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6 **BEFORE THE HEARING EXAMINER FOR THE CITY OF MILL CREEK**

7 **RE: Cubes Self Storage**

8 **Binding Site Plan and Reasonable Use**

9 **File No. PL2018-0013**

FINAL DECISION

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13 **SUMMARY**

14 The Applicant has requested approval of a binding site plan and reasonable use request in order to
15 construct a 90,425 square-foot, three story facility at 17414 Bothell-Everett highway, Mill Creek.
16 The reasonable use request is for authorization to encroach into wetland buffers. The application is
17 approved subject to conditions.

18 **TESTIMONY**

19 *[This summary is only provided for the convenience of the reader, to provide an understanding of the*
20 *testimony presented at the hearing. The summary of testimony is not to be construed as containing*
21 *any findings of fact or conclusions of law, or as indicating what information the examiner found*
pertinent or significant. No assurances are made as to accuracy.

22 **Staff Testimony**

23 Sherri Ringstad, City of Mill Creek associate planner, summarized the staff report. In response to
24 Examiner questions, Ms. Ringstad noted that the proposed wetland buffer encroachment is composed
25 of some parking, a portion of the detention pond and a small portion of building A. These
26 encroachments would only be in the 100 foot buffer. There are still buildings located in the buffer area
but they're currently not in use. They are dilapidated and falling apart and will be removed as part of
the buffer mitigation. WSDOT was notified twice about the project and their comments were mostly

1 limited to ADA access and that the Applicant would have to coordinate with them for channelization.
2 Site distance for access has been deferred to civil review since there are no apparent problems from the
3 initial review.

4 Sean Mallon, Applicant representative, noted that north access would be full movement and southern
5 access would be right in/right out. He noted that the project is decreasing impervious surface and
6 stormwater isn't currently treated. The project will provide treatment for pollution generating surfaces
7 and part of the stormwater analysis includes ensuring that sufficient hydrology will be directed to
8 wetlands to maintain wetland functions.

9 Bill Shiels, Applicant wetland biologist, noted that the wetland buffer is very degraded. The area of
10 the buffer is almost 28,000 square feet.

11 Tom Rogers, Mill Creek Planning Manager, noted that the project doesn't involve any buffer
12 encroachments with buffer averaging except for the southern part where there's a small encroachment
13 into the minimum 50 foot buffer authorized by buffer averaging.

14 Corey Brown, resident, testified she's been going to the existing nursery on the site for 30 years. She
15 hasn't heard anyone talk about the loss of community that will result from the loss of the nursery. Mill
16 Creek is losing its character with the proliferation of storage facilities. There's a child care center next
17 door and it would be great for that use to have a garden center next door instead of another storage unit.

18 David Lee, resident, is a developer and owns about 35 acres in Mill Creek. He's not against the project.
19 He believes that the site plan doesn't meet the character of Mill Creek. Mr. Lee believed that the
20 building footprint should be reduced by placing the access drives on the north and south sides of the
21 buildings instead of between them and then increase the height of the buildings from three to four
22 stories. There should be no driveway in front and the building should be placed up against the street
23 frontage. Mr. Lee noted that there's no development in Mill Creek in this zone that has a driveway
24 placed in front.

25 Sherrie Ringstad acknowledged that pushing the building up to the street frontage is allowed by code
26 but not required. The code does have site design guidelines that require avoiding site design dominated
by automobiles. One of the ways this standard is achieved is by placing parking in the rear, as proposed.
Pushing the building up to street frontage is another option, but only one of several. Setting the building
back from the street frontage as proposed helps to diminish the bulk and scale of the building. With
most of the parking in the rear, staff determined the proposal complies with the design standards
requiring avoidance of automobile domination.

EXHIBITS

Exhibits 1-21 identified in Attachment 1(d) to the staff report were admitted during the hearing.

FINDINGS OF FACT

Procedural:

1. Applicant. The applicant is Pacland-Seattle, 1505 Westlake Ave. N., Suite 305, Seattle, WA 98109.
2. Hearing. A hearing was held on the subject application on October 10, 2018 at 6:00 pm in the City of Mill Creek Council Chambers.
3. Project Description. The Applicant has requested approval of a binding site plan and reasonable use request in order to construct a 90,425 square-foot, three story facility at 17414 Bothell-Everett highway, Mill Creek. The reasonable use request is for authorization to encroach into wetland buffers. The project site is 3.60 acres in size. The eastern portion of the site is currently occupied by a nursery/garden center, "Li'l Sprout Nursery," which is comprised of multiple greenhouse structures. As a part of the proposed project the existing nursery will be demolished. The balance of the site to the west includes a wetland (Wetland A); dilapidated and abandoned structures; and vegetation comprised of native and invasive plant species. The on-site portion of Wetland A is 36,733 square feet. Wetland A extends off-site to the west and is part of a larger wetland complex associated with North Creek. The requested reasonable use request involves a nominal buffer encroachment into the southern portion of the buffer that would apply if the Applicant have applied buffer averaging, which results in a 50 foot buffer. Without buffer averaging a 100 foot buffer applies and encroachments are still relatively nominal.

The site gradually slopes from east to west across the eastern portion of the site containing the existing buildings and parking area with grades varying from 2% to 5%. The western portion of the site containing the critical areas and buffer slopes steeply to the west with grades varying from 25% to 50%.
3. Conformity to Development Standards¹. The project will conform to applicable development standards as follows:
 - A. Drainage. Stormwater runoff generated from the proposed improvements will generally maintain existing/historic drainage patterns. The paved parking areas onsite have been designed to allow runoff to sheet flow to curb and gutters and then flow to catch basin inlets. The stormwater is then

¹ Conformity to development standards is usually assessed via conclusions of law. However, site plan review standards are highly detailed and technical. In the absence of any disagreement over the application or any indication in the record of a code compliance issue, the examiner will rely upon assurances made by staff that standards are met, based upon the staff's exercise of professional judgment. Since these determinations of conformity are based upon staff expertise instead of application of law to fact, the determinations regarding conformance to development standards are treated as findings of fact.

conveyed via underground storm piping to a stormwater detention pond. A flow control structure has been designed to control release rates. Downstream of the detention pond and flow control structure, a proprietary water quality treatment structure (enhanced treatment) will treat the runoff prior to being conveyed to the dispersion trench and ultimately into the wetland buffer. The stormwater runoff generated from the building roof area is conveyed to a gravel infiltration trench and then to a small infiltration pond. Runoff that is not infiltrated will be conveyed to a flow control structure, which will control stormwater runoff as it discharges from the pond. Stormwater from both the detention and infiltration pond is conveyed to a dispersion trench prior to outfall into the wetland buffer. The new drainage system for the proposed development is required to be designed in accordance with the Washington State Department of Ecology's 2012 Stormwater Management Manual for Western Washington (SMMWW), as amended in 2014.

As a Condition of Approval, the applicant will be required to submit a final Stormwater Management Plan (MCMC Chapter 15.14) during the civil plan review phase and the final system design and drainage details will be addressed at that time. The maintenance of the drainage system will be the responsibility of the property owner in accordance with the Mill Creek Municipal Code.

- B. Transportation. Vehicular access will be from the Bothell-Everett Highway. The location of the two existing driveway approaches will be maintained to ensure adequate access for fire protection services and large vehicles (moving vans). As proposed, staff has determined that vehicle access through the site will have turning radii large enough to accommodate large trucks and emergency vehicles.

The applicant has submitted a revised Traffic Impact Analysis dated August 2018. See Ex. 9. Since the proposal will be replacing an existing use, overall the resulting trip generation will in some respects be less than that generated by the current use. On a daily basis an estimated 116 trips would be removed from the site. The AM peak hour would see an increase of 3 trips and the critical PM peak hour would see a reduction of 3 trips. The City's traffic mitigation is based on PM peak hour trips and given the decrease in PM peak hour trips, no traffic mitigation is required.

- C. Parking. In accordance with MCMC Section 17.27.020, Off Street Parking, self-storage warehouses shall have one space for each 50 storage units plus one space for each 300 square feet of office space. Based on the 600 proposed storage units and 1,200 square feet of office, 16 parking spaces are required. The project includes 16 standard parking stalls, one van accessible stall directly in front of the main office, and 12 temporary loading stalls.

- D. Site Design (MCMC 17.34.040). The proposed Binding Site Plan has been designed to be consistent with the design standards set by MCMC 17.34.040. Pedestrian access is provided across the site via the meandering sidewalk in the roadway buffer, with a connection to the building entry. A majority of the parking is provided behind the buildings, which ensures there isn't the appearance of domination by automobiles. Retaining existing native vegetation and trees is proposed to the greatest extent possible; however, there only four significant trees in the northwest corner of the wetland buffer and two on the adjacent property to the north that can be

1 preserved. These trees will be protected during construction. The stormwater facilities are not
2 visible from the public right-of-way.

3 As noted in the testimony summary, Mr. Lee didn't believe the placement of the buildings away
4 from the street frontage was consistent with community character. Staff correctly identified that
5 the City's design standards encourage in some respects the placement of buildings close to street
6 frontage but that requirement isn't mandatory. The only design standard that appears to directly
7 address street frontage is MCMC 17.34.040(A)(2)(a), which requires that "*project design shall*
8 *avoid the appearance of domination by automobiles.*" The standard lists several methods in
9 achieving this objective, one of which is fronting buildings on streets. However, this isn't the
10 only method identified. Another method identified, which has been incorporated by the
11 Applicant, is placing parking in the back of the building. Further, as testified by staff, providing
12 some separation between the building and street frontage has benefit in that it helps buffer the
13 size and scale of the building. Given these circumstances, it is determined that staff correctly
14 applied the design review criteria in authorizing the drive in front of the building.

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16 E. Landscaping. Landscaping is proposed: 1) along the front elevation and the north and south
17 elevations of the building, 2) within the parking area and along the perimeter of the parking lot,
18 3) along the site's frontage and within the SR 527 right-of-way. See Exhibit 7 - Preliminary
19 Landscape Plan. MCMC 17.34.040.H.2 states that, "Where parking lot design results in head-in
20 parking adjacent to landscape areas, the landscape areas shall be protected by wheel stops or
21 another method adequate to prevent damage by overhanging vehicles." As a Condition of
22 Approval, wheel stops or another suitable mechanism will be required to protect the landscaping
23 from vehicles.

24 As a Condition of Approval, the proposed landscaping is required to be reviewed and approved
25 by the City's Design Review Board prior to installation. Enhancement and restoration proposed
26 to the landscaping within the critical area buffers is discussed in detail within the Critical Areas
Study, which is contained in the project file.

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28 F. Critical Areas. The proposal will only affect one critical area, specifically a wetland. A Critical
29 Areas Report and Detailed Conceptual Mitigation Plan prepared by Talasaea Consultants, Inc.,
30 dated May 31, 2018, and amended August 10, 2018, was submitted and reviewed by the City, see
31 Exhibit 12. One Category II wetland has been identified on the site (Wetland A), which extends
32 off site to the west, north and south. The on-site portion of Wetland A is approximately 36,733
33 square feet, and contains forested vegetation, emergent vegetation and invasive species. City
34 regulations impose a 100 foot buffer for this Category II wetland. City regulations authorize staff
35 approve buffer averaging down to a width of 50 feet. Buffer averaging would have been sufficient
36 to avoid all buffer encroachments except that a minor area of encroachment into the 50 foot buffer
cannot be avoided at the southern end of the project site. Because of this southern encroachment,
the Applicant has had to apply for a reasonable use request. The precise amount of encroachment
into the 50 foot buffer is apparently not identified in the exhibits of record, but staff testified that
the amount is nominal.

Overall, even with the reasonable use request, the proposed mitigation will result in a net gain in critical area functions and values compared to existing conditions. The site has been engineered to minimize impacts to critical areas to the greatest extent practicable. No direct impacts to Wetland A are proposed. The proposed project will reduce the developed footprint of the site from 2.46 acres to 1.84 acres. The buffer for Wetland A is heavily disturbed with pre-existing non-conforming structures, as well as cleared areas and an access road. There is little native vegetation present throughout the wetland buffer. The project proposes a combination of wetland enhancement and buffer restoration and enhancement to compensate for the proposed buffer encroachment. The Applicant's wetland review and conclusions has been subject to peer review, which found the proposal to be consistent with the City's environmental regulations. See Exhibit 17 – ESA Review Memorandum, dated August 29, 2018, which is contained in the project file. Given the minor nature of the reasonable use request, the lack of public interest in the request and the compelling evidence for approval, this decision does not include a separate analysis of reasonable use compliance but rather adopts the findings and conclusions of the staff report on the request in its entirety, specifically adopting the reasonable use analysis contained in pages 5-7 of the staff report.

- G. Fire Services. The City of Mill Creek and Snohomish County Fire District No. 7 have executed an Interlocal Agreement for mitigation of development impacts on fire facilities/services. Mitigation fees are determined by the anticipated impact a development will have on Fire District No. 7 facilities. Based on the provisions of the agreement, the mitigation required is \$365 per equivalent development unit (EDU).
- H. School Impact Fees. City ordinances do not impose any school impact fees on commercial development.
- I. Utilities. Water service will be provided by Alderwood Water and Wastewater District (District) and will be tapped into the existing water main located along the western side of SR 527. The project will require a new sanitary sewer main to be constructed along the east side of the subject property and extended north for future connections. The developer is working with the District to finalize a Development Agreement for the proposed improvements and connections.
- J. Building and Fire Code. Building and fire code compliance will be addressed during building permit review.
- K. Tree Retention. MCMC 17.34.040.A.3 requires the preservation of existing significant tree stands and significant individual trees, to the greatest extent feasible. There are two healthy Douglas fir growing on the parcel to the north of the project area very close to the northern property boundary that could be impacted by construction. As a Condition of Approval, these trees will require protection during construction. In addition, there are four healthy Western Red Cedar in the northwest corner of the wetland buffer area that will require protection from impacts during the buffer restoration.

CONCLUSIONS OF LAW

1. Authority. MCMC 14.03.080(2) provides that the hearing examiner shall review and make final decisions on binding site plan applications.
2. Zoning/Comprehensive Plan Designations. The Comprehensive Plan Designation is Business Park and the Zoning District is Business and Industrial Park (BP).
3. Review Criteria. As determined in the Examiner's Autozone Binding Site Plan Final Decision (BS 15-66), the following are the criteria for site plan approval: (1) conformance to the City's development standards; and (2) conformance to the comprehensive plan.
4. Conformance to Development Standards. The proposal complies with all of the City's development standards. The applicant proposes mini-storage use, which is allowed in the BP zoning district by MCMC 17.20.010(I). The proposal conforms to the rest of the City's development standards as determined in Finding of Fact No. 4 and as assessed in the Development Standards matrix in the staff report (Exhibit 1, pages 11-14).
5. Conformity to Comprehensive Plan. The proposal is consistent with the comprehensive plan for the reasons identified in comprehensive plan matrix of the staff report (page 13 under heading MCMC 17.22.120).

DECISION

The binding site plan and reasonable use applications are approved subject to the following conditions:

Binding Site Plan:

1. Development shall occur as portrayed on the Binding Site Plan.
2. All utility, stormwater, drainage, maintenance, and landscaping buffers/easements, together with attendant restrictions and conditions, shall be portrayed on the final Binding Site Plan.
3. The final Binding Site Plan shall be recorded with the Snohomish County Auditor and a copy provided to the City prior to the issuance of the Certificate of Occupancy.
4. The developer may assign its rights and obligations under this development approval upon prior written notice to the City identifying the new entity and evidencing the transfer of obligations to the new entity.

- 1 5. The building elevations, landscaping plans, and any proposed monument signs shall be
2 designed in accordance with MCMC Chapter 17.34 and reviewed and approved by the
3 City's Design Review Board in accordance with MCMC Section 4.18.020.

4 **Landscaping:**

- 5 6. The proposed landscaping plan is required to be reviewed and approved by the City's
6 Design Review Board prior to installation.
- 7 7. The proposed meandering sidewalk and lawn within the SR 527 right-of-way shall be
8 reviewed and approved by WSDOT prior to installation.
- 9 8. The developer shall provide a secured performance bond equal to 125 percent of the cost
10 of labor and materials to install the landscaping, in accordance with MCMC Section
11 16.16.040, posted prior to the issuance of the first building permit.
- 12 9. The developer shall install wheel stops or another suitable mechanism to protect the
13 landscaping.
- 14 10. Once the developer has fulfilled the obligations of the landscape performance bond, the
15 applicant shall enter into a two-year maintenance bond equal in value to not less than 15
16 percent of the original bond amount for the approved and installed landscaping in
17 accordance with MCMC Section 16.16.090.

18 **Protection of Critical Areas:**

- 19 11. The wetland and its associated buffer shall be placed in a separate tract and shall be
20 designated as a Native Growth Protection Area (NGPA) on the face of the Binding Site
21 Plan, and shall be recorded on all documents of title for all affected lots or land areas,
22 pursuant to MCMC Section 18.06.830. Tract restrictions shall include:
- 23 A. An assurance that native vegetation will be preserved for the purpose of preventing
24 harm to property and the environment, including, but not limited to, controlling
25 surface water runoff and erosion, maintaining slope stability, buffering, and
26 protecting plants, fish, and animal habitat; and
- B. The right of the City to enforce the terms of the restrictions.
12. Prior to commencing construction activity, the edge of the wetland buffer (western edge
of proposed site improvements) shall be clearly staked, flagged and protected with
fencing. Site clearing shall not commence until the applicant has submitted written
notice to the Department of Community and Economic Development that the buffer
requirements of MCMC Sections 18.06.810 and 18.06.930 (E) have been met.

- 1 13. Prior to issuance of a Certificate of Occupancy, the boundary at the edge of the NGPA
2 tract being created shall be identified with permanent signs or markers every 100 feet to
3 clearly indicate the location of the NGPA buffers, pursuant to MCMC Section 18.06.810.
- 4 14. Pursuant to MCMC Section 15.10.045.A, barrier fencing shall be placed around the drip
5 lines of the trees to be retained prior to commencing clearing and grading, and be
6 maintained until construction is completed.
- 7 15. In accordance with MCMC Section 15.10.075.B, where trees designated to be retained
8 are damaged, destroyed or removed during the construction of the proposed
9 improvements, a penalty in the amount of \$1,000 may be assessed for each tree, and each
10 tree shall be replaced at a 3:1 ratio.

9 **Engineering and Site Work:**

- 10 16. A Clearing and Grading permit for all clearing, grading, roadway, stormwater, and
11 erosion control work shall be approved by the Director of Public Works and
12 Development Services prior to any clearing or grading work on the site.
- 13 17. The applicant shall provide a pedestrian connection from the walkway along SR 527 to
14 the interior of the site as shown on the site plan.
- 15 18. The developer shall submit stormwater plans and documentation to address all required
16 drainage improvements. The approved stormwater system shall include the following
17 elements and conditions per MCMC Chapter 15.14 and the 2012 Department of Ecology
18 Stormwater Management Manual for Western Washington as amended in 2014.
- 19 A. Final drainage plans shall be submitted to the Director of Public Works and
20 Development Services for review and approval.
- 21 B. A Stormwater Pollution Prevention Plan (SWPPP) shall be prepared to address
22 the required elements and all Best Management Practices that are expected to be
23 used on site for erosion and sediment control.
- 24 C. The developer shall apply for an individual Construction Stormwater General
25 Permit from the State Department of Ecology, and provide proof of the issued
26 permit to the City prior to beginning construction.
- 27 D. A final stormwater report signed and stamped by a licensed professional engineer
28 shall be submitted to the Director of Public Works and Development Services for
29 review and approval.
- 30 E. The property owners shall be obligated to own, maintain and operate the
31 stormwater system outside the public right-of-way to the satisfaction of the

Director of Public Works and Development Services.

- F. Provisions shall be included with the Final Binding Site Plan for maintenance of the stormwater system outside the public right-of-way, including, but not limited to, adequate access to maintenance locations, provisions and easements that allow the City to inspect and maintain the system at its discretion, and adequate provisions to ensure uninterrupted function of the facilities for the proposed development.

19. All new and existing utilities within the project shall be placed underground in accordance with MCMC Section 17.22.110. The applicant shall be responsible for all costs associated with undergrounding the utilities. Appropriate easements or right-of-way for all utilities shall be provided by the applicant and shown on the face of the Final Binding Site Plan.

SEPA Mitigation Fees:

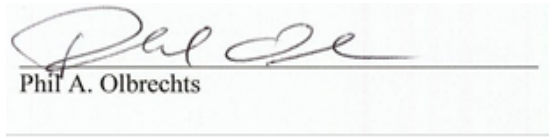
20. In accordance with the Interlocal Agreement between the City of Mill Creek and Snohomish County Fire District No. 7, payment of mitigation fees totaling \$15,753.20 to the City of Mill Creek is required to offset impacts for the proposal prior to building permit issuance.

Fire District Requirements:

21. Fire hydrants shall be provided to serve the development. Placement of the hydrants and fire flow capacity are subject to review and approval by Fire District No. 7.
22. The applicant shall provide a water availability letter from the water purveyor to the City indicating that the required fire flow is available on site.
23. The project requires fire sprinkler protection, and a fire alarm system, each meeting the specifications of the fire code and the applicable NFPA standards. The FDC is required to be located remotely, within 50 feet of a fire hydrant, and is acceptable where proposed.
24. Combustible building materials shall not be brought onto the site until approved firefighting water is available and an all-weather roadway surface capable of supporting fire apparatus is provided.
25. The property address shall be clearly marked at the site during all site and building construction and on the building after construction with a minimum 6" numbers using a 3/4" stroke width on a contrasting background.

Decision issued October 24, 2018.

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Phil A. Olbrechts

Hearing Examiner

Appeal Right and Valuation Notices

MCMC 14.03.030(B)(4) provides that the final decision of the hearing examiner is subject to appeal to the Mill Creek City Council. MCMC 14.11.030 requires appeals of the hearing examiner's decision to be filed within fifteen days from the date of the hearing examiner's decision. Appeal requirements are governed by Chapter 14.11 MCMC.

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.