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CITY OF MEDINA

BEFORE THE HEARING EXAMINER
FOR THE CITY OF MEDINA

In the Matter of the Application of	)	No. TECHNICAL-16-001
	)	
John Gage, on behalf of Kiewit/General/Manson	)	**SR 520 Bridge Noise Variance**
	)	
	)	FINDINGS, CONCLUSIONS, AND
For a Technical Noise Variance	)	DECISION

SUMMARY OF DECISION

The request for a technical noise variance to exceed the Medina Municipal Code's maximum permissible daytime and nighttime noise levels for construction and demolition work related to the SR 520 Floating Bridge is **GRANTED**. Conditions are necessary to address specific impacts of the variance from noise standards.

SUMMARY OF RECORD

Hearing Date:
The City of Medina Hearing Examiner held an open record hearing on the request on June 15, 2016. Following the hearing, the Hearing Examiner issued a Post Hearing Order directing the Applicant to submit, for public review, relevant portions of the Final Environmental Impact Statement (and Addendums) associated with the project, as well as the Applicant's 2012 noise variance application. Public comments on these materials were allowed until noon on June 27, 2016, at which time the record closed.

Testimony:
The following individuals presented testimony under oath at the open record hearing:

Cristina Haworth, City Planning Consultant
Robert Grumbach, Director of Development Services
Cody Bishop, Project Director
Kate Snider, Applicant Environmental Consultant
Heija Nunn
Sheree Wen
Cynthia Adkins

Exhibits:
The following exhibits were admitted into the record:

1. Staff Report, dated June 8, 2016

2. Owner's Declaration of Agent, dated January 19, 2016
3. Notice Materials:
    a. Email from Cristina Haworth to John Gage, dated March 2, 2016, with email string
    b. Determination of Complete Application, dated March 7, 2016
    c. Notice of Application, issued March 14, 2016; Declaration of Mailing, dated March 14, 2016; Potential Noise Exceedance Area map; mailing labels; Declaration of Posting, dated March 14, 2016; Affidavit of Publication, dated May 3, 2016, with Notice of Public Hearing ad copy
    d. Notice of Public Hearing (Rescheduled), issued May 25, 2016; Declaration of Mailing, dated May 25, 2016; mailing labels; Declaration of Posting, dated May 26, 2016
4. Letter from Kathryn Akita, to City of Medina, received May 5, 2016
5. Noise Variance Application, received January 20, 2016; Letter from Cody Bishop to Robert Grumbach, dated January 13, 2016; Requested Additional Information, dated February 11, 2016, with Attachments 1 through 4; Requested Additional Information, dated February 22, 2016
6. Letter from Medina City Attorney Kathleen Haggard to Hearing Examiner, dated May 31, 2016
7. Email from Robert Grumbach to Cristina Haworth, dated June 2, 2016, with email string and Applicant's responses to City's request for additional information
8. Former Chapters 12.86 through 12.100 of the King County Code
9. Affidavit of Publication for rescheduled hearing, dated May 26, 2016, with Notice of Public Hearing ad copy
10. Public Comments:
    a. Email from Jen Garone to Cristina Haworth, dated June 8, 2016
    b. Email from Robert Grumbach to Christina Haworth, dated June 15, 2016, with email string
    c. Email from Heija Nunn to Robert Grumbach, dated June 15, 2016
    d. Email from Robert Grumbach to various recipients, dated June 15, 2016
    e. Email from David Doud to Robert Grumbach, dated June 15, 2016
    f. Email from Suzanne Cohen to Robert Grumbach, dated June 15, 2016
    g. Letter from Laurel Preston to City of Medina, dated June 15, 2016
    h. Letter from Sheree Wen to Hearing Examiner, undated
11. KGM PowerPoint presentation (14 slides), dated June 15, 2016
12. Email from Robert Grumbach to various recipients dated June 1, 2016, with email string
13. Letter from Robert Brenner, KGM, to Robert Grumbach, dated June 17, 2016, with attachments:
    a. *Hearing Examiner, Findings, Conclusions, and Decision, No. PL-12-001 (March 7, 2012)*
    b. Staff Analysis and Recommendation, dated February 15, 2012
    c. Noise Variance Application, dated January 4, 2012, with attachments

14. Cover memo from Applicant, dated June 16, 2016, with highlighted items regarding existing bridge demolition in SR 520 Final Environmental Impact Statement and Addendums[1]
15. Petition opposing variance, submitted June 19, 2016
16. Public comments submitted in response to Exhibits 13 and 14:[2]
    a. Email from Heija Nunn to Robert Grumbach, dated June 15, 2016, with email string
    b. Email from Ron Santi to Robert Grumbach, dated June 15, 2016, with email string
    c. Email from Cynthia Adkins to Heija Nunn, dated June 27, 2016, with email string
    d. Email from Jean Amick to Heija Nunn, dated June 18, 2016, with email string
    e. Email from Jen Garone to Robert Grumbach, dated June 22, 2016, with email string
    f. Email from Sheree Wen to Heija Nunn, dated June 23, 2016, with email from Rep. Gerry Pollet to Julie Meredith, undated, and email string
    g. Review of WSDOT responses to local governments, local elected officials and citizen groups' concerns over lack of environmental review of alternatives to barge based rubblization and barging through contaminated sediments of Kenmore Ship Channel, undated
    h. Email from David Yee to Heija Nunn, dated June 23, 2016
    i. Email from Colleen McAleer to Jen Garone, dated June 23, 2016, with email string
    j. Email from Heija Nunn to Jean Amick, dated June 23, 2016, with email string
    k. Email from Tere Foster to Palvi Mehta, dated June 22, 2016
    l. Email from Roland Dukes to Heija Nunn, dated June 24, 2016
    m. Letter from the Ching family, dated June 25, 2016
    n. Email from Jen Garone to Robert Grumbach, dated June 23, 2016, with email string
    o. Email from Alex Morcos to Robert Grumbach, dated June 17, 2016
    p. "Law Enforcement in the United States," Wikipedia article, printed June 27, 2016

The Hearing Examiner enters the following Findings and Conclusions based upon the testimony at the open record hearing and admitted exhibits:

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[1] Exhibits 13 and 14 were submitted in response to the Hearing Examiner's Post Hearing Order of June 17, 2016.

[2] Sheree Wen submitted a number of documents after the comment deadline addressing health impacts from excessive noise exposure. Because this information was submitted after the comment deadline, these comments cannot be considered by the Hearing Examiner due to considerations of fairness and procedural due process.

FINDINGS

Application

1. John Gage, on behalf of Kiewit/General/Manson, a Joint Venture (KGM/Applicant), requests a technical noise variance to exceed maximum permissible daytime and nighttime noise levels, as permitted by the Medina Municipal Code (MMC), for construction and demolition work related to the SR 520 Floating Bridge (520 Bridge). Project activities would include continued demolition and removal of the old bridge, construction of sound walls on the south side of SR 520, re-grading and landscaping the hillside under the existing bridge, and completion of the Evergreen Point Park & Ride Facility. *Exhibit 5.*

2. The Applicant[3] previously received approval from the Hearing Examiner for a technical noise variance for the proposal on March 7, 2012, following an open record hearing. That noise variance expires on July 13, 2016. Cody Bishop, Applicant Project Director, testified that, due to project delays outside the Applicant's control, work approved under the 2012 noise variance would not be completed prior to expiration of that variance approval. The Applicant has applied for a noise variance to complete project work by the end of 2016. *Exhibit 5; Exhibit 13; Testimony of Mr. Bishop.*

Public Notice

3. The City of Medina (City) determined that the application was complete on March 7, 2016. The City mailed notice of the application to owners of property identified as affected by excessive noise and residences within 300 feet of the property on March 14, 2016. That same day, the City posted notice of the application at City Hall, the Medina Post Office, the public notice board at the Medina Park Northeast 12th Street parking lot, and on the City's website. The City initially scheduled the open record hearing associated with the application for May 18, 2016, and provided notice accordingly. The open record hearing, however, was rescheduled to June 15, 2016, to allow the City attorney to assess whether recent changes to the King County Code's noise ordinances would impact the application.[4] *Exhibit 1, Staff Report, page 3; Exhibit 3.c; Exhibit 3.d; Exhibit 5; Exhibit 6; Exhibit 9.*

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[3] The Washington State Department of Transportation (WSDOT) selected KGM as the contractor to replace the 520 Bridge and tasked it with the responsibility for requesting relief from maximum permissible noise levels under the City of Medina code. It also appointed KGM to act as its agent in working with the City on this application. *Exhibit 1, Staff Report, page 4; Exhibit 2.*

[4] City attorney Kathleen Haggard provided a letter to the Hearing Examiner, dated May 31, 2016, which summarized the City's existing noise regulations. The summary notes that the City adopted its current noise code in 1991, incorporating by reference the maximum sound levels and other controls of the King County Code (former Chapters 12.86 through 12.100). The MMC modifies former Chaps. 12.87, 12.96, and 12.97 of the King County Code. *See MMC 8.06.010(B).* In 2015, the King County Council passed Ordinance 18000, revising the County's noise code and requiring noise standard variances to be reviewed as part of a project permit application. Medina has not amended its noise code since King County made these changes. The City attorney suggested that the noise variance be processed under the current MMC

4. On May 25, 2016, the City provided notice of the rescheduled hearing by mailing notice to residences within 300 feet of the property in question and those identified as affected by excessive noise. The next day, the City posted notice at four locations within 300 feet of the property, at City posting locations, and at the public notice board at the Medina Park Northeast 12th Street parking lot. The City also published notice of the rescheduled hearing in the *Seattle Times* on May 26, 2016. *Exhibit 1, Staff Report, page 3; Exhibit 3.c; Exhibit 3.d; Exhibit 5; Exhibit 9.*

5. The City received a number of public comments in response to its notice materials:
   - Kathyrn Akita wrote a letter expressing concern over excessive noise related to the proposal, issues with the 24-hour hotline meant to address citizen noise complaints, a "lack of concern or consideration for our communities by WSDOT/Kiewit" in the past, and any allowances for additional nighttime construction impacts.
   - Jennifer Garone wrote with concerns about quality of life and health impacts for local residents due to noise and construction, environmental impacts, and impacts from a recent settlement between the Applicant and the City of Kenmore forbidding the Applicant from performing demolition work on removed bridge concrete in Kenmore.
   - Heija Nunn wrote a lengthy letter detailing her concerns that: public notice for the hearing was insufficient; the recent settlement between Kenmore and the Applicant forbidding "rubblization" (demolition of removed bridge concrete) in Kenmore would create additional impacts in Medina; a Shoreline Permit appears necessary and the noise variance should be consolidated with that permit; there is need for a public hearing on the Shoreline Permit; and the need for assurances that, if rubblization does occur in Medina, debris removal would still occur by barging debris to Kenmore to be trucked away from there.
   - David Doud emailed the City expressing opposition to the variance request because he believes the proposed noise levels and rubblization activities would endanger the health of his children and the health and safety of the general public.
   - Suzanne Cohen wrote expressing concern over noise impacts from rubblization and whether notice of the public hearing was sufficient.
   - Laurel Preston wrote a letter requesting that the hearing be postponed because notice was insufficient and access to relevant documents was inadequate. She also requested that the noise variance be denied because residents are already experiencing noise impacts from this project 24 hours a day.
   - Sheree Wen wrote requesting denial of the variance because, according to scientific studies, "mounting evidence connects noise exposures with

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and former KCC noise ordinances. *Exhibit 6.* Relevant sections of the former KCC noise ordinances are provided in Exhibit 8. The Hearing Examiner concurs with the City Attorney's assessment.

cardiovascular disease, sleep disturbance, stress, general annoyance, impaired learning and concentration, and other health effects." Ms. Wen also expressed concern about the recent Kenmore settlement and impacts from additional truck travel through the city.

- Jean Amick emailed the City with concerns about the fact that the Applicant does not yet have the necessary shoreline permit approval to perform rubblization in Lake Washington.

Exhibit 4; Exhibit 10; Exhibit 12.

6. At the open record hearing, both Heija Nunn and Sheree Wen[5] argued that notice of the open record hearing was inadequate and moved to have the hearing postponed. Ms. Nunn testified that, when she became aware of the public hearing, she searched the City's website for information about it but could only find notification that the hearing set for May 18, 2016, had been postponed. She did locate public notice materials at the City post office and the public notice board at the Medina Park Northeast 12th Street parking lot but could not find notice posted at City Hall. Ms. Nunn also stated that she located notice of the hearing at the project site but, because two public hearings were scheduled for the same evening, worried that citizens would not realize that the hearing on the technical noise variance for SR 520 Bridge demolition was occurring. She expressed concern that public involvement in the application process for the noise variance might be discouraged and thought additional time should be allotted for public input on the application and supporting materials. Ms. Wen expressed similar concerns, specifically noting that many of the links on the City's website to technical reports related to the application were inaccessible. *Testimony of Ms. Nunn; Testimony of Ms. Wen.*

7. City Planning Consultant Cristina Haworth testified that notice of the open record hearing was provided as required by the municipal code, including posting at City Hall, the public notice board at the Medina Park Northeast 12th Street parking lot, the Medina post office, four locations around the project site, and on the City's website. In addition, notice was provided to 206 residences – not just those within 300 feet of the project site as required by City code.[6] The City's Director of Development Services, Robert Grumbach, testified that, as a matter of practice, the City also uses the "eGov" delivery system to notify interested residents who have requested notifications about certain projects and that the eGov notification about the public hearing went out on May 26, 2016. *Testimony of Ms. Haworth; Testimony of Mr. Grumbach.*

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[5] Ms. Wen currently serves on the City Council but appeared at the hearing in an unofficial capacity as a concerned city resident. *Testimony of Ms. Wen.*

[6] Ms. Haworth testified that she recalled seeing notice posted at City Hall. At the hearing, however, she accompanied Ms. Nunn outside to the notice board and discovered that notice was no longer visible at City Hall. *Testimony of Ms. Haworth.*

8. The Hearing Examiner ruled that, although notice was not perfect, it was sufficient in time and adequate under the law to apprise interested citizens of the hearing. The Hearing Examiner specifically noted that the City complied with notice requirements for mailing and publication and made reasonable efforts to comply with requirements related to posting. He also noted that, regardless of any perceived deficiencies with notice, both Ms. Wen and Ms. Nunn attended the hearing and, accordingly, clearly received actual notice of the proceeding.[7] *Ruling of the Hearing Examiner.*

Environmental Review

9. The Washington State Department of Transportation (WSDOT) and the Federal Highway Administration issued a joint National Environmental Policy Act / State Environmental Policy Act Final Environmental Impact Statement (FEIS) on the SR 520 Floating Bridge Replacement and HOV Program in June 2011.[8] Two addenda were issued on October 8 and November 18, 2011. These documents are relevant to a review of the current variance request. Chapter 3 of the FEIS is entitled "Construction Activities." It defines *demolition* as "major breaking, crushing, and cutting of existing structures for eventual disposal," and it defines *removal* as "vibrating, pulling, and dismantling existing structures for eventual disposal, reuse, or recycling." Chapter 3 describes a time frame of 45 months for replacement of the SR 520 Bridge "including . . . demolition of the existing bridge." In-water construction includes "existing bridge demolition." Chapter 3 also specifies that this type of demolition would require impact hammers and other equipment to remove all features of the existing structures (traffic barriers, bridge deck, pier caps, columns, etc.), as well as saw and torch cutting to cut the bridge deck into manageable sections that can be lifted by crane. According to Chapter 3, pieces of the roadway would be loaded by crane onto trucks or barges for disposal or recycling. Columns and piles would be removed using vibratory extraction where possible and necessary, or cut two feet below the mudline (ground surface). *Exhibit 1, Staff Report, page 6; Exhibit 14, FEIS, Chapter 3, pages 3-2, 3-13, 3-14, and 3-18 (June 2011).*

10. Chapter 6 of the FEIS is entitled "Effects during Construction of the Project." It contains a subsection on proposed demolition activity, explaining that demolition of the existing structures would require heavy equipment such as concrete saws, cranes, excavators, hoe-rams, haul trucks, jackhammers, loaders, and tractor trailers. It states that maximum noise levels could reach 82 to 92 dBA at the nearest residences. Table 6.7-5 identifies the

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[7] The requirement for notice under procedural due process is satisfied when actual notice is given to those who attend the initial land use hearing and is mailed to those property owners within 300 feet of the potentially affected property. *Pease Hill Cmty. Grp. V. Cnty. of Spokane*, 62 Wn. App. 800 (1991).

[8] Washington Administration Code (WAC) 197-11-800(6)(b) provides land use decisions that "[grant] variances based on special circumstances, not including economic hardship, applicable to the subject property, such as size, shape, topography, location or surroundings and not resulting in any change in land use or density" shall be exempt from SEPA review. *WAC 197-11-800(6)(b).* The City's 2012 staff report stated that the noise variance requested in 2012 was exempt from review under the State Environmental Policy Act (SEPA), Chapter 43.21C RCW, in accord with WAC 197-11-800(6)(b). *Exhibit 13.*

noise levels for each of the four typical construction phases as measured at 50 feet from the construction activity. The construction noise analysis assumed that there would be construction staging areas along the proposed bridges during demolition and construction, similar to the "east side staging area" described in more detail below. The noise levels listed in Table 6.7-5 are the typical maximums and would occur only periodically during the heaviest periods of construction. *Exhibit 14, FEIS, Chapter 6, page 6.7-4 (June 2011).*

11. Table 6.7-5 lists air compressors, backhoes, concrete saws, cranes, excavators, forklifts, haul trucks, jackhammers, loaders, power plants, pneumatic tools, water pumps, service trucks, and utility trucks as normal equipment for demolition of currently existing structures with an average maximum noise emission of 93 dBA and an energy average noise emission of 88 dBA. Noise levels are combined worst-case levels for all equipment at a distance of 50 feet from the work site. *Exhibit 14, FEIS, Chapter 6, Table 6.7-5, page 6.7-5 (June 2011).* The FEIS lists noise abatement measures that could be used including limiting hauling, loading spoils, jackhammering, and using other demolition equipment during daytime hours. *Exhibit 14, FEIS, Chapter 6, page 6.7-8 (June 2011).*

12. Katie Snider, the Applicant's Environmental Consultant, testified that all work envisioned under the current variance request was addressed in the 2011 FEIS and that the FEIS was considered and approved by numerous government agencies. She also stressed that all the work currently proposed was also identified in the 2012 application for a noise variance. *Testimony of Ms. Snider.*

13. Mr. Grumbach testified that, because the activities involved with this application were already considered under the FEIS, no additional environmental review of the current application occurred. He noted, however, that this application is not a "renewal" of the existing variance because there is currently no active noise variance related to construction of the park and ride facility, for which the Applicant recently acquired responsibility. *Testimony of Mr. Grumbach.*

Comprehensive Plan, Zoning, and Surrounding Property

14. The SR 520 Corridor is a special planning area under the City's Comprehensive Plan. City staff identified the following Comprehensive Plan goals and policies as relevant to the proposed application: Land Use Element Goal LU-G1 (maintain Medina's high quality residential setting and character); Policy LU-57 (the City shall work with WSDOT and city residents to development mitigation measures to be implemented as part of regional facilities development or improvement projects, such as SR 520 and related structures and improvements); Utility Element Goal T-G4 (minimize impacts of regional transportation facilities on adjacent residential uses and the city as a whole); Policy T-P8 (the City shall work with WSDOT, city residents and other groups, stakeholders, and agencies to develop mitigation measures that may be implemented as part of any SR 520 improvement/expansion project). *Exhibit 1, Staff Report, page 3.*

15. The Comprehensive Plan recognizes SR 520 as an Essential Public Facility that may not be prohibited outright by the Comprehensive Plan or development regulations. *Washington Administrative Code (WAC) 365-196-550(1)(d)(iii), -550(3)(b), -550(6)(d).* The Comprehensive Plan also designates the SR 520 right-of-way (ROW) within the city, including the existing SR 520 Bridge to mid-span, as the "SR 520 Corridor Special Planning Area." The Comprehensive Plan Land Use Element states that development of Special Planning Areas is guided by the need to limit or mitigate the impact of such development on surrounding areas and the city as a whole, seeking a balance between needs of a growing population, environmental preservation, and maintaining a high standard of living. *Comprehensive Plan, Land Use Element, page 14.*

16. The proposed project would take place within the SR 520 right-of-way zoned primarily state highway (State ROW), with property zoned Single Family Residential (R-20) to the north and south. SR 520 continues to the east, and Lake Washington is adjacent to the west. *Exhibit 1, Staff Report, pages 2 and 3.*

Technical Noise Variance

17. The City's jurisdiction extends to the middle of Lake Washington. *RCW 34A.21.090 and RCW 35.21.160.* The Applicant's work zone includes portions of Lake Washington and approximately 1,500 linear feet of land within city limits, including the eastern SR 520 Bridge landing and the Evergreen Point Park & Ride facility. Ms. Snider testified that the "east side staging area,"[9] where rubblization would occur on barges in Lake Washington, is approximately 450 feet offshore from the city. *Exhibit 1, Staff Report, page 6; Testimony of Ms. Snider.*

18. At the hearing, Ms. Snider testified that she has been involved with the proposal since 2012. She stressed that the 2012 noise variance anticipated and described the need for demolition of the old bridge, construction of the new bridge, construction of the park and ride facility, and potential construction of sound walls. She explained that the Applicant intended to complete demolition by the end of 2015, but work was delayed due to design issues with the support pontoons for the new SR 520 Floating Bridge. Ms. Snider testified that the following demolition activities have yet to be completed:
    - The "east approach structure"—the portion of the old bridge affixed to land—would be demolished between now and December 2016. This demolition would occur in situ (including rubblization) and the demolished material would be transported via truck through Medina to a recycling facility in Renton.
    - Pontoons with "superstructure" supporting the old bridge would be removed between now and September 2016. Concrete from these structures would be

[9] An Addendum to the FEIS identified this area as one where barges would be used to stage construction materials, store construction equipment, transport demolition debris, provide a work area for construction personnel, and store water containment systems and water storage tanks. *Exhibit 15, SR 520, SEPA Addendum, page 1-2 (November 2011).*

demolished in the east side staging area (on barges approximately 450 feet from the Medina shoreline) between now and December 2016. This would involve breaking up the concrete, separating out rebar, and transporting the demolished concrete by barge to Kenmore where it would be trucked to the recycling facility in Renton.

- After all the superstructures are removed, the empty support pontoons would be floated out of Lake Washington, through the Ballard Locks, by December 2016.

Testimony of Ms. Snider.

19. At the hearing, Ms. Snider identified the following non-demolition activities as part of the remaining SR 520 project:
    - Construction of noise walls along the south side of SR 520.
    - Completing construction of the Evergreen Point Park & Ride facility.
    - Slope reestablishment and landscaping at the site of the old east side approach structure.
    - Removing anchor cables related to the old bridge and the east side staging area.

    Testimony of Ms. Snider.

20. The application seeks a variance through the end of 2016. Ms. Snider stressed that, for the most part, the Applicant expects that remaining construction and demolition of the SR 520 project would occur during normal daytime hours. Proposed nighttime activities would involve constructing the noise walls and completing the park and ride facility because that work generally requires lane closures on SR 520 and doing the work at night reduces traffic impacts. Ms. Snider explained that the National Marine Fisheries Service has prohibited underwater demolition work from April 15 to August 16 on the west approach and from May 15 to July 1 on the east approach. Because of this, the Applicant has identified the following activities that may need to be carried out during nighttime hours due to scheduling requirements: sidecasting lake bed materials for bridge foundation demolition, underwater bridge demolition, bridge pontoon separation, bridge superstructure demolition, minor construction activities at Evergreen Point Road Park and Ride, and minor noise wall construction activities. *Exhibit 1, Staff Report, pages 6 and 7; Exhibit 5; Testimony of Mr. Bishop; Testimony of Ms. Snider.*

21. Ms. Snider explained that the Applicant is requesting the technical noise variance, in part, to allow for nighttime demolition as a contingency plan if delays to the overall schedule occur. She stated that there are potential problems with a project of this nature and, to stay on schedule and complete the project, the Applicant would like the flexibility to perform nighttime demolition work if necessary. *Testimony of Ms. Snider.*

22. Ms. Snider also addressed the recent settlement between the Applicant and the City of Kenmore. She explained that, pursuant to the 2012 noise variance and the FEIS, the Applicant intended to perform rubblization in situ (for the east side approach) and at the east side staging area (for the pontoon superstructures). After the project began,

however, the Applicant secured a site in Kenmore to fabricate project components. In 2015, the Applicant sought a permit to use that same site for demolition of bridge materials in Kenmore. This would only have impacted a small percentage of rubblization for the site (approximately six percent). Prior to any hearing on the permit, however, Kenmore and the Applicant agreed that no rubblization would occur at the Kenmore site. Accordingly, the Applicant returned to its original plan—in place since the FEIS was issued in 2011—to perform most rubblization work in situ and on barges in Lake Washington. Ms. Snider explained that the east side staging area has been used throughout the SR 520 project and that it was permitted through extensive analysis of the initial project scoping and application review process. *Testimony of Ms. Snider.*

23. Mr. Grumbach testified that the City and the Applicant disagree about the scope of work addressed in the Applicant's shoreline permits related to the proposal. The City believes that the Applicant must procure a revised shoreline permit for the rubblization work that would occur in the east side staging area. Mr. Grumbach testified, however, that because the work would involve the same equipment as previously planned and would produce the same noise impacts, the technical noise variance application could proceed independent of the revised shoreline permit application. *Testimony of Mr. Grumbach.*

City Noise Limits

24. Proposed work would exceed daytime and nighttime noise levels set forth in the City code. Chapter 8.06 MMC adopts former King County Code (KCC) Chapters 12.86 – 12.100 to regulate noise within the city.[10] *See Chapter 8.06 MMC.* Former Chapter 12.88 KCC establishes maximum permissible sound levels per Sound District Designation. The City has designated the City Director of Development Services to administer the City's noise control regulations. The Director has determined that the SR 520 areas west of the center point of Evergreen Point Road are "residential" districts consistent with the residential zoning adjacent to the SR 520 right-of-way. The area between the centerlines of Evergreen Point Road and 80th Avenue NE is a "commercial" district. *Exhibit 1, Staff Report, pages 6 and 7.*

25. The maximum permissible sound level[11] for sounds originating from Commercial Districts is 57 dBA where affecting Residential Districts and 60 dBA where affecting Commercial Districts. The maximum permissible sound level for sounds originating

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[10] MMC 8.06.030 provides that is a violation of the City's noise ordinances to engage in any commercial construction and development activity or to operate any heavy equipment before the hours of 7:00 AM and after 7:00 PM Monday through Friday and before the hours of 8:00 AM and after 5:00 PM on Saturday. No construction and development activity or use of heavy equipment may occur on Sundays.

[11] *Sound level* means the weighted sound pressure level measured by the use of a metering characteristic and weighted as specified in American National Standards Institute Specifications, Section 1.4. The sound pressure level of a sound expressed in decibels is 20 times the logarithm to the base 10 of the ratio of the pressure of the sound to the reference sound pressure of 20 micropascals. In the absence of any specific modifier, the level is understood to be that of a root-mean-square pressure. *KCC 12.87.300. Exhibit 8.*

from Residential Districts is 55 dBA where affecting Residential Districts and 57 dBA where affecting Commercial Districts. All standards are reduced by 10 decibels during nighttime hours between 10:00 PM and 7:00 AM on weekdays and 10:00 PM and 9:00 AM on weekends where the receiving property lies within a rural or residential district of King County. *Former KCC 12.88.030.* The former King County Code also requires that noise level measurements be taken at the real property of another person or at 50 feet from noise-producing equipment, whichever is greater in distance from the noise source. *Former KCC 12.88.040.A. Exhibit 8.*

26. The City determined that excessive noise generated would impact approximately 206 properties to varying degrees up to 1,000 feet from the source. Project work is expected to occur 50 feet or more from residences, except for properties located immediately adjacent to the limits of construction along the north and south sides of the SR 520 right-of-way. The Applicant provided a table of predicted noise levels with the maximum decibels at 50 feet that describes the following impacts: grading work (85 dB from excavators and dozers); bridge demolition (85 dB from excavators); approach demolition (90 dB from hoe ram); underwater sidecasting (79 dB from generator); and noise wall construction (85 dB from dozer). *Exhibit 1, Staff Report, page 10; Exhibit 5.*

27. The City determined that nighttime work involving bridge demolition, noise wall construction, and underwater sidecasting would exceed nighttime noise standards, up to 85 dBA at 50 feet from the noise wall construction on the south side of SR 520 and at the Evergreen Point Park and Ride. *Exhibit 1, Staff Report, page 9.*

28. Ms. Haworth testified that a number of Best Management Practices (BMPs) were put in place for the 2012 noise variance application and that the Applicant would continue to follow these BMPs to reduce noise impacts from the proposal. She explained that noise levels would exceed allowable levels to approximately 100 feet during the daytime and potentially up to 1,000 feet at night because of lower-allowed noise levels at night. Ms. Haworth testified that the Applicant would have to conduct ongoing noise monitoring throughout the duration of the project and periodically report to the City about project progress and noise-relate issues. *Testimony of Ms. Haworth.*

29. Mr. Grumbach testified that, under conditions of the current (2012) noise variance, he has received and reviewed periodic reports about compliance with the City's noise ordinances. He noted that there have been a number of issues related to testing equipment failures but that the current noise complaint system has been satisfactory. He stated that, despite the availability of the Applicant's noise complaint hotline, the City has received complaints made directly to it. Mr. Grumbach explained that, when complaints do occur, the City gets involved, and the City would like to retain the ability to enforce its noise ordinances and address noise complaints through the City's code compliance process. *Testimony of Mr. Grumbach.*

30. Ms. Snider testified that there have been a number of issues with the equipment related to noise testing but agreed that it would be reasonable to expect that the equipment should work at least 75 percent of the time. *Testimony of Ms. Snider.*

Mitigation

31. The Applicant proposes the following measures to minimize and mitigate noise impacts of proposed construction:

- Require mufflers on all engine-powered equipment;
- Inspect equipment regularly to replace parts not meeting manufacturers' specifications;
- Limit high-noise activities to daytime hours when feasible;
- Locate stationary construction equipment as far as possible from noise-sensitive properties;
- Prohibit unnecessary equipment idling;
- Minimize the use of standard back-up alarms, and investigate the possibility of using ambient alarms;
- Prohibit truck tailgate banking;
- Use electric tools and equipment when possible;
- Notify nearby residents when noisy work would occur;
- Notify all impacted households at least seven days in advance of scheduled nighttime work, or as soon as possible in the case of unscheduled work; and
- Maintain a 24-hour construction hotline to investigate noise complaints.

Exhibit 5.

Public Testimony

32. Ms. Nunn reiterated that she would like additional time to review the proposal. She expressed concern that the scope of work has changed and that additional permits may be required. Ms. Nunn stated that she would like to see the Applicant hire an outside, third-party expert to address and report on noise related issues with this project. She explained that, although she does not live next to the bridge, she is concerned because she believes Medina's citizens have been ignored to some extent by WSDOT. Ms. Nunn restated many of the same concerns submitted in her earlier comments on the proposal, especially those related to the Kenmore settlement, trucking materials from the site, and project impacts from nighttime construction work. She stressed that she would like to see the permit request denied. *Testimony of Ms. Nunn.*

33. Ms. Wen testified that all area residents would be impacted by the potential noise impacts of the proposal. She stressed that there is a reason that the City code and other regulatory agencies limit nighttime noise levels to 55 dBA because mounting evidence shows that nighttime noise impacts pose health risks. Ms. Wen does not believe demolition of the old bridge should fall under the "essential public facility" doctrine because the very fact that it is being demolished proves that the old bridge is no longer essential. She believes

the demolition project, as proposed, constitutes a public nuisance that endangers public health and safety. *Testimony of Ms. Wen.*

34. Cynthia Adkins[12] testified that she believes there should be redundancies built in to the Applicant's noise monitoring system, especially because of how ineffective the system has been in the past. She stressed that area residents would prefer that no nighttime work occur and that, if feasible, portions of the bridge be deconstructed and barged to non-residential areas elsewhere for rubblization. *Testimony of Ms. Adkins.*

35. In response to public comment, Ms. Snider testified that the Applicant is not requesting any significant changes to the noise variance proposal envisioned in 2012. She noted that the Applicant has a 24-hour hotline for noise complaints related to the SR 520 project and that it is the Applicant's responsibility (not the City's) to address such complaints. Ms. Snider explained that, although nighttime work may seem to be a major focus of the current application, it is only because the current application is for a variance from the City's noise standards. The Applicant, however, is committed to performing all demolition work during the daytime absent emergencies or major project delays. Ms. Snider testified that, when nighttime work that exceeds allowable noise levels occurs, the Applicant would notify affected property owners seven days in advance of such work. Because of this, there is little incentive for the Applicant to do demolition work at night. Ms. Snider also argued that removing the old bridge should be viewed as an integral part of construction of the new SR 520 Bridge—an essential public facility—because leaving the old bridge in place is dangerous. *Testimony of Ms. Snider.*

Post Hearing Order & Responses

36. The Hearing Examiner issued a Post Hearing Order directing the Applicant to submit, for public review, relevant portions of the FEIS (and Addendums) as well as the Applicant's 2012 noise variance application because neither document was included in the Applicant's submission materials. In response to these materials, the City received numerous public comments:
    - Ms. Adkins requested that a number of application materials be made publicly available online and expressed concern that the scope of project work has increased in relation to rubblization.
    - Jean Amick emailed with concerns about noise impacts of the proposal.
    - Jennifer Garone wrote expressing concern about the lack of public involvement in the decision process as well as concerns about noise impacts and environmental impacts.
    - Sheree Wen wrote stressing that mounting evidence shows that noise exposure above 40 dBA in the evening and 55 dBA during the day creates health problems.

[12] Ms. Adins currently serves on the City Council but appeared at the hearing in an unofficial capacity as a concerned City resident. *Testimony of Ms. Adkins.*

- David Yee emailed his concerns that the project would endanger public health and safety and that the proposal is not utilizing practical, known means to prevent or abate excessive noise pollution. He requested that, at a minimum, all affected residents be supplied with noise cancelling headphones.
- Heija Nunn reiterated the same concerns expressed in her previous comments and at the public hearing.
- Tere Foster emailed that, in her experience as a real estate broker, noise impacts affect property values and discourage home sales in the area.
- Roland Dukes, Ron Santi, and the Ching family wrote expressing concerns over noise from defectively designed joints on the new 520 bridge.
- Alex Morcos sent a letter requesting that construction be restricted to regular daytime hours, that barges be stacked between the shoreline and the demolition barges to serve as a noise buffer and further reduce noise impacts, and that the Applicant develop a clear plan addressing the need for weekend and nighttime work.
- David Doud submitted a petition, collected on "change.org," with signatures and brief comments of other area residents opposed to the noise variance application.

Exhibit 15; Exhibit 16.

Staff Recommendation

37. Ms. Haworth testified that City staff does not provide recommendations on variance applications. She stated, however, that if the Hearing Examiner were to approve the application, the City recommends nine conditions of approval. The City's proposed conditions relate to providing construction schedules to the City; performing sound level testing and monitoring, with quarterly reports to the City; complying with variance start and end dates; performing additional mitigation if construction activity sound levels exceed modeled sound levels; implementing construction best management practices; notifying neighbors of noise exceeding maximum permissible sound levels; providing a phone complaint number and designated contact person; and placing a copy of the noise variance decision on-site to ensure compliance with noise mitigation measures at all times. *Exhibit 1, Staff Report, pages 11 to 12; Testimony of Ms. Haworth.*

38. Mr. Grumbach testified that any additional approval conditions of the pending Shoreline Permit should also be requirements of the noise variance approval. *Testimony of Mr. Grumbach.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner has jurisdiction to hear and decide requests for technical noise variances from the Medina Municipal Code (MMC). *MMC 8.06.010.B.4.*

Criteria for Review

As explained above (in footnote 5), the MMC adopted portions of King County Code (KCC) Chapters 12.86 through 12.100 governing excessive noise and noise control by reference, with amendments set forth within MMC 8.06.010. The City has not adopted KCC noise control amendments adopted by the County in 2015. Relevant portions of the previous KCC noise control chapter are provided in Exhibit 8. Under MMC 8.06.010, KCC 12.96.010 (D) is amended to read:

> No variance shall be granted pursuant to this section until the administrator or the hearing examiner has considered the relative interests of the applicant, other owners or possessors of property likely to be affected by the noise, and the general public. A technical or economic variance may be granted only after a public hearing on due notice. The administrator or hearing examiner may grant a variance, if the Hearing Examiner finds that:
>
> A. The noise occurring or proposed to occur does not endanger public health or safety; and
>
> B. The applicant demonstrates the criteria required for temporary, technical or economic variance under Section 12.96.020.

MMC 8.06.010.B.4.

MMC 8.06.010.B.5 amends KCC 12.96.020(B) to read as follows:

> A technical variance may be granted by the hearing examiner on the grounds that there is no practical means known or available for the adequate prevention, abatement or control of the noise involved. Any technical variance shall be subject to the holder's taking of any alternative measures that the hearing examiner may prescribe. The duration of each technical variance shall be until such practical means for prevention, abatement or control become known or available. The holder of a technical variance as required by the hearing examiner, shall make reports to the administrator detailing actions taken to develop a means of noise control or to reduce the noise involved and must relate these actions to pertinent current technology.

MMC 8.06.010.B.5.

The criteria for review adopted by the Medina City Council are designed to implement the requirement of Chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with City development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

Conclusions Based on Findings

1. **With conditions, the noise occurring or proposed to occur does not endanger public health or safety.** The former noise ordinances in the King County Code, adopted by the City, set maximum permissible sound levels for activities originating within a specific area and affecting specific environments. These ordinances allow an applicant to apply for relief from maximum permissible noise standards. The Applicant would employ the

following mitigation measures to limit noise impacts: require mufflers on all engine-powered equipment; inspect equipment regularly to replace parts not meeting manufacturers' specifications; limit high-noise activities to daytime hours when feasible; locate stationary construction equipment as far as possible from noise-sensitive properties; prohibit unnecessary equipment idling; minimize the use of standard back-up alarms, and investigate the possibility of using ambient alarms; prohibit truck tailgate banking; use electric tools and equipment when possible; notify nearby residents when noisy work would occur; notify all impacted households at least seven days in advance of scheduled nighttime work, or as soon as possible in the case of emergencies for unscheduled work; and maintain a 24-hour construction hotline to investigate noise complaints.

Conditions are necessary to ensure the Applicant continues to provide construction schedules to the City; performs sound level testing and monitoring, with monthly reports to the City; complies with variance start and end dates; performs additional mitigation if construction activity sound levels exceed modeled sound levels; implements construction best management practices; notifies neighbors of noise exceeding maximum permissible sound levels; maintains a phone complaint number and designated contact person; and places a copy of the noise variance decision on-site to ensure compliance with noise mitigation measures at all times.

There may be adverse impacts to health due to sleep interruptions that may be caused by noise. Conditions are also necessary to ensure that any nighttime deviation from noise standards occurs only in emergencies when there is no alternative to nighttime noise levels that vary from noise standards. *Findings 1—38.*

2. **There are no practical means known or available for the adequate prevention, abatement, or control of the noise involved.** Proposed construction of the sound walls and park and ride facility require SR 520 lane closures during nighttime hours to prevent endangerment of public health or safety by construction activities and to reduce traffic congestion. The proposed noise minimization and mitigation measures are the best means available for the prevention, abatement, and control of construction-related noise. City ordinances cannot prohibit siting of the Essential Public Facility under the Washington Administrative Code, but the City can require conditions to mitigate adverse effects of operation of the facility, including elevated noise levels. With conditions described below, the proposal would mitigate the adverse impacts from elevated noise levels. *Findings 1—38.*

3. **Noise duration would be until such practical means for prevention, abatement, or control becomes known or is available.** Conditions of approval are necessary to ensure the duration of the variance would extend only until December 31, 2016, as requested by the Applicant. *Finding 2.*

4. **With conditions, the holder of the technical variance would make reports to the City Director of Development Services detailing actions taken to develop a means of noise control or to reduce the noise involved and would relate these actions to pertinent current technology.** Conditions are necessary to ensure the Applicant tests and monitors sound levels and periodically sends reports to the City, and that the Applicant provide additional mitigation if sound levels exceed those estimates. Monitoring has failed at times in the past. Conditions are also necessary to ensure backup equipment is available so that regular reports can be made. *Findings 1—38.*

DECISION

Based on the preceding Findings and Conclusions, the request for a noise variance to exceed maximum permissible daytime and nighttime noise levels, as permitted by the Medina Municipal Code, for construction and demolition work related to the SR 520 Floating Bridge, is **GRANTED**, with the following conditions:[13]

1. The technical noise variance is limited to the excessive sound levels associated with the construction and demolition activity identified in Exhibit 5. The technical noise variance shall not apply to uses or activities not included in Exhibit 5.

2. The Applicant shall continue providing updated construction and demolition schedules to the City on a monthly basis, which shall identify and highlight construction activity outside of the work hours set forth in MMC 8.06.030.

3. The Applicant shall continue to conduct testing and monitoring of sound levels associated with construction activity. Monthly reports on the results of the testing and monitoring shall be submitted to the City on the first day of each month for the duration of the construction activity associated with the project.

4. Noise levels shall be monitored by reliable equipment, including backups to primary monitors, to ensure that daily noise reports are available. Reports shall be posted online at the City's website and made available in a manner that is accessible and understandable to all area residents.

5. Approval of the variance is granted until December 31, 2016.

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[13] Conditions of approval are required to mitigate specific impacts of the proposal and comply with City code.

6. If construction activity sound levels exceed the sound levels set forth in Exhibit 5, the City may require the Applicant to provide additional mitigation for those residences that are affected by noise levels exceeding those levels approved by this variance.

7. Best management practices identified in the application shall be adhered to for the life of the project. These include but are not limited to:
   a. Construction and stationary equipment shall be strategically located as much as possible so that residents do not have direct line of sight. Equipment such as light plants, generators, compressors, jackhammers, saw cutters, and rollers shall utilize WSDOT-approved noise mitigation shields, noise blankets, skirts, concrete barriers, or other means available to reduce noise.
   b. Vehicles shall be equipped with ambient sensitive back-up warning devices. Back-up observers may be used in lieu of back-up warning devices for all equipment except dump trucks, in compliance with WAC 296-155-610 and WAC 296-155-615, which shall use back-up observers and back-up warning devices in compliance with WAC 296-155-610.
   c. Trucks performing export haul shall have well-maintained bed liners that shall be inspected and approved by the Applicant's engineer.
   d. Truck tailgate banging is prohibited. Tailgates shall be secured to prevent banging.
   e. As available, the use of electrically-powered tools and equipment is preferred.
   f. Whenever possible, the noisiest activities shall be completed before midnight.

8. The Applicant shall provide and be responsible for written notification to all residences within the radius of a proposed construction or demolition activity affected by noise exceeding the maximum permissible sound levels. Notice shall be provided at least seven calendar days before the particular construction or demolition activity occurs. If a period of more than one month should elapse between the notice and the construction activities, a new written notice shall be provided.

9. Content of the written notification and a list of the households being notified shall be submitted to the City prior to it being mailed to residences. The notification shall include a phone complaint number and designated contact for residents to call.

10. Nighttime demolition activity shall only occur in the event of an emergency. An 'emergency' shall mean there are no alternatives to completion of demolition work without nighttime activity. 'Nighttime' shall mean after dusk and before dawn.

11. Should nighttime demolition activity be necessary, the Applicant shall hire a third party consultant to monitor nighttime demolition activity and ensure that all available means are used to minimize noise impacts.

12. A copy of the decision on this application shall be kept on the project site at all times. Supervisors on site shall ensure noise mitigation measures are complied with at all times.

Decided this 11th day of July 2016.

THEODORE PAUL HUNTER
Hearing Examiner
Sound Law Center