

City of Mukilteo, Washington

Noise Variance Notice of Approval (VAR-NOISE-2021-001)

for
**Manson Construction on behalf of the
Washington State Ferries**



The City of Mukilteo has **APPROVED, with conditions**, a Noise Variance application (City File No. VAR-NOISE-2021-001) for Manson Construction Company on behalf of the Washington State Ferries (WSF) for overnight work between 9:00 PM on February 22, 2021 to 7:00 AM March 16, 2021, up to a maximum of ten (10) nights.

APPLICANT:

Ms. Kelli Rider, Project Engineer
Manson Construction Company
5209 E. Marginal Way S.
P.O. Box 24067
Seattle, WA 98124

DESCRIPTION OF PROJECT:

Manson Construction Company is requesting a noise variance to install and repair of structural, electrical, mechanical, hydraulic and architectural components of the vehicle transfer span and to install overhead loading components for the *new* Mukilteo Ferry Terminal building.

This overnight work noise variance request seeks to minimize interruptions to scheduled ferry runs and to take advantage of low tide conditions of any in-water work. Currently the ferry boats do not operate during the hours of 12:15 AM to 4:40 AM.

LOCATION OF PROPOSAL:

The work will occur at the following location:

910 First Street - New Mukilteo Ferry Terminal. Work will be within Section 33 Township 29 Range 04 E.W.M. in Snohomish County, Washington, also known as Snohomish County Assessor Parcel Number 29043300401900 (**see Exhibit 1**).

FINDINGS OF FACT:

1. On January 9, 2021, Ms. Kelli Rider of Manson Construction Company (“Manson”) submitted a noise variance application to the City of Mukilteo on behalf of the Washington State Ferries (WSF).

2. Manson's noise variance request seeks to,

“... perform work during the hours between 9 PM and 7 AM for 15 working days between the dates of February 15th and March 15th. Not all 15 days may be needed. Manson will only use these days as necessary.”

This overnight work request is for the installation/repair of the vehicle transfer span and installation of overhead loading components for the new Mukilteo Ferry Terminal building. Overnight work will minimize interruptions to scheduled ferry runs.

3. Manson has stated that in ideal conditions, eight (8) overnight shifts are required to complete the work. Manson stated that weather and system failures could lead to the need for additional shifts.
4. Given Manson's statement that eight (8) overnight shifts would be required under ideal conditions, staff worked with Manson to reduce the number of potential overnight shifts from 15 (as originally requested) to ten (10). Ten (10) overnight shifts still provides two (2) additional overnight shifts in the event work needs to stop due to weather conditions or to troubleshoot system failures.
5. Manson's original request was to allow work through March 15, 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 March 16, 2021, is appropriate, so long as the final overnight work period is not in excess of the 10 overnights allowed.
6. MMC Subsection 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 9.46.080 “Construction noise”, on April 1, 2014, the City of Mukilteo Hearing Examiner issued a decision for the Washington State Ferries (WSF) to replace the existing Mukilteo Ferry Terminal with a new terminal and multimodal facility (EPF-2013-001, SH-2013-001). The Washington State Department of Ecology issued its approval of the Shoreline Conditional Use Permit (CUP) on May 19, 2014 (2014-NW-623). The Hearing Examiner/Department of Ecology decision included a condition that placed more restrictive construction noise requirements over that identified in MMC 9.46.080.

Condition No. 53 of the 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. Manson anticipates sources of noise will be from the following:

- Welding machines
- Generators
- Hand-tools and small power tools
- Engine of the derrick crane
- Engine of the tugboat

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

11. Manson’s application also states,

- When working at the new Mukilteo Ferry Terminal facility, residents on the bluff south of the work area are approximately 600 feet away and the Silver Cloud Inn is approximately 1,500 feet away. Noise will naturally dissipate and decrease to 7-25 dBA at 600-1,500 feet away. From the bluff, this sound is expected to be reduced to barely a whisper. The noise will be partially shielded by the new Mukilteo Ferry Terminal building.

12. To mitigate and reduce noise Manson Construction will:
 - Shut off equipment when not in use;
 - Restrict all work to the area shown in **Exhibit 1**; and
 - Conduct work in such a manner so that noise will be partially shielded by the new Mukilteo Ferry Terminal building.
13. The derrick crane and tugboat lights are the only lights proposed during this phase of construction. To mitigate lighting impacts, Manson states it will:
 - Position the lights to face the work being performed and will not be turned towards the homes on the bluff;
 - Lights not in use will be turned off; and
 - Lights will be shielded by a portion of the new terminal building.
14. In accordance with WAC 173-60-080, the City finds that:
 - a. Manson 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 for the installation/repair of structural, electrical, mechanical, hydraulic and architectural components of the vehicle transfer span and installation of overhead loading components for the new Mukilteo Ferry Terminal building. Overnight work minimizes disruptions to the ferry schedule and takes advantage of low tide conditions for any in-water work.
 - c. The noise variance is being granted for a period less than 30 days. Notice to the public with opportunity to comment is not required.
15. The Mukilteo Community Development Director may grant a variance to the construction noise regulations in accordance with MMC 9.46.080(C) and finds the improvements to the new Mukilteo Ferry Terminal to be essential to the operation of the overall highway system.

DECISION:

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

1. 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 for the installation/repair of structural, electrical, mechanical, hydraulic and architectural components of the vehicle transfer span and the installation of overhead loading components for the new Mukilteo Ferry Terminal building, as described in this decision. No other overnight construction activity is authorized.
3. This noise variance approval shall be valid between 9:00 PM on February 22, 2021 through 7:00 AM on March 16, 2021, for a maximum of ten (10) nights, 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. Manson and/or WSF shall provide residents and businesses within 1,000 feet of the new Mukilteo Ferry Terminal properties 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. Stationary equipment, such as light plants, generators, and compressors shall utilize approved noise mitigation shields, noise blankets, skirts or other means available as approved by the WSF engineer.
6. All equipment and lights shall be shut off when not in use.
7. Lights shall be directed towards the work area and shall not be turned towards residential and hotel uses, including the residential areas on the hill (i.e. "Old Town") and the Silver Cloud Inn.
8. WSF/Manson shall provide the City with advance notice of overnight work by 4:30 PM for each date work will occur by sending an email to lr Ritter@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-notice> (File No. VAR-NOISE-2021-001).

CONTACT PERSON:

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DATE OF ISSUANCE:

February 12, 2021

Signature: David Osaki Date: 2/12/2021
David Osaki
Community Development Director

PC:

Applicant
Parties of Record

Community Development Director
Fire Chief

Police Chief
Permit Services

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