special Inspections for the stormwater vault infiltration area and submit reports to the City. These reports shall verify that the infiltration design was built per the approved Engineered design.
  - e. Final infiltration test results conducted by a licensed geotechnical engineer shall be submitted to the City, confirming the design infiltration rate as stated in the drainage report, is achieved. This infiltration test is required after excavation of the infiltration area, but prior to installation of the stormwater vault. If the infiltration rate is found to be less than the assumed infiltration rate, the City will require a stormwater detention redesign, for review and approval by the City. Construction may be limited or halted during the redesign phase. Additional review fees will apply to any redesign.
  - f. Per the November 4, 2019 geotechnical letter (p 14), the site must be fully stabilized prior to routing stormwater to the infiltration facility. The City considers landscape and vegetated areas to have “permanent groundcover in place” when there is fully established vegetation, mulch and/or established grass and/or hydroseed binder application. The site will not be considered stable with only straw and/or grass seed



applied. Other “permanent groundcover” options may be approved, at the discretion of the City inspector.

- g. Prior to discharging any stormwater to the infiltration facility, the project must provide inspection reports from a qualified Certified Erosion and Sediment Control Lead (CESCL) or geotechnical engineer to the city for approval, showing that all stormwater leaving the pretreatment device is less than 25 nephelometric turbidity units for the design storm event.
26. The following additional City inspections shall be required for the stormwater vault. It is the applicant’s responsibility to call the City for these inspections in a timely manner:
  - a. Review the infiltration horizon prior to geotechnical testing.
  - b. Review backfill materials once they are placed.
27. Prior to City approval of the stormwater vault, special Inspections shall be conducted for the stormwater vault by the Design Structural Engineer, or their designee, and their signed reports submitted to the City for review and, if acceptable, approval. These reports shall verify that the vault was built per the approved Engineered design, or, if deviations were done, that they were approved by the Structural Engineer of record.
28. Long-term continuous well monitoring of the infiltration facility by a geotechnical engineer and submittal of monitoring reports for a period of two (2) years is required. Monitoring reports shall be provided to the City every six months, or as soon as performance issues are identified. Reports shall show that the design infiltration rate is being achieved. If the design infiltration rate is not achieved, the project applicant shall be required to restore the infiltration and/or meet the drainage requirements for flow control in an alternative method.
29. Prior to stormwater permit issuance, a financial guarantee for performance of the continuous well monitoring (in Condition #28 above) shall be required. Applicant shall submit a cost estimate for monitoring to the City for approval. The performance guarantee shall be equivalent to 150% of cost estimate.
30. The infiltration vault has been registered with Department of Ecology’s Underground Injection Control Program as Site Number 35267. These activities are prohibited on the site, unless approval is given by the Public Works Director:
  - a. Vehicle maintenance, repair, and service;
  - b. Commercial or fleet vehicle washing;
  - c. Storage of treated lumber;
  - d. Storage or handling of hazardous materials;
  - e. Generation, storage, transfer, treatment or disposal of hazardous wastes; and
  - f. Vehicle fueling.

A request to the City for use of these listed activities shall show how the activities are under a cover, and that they only discharge to sanitary sewer. No stormwater or waste from these activities can be introduced to the stormwater vault.

## **Fire**

31. Where a portion of the facility or building is more than 400 feet from a hydrant on a fire apparatus access road, as measured by an approved route around the exterior of the facility or building, on-site fire hydrants and mains shall be provided where required by the fire code official.
32. Where access to or within a structure or an area is restricted because of secured openings or where immediate access is necessary for lifesaving or fire-fighting purposes, the Fire Marshal requires a key box (Knox Box) to be installed in an approved location. The key box shall be of an approved type listed in accordance with UL 1037, and shall contain keys to gain necessary access as required by the Fire Department.
33. A second access off 44<sup>th</sup> Avenue W is provided and will be a gated and locked. This second access point off 44<sup>th</sup> Avenue W shall only be used by the Fire Department ingress/egress or for emergency services purposes. It should not be used for any other purpose other than for the Fire Department/emergency services.
34. Approved automatic sprinkler systems shall be provided in the locations described in IFC Sections 903.2.1 through 903.2.12.
35. An approved fire alarm system installed in accordance with the provisions International Fire Code (IFC) and National Fire Protection Association (NFPA) 72 shall be provided in new buildings and structures in accordance with Sections 907.2.1 through 907.2.23 and provide occupant notification in accordance with Section 907.5.

## **Utilities**

36. Cost of any work, new or upgrade, to existing Snohomish County Public Utility District ("District") facilities required to connect this proposed development to the District electric system shall be in accordance with the applicable District policies.

Specific space requirements and limitations apply pertaining to the location of District facilities relative to structures, roadways, parking areas and other utilities proposed on the project. The District requires allowance for adequate space for District facilities to provide electrical service.

37. The owner/developer is required to enter into a Developer Extension Agreement (DE) with Mukilteo Water and Wastewater District to install necessary sewer, water and fire suppression improvements.

All construction of the sewer and water facilities will be in accordance with the Standards, Specifications and Regulations of the Mukilteo Water and Wastewater District. The owner would pay the current charges in effect when the application is made to connect to the sewer and water system.

## **Project Approval Timeframe**

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The project permit shall be valid for four (4) years from the date of this Notice of Decision. If a building permit, grading permit, or occupancy permit is not obtained within this period, the project permit shall become null and void, and a new project permit application would need to be submitted. 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

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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., Tuesday, June 15, 2021**.


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 closed to walk in public visitors in response COVID-19. Please call City Hall (425) 263-8000 during regular business hours and arrangements can be made for receipt of an appeal.

**Staff Contact:** Garrett Jensen, Associate Planner  
T: (425) 263-8046  
E: gjensen@mukilteowa.gov

Signature: Garrett Jensen, Associate Planner  
Garrett Jensen, Associate Planner


Date: May 27, 2021

Signature:   
[Andrea Swisstack \(May 28, 2021 09:22 PDT\)](#)  
Andrea Swisstack, Public Works Director

Date: May 28, 2021

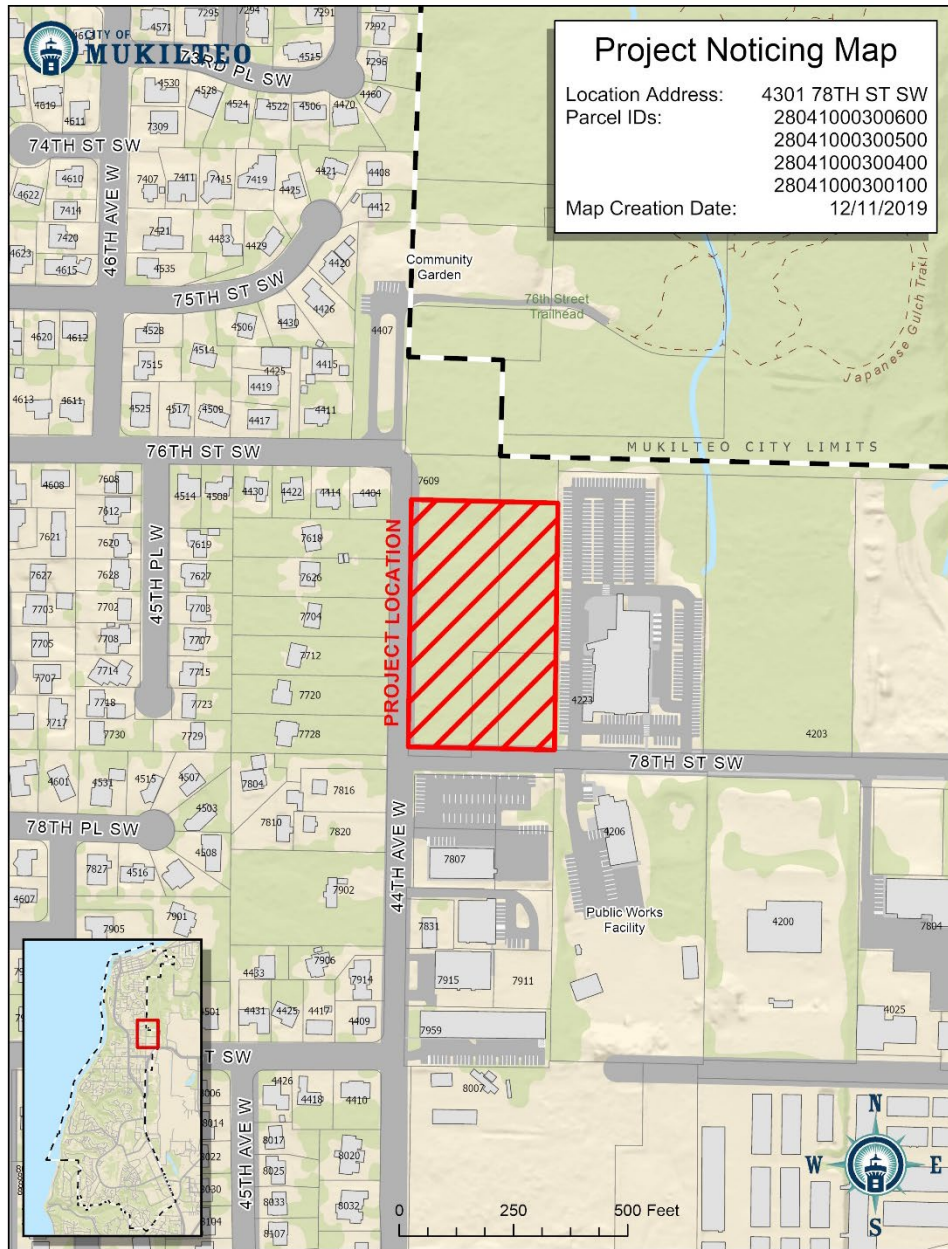
Signature: willie berns  
[willie berns \(May 28, 2021 09:32 PDT\)](#)  
Willie Berns, Building Official

Date: May 28, 2021

Signature:   
Glen Albright, Fire Marshal

Date: May 28, 2021

**Location Map**



**Date Issued:** Tuesday, June 1, 2021  
**End of Appeal Period:** Tuesday, June 15, 2021  
**Project Permit Expiration Date:** June 1, 2025

pc:	Applicant/Representative Reviewing Agencies Parties of Record	CDD Director Planning Manager Permit Services Supervisor	Permit Services Assistants (2) Property File
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