



# CITY OF EDMONDS

121 5TH AVENUE NORTH • Edmonds, WA 98020 • (425) 771-0220 • FAX (425) 771-0221  
HEARING EXAMINER

GARY HAAKENSON  
MAYOR

In the Matter of the Application of	)	NO. PLN-2010-0024
	)	
<b>Washington State Department</b>	)	<b>Edmonds Ferry Terminal</b>
<b>of Transportation, Applicant</b>	)	<b>Repaving Noise Variance</b>
	)	
For a Noise Variance	)	FINDINGS, CONCLUSIONS,
_____	)	AND DECISION

### SUMMARY OF DECISION

The request for a variance from the City's noise ordinance provisions to allow night-time repaving work on the Edmonds Ferry trestle for up to ten non-consecutive nights over a three month period is **GRANTED**, subject to conditions.

### SUMMARY OF RECORD

Request:

Laura Musso Escude, on behalf of Washington State Department of Transportation (WSDOT/ Applicant), requested a variance from the City's noise ordinance provisions at Edmonds City Code (ECC) 5.30.040 and .050 to allow night-time repaving work on the Edmonds Ferry trestle. The request would allow the Applicant to exceed the City's noise limits for up to ten non-consecutive nights during a three-month period to be determined in the future. The Edmonds Ferry Terminal is addressed as 71 West Main, in Edmonds, Washington.

Hearing Date:

The Edmonds Hearing Examiner conducted an open record hearing on the request on June 3, 2010.

Testimony:

At the open record hearing the following individuals presented testimony under oath:

1. Mike Clugston, Planner, City of Edmonds
2. Laura Musso Escude, WSDOT, Applicant
3. Tom Castor, Applicant Representative
4. Al Rutledge

Exhibits:

At the open record hearing the following exhibits were admitted into the record:

1. Staff Report dated May 25, 2010, with the following attachments:
  1. Land Use Application

*Findings, Conclusions, and Decision*  
City of Edmonds Hearing Examiner  
WSDOT Noise Variance, No. PLN-2010-0024

2. Criteria Statement
3. Site plans and trestle photo
4. Edmonds City Code Chapter 5.30 – Noise Abatement and Control
5. Table of anticipated noise levels and proposed mitigations
6. Technical Comments
7. Public Notices and Affidavits
8. WSF Programmatic Exemption decision, dated April 8, 2008
9. Lockhart public comment, dated June 1, 2010

Upon consideration of the testimony and exhibits submitted at the open record hearing, the Hearing Examiner enters the following findings and conclusions:

### FINDINGS

1. WSDOT (the Applicant) requested a variance from the City's noise ordinance provisions at ECC 5.30.040 and .050 to allow nighttime repaving work on the Edmonds Ferry trestle for up to ten non-consecutive nights. Washington State Ferries owns the Edmonds Ferry Terminal, which is at 71 West Main Street, in Edmonds, Washington. *Exhibit 1, pages 1-2; Exhibit 1, Attachment 1.*
2. The project is intended to preserve the structural integrity of the ferry dock's timber trestle. Severe "alligator" cracking in the trestle surface indicates pavement failure, which if left unaddressed could damage the timbers beneath the pavement. The proposed project would reduce interim maintenance costs and prevent future damage that could impact operations and require expensive repairs. Project components include: repaving the trestle; resurfacing the transfer spans and retained fill areas; repairing storm drain sink holes on the retained fill; repainting the curbs, rails, and traffic arm; and storm drain repair and other work at the ferry terminal. *Exhibit 1, Attachment 2; Exhibit 1, Attachment 3; Escude Testimony.*
3. In 2008, Washington State Ferries applied for and received a Programmatic Shoreline Exemption from the City of Edmonds regarding maintenance and repair of the Edmonds Ferry Terminal. The result is that no shoreline substantial development permit is required for specific types of maintenance and repair work to the facility. The Programmatic Exemption approval specifically noted that even exempt projects are required to comply with the City's noise regulations. *Exhibit 1, Attachment 8.*
4. Washington State Ferries Operations Department prohibits maintenance from interfering with scheduled service, which means two access lanes to the vessel slip must be available at all operational times. Daytime work would require partial lane closures, which would result in increased loading and unloading times, interfering with service schedules. Industry standard construction techniques require the newly laid pavement to cure for a sufficient time before cars can drive on it. The necessary repaving work must be completed at night when the ferry is in recess for the evening. *Castor Testimony; Exhibit 1, Attachment 2.*

5. The Edmonds Ferry Terminal property is unzoned public right-of-way. Surrounding uses and zoning are as follows. To the north is Bracket's Landing, zoned Public Use. Parcels to the south are zoned Commercial Waterfront, and developed with the Port of Edmonds and various commercial uses. Burlington Northern Railroad tracks abut the ferry property to the east. Inland from the Commercial Waterfront properties south of Main Street is an area zoned Community Business, developed with commercial uses. Inland from Bracket's Landing north of Main Street is an area containing Downtown Mixed Commercial, Office-Residential, Single-family Residential, and Multifamily Residential zoning developed with the uses allowed in those zones. *Exhibit 1, pages 2-3; City of Edmonds Zoning Map, 2009.*
6. The Edmonds noise ordinance bases the maximum permissible sound levels on three factors: the zoning of the property generating the noise; the zoning of the property receiving (hearing, perceiving) the noise; and time of day.

District of Sound Source	District of Receiving Property		
	Residential	Business	Commercial
Residential	55 dB(A)	57	60
Business	57	60	65
Commercial	60	65	70

Between the hours of 10:00 pm and 7:00 am, permitted noise levels are reduced by 10 dB(A) for receiving properties within residential districts. *ECC 5.30.040; 5.30.050.A.*

7. Sounds created by the repair of essential utility services or public road projects are exempt from the limits in ECC 5.30.040 between the hours of 7:00 am through 10:00 pm. *ECC 5.30.110.A.3.*
8. The nearest sensitive receiver (residential use) is 200 feet from the proposed project area. *Castor Testimony.*
9. The Applicant submitted an information table showing the various kinds of equipment that would be used for the project and the sound levels that would result from each at three distances from the project site:

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Equipment	dB(A) at 50'	dB(A) at 100'	dB(A) at 200'
One ton pickup	68	65	62
Dump Trucks	79	76	73
Paving machine	74	71	68
Vibratory roller	85	79	73
Planing machine/grinder	82	79	76
Air compressor	68	62	56
Saw cut asphalt	85	79	73
Portable light plants and generators	64	58	52
Static roller and hand compressor	77	71	65
Flatbed truck	83	80	77
Truck mounted attenuator	68	62	56
Sweeper	69	66	63

Each piece of equipment listed exceeds the maximum permissible nighttime noise level for the receiving residential properties (45 dB(A)) and the majority of the equipment listed also exceeds maximum levels for the nearer commercial and business districts. *Exhibit 1, Attachment 5.*

10. The Applicant proposed the following mitigation measures to reduce noise impacts to the maximum extent possible:
- All vehicles shall be equipped with ambient sensitive backup warning devices. Contractors may use back up observers in lieu of back up warning devices for all equipment except dump trucks in compliance with WAC 296-155-610 and 296-155-615. Contractor shall use back up observers and back up warning devices for dump trucks in compliance with WAC Chapter 296-155-610.
  - All trucks performing export haul shall have well maintained bed liners as inspected and approved by the Engineer.
  - Truck tailgating is prohibited. All truck tailgates shall be secured to prevent excessive noise from banging.
  - A copy of the noise variance shall be kept on the project site at all times.
  - WSDOT will post a 24-hour complaint number on information signs.
  - WSDOT or its representatives shall notify residents within 300 feet of each area where nighttime construction will take place.
  - Temporary noise shields to be used as directed by the Engineer.

- Contractors will use the vibratory roller in "static" mode within 500 feet of residences.
- The Applicant can distribute ear plugs to affected residents upon request.

*Exhibit 1, Attachments 2 and 5; Escude Testimony.*

11. The afterhours complaint number would allow people calling to hear an outgoing message and leave a voicemail. WSDOT representatives would return calls within 24 business hours. *Escude Testimony.*
12. The Applicant is requesting approval to exceed the maximum nighttime noise limits for ten non-consecutive nights in an unspecified future three-month period. The work window for summer 2010 ends approximately September 15, 2010 and does not reopen until May 2011. As originally proposed, the project was budgeted to be paid for by a federal grant under the Jobs Bill flowing from the American Reinvestment and Recovery Act; however, the federal grant fell through. Another source of funding would potentially be available in time for the project to be completed in the fall of 2010. If not, the Applicant would attempt to fund and complete the work in the 2011 construction season. *Exhibit 1, Attachment 2; Exhibit 1, page 4; Castor Testimony.*
13. The amount of nighttime work that needs to be done could be completed in two to three days; however, because of the impossibility of predicting interruptions caused by weather, equipment, contractor/crew scheduling and sequencing issues, and other unforeseeable events, the Applicant is requesting permission for 10 nights' exception from the code's noise limits. Based on previous projects, 10 nights would be the minimum number of nights needed to ensure the work can be completed without being interrupted by the need to return for additional variance approval. Nighttime operations on the proposed project would occur on a Monday through Thursday schedule, four nights per week, with no Friday, Saturday, or Sunday night construction hours. *Castor Testimony.*
14. The advance written notice to residents within 300 feet of the project would be mailed one time approximately seven days before commencement of nighttime work hours. Additional written notice would be sent only in the event of something completely unusual that resulted in an extensive delay in project completion. *Escude Testimony.*
15. At hearing, the Applicant acknowledged the one-year time limit on variance approval in the code at ECDC 20.85.020.C and the extension procedure at ECDC 20.85.020.D. *Castor Testimony.*
16. The Technical Review Committee, consisting of representatives of the Fire District, the Public Works and Parks Departments, and the Engineering and Building Divisions reviewed the variance application and submitted comments that did not raise concerns or oppose approval. The Fire District noted that the Applicant would be required to ensure emergency access during construction. *Exhibit 1, Attachment 6.*

17. The proposed variance is exempt from review under the State Environmental Policy Act. *Exhibit 1, page 2; WAC 197-11-800(6)(b); ECDC 20.15A.080.*
18. Notice of Application and Public Hearing posted on-site, published in *The Herald*, and mailed to surrounding property owners on May 20, 2010, consistent with the requirements of ECDC 20.03. *Exhibit 1, page 4; Exhibit 1, Attachment 7.*
19. Public testimony at the hearing included: comments about the project's funding; comments about a previous construction project several years ago that resulted in substantial use of the 24-hour complain call in number due to nighttime construction noise; questions about Washington State Ferries future plans to remove a route from the Edmonds Ferry Schedule; and whether there would be notice to ferry passengers about the proposed work. *Rutledge Testimony*. One comment from local residents within two blocks requested that noise be kept to a minimum. *Exhibit 1, Attachment 9.*
20. Applicant representatives indicated that the ferry system is considering removing one "run" from the Edmonds Ferry schedule, not a "route", and that ferry passengers would be notified of the proposed repaving project via signage and other methods. *Castor Testimony*.
21. As a major regional transportation hub, the Edmonds Ferry is uniquely important to the City. The Edmonds/Kingston Ferry connects south Snohomish County and north King County to the Kitsap Peninsula and points west on the Olympic Peninsula. According to the City of Edmonds 2009 Comprehensive Plan, it is the fastest-growing route in the state's ferry system. *2009 Comprehensive Plan, page 13.*

## CONCLUSIONS

### Jurisdiction:

The Hearing Examiner has jurisdiction to hear and decide variance requests pursuant to Edmonds Community Development Code 20.01.003.A and 20.01.003.C.

### Criteria for Review:

Pursuant to Edmonds City Code 5.30.120, a variance may be granted from any requirement of sections 5.30.040 or 5.30.110 of the City's noise ordinance if the following findings can be made:

- A. Immediate compliance with the requirements of the City's noise ordinance cannot be achieved because of special circumstances rendering immediate compliance unreasonable in light of economic or physical factors, encroachment upon an existing noise source, or because of non-availability of feasible technology or control methods.
- B. Any such variance or renewal thereof shall be granted only for the minimum time period found to be necessary under the facts and circumstances.

- C. ....In those circumstances where variances to the noise standards are anticipated, the variance must be processed in the same manner provided for in ECDC 20.85.020 utilizing the criteria found in this section.

Pursuant to ECDC 20.85.010, the Hearing Examiner may not grant a variance unless the following findings can be made:

A. Special Circumstances. That, because of special circumstances relating to the property, the strict enforcement of the zoning ordinance would deprive the owner of use rights and privileges permitted to other properties in the vicinity with the same zoning.

1. Special circumstances include the size, shape, topography, location or surroundings of the property, public necessity as of public structures and uses as set forth in ECDC 17.00.030 and environmental factors such as vegetation, streams, ponds and wildlife habitats.

2. Special circumstances should not be predicated upon any factor personal to the owner such as age or disability, extra expense which may be necessary to comply with the zoning ordinance, the ability to secure a scenic view, the ability to make more profitable use of the property, nor any factor resulting from the action of the owner or any past owner of the same property;

B. Special Privilege. That the approval of the variance would not be a grant of special privilege to the property in comparison with the limitations upon other properties in the vicinity with the same zoning;

C. Comprehensive Plan. That the approval of the variance will be consistent with the comprehensive plan;

D. Zoning Ordinance. That the approval of the variance will be consistent with the purposes of the zoning ordinance and the zone district in which the property is located;

E. Not Detrimental. That the variance as approved or conditionally approved will not be significantly detrimental to the public health, safety and welfare or injurious to the property or improvements in the vicinity and same zone;

F. Minimum Variance. That the approved variance is the minimum necessary to allow the owner the rights enjoyed by other properties in the vicinity with the same zoning.

### Conclusions Based on Findings:

1. The purpose of the City's Noise Abatement and Control ordinance is "to minimize the exposure of citizens to the physiological and psychological dangers of excessive noise and to protect, promote, and preserve the public health, safety, and general welfare. It is the express intent of the city council to control the level of noise in a manner which promotes commerce, the use, value and enjoyment of property, sleep and repose, and the quality of the environment." *ECC 5.30.010*. Variances from the maximum permissible noise levels are established in the ordinance. *ECC 5.30.120*.
2. Repairs to the pavement on the ferry's timber trestle are needed in the short term to ensure ongoing public safety and to prevent the increase in costs that could result from further compromise to the trestle's structural integrity. Given the high importance of ferry operations to the City and regional transportation network, the inability for the project to proceed during ferry operating hours is a special circumstance that satisfies the requirement of *ECC 5.30.120.A*. *Findings 2, 4, and 21*.
3. Due to the vagaries inherent in outdoor construction on major infrastructure and the requirements specific to the proposed project, the request to exceed the City's noise standards on 10 non-consecutive nights over a three month period is the minimum necessary (*ECC 5.30.120.B*) to ensure the project is completed in an efficient manner, preventing the need to return for additional variance approval. *Findings 2, 4, 12, and 13*.
4. The requested variance is necessary to allow completion of maintenance and repairs on a significant public structure, which satisfies the special circumstances requirements of *ECDC 20.85.020.A* and also comports with the mandate of avoiding special privileges in *20.85.020.B*. The importance of the safety and effectiveness of ferry operations is a guiding principle in the most recent Comprehensive Plan, and the instant proposal would improve both. The subject property is unzoned. There would be nighttime noise impacts to surrounding commercial, business, and residential uses that exceed the limits established in the City's noise ordinance; however, conditions of approval would ensure that noise impacts are mitigated to the maximum extent possible. Approval would only allow excess noise for ten total non-consecutive nights over a three month period to be determined in the future. As stated previously, the requested 10 nights is the minimum number necessary to ensure efficient completion of the maintenance project that is necessary to preserve public safety and to safeguard public funds. *Findings 2, 4, 10, 11, 12, 13, 14, 16, and 21*.

### **DECISION**

Based on the preceding findings and conclusions, the request for a variance from the City's noise ordinance to allow night-time repaving work on the Edmonds Ferry trestle for up to ten non-consecutive nights during a three month period is **GRANTED**, subject to the following conditions:

1. Sounds originating from the temporary construction site as a result of construction activity to repave the Edmonds Ferry Trestle, as described in Attachments 2 and 3, shall

be exempt from the provisions of Edmonds City Code 5.30. The granting of a variance shall not relieve any person from the requirements of ECC 5.30.130 relating to public disturbance noises (ECC 5.30.120.D).

2. Approval is granted for the minimum length of time required to complete the project as described in the Applicant's declarations as indicated in Attachment 2. The variance may be utilized to exceed the nighttime noise limits for no more than ten total nights and no more than seven consecutive nights during a three month period.
3. The Applicant shall implement the proposed noise mitigation measures:
  - All vehicles shall be equipped with ambient sensitive backup warning devices. Contractors may use back up observers in lieu of back up warning devices for all equipment except dump trucks in compliance with WAC 296-155-610 and 296-155-615. Contractors shall use back up observers and back up warning devices for dump trucks in compliance with WAC Chapter 296-155-610.
  - All trucks performing export haul shall have well maintained bed liners as inspected and approved by the Engineer.
  - Truck tailgating is prohibited. All truck tailgates shall be secured to prevent excessive noise from banging.
  - A copy of the noise variance shall be kept on the project site at all times.
  - WSDOT will post a 24-hour complaint number on information signs.
  - WSDOT or its representatives shall notify residents within 300 feet of each area where nighttime construction will take place.
  - Temporary noise shields to be used as directed by the Engineer.
  - Contractors will use the vibratory roller in "static" mode within 500 feet of residences.
  - The Applicant can distribute ear plugs to affected residents upon request.
4. Emergency access shall be maintained during construction as required by the Fire Marshall.
5. The Applicant shall notify the City at the same time that neighboring residents are notified of the impending project commencement. The Applicant shall track and report to Planning Staff the nights on which the variance approval is relied upon to exceed the City's noise standards.

6. The variance must be acted on within one year from the date of approval or it shall expire and be null and void, unless the Applicant files for an extension of time before the expiration date and the City approves the extension request. An application for an extension of variance approval time shall be reviewed as a Type II decision.

DECIDED this 17th day of June 2010.

Toweill Rice Taylor LLC  
City of Edmonds Hearing Examiners  
By:



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Sharon A. Rice



# CITY OF EDMONDS

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HEARING EXAMINER

GARY HAAKENSON  
MAYOR

## **RECONSIDERATION AND APPEAL**

The following is a summary of the deadlines and procedures for filing requests for reconsideration and appeals. Any person wishing to file or respond to a request for reconsideration or an appeal should consult the relevant ordinances and/or contact the Planning Division of the Development Services Department for further procedural information.

### **REQUEST FOR RECONSIDERATION**

Section 20.06.010 of the Edmonds Community Development Code (ECDC) contains the procedures for requesting reconsideration of a Hearing Examiner decision. Requests for reconsideration must be filed with the City Planning Director within 10 calendar days of the Hearing Examiner's decision. The filing deadline is 4:30 p.m. on the last business day of the reconsideration period. Only parties of record (i.e., the applicant, any person who testified at the open record hearing on the application, any person who individually submitted written comments on the application, or the City of Edmonds) may file a request for reconsideration. The grounds for reconsideration are limited to errors of procedure, errors of law or fact, errors of judgment, or the discovery of new evidence that was not known and could not in the exercise of reasonable diligence have been discovered. Reconsideration requests must contain the information specified in ECDC 20.06.010(D) and be accompanied by the required filing fee.

### **APPEALS**

Pursuant to ECDC 20.05.020(B), appeals of hearing examiner decisions on variances shall be to the Snohomish County Superior Court as provided in ECDC 20.85.020.B and 20.07.006, in accordance with the Land Use Petition Act (RCW 36.70C). LUPA appeals must be filed within 21 days of decision issuance. Filing a request for reconsideration is not a prerequisite to filing an appeal.

### **EFFECT OF REQUEST FOR RECONSIDERATION ON APPEAL DEADLINE**

The timely filing of a request for reconsideration stays the Hearing Examiner's decision until such time that the Hearing Examiner issues a decision on reconsideration, and any judicial appeal must be filed within 21 days of the decision on reconsideration.

### **LAPSE OF APPROVAL**

Section 20.05.020(C) of the ECDC states: "Time Limit. The approved variance must be acted on by the owner within one year from the date of approval or the variance shall expire and be null and void, unless the owner files an application for an extension of time before the expiration and the city approves the application."

### **NOTICE TO COUNTY ASSESSOR**

The property owner may, as a result of the decision rendered by the Hearing Examiner, request a change in the valuation of the property by the Snohomish County Assessor's Office.



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HEARING EXAMINER

GARY HAAKENSON  
MAYOR

## OFFICE OF THE HEARING EXAMINER CITY OF EDMONDS, WASHINGTON

Applicant	)	
	)	
Washington State Department of Transportation	)	Case No. PLN-2010-24
	)	
For a Variance	)	<b>DECLARATION OF SERVICE</b>
_____	)	

I, Sharon A. Rice, the undersigned, do hereby declare:

- That I am a partner in the firm of Toweill Rice Taylor LLC, which maintains a professional services agreement with the City of Edmonds, Washington for the provision of Hearing Examiner services, and make this declaration in that capacity; and that I am now and at all times herein mentioned have been a citizen of the United States, a resident of the State of Washington, over the age of eighteen (18), and competent to be a witness and make service herein; and that on June 17, 2010 I served a copy of the decision in case PLN-2010-24 upon the following individuals at the addresses below by first class US Mail:

Maria Musso Escude, WSDOT  
15700 Dayton Avenue N.  
Shoreline, WA 98133

City of Edmonds Planning Division  
121 Fifth Avenue North, First Floor  
Edmonds, WA 98020

Clerk of the Edmonds City Council  
121 Fifth Avenue North, First Floor  
Edmonds, WA 98020

Harry and Rita Speiser  
200 Beach Place # 104  
Edmonds, WA 98020

Alvin Rutledge  
7101 Lake Ballinger Way  
Edmonds, WA 98026

James L. Lockhart  
110 James Street  
Edmonds, WA 98020

I hereby declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct, this 17th day of June 2010 at Edmonds, Washington.

Sharon A. Rice, Toweill Rice Taylor LLC