FINDINGS, CONCLUSIONS AND DECISION
OF THE CITY COUNCIL OF THE CITY OF SEATTLE

Council Concept Approval to allow the replacement and expansion of a utility service use (Seattle Public Utilities storm water facility) located at 5895 Lake Washington Boulevard S (Project No. 3015640, Type V).	)	C.F. 313666 DPD Application #3015640 FINDINGS, CONCLUSIONS AND DECISION

Background

Seattle Public Utilities (SPU) has proposed to install a 2.65 million gallon Combined Sewer Overflow (CSO) tank at Basin 44 in Seward Park. The proposed CSO tank and related infrastructure will be mostly located beneath existing tennis courts at the southwestern corner of Seward Park. Piping and related infrastructure would be located below the park, in the water, and above grade within the park and would extend south to Basin 45 at Martha Washington Park, 6612 57th Ave S.

The proposed CSO tank would be approximately 390 feet long by 50 feet wide by 30 feet deep. The tank and its related infrastructure (including an electrical cabinet, irrigation control cabinet, motor actuators for mechanical gates, odor control ducts, meter cabinet, and a 680 linear foot outfall pipe) will be partially located under the existing tennis courts, but would extend beyond the current boundary of the tennis courts. The project site is zoned Single Family 9600 (SF 9600) and in the Conservancy Recreation (CR) and Conservancy Protection (CP) shoreline environments. SPU will own the CSO; the Seattle Department of Parks and Recreation (Parks Department) owns the property.

CSO tanks are a "utility service use", "city facility" and "public facility" within the meaning of the City's land use code (SMC 23.84A.006, .030, and .040). New public facilities are permitted in SF 9600 zones by City Council approval. Public facilities and utility lines require a shoreline substantial development permit in the CP and CR environments. Utility service uses require shoreline conditional use approval in the CR environment.

This project is a required part of SPU's strategy to protect public health and the environment by improving its existing wastewater system. In June 2012, the City of Seattle approved a consent decree with the United States Environmental Protection Agency, Department of Justice, and Washington State Department of Ecology that included this project as one measure to reduce sanitary sewer overflow and CSO, along with timelines for implementing those measures. This CSO tank will store untreated stormwater and wastewater that the system would otherwise discharge into Lake Washington during peak storm events. In this particular drainage basin, there have been an average of seventeen untreated discharges a year. The improvements to this facility will help SPU meet a goal of no more than one such event in any year.

On April 3, 2014, the Department of Planning and Development (DPD) issued its Analysis and Recommendations and published a Notice of Public Hearing for Council to consider the request for concept approval. DPD recommended approval of the project with eight conditions to mitigate both construction and use impacts.

On May 6, 2014, the Parks, Seattle Center, Libraries, and Gender Pay Equity Committee (Parks Committee) held a public hearing on DPD's recommendation and received a briefing on the project. On May 20, 2014, the Parks Committee had an additional briefing and heard public comment on the proposal prior to making it recommendation to the full City Council.

Findings of Fact

The City Council hereby adopts the following Findings of Fact:

1. As reflected in Attachment A, the proposed CSO tank is located in the southwest corner of Seward Park at 5895 Lake Washington Boulevard South.

2. The project site is zoned Single Family 9600 (SF 9600). The project site is also located in two Shoreline environments (SMC Chapter 23.60A): areas landward of the ordinary high water mark of Lake Washington are located in the CR environment, areas waterward of the ordinary high water mark are in the CP environment. The project site is subject to a substantial shoreline development permit and a shoreline conditional use permit due to its location within the shoreline environments and the cost of construction.

3. The Parks Department owns the site. Concurrent with consideration of this application, the Council is considering a partial transfer of jurisdiction of the site from the Parks Department to SPU (Council Bill 118066).

4. The project site is predominantly flat, paved and is in use as two tennis courts and a small parking lot. The parking lot serves the tennis courts and visitors to the rest of Seward Park. The site is east of and shares property boundaries with ten single family homes zoned SF 9600. To the east of the site is Lake Washington. Seward Park extends north and east of the site. Surrounding uses outside the park are primarily single family houses.

5. The project is subject to environmental review under the Washington State Environmental Policy Act (SEPA). SPU issued a SEPA determination of significance on May 26, 2011. In September 2012, SPU Issued a Draft Environmental Impact Statement (EIS). On January 3, 2013 SPU Issued a Final Environmental Impact Statement. A coalition of local neighbors (Seward Park Neighbors Coalition) appealed the adequacy of the Final EIS to the Office of the Hearing Examiner, pursuant to Chapter 25.05 of the Seattle Municipal Code. The Hearing Examiner conducted an appeal hearing on March 25, 2013. As documented in a decision dated April 8, 2013, the Hearing Examiner remanded the SPU Director's adequacy determination on the Final EIS on the sole issue of project-related operational noise. The Hearing Examiner affirmed the SPU Director's Final EIS adequacy determination with respect to all other issues addressed in the appeal. On September 5, 2013, SPU issued a Revised EIS and Technical Memorandum, addressing project-related operational noise. On September 30, 2013, SPU issued an Addendum to the Revised EIS and Technical

Memorandum analyzing a modified project that SPU determined could be more cost-effective and perform better than the project as initially proposed.

6. SPU submitted a Master Use Permit (MUP) application to DPD in December 2013 (DPD Application Number 3015640). A public comment period on the MUP ran from January 9, 2014 to February 7, 2014. DPD received comments from six neighbors of the site recommending denial of the application, as shown in the Analysis and Recommendation of the DPD Director. Comments voiced concern regarding the noise, vibration and dust impacts of construction. Comments also cited impacts on trees, plants and wildlife in the park; impacts on adjacent steep slopes and liquefaction prone areas, and noise and odor impacts of the facility when it is in operation. Instead of installing the CSO tank at the proposed site, many commenters recommended siting the facility at an alternative location analyzed in the EIS, the park's south parking lot.

7. In making a recommendation to Council, SMC 23.76.050 requires that the DPD Director draft an evaluation of the proposal based on the following standards and criteria:

   1. The written recommendations or comments of any affected City departments and other governmental agencies having an interest in the application or request;

   2. Responses to written comments from the public;

   3. An evaluation of the proposal based on the standards and criteria for the approval sought and consistency with applicable City policies;

   4. All environmental documentation, including any checklist, EIS or DNS; and

   5. The Director's recommendation to approve, approve with conditions, or deny a proposal.

8. The following findings were included in the Analysis and Recommendation of the DPD Director concerning the project's compliance with criteria in SMC 23.76.050:

   a. SPU conducted public outreach and meetings for the project prior to submitting the application to DPD. From those public meetings, SPU maintains their own email and mailing lists, as well as public comments, all of which informed the project prior to submittal to DPD. MUP plans were referred to the Parks Department for comment.

   b. The required comment period for this proposal was held from January 9, 2014 to February 7, 2014. DPD noted comments from six members of the public opposed to this project. Comments stated that the proposed use and construction impacts are incompatible with the adjacent single family uses. Comments noted that the proposed site would impact more trees than the alternative site, the south parking lot. Comments were also concerned about noise and odors.

      In response to public comments, SPU stated: "Seattle Parks and Recreation (Parks Department) is the City department that has jurisdiction over the development site and its usage. According to the Parks Department, Seward Park is a regional destination park

that draws visitors from both the local area as well as the region. Based on the historical usage of the tennis courts and the parking lot, the Parks Department does not believe that the elimination or a reduction in the development site area is warranted. Regarding landscaping, the Parks Department supports "Crime Prevention through Environmental Design" (aka, CPTED), which is defined as 'the proper design and effective use of the built environment which can lead to a reduction in the fear of crime and incidence of crime, and to an improvement in the quality of life.' Planting of new landscaping on the site will incorporate CPTED principles to discourage criminal activity."

c. The project complies with land use code development standards for institutions in SMC 23.44.022: few development standards apply as the development occurs primarily underground. The two applicable requirements are section 23.44.022 H. "Noise and Odors" and 23.44.022 I. "Landscaping".

   The acoustic modeling for noise levels during operation shows no audible increase to existing noise levels at residences or key sensitive park sites discussed in the EIS, or for park users. The construction permit will have a separate Noise Ordinance review to ensure compliance with the Noise Ordinance during construction.

   SMC 23.44.022 I. requires landscaping that: integrates the facility with adjacent areas; reduces the potential for erosion or stormwater runoff; reduces coverage of the site by impervious surfaces; screens parking from adjacent residentially zoned lots or streets, or reduces the appearance of bulk of the facility. In this case, the Parks Department is reviewing the application and has provided specific comments on all facets of the project, including landscaping. No further analysis is necessary. The proposal is to repave the tennis courts and parking lot in generally the existing configuration, which requires compliance with the drainage code.

   The proposal meets all applicable development standards for new or expanding institutions in single-family zones.

   Related to Environmentally Critical Areas (ECAs), SPU has executed an ECA Exemption pursuant to SMC 25.09.045.

   Related to the Comprehensive Plan, the DPD Analysis and Recommendations cites multiple Comprehensive Plan goals and policies that the proposal meets.

d. According to the environmental analysis performed on this project, there are no significant adverse effects on the environment anticipated to result from the proposal. Meeting the eight conditions specified in the DPD Analysis and Recommendations the project will be compliant with SEPA policies. Existing codes and development regulations applicable to this project will provide additional mitigation.

e. DPD has recommended approval of the project including: Council approval of the location of a public facility in a single-family zoning district; conditional use approval of the shoreline substantial development permit; approval of the shoreline conditional use permit; and SEPA approval with conditions.

9. The proposal also requires a shoreline substantial development permit because: (1) the value of construction in the City's Shoreline District[1] exceeds $2,500, and (2) the request to install a CSO tank and related infrastructure occurs in the CR and CP shoreline environments. Normally, DPD reviews a shoreline permit as a Type II land use permit. However, SMC 23.76.036 requires Council approval for Type II Shoreline applications listed in SMC 23.76.006 C.2.g when associated with a Type V request. Section 23.76.006 C.2.g lists both shoreline substantial development permits and shoreline conditional uses.

10. According to SMC 23.60.030, shoreline substantial development permits may be issued when the proposed development is consistent with:

    1. The policies and procedures of Chapter 90.58 RCW;

    2. The regulations of SMC 23.60; and

    3. The provisions of Chapter 173-27 WAC.

    Conditions may be attached to the approval of a shoreline permit, to assure consistency of the proposed development with the Seattle Shoreline Master Program and the State's Shoreline Management Act.

11. In the CR environment, SMC 23.60.365 states: "utility service uses for treating and storing stormwater and/or combined sewage are allowed as a shoreline conditional use if they reasonably require a shoreline location to operate, they are the minimum size necessary to meet the purpose; and they mitigate adverse impacts to achieve no net loss of ecological functions." In the CP environment, SMC 23.60.302 permits utility lines as a special use if no reasonable alternative location exists.

12. In making a recommendation to Council, SMC 23.76.050 requires that the DPD Director draft an evaluation of the proposal based on the standards and criteria for the approval sought and consistency with applicable City policies.

13. The DPD Director's written Recommendation analyzes the proposal's compliance with related land use code approval criteria, provides detailed SEPA analysis, including an analysis of construction noise impacts not addressed by existing regulations.

14. The DPD Director recommends that the Council grant concept approval and approve shoreline permits for the project. DPD has recommended eight conditions to address short- and long-term impacts of construction and the new use.

Conclusions

The City Council hereby adopts the following Conclusions:

1. The proposed facility, a utility service use, is a public facility as defined in SMC 23.84A.006.

[1] The Shoreline District extends 200 feet from the Ordinary High Water Mark of Lake Washington as measured on a horizontal plane

2. Utility service uses are public facilities that require Council approval when the use is established in a SF 9600 zone. The Lake Washington shoreline between I-90 and South Fontanelle Place, including the entire shoreline in the North Henderson Basin, is zoned exclusively with single-family zoning districts.

3. The Council has identified twenty-one additional mitigation measures to reduce impacts of construction on the adjacent single-family houses and the park.

4. The Council also acknowledges that SMC 23.76.036 requires Council approval of MUP applications that include both Type II (shoreline permit) and Type V (council concept approval) requests. The Council has considered the shoreline permit requirements in SMC 23.60, DPD's Analysis as detailed on Pages 12-20 of its Analysis and Recommendation, and supporting documents. The Council concludes that the project, as designed, meets 1) the policies and procedures of RCW Chapter 90.58, 2) requirements in SMC 23.60, and 3) the provisions of WAC Chapter 173-27.

Accordingly, the City Council now concludes that requested concept approval and shoreline permits should be granted with conditions.

Decision

The City Council hereby GRANTS SPU's requested concept approval and shoreline permits for the project with the following conditions:

A. CONDITIONS – TYPE V COUNCIL LAND USE DECISION

Prior to construction

1. Review the design to identify whether there are any additional improvements that would: (1) further reduce above-ground features; and (2) reduce impervious surfaces in the design of the proposed facility;

2. Offset any increase in impervious surfaces at the proposed facility with creation of new pervious areas at other locations within Seward Park with the goal of no net increase in impervious surfaces within the park;

3. Provide a 24-hour contact person or persons to address complaints during construction;

4. Work with the abutting property owners to perform pre-construction surveys of structures and side sewers on lots abutting the park to provide a baseline to identify cracks resulting from construction;

5. Work with the abutting property owners to install additional vegetation along property lines to enhance visual screening and delineate the boundary between the Park and lots abutting the park where none currently exists.

During construction

6. In addition to public notice requirements imposed as a SEPA condition, provide public notice through signage near or at the construction site, website information, and e-mail notification to interested parties regarding the construction schedule: (1) identifying the periods of construction during which noise levels are expected to be high because the impact types of equipment identified in SMC 25.08.425 C are planned to be used; and (2) providing at least one month notice of the construction start date;

7. Prepare a plan to stage trucks offsite to the extent feasible while minimizing trips to the site;

8. Schedule the construction of project elements, when feasible, to reduce the number of simultaneous vehicle trips to the site;

9. Limit construction activity on weekends and restrict construction activities using the impact types of equipment identified in SMC 25.08.425 C to weekdays;

10. Schedule construction to avoid overlap with the construction of other projects in the park; when construction overlap cannot be avoided, coordinate project schedules to minimize impacts, where feasible, on the Seward Park neighborhood and park visitors;

11. Work with the Parks Department and special event organizers to coordinate construction hours with the scheduling of large scheduled community events at Seward Park;

12. Work with Seafair to develop a construction schedule that suspends construction activities during significant Seafair events in or near Seward Park;

13. Use construction methods that reduce vibration to or below the levels identified in the FEIS;

14. Specify threshold vibration levels for structures on lots abutting the park in the contract documents;

15. Work with property owners to implement a monitoring program to periodically measure vibration levels and movement on lots abutting the park;

16. Do not use rock blasting;

17. Follow best management practices for controlling fugitive dust;

18. Use feasible noise-reducing measures, such as using sound control devices on equipment, prohibiting equipment with unmuffled exhaust, minimizing idling time of equipment and vehicles, and installing acoustic barriers around stationary sources of construction noise; and

19. Conduct on-site monitoring to ensure compliance with requirements in the City's noise code.

Post Construction

20. Work with the abutting property owners to perform post-construction surveys of those structures and side sewers surveyed under Condition 4, and repair cracks determined by the inspector to reasonably result from construction;

For the life of the project

21. Schedule maintenance activities at low-use times in the park, except in cases of emergency.

B. CONDITIONS – SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

During Construction

22. Restrict any work waterward of the ordinary high water mark to applicable work windows established by the Washington Department of Fish and Wildlife.

23. Employ appropriate Best Management Practices (BMPs)to prevent any debris or other deleterious material from entering Lake Washington, such as the use of a turbidity curtain and/or debris boom surrounding the project area during in-water and over-water work to contain any debris, suspended sediments, or spills caused by construction activities. Materials to be disposed of shall be contained on site and then discarded at an appropriate upland facility.

24. Immediately remove any debris that enters the water during the proposed work and contain such debris until it can be disposed of at an appropriate upland facility.

For the Life of the Project

25. Apply no pesticides or fertilizers at the project site within 50 feet of a stream, wetland, or shoreline except as authorized by DPD.

26. Prevent the entry of fish into the outfall.

27. Monitor and maintain shoreline revegetation and shoreline enhancement measures included in the application.

C. CONDITIONS – SHORELINE CONDITIONAL USE

None.

D. CONDITIONS – SEPA

Prior to Construction

28. Execute a public outreach plan including a website to provide project and progress updates, obtain email addresses for a list-serve for project updates, and provide project contacts (with

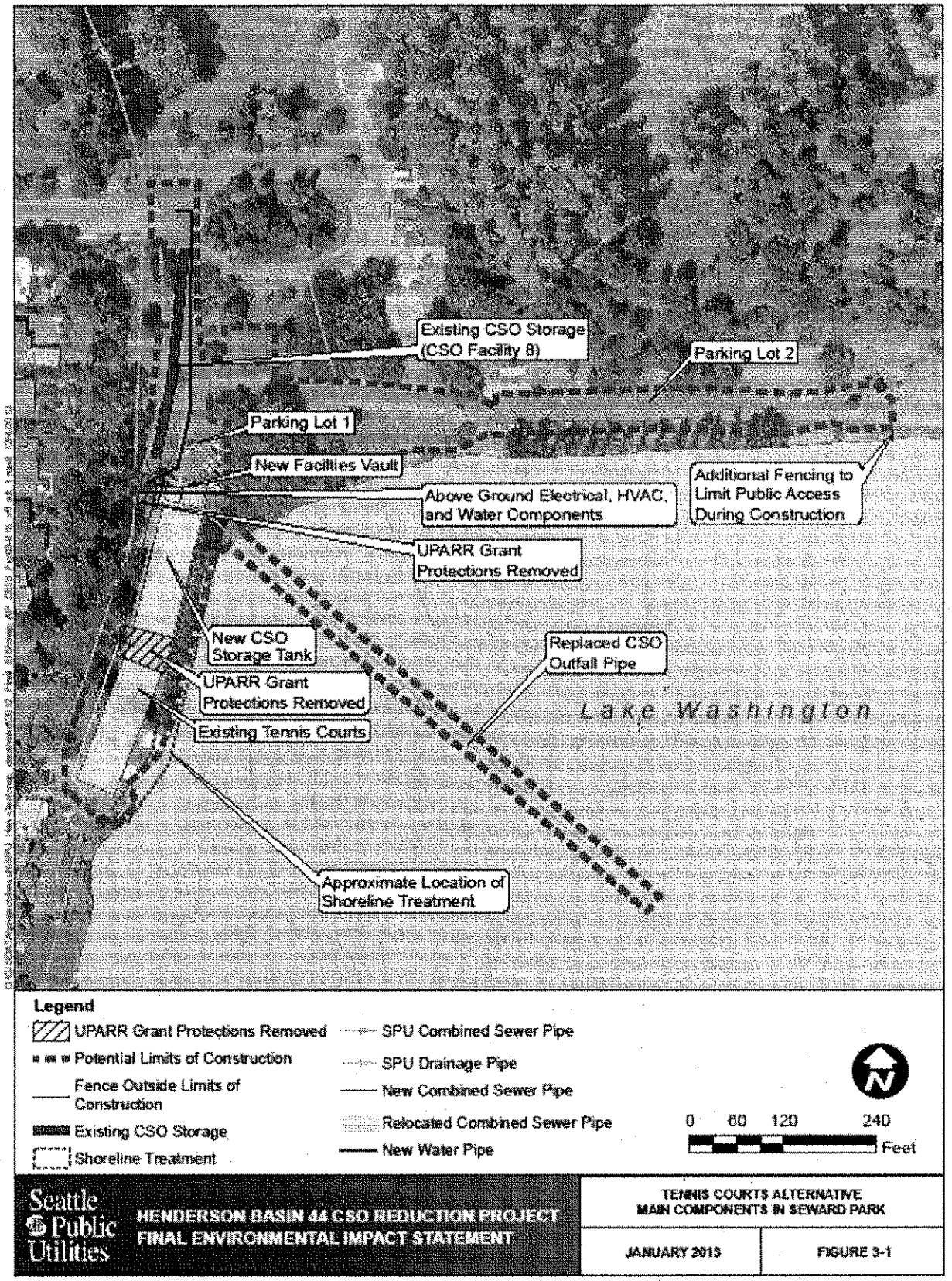
phone numbers) for the public. These contacts should also be mailed to nearby property owners (SPU should define the appropriate area of the mailings).

Prior to Issuance of the Master Use Permit

29. The project owner and/or responsible parties shall provide DPD with a statement that the contract documents for their general, excavation, and other subcontractors will include reference to regulations regarding archaeological resources, and that construction crews will be required to comply with those regulations, including the following:

- Archaeological Sites and Resources (RCW 27.53);
- Indian Graves and Records (RCW 27.44);
- Archaeological Site Public Disclosure Exemption (RCW 42.56.300);
- Discovery of Human Remains (RCW 27.44);
- Archaeological Excavation and Removal Permit (WAC 25-48); and
- Abandoned and Historic Cemeteries and Historic Graves (RCW 68.60).

Dated this 2nd day of June, 2014.

City Council President

Attachment A