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BEFORE THE HEARING EXAMINER FOR THE CITY OF BELLEVUE

In the matter of an Applications for a)
Conditional Use Permit and a Shoreline)
Conditional Use Permit for)
)
MEYDENBAUER BAY PARK PHASE I)
)
To construct a waterfront park providing)
public access to the shoreline on the same)
site location at 9815 Lake Washington)
Boulevard NE)
)

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER**

**FILE NOS. 15-108428 LB
15-105431 LO**

SUMMARY

- 1. Decision. The application is approved, subject to conditions.
- 2. Request. The proposal is for Meydenbauer Bay Park Phase I, the first phase of the Meydenbauer Bay Park and Land Use Plan. The Phase I project is limited to the waterfront and does not deal with the ultimate goal of pedestrian connection between the waterfront and Downtown.
Phase I involves development of a 6.7-acre public park along 770 feet of shoreline on the north shore of Meydenbauer Bay on Lake Washington. The project includes the existing Meydenbauer Beach Park and additional city-owned property along the bay, incorporating the historical Whaling Building. The proposal seeks to balance active spaces and restored natural areas. The project will include the construction of a new viewing pier and a beach house with changing rooms. Also included will be significant shoreline habitat restoration. The steep topography will require extensive grading and the use of retaining walls to provide for pathways and open usable areas.
- 3. Procedure. After preparation of a programmatic Environmental Impact Statement, the overall Meydenbauer Bay Park and Land Use Plan was adopted by the City Council in 2010, after several years of review, including numerous public meetings and hearings.

1 Phase I is the beginning of plan implementation. Throughout the development of Phase I
2 the Parks Department has been in contact with the Meydenbauer Bay Neighbors Association
3 (MBNA). A Preliminary Design Open House was held for the public at City Hall on December
4 3, 2014.

5 Applications for Phase I were submitted by the Bellevue Parks Department (Parks). Four
6 permits were applied for on April 14, 2015—Shoreline Conditional Use Permit (SCUP),
7 Shoreline Substantial Development Permit (SDP), Conditional Use Permit (CUP) and Critical
8 Areas Land Use Permit (CALUP). A public meeting on the permit applications and State
9 Environmental Policy Act (SEPA) review was held on June 4, 2015. The Staff Report on Phase
10 I was issued on March 24, 2016, accompanied by a Determination of Non-Significance (DNS)
11 under SEPA. The Staff Report contains a thorough review of the public comment on the
12 proposal.

13 Administrative approval was given for the SDP and CALUP. Hearing Examiner
14 approval was recommended for the SCUP and CUP. The Hearing Examiner's public hearing
15 was held on April 14, 2016. Prior thereto MBNA appealed the administrative approvals.
16 Consideration of all the permits together was scheduled for a single consolidated hearing.

17 At the hearing City was represented by Catherine Drews and Cheryl Zakrewski, Assistant
18 City Attorneys. MBNA was represented by Charles Klinge, Attorney at Law. The City's file
19 was admitted to the record. Additional exhibits were offered and admitted. Witnesses testified
20 and were cross-examined.

21 The City presented five staff members who participated in the project review. Eight
22 members of the public testified. Seven of these were witnesses sponsored by MBNA.

23 At the hearing, counsel for appellants determined that the issues he wished to have
24 addressed could be decided without pursuing the appeals of the SDP, the CALUP, and the SEPA
25 DNS. A written order formally dismissing these appeals was entered on April 25, 2016.

26 The Examiner called for post-hearing briefs by the parties on the remaining permit
27 applications. The parties submitted their briefs, the last being filed on May 6, 2016.

FINDINGS OF FACT

1
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3 1. The factual matters set forth in the foregoing Summary are adopted by the Examiner
4 as findings.

5 2. The Phase I project is being permitted on a stand-alone basis because future features
6 of the overall Meydenbauer Bay Park and Land Use Plan have not been funded.

7 3. The project proposed requires two different types of conditional use permits – what
8 might be called a traditional CUP and a SCUP dictated by the state Shoreline Management Act.

9 4. The CUP is mandated by the City's Land Use Code (LUC). The site is within the
10 North Bellevue Subarea. The zoning is residential. Under the LUC, beach parks on Lake
11 Washington in such zones require conditional use approval. LUC 20.10.440 (Recreation), Note
12 10.

13 5. The need for an SCUP arises from the project's location within the Shoreline Overlay
14 District, an area extending into the lake and 200 feet landward of the lake's ordinary high water
15 mark. LUC 20.25E.080(W). About half of the project area is within shoreline jurisdiction.

16 6. The site of Phase I is on steeply sloped waterfront along the eastern shore of
17 Meydenbauer Bay. The site is oriented in a northwest-southeast direction along the lakefront.
18 The project consists of the existing park, which is located in the northwestern portion of the site
19 and on additional acquired properties (formerly residential) extending southeast to 99th Avenue
20 NE, plus the historic Whaling Building on Pier One at Bellevue Marina. The inland border is
21 Lake Washington Boulevard NE.

22 7. The existing Meydenbauer Beach Park comprises approximately three acres. It has
23 been operational in its current state since 1988. It consists of a dock, swimming beach, lawn
24 with picnic areas, landscaped areas, a beach house with restrooms and showers, walkways, a
25 children's playground and parking lots.

26 8. The proposed Phase I development expands the park to 6.7 acres. The only new
27 activities are a pedestrian viewing pier, public use of the Whaling Building, and a PPV vessel
28 launch area. (PPV stands for person-powered-vessel which largely translates to kayaks.)

29 9. However, physical features of the expanded site will be extensively re-arranged --
30 including relocation of the swim beach, daylighting of a storm drain on the northwest side,
construction of a new beach house, installation of a new pedestrian pier, shoreline restoration,

1 creation of an outdoor classroom and a meadow area, building new pathways and viewing areas,
2 and considerable terracing and landscaping.

3 10. As part of the project, the street edges abutting Lake Washington Boulevard and 99th
4 Avenue NE will be upgraded with the addition of new sidewalks and lighting. According to
5 testimony, sight distance conditions at the intersection will likely improve due to removal of
6 vegetation.

7 11. The zoning of the site matches residential Comprehensive Plan designations, with R-
8 1.8 on the west and R-3.5 in the central and east portions. To the east and north of the park are
9 residential uses. Bordering the park's eastern boundary (99th Avenue NE) are the Whaler's Cove
10 Condominiums. Separated from the Phase I site by residential development, Bellevue's
11 Downtown Park is about a quarter mile to the east.

12 12. Off the southeast corner of the park site is an existing pier that leads to the Bellevue
13 Marina at Meydenbauer Bay operated by the City's Parks Department, the applicant here. At the
14 nearshore end is an old ice house which will continue to be used as a caretaker's residence.
15 Nearby on the pier is the Whaling Building. Farther southeast along the shore is the
16 Meydenbauer Bay Yacht Club, a privately owned and operated club which includes moorage and
17 a clubhouse.

18 13. There is no specific code requirement for parking to be provided for city parks.
19 Therefore, the City commissioned a professional parking demand study for the Phase I project
20 which was conducted by Perteet, Incorporated. Perteet selected a high value for parking demand
21 from standard sources: 6.2 stalls per acre. A likely demand for 99 total spaces was calculated –
22 42 for the park and 57 for the marina and other uses. The project is supplying 118 parking
23 spaces, more than enough for the projected need. In addition, there will be 10 newly striped
24 angled spaces moved from the east side to the west side of 99th Street NE which are not included
25 in the 118 figure because they are in the public right-of-way and cannot be assigned exclusively
26 to the project. The parking available will be sufficient to meet the highest observed level of
27 demand for parking at other local beach parks on Lake Washington.

28 14. Perteet's evaluation also concluded that there is no evidence that the project will
29 have a negative impact on the surrounding parking supply.
30

1 15. City counts of actual parking in 2015 at the marina showed that, except on Seafair
2 and July 4th weekends, the lot was under-utilized. The Parks Department plans to develop a
3 parking management plan to manage anticipated heavy marina usage during high use occasions.

4 16. Whalers Cove Condominiums holds a landscape easement and a view easement
5 which relate to adjacent property. On this record, there is no evidence that the proposed Phase I
6 project will have any effect on either of these easements.

7 17. The criteria for the two types of conditional use permits sought here are not in
8 conflict. The CUP decision criteria are set forth in LUC 20.30B. 140, as follows:

9 The city may approve or approve with modifications an application for a
10 Conditional Use Permit if:

11 A. The conditional use is consistent with the Comprehensive Plan; and

12 B. The design is compatible with and responds to the existing or intended
13 character, appearance, quality of development and physical characteristics
14 of the subject property and immediate vicinity; and

15 C. The conditional use will be served by adequate public facilities
16 including streets, fire protection, and utilities; and

17 D. The conditional use will not be materially detrimental to uses
18 or property in the immediate vicinity of the subject property, and;

19 E. The conditional use complies with the applicable requirements of this Code.

20 The decision criteria for an SCUP are codified in LUC 20.30C.155, as follows:

21 The City may approve or approve with modifications an application for a
22 Shoreline Conditional Use Permit if:

23 A. The proposed use will be consistent with the policies of RCW 90.58.020
24 and the policies of the Bellevue Shoreline Master Program; and

25 B. The proposed use will not interfere with the normal public use of public
26 shorelines; and

27 C. The proposed use of the site and design of the project will be compatible
28 with other permitted uses within the area; and

29 D. The proposed use will cause no unreasonably adverse effects to the shore-
30 line environmental designation in which it is to be located; and

 E. The public interest suffers no substantial detrimental effect; and

 F. The proposed use complies with all requirements of WAC173-14-140; and

 G. The proposed use is harmonious and appropriate in design, character and

1 quality of development in the immediate vicinity of the subject property and
2 with the physical characteristics of the subject property; and

3 H. The proposed use will be served by adequate public facilities including
4 streets, fire protection, water, stormwater control and sanitary sewer; and

5 I. The proposed use will not be materially detrimental to uses or property
6 in the immediate vicinity of the subject property; and

7 J. The proposed use has merit and value for the community as a whole; and

8 K. The proposed use is in accord with the Comprehensive Plan; and

9 L. The proposed use complies with other applicable criteria and standards of
10 the Bellevue City Code.

11 18. The Staff Report analyzes the application in light of the above conditional use
12 criteria and concludes that, as conditioned, the project will be consistent with them. The Hearing
13 Examiner has made a few modest amendments to the City's recommended Conditions of
14 Approval. Otherwise, he concurs with the Staff analysis and adopts the same. The Staff Report
15 is by this reference incorporated herein as though fully set forth.

16 19. The issues raised by MBNA at the public hearing were largely concerned with the
17 requirement for compatibility of the project with other permitted uses. These issues relate to
18 (1) noise, (2) hours of operation, (3) vibratory pile driving, (4) construction staging, (5) structure
19 height, (6) on-going parking review, (7) right-of-way permit, (8) sight distance, (9) recognition
20 of existing easements, (10) milfoil treatment, (11) City engagement of the neighborhood
21 (Implementation Principle N. 6), (12) lighting, (13) failure to identify uses of Whaling Building
22 and Beach House roof.

23 20. Noise. Under the Bellevue Code, parks during hours they are open are exempt from
24 general noise limitations. BCC 9.18.020 (E). However, sound amplification is prohibited in
25 parks, except where allowed by an event-specific permit. BCC 3.43.260. (It is possible to
26 designate "quiet zones" but the restrictions involved do not increase noise control over what the
27 Code otherwise provides.)

28 21. MBNA asks for a condition that would prohibit the issuance of amplified sound
29 permits under BCC 3.43.260, or at least restrict such permits to daylight hours and no later than
30 9:00 p.m. in the summer. The reasons given were that the park is located on the water and that
area residents include retired people.

1 22. The Examiner recognizes that sound carries across water, but does not believe that
2 the circumstances are so idiosyncratic as to require the City to grant an exception to the Code
3 provision which already addresses the issue of amplified sound and imposes restrictive
4 conditions, allowing it only when it will not constitute a public nuisance or endanger public
5 health or safety.

6 23. The noise condition proposed in the Staff Report relates to construction noise. The
7 condition as written implements the exemption between the hours of 7 a.m. and 6 p.m. Monday
8 through Friday and 9 a.m. to 6 p.m. on Saturdays. Testimony for the City was that Saturday
9 construction would be rare. The proposed condition also requires use of best available noise
10 technology during construction.

11 24. MBNA seeks to restrict construction noise by limiting construction to Monday –
12 Friday only from 8 a.m. to 6 p.m. with no work on Saturdays. The reason for this request was
13 essentially the comfort and convenience of the residential neighbors, some of whom like to sleep
14 in. The City’s proposed condition is consistent with the City Code (BCC 9.18.020(C)). The
15 Examiner is not persuaded that the circumstances oblige the City to depart from its general
16 practice on construction hours.

17 25. MBNA also asked that the best available noise abatement technology standard be
18 extended to maintenance equipment, such as blowers, mowers, trimmers and other gardening
19 equipment used during the operation of the park. While the City, of course, should try to acquire
20 and use up-to-date equipment, there is nothing in the record to suggest that an across-the-board
21 best noise technology requirement is technically or economically feasible.

22 26. Hours of operation. The City proposes that the park be kept open until 11 p.m.,
23 consistent with the hours adopted for the Downtown Park, a short distance away. The general
24 rule for park hours is one-half hour before sunrise and one-half hour after sunset. See BCC
25 3.43.330. MBNA seeks a condition reading, “Park operating hours shall be 8:00 a.m. to one-half
26 hour after sunset or 9:00 p.m. whichever is earlier. The Departments will enforce this restriction
27 with police and park employees as necessary to obtain compliance.”

28 27. There is no proposed condition that explicitly sets the 11 p.m. closing time. MBNA
29 asks that, at the least, Staff Report Condition B.12 be retained. This condition calls for hours of
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1 operation to be set in a Standard Operating Procedure Plan to be submitted prior to final clearing
2 and grading and land use inspection.

3 28. Since there is no experience with keeping Meydenbauer Bay Park open until 11:00
4 p.m., the Examiner thinks the appropriate course would be to allow this on a trial basis with the
5 possibility of review and public comment after a year.

6 29. MBNA also added, without elaboration, a list of seven other substantive
7 requirements that it says should be imposed in connection with park operations. All of these
8 appear to relate to the City's obligation to ensure the park is operated in accordance with
9 normally expectable standard procedures

10 30. Vibratory Pile Driving. MBNA asks that the condition requiring this technique be
11 amended to add that pile driving work shall occur within the construction noise hours established
12 in Condition B.5. This limit is probably implied, but no harm would come from making it
13 explicit,

14 31. Construction Staging Requirements. As recommended by Staff, construction staging
15 will be governed by a staging plan to be submitted and approved as part of the project right-of-
16 way construction, and building permits.

17 32. The City's testimony was that impacts of staging and right-of-way impacts cannot be
18 known in detail until the clearing and grading permit is approved. There is no requirement for
19 public input into permitting at that stage. At hearing, MBNA appeared to want a chance to
20 comment on the staging plan, but in its post-hearing brief it asked only that the following
21 language be include in Condition B.7: "The construction staging plan will be reviewed to
22 consider impacts on residents and roadways and to ensure that the work is constructed in the
23 least intrusive way possible on residents and roadways" The Examiner does not see how such a
24 provision would add to the duties that the permit reviewers already have.

25 33. Structure Height. MBNA asks for a condition stating that "building heights shall be
26 limited to the heights shown in the Plans and Drawings, Attachment A to the Staff Report." Any
27 approval given by the Hearing Examiner is necessarily limited to what was asked for. Therefore,
28 a condition making such a limitation on height explicit would eliminate all possible ambiguity on
29 this score.

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1 34. Parking Review. MBNA asks for a condition for annual review of parking demand
2 documented through studies made available to the community. Given the results of parking
3 studies conducted for Phase I, the need for such eternal review was not demonstrated. However,
4 there is sufficient question about likely parking impacts to support a requirement for a parking
5 review after the first year of Phase I operation.

6 35. Right-of-Way Permit. MDNA requests that a condition be added requiring a
7 construction parking plan that predicts where construction employees will park during
8 construction hours. The plan would be reviewed and approved by Land Use and Right-of-Way
9 staff prior to issuance of a building permit. Again the Examiner believes that this kind of review
10 is inherent in the duties permit reviewers already have.

11 36. Sight Distance. Given the testimony, MDNA did not demonstrate a need for a
12 condition on this matter.

13 37. Existing Easements. It was not shown that the private easements of the Whalers
14 Cove Condominiums will be affected by this project,

15 38. Milfoil Treatment. The City acknowledged that it has an ongoing commitment to
16 combat milfoil. There is no need for a specific condition on this subject.

17 39. City Engagement of the Neighborhood. Implementation Principle No. 6 of the
18 overall Meydenbauer Bay Park and Land Use Plan states: “The Departments will re-engage the
19 neighborhood at each phase of any proposed build-out.” The record shows that the City was in
20 frequent contact with the MBNA during this project’s planning. “The MBNA complains that it
21 did not get the Staff Report far enough in advance to adequately prepare for the hearing.
22 Nonetheless, it did mount a spirited presentation which showed no lack of preparation. In the
23 Examiner’s view, the record shows that the City fulfilled the “re-engagement” requirement in
24 preparing the Phase I project for approval. The Examiner interprets Principle 6 to call for
25 providing ample opportunity for citizen input prior to the land use approval of a project phase.
26 The principle does not, in the Examiner’s view, change substantive law and require citizen
27 involvement in aspects of project performance after such approval which do not otherwise call
28 for public involvement.

29 40. Lighting. MBNA supports a Dark Sky Lighting mandated in Condition B. 14.
30 However, it has continuing concerns about street lighting referenced at Staff Report page 78 and

1 asks for added language stating that: "Parks . . . will explore the availability and feasibility of
2 technology that meets the requirements of the Transportation Department Design Manual but is
3 less intrusive." The Examiner sees no reason not to include this statement in the condition.

4 41. Failure to identify uses of Whaling Building and Beach House Roof. MBNA argues
5 that parking calculations may be affected by the types of uses and events (and their frequency) at
6 the Whaling Building and Beach House roof. The uses allowed should be addressed in the
7 Standard Operating Procedure Plan. Given the restrictions on amplified noise, potential uses of
8 these spaces do not suggest substantial impact. However, the review of parking after a year of
9 operation should address any unanticipated impacts from use of these structures.

10 42. Any conclusion herein which may be deemed a finding is hereby adopted as such.

11 CONCLUSIONS OF LAW

12 1. The Hearing Examiner has jurisdiction over this proceeding. It involves two permits,
13 both of which are Process I decisions. LUC 20.35.015(B)(1).

14 2. The requirements of SEPA have been met.

15 3. MBNA made several motions to strike material in the City's post hearing brief. These
16 concerned argument from facts not in evidence. The Examiner grants these motions. But, the
17 decision here does not rely on any of the facts stricken.

18 4. The City carried its burden to show by a preponderance of evidence that the project
19 complies with the applicable decision criteria of the City Code. LUC 20.35.140(A).

20 5. Those decision criteria are set forth verbatim above in Finding 17. As noted, the
21 MBNA's case for additional conditions rests essentially on the criterion requiring compatibility.
22 The flip side of this criterion is that the proposed use "will not be materially detrimental" to uses
23 or property in the immediate vicinity. The record fails to support a finding of either
24 incompatibility or material detriment.

25 6. The key reality here is that there is already a park at the site. After Phase I, the park
26 will take up more space, but the added uses will be relatively minor. These uses –meeting room
27 inside Whaling Building, PPV launching, and pedestrian viewing pier – are not likely to impact
28 the status quo significantly. On the record, the expanded Phase I Park will fit into the
29 neighborhood substantially as the existing facility does.
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1 7. A review of the City's conditions of approval, shows that, with some minor additions,
2 they are reasonable and appropriate. In particular, the Examiner does not believe that a case was
3 made for changing the hours for park operation or for project construction. The Examiner has
4 made changes or additions to language in the following conditions recommended by Staff:
5 Condition B.6., B.8. B.12, B.13, C.2 (specific requirements) (a).

6 8. Any finding herein which may be deemed a conclusion is hereby adopted as such.

7 **CONDITIONS OF APPROVAL**

8 **A. COMPLIANCE WITH BELLEVUE CITY CODES, STANDARDS, AND**
9 **ORDINANCES**

10 The applicant shall comply with all applicable Bellevue City Codes, Standards, and
11 Ordinances (whether or not discussed in the staff report) including but not limited to:

- 12 1. Clearing and Grading Code – BCC 23.76
- 13 2. Construction Codes – BCC Title 23
- 14 3. Fire Code – BCC 23.11
- 15 4. Land Use Code – BCC Title 20
- 16 5. Noise Control Code – BCC 9.18
- 17 6. Sign Code – BCC Title 22
- 18 7. Transportation Code – BCC 14.60
- 19 8. Right of Way Use Code – BCC 14.30
- 20 9. Utility Code – BCC Title 24

21 **B. CONSTRUCTION WINDOW**

- 22 1. To limit the potential for impact to fish utilization and migration patterns, all in-water
23 construction activity associated with this project shall take place during the applicable
24 work windows. This site is located North of I-90 more than 2 miles from Mercer Slough.
25 The applicable work window is July 16 to September 30. No in-water work shall take
26 place outside these periods unless otherwise determined by the Hydraulics Project
27 Approval issued by the Washington State Department of Fish and Wildlife. LUC 20.30R
- 28 2. FIRE CODE REQUIREMENTS
29 Fire Department review of the project for consistency with Fire Code standards will take
30 place under building permit review. City of Bellevue Fire Code
3. UTILITY CODE REQUIREMENTS— CONCEPTUAL APPROVAL
Utility Department approval of the design review application is based on the conceptual
design only. Changes to the site layout may be required to accommodate the utilities after

1 utility engineering is approved. The water, sewer, and storm drainage systems shall be
2 designed per the current City of Bellevue Utility Codes and Utility Engineering
3 Standards. Utilities Department design review, plan approval, and field inspection is
4 performed under the Utility Developer Extension Agreement (DEA) for water, and storm.
5 A water and storm Developer Extension Agreement will be required along with separate
6 UA and UC permits. All necessary public and private utility easements are required to be
7 recorded prior to final acceptance of the utility improvements. BCC 24.02, 24.04, 24.06

8 4. CLEARING AND GRADING CODE REQUIREMENTS

9 The Clearing and Grading Division has approved this proposal with the condition that the
10 applicant apply for and obtain a Clearing and Grading Permit and that all applicable
11 sections of the Clearing and Grading Code (BCC 23.76) be met prior to permit issuance.
12 BCC 23.76

13 5. NOISE REQUIREMENTS

14 Noise related to construction is exempt from the provisions of BCC 9.18 between the
15 hours of 7 am to 6 pm Monday through Friday and 9 am to 6 pm on Saturdays, except for
16 Federal holidays and as further defined by the Bellevue City Code. Noise emanating from
17 construction is prohibited on Sundays or legal holidays unless expanded hours of
18 operation are specifically authorized in advance. Routine construction exemptions under
19 BCC 9.18.020.C will not be granted for this project due to proximity off residential
20 neighborhoods.

21 Exemptions will be considered on a case by case basis and exemptions requested solely
22 for the convenience of construction will not be considered. Requests for short-term
23 construction hour extension must be submitted in writing two weeks in advance of
24 intended work with the submittal of a construction noise expanded exempt hours permit.
25 Such requests may require a site specific noise analysis prepared by a noise consultant.
26 The use of best available noise abatement technology consistent with technical feasibility
27 is required during construction to mitigate construction noise impacts to surrounding
28 uses. BCC 9.18

29 6. VIBRATORY PILE DRIVER REQUIRED

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1 To mitigate impacts to fish habitat and fish use and to reduce construction noise impacts
2 to surrounding residents, a vibratory pile driver is required to install the piling for the
3 proposed curved pier. The operation of the pile driver shall be between 7a.m. and 6 p.m.
4 Monday through Friday and 9 a.m. to 6 p.m. on Saturdays, except for Federal holidays or
5 as otherwise specially authorized in advance. BCC 9.18; LUC 20.25E; LUC 20.25H.

6 7. CONSTRUCTION STAGING REQUIREMENTS

7 Construction activity within the site shall be staged to limit the impact of construction
8 activity on the adjacent property owners and the public right-of-way. The applicant shall
9 prepare a construction staging plan to be submitted and approved as part of the Project'
10 right-of-way, construction, and building permits and should coordinate site access with
11 different phases of construction. LUC 20.30C

12 8. STRUCTURE HEIGHT

13 Structures may not exceed the height shown on approved plans. For any future
14 construction, all structures shall be limited to a maximum of 35 feet in height as
15 measured from average existing grade to the highest point of the structure. LUC
16 20.20.010; 20.25E; 20.30C; 20.30R

17 9. SEASONAL CLEARING AND GRADING RESTRICTIONS

18 The project is located adjacent to Lake Washington where the potential for discharge into
19 waters of the state is high. The project will be subject to work restrictions during the
20 rainy season. The Clearing and Grading code (BCC 23.76) defines the rainy season as
21 November 1st through April 30th. The Development Services Department must grant
22 approval to initiate or continue clearing or grading activity during the rainy season. Any
23 approval will be based on-site and project conditions, extent and quality of the erosion
24 and sedimentation control, and the project's track record at controlling erosion and
25 sedimentation. BCC 23.76

26 10. PROVISIONS FOR LOADING

27 The property owner shall provide an off-street loading space which can access a public
28 street. This must include an off-street location for garbage pick-up, which must be
29 acceptable to the garbage hauler. This use may not take up a required parking spot. On-
30 street loading and unloading will not be permitted. LUC 20.20.590.K.4; BCC 14.60.180

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11. SITE ENVIRONMENTAL MANAGEMENT

To mitigate potential adverse water quality impacts, operations on the site must comply with Bellevue’s Environmental Best Management Practices. LUC 20.30C

12. APPROVAL OF PARK OPERATIONS PROCEDURE

Prior to final clearing and grading and land use inspection, Parks shall submit a standard operating procedure plan for site management. Management includes facility operating hours, peak day use management, management of landscape maintenance and garbage disposal, and pesticide use. This operating plan shall contain the following elements: (1) hours when park is open to the public; (2) procedures for peak day use management; (3) description of general maintenance procedures and appropriate timeframes for mowing, blowing, routine maintenance, and garbage hauling; (4) procedures governing pesticide use within the 50-foot buffer from the OHWM and near open water conveyance on the site. After one year of operation of Phase I, Parks shall review the hours of operation established and make a determination as to whether the time of closing should be modified. LUC 20.30C

13. PARKING PLAN REQUIRED FOR PEAK SUMMER PARKING; REVIEW OF PARKING DEMAND AFTER FIRST YEAR

Prior to final clearing and grading and land use inspection, Parks shall develop a parking plan to manage expected peak utilization of park and marina use on identified peak summer holiday weekends. This plan shall consist of: (1) signing the marina lot for park and marina use only; and, (2) providing sufficient monitoring to ensure compliance with park signage; (3) collecting parking utilization information when swim beach is open (you may propose a plan with employee observation according a fixed methodology or contract with a parking management firm; and, (4) outlining when compliance with Special Event Code (BCC 14.50) would be required. Following the first year of operation of Phase I, Parks shall review the parking demand experienced and determine whether additional parking is needed or whether changes in the uses allowed at the park eliminate the need. Additional parking shall be sought if needed. LUC 20.30C

1 14. DARK SKY LIGHTING REQUIRED. Lighting within the Park shall be limited to the
2 minimum necessary and constructed and installed in such a manner that all light emitted
3 by the luminaire, either directly from the lamp or a diffusing element, or indirectly by
4 reflection or refraction from any part of the luminaire, is projected below the horizontal
5 plane through the luminaire's lowest light-emitting part or otherwise obscured. The
6 applicant shall submit a written narrative with the lighting plan attesting to the success at
7 meeting this condition. Luminaires that do not meet this condition shall be replaced
8 unless analysis suggests that the location of the luminaire makes the condition
9 unnecessary or the specific lighting requirement cannot be met under these restrictions.
10 Lighting tear sheets or photos of fixtures must be submitted to Development Services for
11 preliminary approval and shall be confirmed by inspection in the field after installation.

12 A. PRIOR TO SUBMITTAL OR ISSUANCE OF ANY CONSTRUCTION PERMIT

13 1. RIGHT-OF-WAY USE PERMIT

14 Prior to issuance of any construction or clearing and grading permit, the applicant shall
15 secure applicable right-of-way use permits from the City's Transportation Department,
16 which may include:

- 17 a) Designated truck hauling routes.
- 18 b) Truck loading/unloading activities.
- 19 c) Location of construction fences.
- 20 d) Hours of construction and hauling.
- 21 e) Requirements for leasing of right of way or pedestrian easements.
- 22 f) Provisions for street sweeping, excavation and construction.
- 23 g) Location of construction signing and pedestrian detour routes.
- 24 h) All other construction activities as they affect the public street system.

25
26 In addition, the applicant shall submit for the review and approval a plan providing
27 pedestrian access during construction of this project. Access shall be provided at all times
28 during the construction process, except when specific construction activities such as
29 shoring, foundation work, and construction of frontage improvements prevent access.
30 General materials storage and contractor convenience are not reasons for preventing
access.

1 The applicant shall secure sufficient off-street parking for construction workers before
2 the issuance of a clearing and grading, building, a foundation or demolition permit. BCC
3 11.70 & 14.30

4 2. CIVIL ENGINEERING PLANS – TRANSPORTATION

5 Civil engineering plans produced by a qualified engineer must be approved by the
6 Transportation Department prior to issuance of the clearing and grading permit.

7 The design of all street frontage improvements and driveway accesses must be in
8 conformance with the requirements of the Americans with Disabilities Act, the
9 Transportation Development Code, the provisions of the Transportation
10 Department Design Manual, and specific requirements stated elsewhere in this
11 document. All relevant standard drawings from the Transportation Department
12 Design Manual shall be copied exactly into the final engineering plans.

13 Requirements for the engineering plans include, but are not limited to:

- 14 a) Traffic signs and marking.
- 15 b) Curb, gutter, sidewalk, and driveway approach design. The engineering plans
16 shall be the controlling document on the design of these features; architectural
17 and landscape plans must conform to the engineering plans as needed.
- 18 c) Curb ramps, crosswalk revisions, and crosswalk equipment.
- 19 d) Installation or relocation of streetlights and related equipment.
- 20 e) Street lighting.
- 21 f) Undergrounding of existing overhead utility lines, which should be
22 coordinated with adjacent sites. Transformers and utility vaults to serve the
23 building shall be placed inside the building or below grade, to the extent
24 feasible.
- 25 g) Sight distance. Show the required sight triangles for pedestrian and vehicular
26 sight distance (TE-1 and TE-3) and include any sight obstructions, including
27 those off-site. Sight distance triangles must be shown at all driveway locations
28 and must consider all fixed objects and mature landscape vegetation. Vertical
29 as well as horizontal line of sight must be considered when checking for sight
30 distance.
- h) Landings on sloping approaches are not to exceed a 7% slope for a distance of
30 feet approaching the back edge of sidewalk. Driveway grade must be
designed to prevent vehicles from bottoming out due to abrupt changes in
grade.

- 1 i) The minimum driveway width for a one-way driveway is sixteen feet.
2 Driveway aprons must be constructed in accordance with Design Manual
3 Standard Drawing DEV-7F.
- 4 j) Location of fixed objects in the sidewalk or near the driveway approach.
- 5 k) Trench restoration within any right of way or access easement.

6 Specific requirements are detailed below:

- 7 a) A street lighting analysis of Lake Washington Boulevard NE and 99th Avenue
8 NE is required to determine adequacy of existing street lighting. Lake
9 Washington Boulevard NE and 99th Avenue NE are classified as Tertiary
10 roadways for street lighting and must be lit to those standards. The street
11 lighting on 99th Avenue NE shall be city owned. The applicant is responsible
12 for the cost associated with the design and installation of street lights for the
13 entire street frontage. Parks will explore the availability and feasibility of
14 technology that meets the requirements of the Transportation Department
15 Design Manual but is less intrusive.
- 16 b) A six foot wide sidewalk with four foot wide planter is required to be installed
17 along the site's street frontage on Lake Washington Boulevard NE.
- 18 c) A five foot wide bicycle lane is required on the south side of Lake
19 Washington Boulevard NE along the park street frontage. The applicant is
20 responsible for any channelization or markings associated with the installation
21 of the bike lane.
- 22 d) The relocation of existing above-grade utilities and signing will be required
23 as needed to ensure that no fixed objects are within ten feet of the driveway
24 edge, identified as Point A in the Design Manual Standard Drawing DEV-7F,
25 and to ensure compliance with sight distance requirements.
- 26 e) Existing overhead utility lines must be relocated underground and no new
27 overhead utility lines will be allowed within or across any right of way or
28 sidewalk easement.
- 29 f) The applicant has proposed improvements to 99th Avenue NE including
30 sidewalks on both sides of the street south of Lake Washington Boulevard NE,
angled parking on the west side of the street, and a loading zone area with
vehicle turn-around loop as shown on the plans. A crosswalk must be installed
on the east side of 99th Avenue NE crossing Lake Washington Boulevard NE
to better facilitate pedestrian movement from the downtown park area. The
crosswalk style will be the piano key marking style as shown in Standard
Drawing TE-7A. A parallel bar marking style crosswalk shall be installed
crossing 99th Avenue NE, south of Lake Washington Boulevard to align with
the curb ramps. ADA-compliant curb ramps will be required on the southwest,
southeast, and northeast corners of 99th Avenue NE and Lake Washington
Boulevard NE with the installation of the proposed sidewalks. For a possible
future flashing beacon crosswalk, conduit with accompanying junction boxes

1 shall be installed crossing Lake Washington Boulevard at 99th Avenue NE. An
2 end of road design, at the south end of 99th Avenue, is required to visually alert
3 drivers of the transition from the public street to the Bellevue Marina parking
4 lot area. The applicant is proposing a driveway approach, guardrails, and
5 reflective signing; the details will be determined during the clearing and
6 grading permit.

- 7 g) The applicant has proposed a bus bay on the south side of Lake Washington
8 Boulevard NE along the park street frontage for school bus drop off. The bus
9 bay details shall be shown on the plans including signing for no parking and to
10 indicate that the area is for buses only.
- 11 h) Planter strips within the sidewalk along Lake Washington Boulevard NE shall
12 be irrigated with a metered water source.
- 13 i) To the extent feasible, no utility vaults may be located within the primary
14 walking path in any sidewalk. Vaults serving a broader public purpose may be
15 located within a public sidewalk.
- 16 j) The applicant shall provide easements to the City for location of street light
17 facilities consisting of above-grade boxes and/or below-grade vaults between
18 the park and sidewalk within the landscape area on the Lake Washington
19 Boulevard NE frontage.

20 BCC 14.60; Transportation Department Design Manual; Americans with
21 Disabilities Act

22 3. SITE DISTANCE MUST BE MAINTAINED

23 Landscaping plans and building plans must depict on-site traffic markings and
24 signs and driveway design as specified in the engineering plans. Landscaping and
25 building plans must comply with vehicle and pedestrian sight distance
26 requirements, as shown on the engineering plans. BCC 14.60.060; 110; 120; 150;
27 180; 181; 190; 240; 241

28 4. EXISTING EASEMENTS

29 Any utility easements contained on this site which are affected by this
30 development must be identified. Any negative impact that this development has
on those easements must be mitigated or easements relinquished. BCC 14.60.100

5. EASEMENTS FOR STREET LIGHT BOXES AND VAULTS

The applicant shall provide easements to the City for location of street light
facilities such as above-grade boxes and below-grade vaults between the park and
sidewalk within the landscape area. BCC 14.60.100

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6. SIDEWALK/UTILITY EASEMENTS

The applicant shall provide sidewalk and utility easements to the City such that sidewalks outside of the City right of way along the property frontage are located within a pedestrian easement area. BCC 14.60.100

7. SILT CURTAIN

To meet the requirements of the Shoreline Substantial Development Permit approval, the applicant is required to modify the dock removal and new pier construction plans to include the use of a silt curtain that will limit the release of sediments during pile driving and construction. LUC 20.25E; 20.30R; 20.30C

8. UTILITIES

The water, sewer and storm drainage systems shall be designed per the Utility codes BCC 24.02, 24.04, 24.06, and the Utilities Engineering Standards. Utility Developer Extension Agreements are required for the review, approvals and inspection of the water, sewer and storm drainage improvements. The water, sewer and storm drainage design review, approvals and inspection will occur through the Utility Developer Extension process. The civil engineer shall be licensed in the state of Washington.

BCC 24.02, 24.04 & 24.06

9. SUBMITTAL OF FINAL SHORELINE RESTORATION AND LANDSCAPE PLAN

To mitigate impacts to shoreline and critical area functions and values resulting from permanent and temporary disturbance associated with construction of the Project, a final restoration and landscape plan (1"=10' scale) must be submitted for review and approval. Restoration plans must contain native shrubs and trees and most conform to planting details, densities and performance standards of the proposed vegetation restoration plan modified, if required, by Agency review and approval. Where suggested densities do not match the standard minimum acceptable densities outlined in the City of Bellevue Critical Area Handbook, the final plan must be altered accordingly. Any modifications to this plan must be submitted for review and approval by the City prior to commencing any work.

LUC 20.30C; 20.30R; 20.25E; BCC 23.76

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10. SUBMITAL OF FINAL WETLAND MITIGATION AND BUFFER RESTORATION PLAN

To mitigate impacts to wetlands resulting from permanent and temporary disturbance associated with construction of the Project, a final mitigation plan (1"=10' scale) must be submitted for review and approval. The Plan must be acceptable to the City and consistent with mitigation plan outlined in this staff report. The plan must be accompanied by a 10-year maintenance and monitoring plan and must meet all requirements of reviewing agencies. LUC 20.30C; 20.25H; BCC 23.76

11. UPDATED GEOTECHNICAL REPORT

Prior to the issuance of any construction permit, the applicant shall provide an letter addendum to the geotechnical report verifying that the recommendations of the report meet the current site design. BCC 23.76

12. CONSTRUCTION STORMWATER POLLUTION PREVENTION PLAN (CSWPPP)

Prior to submittal of construction permits, the applicant shall prepare a CSWPPP. Plans shall include a site plan, notes and associated details that address erosion and sedimentation control requirements of the BCC 23.76. A turbidity monitoring plan is also required while earthwork continues on the site. The plan must include the proposed methods of monitoring, frequency of monitoring, and location of monitoring. The plan must be acceptable to the City's clearing and grading Reviewer. The monitoring of stormwater turbidity is required to determine compliance with City of Bellevue (BCC 23.76.160.C) and State Surface Water Quality Standards (WAC 173.201 A). The standard for turbidity (indirect measurement of the amount of suspended sediments in-water) is:

- 5 NTU over background turbidity when background turbidity is 50 NTU or less;
- 10 percent above background turbidity when background turbidity is greater than 50 NTU. LUC 20.30C; 20.30R; BCC 23.76.160.C

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B. PRIOR TO ISSUANCE OF ANY BUILDING PERMIT

1. DESIGN CHANGES

Any changes to the development plans requested prior to the issuance of a building permit or during construction must be reviewed by the City for consistency with the original approval. LUC 20.30C; 20.30R

2. FIRE REVIEW

Prior to issuance of any building permit, review by the Fire Department must occur.

C. PRIOR TO FINAL CLEARING AND GRADING INSPECTION AND FINAL SIGN-OFF

1. NO PARKING SIGNS AND FIRE LANE STRIPING

Fire access and circulation routes within the development shall be posted and marked "Fire Lane-No Parking" per Bellevue Fire Department Standards, unless otherwise approved based on final field inspection. Bellevue Fire Code

2. INSTALLATION OF APPROVED SHORELINE RESTORATION AND LANDSCAPING

Prior to final clearing and grading inspection all restoration and landscaping improvements must be installed as approved. Final landscaping approval shall be made by the project planner. LUC 20.30C

3. RESTORATION OF SHORELINE REQUIRED

Installation of the approved shoreline restoration plan including the submittal of a 5 year maintenance and monitoring plan must be completed and approved prior to final clearing and grading inspection. Final shoreline restoration approval shall be made by the project planner or future designee. LUC 20.30C

4. RESTORATION OF WETLAND AND WETLAND BUFFER

Installation of the approved wetland and buffer restoration plan including the submittal of a 10-year maintenance and monitoring plan based on required performance standards must be completed and approved prior to final clearing and grading inspection. Approval of final wetland and buffer mitigation approval shall be made by the project planner or designee in the field with mitigation designer and installer. LUC 20.30C

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5. COMPLETION OF REQUIRED SITE UTILITY IMPROVEMENTS

Prior to the final clearing and grading inspection, the applicant shall install all required site infrastructure utility improvements as approved under the Utility Developer Extension Agreement. The Extension Agreement must be accepted by the Utility Department prior to certificate of occupancy sign off. BCC 24.02, 24.04 & 24.06

6. BLA RECORDED

Prior to final clearing and grading inspection, the applicant shall record a BLA removing all interior lot lines within the boundaries of Project in order to avoid setback restrictions within existing residential lots. Copies of recorded BLA must be submitted to the project planner for addition to the project file. LUC 20.45

7. STREET FRONTAGE IMPROVEMENTS

All street frontage improvements and other required transportation elements, including street light revisions, must be constructed by the applicant and accepted by the City inspector. All existing street light apparatus affected by this development must be relocated as necessary. Existing overhead lines must be relocated underground. All required improvements must be constructed as per the approved plans or as per direction of the Transportation Department inspector. BCC 14.60; Comprehensive Plan Policy UT-39; Transportation Department Design Manual; and Transportation Design Manual Standard Drawings

8. PAVEMENT RESTORATION

Pavement restoration associated with street frontage improvements or to repair damaged street surfaces shall be approved as follows:

- a) Lake Washington Boulevard NE: This street was recently overlaid and a five year no-street cut moratorium is currently in effect. Should street cuts prove unavoidable or if the street surface is damaged in the construction process, a half-street or full-street (depending on the extent of street cuts or damage) grind and overlay will be required. Permission to cut into the street must be obtained during the right of way use permit. The pavement restoration requirements will be specified in the right of way permit.

1 b) 99th Avenue NE: Based on this street's excellent condition, it is classified with
2 the City's overlay program as "Overlay Required." Street cutting is permitted
3 only with extraordinary pavement restoration. Pavement restoration
4 requirements are a full grind and overlay for a minimum of 50 feet as specified
5 in the right of way use permit.

6 BCC 14.60.250; Design Manual Design Standard #23

7 F: AFTER FINAL APPROVAL

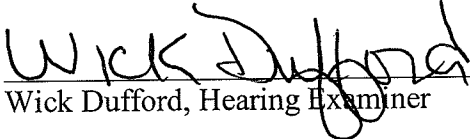
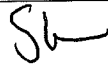
8 1. FUTURE CHANGES

9 Any future change to the approved shoreline conditional use permit, conditional
10 use permit, shoreline permit, critical areas permit or site development plans
11 including standard operating procedures, site plans, landscaping, lighting,
12 building design, or the installation of communication equipment must be
13 reviewed and approved by the City or for consistency with this approval. LUC
14 20.30C; 20.30R

15
16 **DECISION**

17 The applications for approval of a Conditional Use Permit and a Shoreline
18 Conditional Use Permit for Meydenbauer Bay Park Phase I are approved, subject to the
19 conditions set forth above.

20 DONE, this 20th day of May, 2016.

21
22 
23 Wick Dufford, Hearing Examiner 

24
25 **NOTICE OF RIGHT TO APPEAL**
(Pursuant to Resolution No. 5097)

26 **RIGHT TO APPEAL-TIME LIMIT**

27 A person who submitted written comments to the Director prior to the hearing, or
28 submitted written comments or made oral comments during the hearing on this matter, may
29 appeal the decision of the Hearing Examiner to the Bellevue City Council by filing a written
30 appeal statement of the Findings of Fact or Conclusion being appealed, and paying any appeal
fee, no later than 14 calendar days following the date that the decision was mailed. The appeal
must be received by the City Clerk by **5:00 p.m. on June 3, 2016.**

1 **TRANSCRIPT OF HEARING-PAYMENT OF COST**

2 An appeal of the Hearing Examiner's decision requires the preparation of a transcript of
3 the hearing before the Hearing Examiner. Therefore, the request for appeal must be
4 accompanied by an initial deposit of \$100. Should the actual cost be less the amount of the
5 deposit, any credit due shall be reimbursed to the appellant. Should the cost for transcript
6 preparation be more than the deposit, the appellant will be additionally charged.

5 **WAIVER OF TRANSCRIPTION FEE**

6 Upon request, the City Clerk will waive transcription fees upon submission by an
7 appellant of the following documentation: a) an affidavit stating that the appellant's net financial
8 worth does not exceed \$20,000; b) an affidavit stating that the appellant's annual income does
9 not exceed \$5,200; c) a brief statement of the issues sought to be reviewed; d) a designation of
10 those parts of the record the party thinks are necessary for review; e) a statement that review is
11 sought in good faith.

12 The transcription fee waiver is available to individuals over eighteen (18) years of age
13 and is not available to corporations, companies, partnerships, or any business, enterprise,
14 community club or and social recreational organization.
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