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**ADMINISTRATIVE DECISION FOR TYPE III  
MAJOR CRITICAL AREA WORK PERMIT**

**CASE:** File # 2017-SAMJ-0003

**APPLICANT:** LFP Water District via Watershed Company and  
Mike Foster  
750 Sixth Street South  
Kirkland, WA 98033

**REQUEST:** Demolish an existing pump house, and construct a new pump house building on parcel -0176, and connect the structure to infrastructure on parcel -6570 with a new set of mains that extend north from the pump house. The pump house will be and above ground structure; the proposed water mains will be largely underground. This project has already received approval for a Public Agency Utility Exception (PAUE) through the City's Hearing Examiner on August 12, 2016. The PAUE approval authorizes the LFPWD to construct the new pump house within steep slope areas. The project proposes to temporarily and permanently impact on-site wetlands, wetland buffers, and stream buffers, and provides for compensatory mitigation.

**SITE ADDRESS:** 18460 47 PL NE  
Lake Forest Park, WA 98155

**APPLICATION DATES:** Application Submitted: February 7, 2017  
Date of Complete Application: March 6, 2017

Posted for 14-day Notice of Application with  
ODNS: December 19, 2018  
Decision Issued: May 13, 2019

**COMPREHENSIVE PLAN:** Single Family Residential; Moderate

**ZONING:** RS 10000

**APPLICABLE REVIEW PROVISIONS:**

- Chapter 16.06- State Environmental Policy Implementation
- Chapter 16.14 LFPMC- Tree Canopy Preservation and Enhancement
- Chapter 16.16 LFPMC- Environmentally Critical Areas; Ordinance 930
- Chapter 16.26 LFPMC- Land Use Decisions and Procedures

**ENVIRONMENTAL DETERMINATION:** Determination of Non-Significance issued on December 19, 2018

**ASSIGNED STAFF:** Nick Holland  
Senior Planner

**DECISION:** Approve with conditions

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**I. APPLICATION TIMELINES**

Mike Foster of Kirkland’s Watershed Company filed a major critical area permit application on the behalf of the Lake Forest Park Water District on February 7, 2017. The application was determined complete on March 6, 2017, and put on hold awaiting additional information from the applicant. On July 11, 2018, the applicant submitted additional information detailing a change in the project’s scope. On October 31, 2018, the applicant provided an updated sensitive area memorandum detailing the critical area compliance aspects of the proposed design changes. On December 28, 2018, the City requested additional information from the applicant, because of changes in the critical areas ordinance (ord. 1150 adopted). The applicant responded to the City’s request on April 3, 2019, and provided a new critical areas study. The City requested additional information on April 5, 2019. The applicant responded with clarifying information on April 22, 2019. The City is issuing this decision and permit on May 13, 2019.

## **II. SITE DESCRIPTION and CHARACTERISTICS**

The subject site is a combination of two parcels. Parcel one (#401990-0176) is a residentially zoned parcel owned by the water district, and contains the existing pump house, which is to be demolished. The parcel takes access via an unimproved construction access road directly from 47 PL NE, and is roughly rectangular in shape totaling 17,820 square feet. The parcel contains a steep slope roughly 30-40% in grade at the southern portion of the property, as well as a category 3 wetland which is identified as wetland A in the updated critical area study (Exhibit 1).

The adjacent parcel (4022906570) to the north is owned by King County and contains several pump stations, water lines, and vaults; essential infrastructure for the LFP Water district. The parcel is 396, 609 square feet, and also contains several critical areas including wetlands F, E, and EE (as identified in the most recent critical area study- Exhibit 1), and McKinnon Creek. Each wetland is classified as a category 3 wetland, and McKinnon Creek is classified as a type F stream per the critical area study.

## **III. PROJECT DESCRIPTION**

On February 7, 2017, the applicant applied for a major critical area permit to construct a new pump house building (then proposed to be 768 square feet) on parcel -0176, and connect the structure to infrastructure on parcel -6570 with a new set of water mains that extend north from the pump house. The pump house will be an above ground structure set into the hillside; the proposed water mains (averaging from 6-12 inches in diameter) will be largely underground. There will also be a mix of above and underground vaults, valve stations, sensors, and risers installed to support the system.

The construction and installation of these facilities will require a significant amount of excavation in, and around documented critical areas and their buffers. Approximately 2,030 cubic yards of material will be excavated from the project site to support pipe and infrastructure installation. Excavation within steep slope areas will be required for the construction of the pump house, and has been approved as a part of a previous land use action on August 12, 2016 (see the Hearing Examiner decision for 2015-PAUE 0001, and 2018-CU-0001 (Exhibit 2, and specifically exhibit 23 which is the approved site plan).

The proposed project is contained entirely within the combined stream/wetland buffer. The applicant had proposed to mitigate permanent and temporary impacts to wetland and buffer areas that the installation of the equipment and infrastructure will create.

On July 19, 2018 the applicant's engineer, Mundall Engineering, approached the City about a change in the scope of the project. Changes for some of the areas to be largely impacted were sought; most notably was the reduction in square footage of the pump house to 576 square feet. Changes to the site infrastructure were also proposed, in some cases creating temporary infrastructure to be replaced at a later date with permanent systems. The changes were an attempt to minimize the amount of impact the project

would have, and to ultimately reduce costs, and improve construction schedules and timing. These changes are summarized in the memorandum document contained within Exhibit 3. An updated sensitive area memorandum in support of the changes was also provided on October 31, 2018 (Exhibit 4). All of the revisions were described as within the scope of the Hearing Examiner decision for 2015-PAUE 0001, and 20185-CU-0001.

Changes in critical area regulations at the local level has prompted the need for a revised critical area study, and another look at wetland and stream classification and associated buffer widths. The applicant has provided an updated study (see Exhibit 1) which describes the classification of critical areas, and defines buffer widths. Removed trees will be replaced with native trees at an increased ratio (under a separate permit as a condition of this approval), and several thousand square feet of wetland, and combined stream and wetland buffer, will be replaced at ratio compensation levels for the impacts that the project creates. The critical area mitigation will result in no net loss of biological function for the site's critical areas.

#### **IV. CRITICAL AREA PERMIT REQUIREMENTS**

This project is subject to the City's critical area ordinance regulations, as adopted through ordinance 1150. The following are staff's findings and conclusions for relevant criteria within that ordinance.

*LFPMC 16.16.060 Critical area – Authority of planning director – Review process.*

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*Pursuant to LFPMC 16.16.060 (A), the Planning Director is authorized to administer the critical areas ordinance, and to make all decisions required by the ordinance, unless otherwise specified. Pursuant to LFPMC 16.16.060 (B), the Planning Director shall perform a review for any development proposal permit application or other request for permission to proceed with an alteration on a site. The requirements listed in LFPMC 16.16.060 (B) (1) through (5) along with staff's findings and conclusions for each requirement, are as follows:*

- 1. Determine whether any critical area exists on the property and confirm its nature and type.*

Findings: Staff has performed site visits to the subject properties, and confirmed the presence of critical areas on-site. The applicant has submitted professional studies that document the characteristics of wetlands, streams, slopes, and associated buffers on the property. The site contains a type F stream in McKinnon Creek, and four category III wetlands.

Conclusion: This criterion is met.

2. *Determine whether a critical area study is required and, if so, the nature of that study.*

Findings: City critical area maps do not provide enough detail about the characteristics of the critical areas on this property. The City requires additional information on the critical areas present, such as the classifications, locations, sizes, and information on functions and values of wetlands and streams in the project area. The City also requires information on the associated wetland, and stream buffers for the site. Steep slope analysis has been approved through a previous land use action (PAUE approved 8/12/16), and direct impacts to McKinnon Creek on the project site will be avoided.

Conclusion: A critical areas study is needed and has been provided by the applicant. This criterion is met.

3. *Evaluate the critical area study.*

Findings: The City has evaluated the critical areas study, designs, and mitigation plans for compliance with applicable critical area regulations, specifically for impact to wetland and buffer areas, as well as stream, and combined stream/wetland buffers.

The critical area study classifies the wetland areas (wetlands A, E, EE, and F in Exhibit 1) as category 3 wetlands based on the Department of Ecology's rating system. LFPMC 16.16.320-1 assigns buffer widths to each category wetland based on a combination of category, and the specific habitat score for each wetland. It also assumes that a 100 foot wide vegetated corridor exists within a protected easement.

Due to the presence of the District's access road, which is required to maintain the potable water infrastructure, as well as other infrastructure necessary to maintain the District's system, a 100 foot wide vegetated corridor, and protection easement is not possible for each wetland. Therefore, the applicant's critical area study is proposing to use the measures listed in LFPMC 16.16.320-2 to minimize impacts to wetland areas. Pursuant to LFPMC 16.16.320 (A) (1) (b), when the measures listed in LFPMC 16.16.320-2 are used, the buffer widths listed in LFPMC 16.16.320-1 apply to wetland areas. Correspondingly, the applicant's critical area study assigns the following buffer widths to each wetland:

- Wetland A: 165 foot buffer (Habitat score of 6)
- Wetland E: 165 foot buffer (Habitat score of 6)
- Wetland EE: 165 foot buffer (Habitat score of 6)
- Wetland F: 105 foot buffer (Habitat score of 5)

The District is not proposing to average wetland buffer widths, as allowed per LFPMC 16.16.320 (C). According to an addendum to the applicant's critical area study, and information received on April 22, 2019 in a technical memorandum from the Watershed Company (see Exhibit 5), increased buffer widths for this utility corridor (see LFPMC 16.16.320 (E) (1) through (6)) are not needed because existing and proposed infrastructure are located within standard buffers, and would be located within any increased buffers. The proposed mitigation within the standard buffer width will result in no net loss of ecological function, therefore increased buffer widths are not needed to provide additional critical area functions.

McKinnon Creek is a stream with documented fish use, and therefore is classified as a type F stream, pursuant to the applicant's critical area study. LFPMC 16.16.355 (A) (2) requires that type F streams maintain a 115-foot buffer (buffer reduction methods are allowed pursuant to LFPMC 16.16.355 (B), but are not proposed by the applicant).

The project will have impacts to both wetlands and combined stream and wetland buffers on each parcel. Construction of the pump house will result in a permanent wetland buffer impact, while associated clearing limits, as well as the installation of underground pipe will require excavation within wetland F, E, and wetland EE, as well as their buffers. Other water lines will also cross through wetland buffers on site (see exhibit 6-design plans). The applicant's sensitive area study proposes that impacts to wetland areas will be temporary. Impacts to buffer areas will be temporary (with just the pump house as the only permanent wetland buffer impact), as the excavated material will be replaced, and mitigation installed once construction is finished. The applicant has provided a critical area study that proposes to mitigate project impacts, pursuant to LFPMC 16.16.130 (Mitigation Sequencing). The applicant's critical area study indicates that avoiding project impacts isn't entirely feasible because of the nature of the Water District's function and existing infrastructure. It will be necessary to perform work within wetland and combined wetland and stream buffer areas to connect to existing infrastructure, so that the community can be served with potable water. The applicant plans to minimize impacts to critical areas by shoring all excavation trenches, which will limit the area and vegetation disturbed. They also plan to use steel plates or mats when access to areas adjacent or within wetlands is required. Finally, compensatory mitigation is proposed in the form of wetland, and combined stream and wetland buffer restoration and enhancement (see Exhibit 6- mitigation plans). The result, according to the applicant's critical area study, will be new, restored buffers that encompass the entire project area. If the information contained within the design plans (Exhibit 6), and critical area report (Exhibit 1) are not

sufficient for a contractor to execute construction level work, or for the City to perform any required inspections, the permittee will be required to obtain the necessary construction level permits (at the discretion of the City), with fully engineered designs for any work associated with the project (condition of approval).

All mitigation will be monitored for a period of 5 years, as detailed in the applicant's critical area study, and held to a series of performance standards (see section 6.2 of critical area study).

A total of 14 trees are proposed for removal as a part of the project. 2 of the 14 trees (trees 5 and 12 as identified in the arborist report prepared by the Watershed Company) are exceptional trees. Per LFPMC 16.14.060 (B), viable exceptional trees are not be removed. The permittee has identified the two exceptional trees to be a risk, and recommend removal.

The applicant has already applied for a tree removal permit to remove trees within sensitive areas (application no. 2016-SATR-0011). The application was filed in 2016 when the City was operating under different tree regulations. An updated arborist evaluation has been submitted (prepared by the Watershed Company), and the City's Arborist is in the process of reviewing the application materials. As a condition of this decision, construction shall not start until the existing tree removal application is issued, and after the permittee has completed a pre-construction meeting with the City.

Conclusion: Staff has evaluated the applicant's critical area study. The applicant's critical area study includes all of the relevant content, as described in LFPMC 16.16.110. It adequately classifies critical areas, includes descriptions of functions and values, discusses project impacts, and specifies mitigation and monitoring for project impacts. As conditioned, this criteria has been met.

*4. Determine whether any proposed alteration to the critical area is necessary.*

Findings: A mitigation sequencing exercise has been done as a part of the wetland study, and to comply with LFPMC 16.16.130. This code section indicates an applicant shall make every effort to avoid impacts to critical areas, minimize them if impacts are absolutely necessary, and mitigate them if impacts result in a loss of function and values.

Impacts to wetland and buffer areas, as well as stream buffer areas are essentially unavoidable because of the nature of where the project's infrastructure must be installed in order for the agency to adequately

provide the utility. Springs that are a source of water for the District also support onsite wetlands.

Construction plans have been designed and modified to minimize the impacts to the least necessary. Shoring techniques will be used while installing piping, so that slopes for excavation can be minimized within wetland areas, and ultimately minimize wetland and buffer impacts, as well as stream buffer impacts. Any vegetation to be retained will be supplemented with protection fencing, as a condition of construction, and of this permit. A condition of this major sensitive area permit shall require the property owner to record a notice on the property's title that the properties are subject to regulation under this chapter. Notice on title shall include any requirement for mitigation and monitoring imposed as a condition of this sensitive area permit.

The mitigation plan is intended to compensate for the unavoidable temporary and permanent impacts to wetlands and critical area buffer that will arise as part of the LFPWD pump house project. The plan was prepared in accordance with LFPWC 16.16.340. The 14 lost trees will be replaced with 87 native trees, a 6.1:1 ratio. Wetland impacts, although temporary (with exception of the pump house itself), will be compensated at a 3.16:1 ratio to meet the requirements of the code [To clarify this ratio, several places within the submitted critical areas study misstate this number. Specifically, Sections 6 and 7 indicate that wetland mitigation will occur at a 3:16 ratio]. Disturbed wetland area will be enhanced, with other nearby degraded wetlands also targeted for weed removal and planting to reach the 3.16:1 ratio. A total of 8,000 square feet of wetland will be enhanced to compensate for 2,530 square feet of impact (a 3.16:1 actual ratio). Temporary critical area buffer impacts will be mitigated at a 1:1 ratio and be located in place of the temporary disturbance. Permanent buffer impacts associated with the well house structure will be compensated through enhancement planting in a buffer area dominated by English ivy and cherry laurel between the proposed pump house structure and Wetland A. These impacts will be compensated at a ratio of 6.96:1. A five-year maintenance and monitoring period is proposed that will ensure the successful establishment of the mitigation site.

All proposed mitigation will be monitored, and contingencies have been developed in the event mitigation fails (see section 6.3 of the critical area study- Exhibit 1). These measures meet the intent of LFPWC 16.16.340.

Conclusion: Critical areas will need to be altered to facilitate the project. Adequate mitigation, monitoring, and contingencies have been provided for the impacts. As conditioned, this criteria has been satisfied.

5. *Determine whether the mitigation and monitoring plans and bonding measures proposed by the applicant are sufficient to protect the public health, safety and welfare, consistent with the purposes of this chapter.*

Findings: The details of LFPMC 16.16.120 (Mitigation and Monitoring) are contained within the applicant's wetland study. The study contains a mitigation plan, and a monitoring schedule. The mitigation plan proposed by the applicant's consultant (exhibit 6) meets the regulations for wetland and buffer mitigation in terms of ratios. The monitoring component of the wetland study contains performance measures for the mitigation, and contingencies in the event the mitigation does not meet those performance standards. Lake Forest Park Water District (LFPWD) is a public agency, and as such cannot be subject to bonding regulations, per state law. Conditions of this permit will be established to ensure long term survivability of the installed mitigation. The survivability of the project has a direct impact on the public's health, safety, and general welfare, so, a condition for the applicant to provide to the City a copy of the signed contract of the individual qualified to perform monitoring will be a condition of approval.

Conclusion: As conditioned, this criterion has been met.

*LFPMC 16.16.090 Applications – Approval – Criteria – Revocation.*

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*The Planning Director shall make final critical area determinations and issue critical area permits according to the requirements of this chapter, best available science, and critical area studies prepared by qualified professionals. Criteria for permit approval are contained in LFPMC 16.16.090 (B) thorough (D). Staff's findings and conclusions for each requirement, are as follows:*

*B. The planning director is authorized to conduct review of the critical area study submitted by the applicant using a qualified professional to verify the study's findings, conclusions and recommendations. Before initiating a professional review, the city shall inform the applicant of the review and anticipated expense.*

Findings: The City has not initiated a professional or third party review for this project.

Conclusion: This criterion does not apply.

*C. When reviewing an application, the planning director may consider any recommended development practices that may be used in conjunction with the adopted critical areas map and study including those referenced in LFPMC [16.16.050](#). Recommended development practices may serve as a guideline for interpretation of both the study and critical areas map.*

Findings: Staff referenced City critical area maps, and research historical data only to determine the presence of critical areas, but did not find any additional information regarding the subject property.

Conclusion: This criterion has been met.

*D. A permit issued on the basis of false information provided by the applicant is void and the holder of such permit shall have no rights thereunder.*

Findings: There has been no evidence of false information with this permit application.

Conclusion: This criterion does not apply.

*16.16.230 Authorized work in critical areas.*

*The Planning Director may issue a critical area permit for work in critical areas or critical area buffers as described below. Staff's findings and conclusions for each requirement, are as follows:*

*E. Utility projects that have minor or short-duration impacts to critical areas, and do not significantly impact the function or values of a critical area(s), as determined by the planning director according to the following criteria:*

*1. There is no practical alternative to the proposed activity with less impact on critical areas;*

Findings: Due to the nature of the District's operations, and the current placement of potable water infrastructure, the project has been designed with the least amount of impact to critical areas as possible. Construction plans have been designed and modified to minimize the impacts to the least necessary. Shoring techniques will be used while installing piping, so that slopes for excavation can be minimized within wetland areas, and ultimately minimize wetland and buffer impacts, as well as stream buffer impacts. Any vegetation to be retained will be supplemented with protection fencing, as a condition of construction, and of this permit. A condition of this major sensitive area permit shall require the property owner to record a notice on the property's title that the properties are subject to regulation under this chapter. Notice on title shall include any requirement for mitigation and monitoring imposed as a condition of this sensitive area permit.

Conclusions: As conditioned, this criteria has been met.

*2. All unavoidable impacts to critical areas and associated buffers are fully mitigated;*

Findings: Mitigation measures are fully explained in the findings of section IV, criteria 4, paragraph 4 above.

Conclusions: This criteria has been met.

*3. The activity involves the placement of a utility pole, street signs, anchor, or vault or other small component of a utility facility;*

Findings: The District is not proposing to install a utility pole, street signs, anchor, or vault or other small component of a utility facility.

Conclusions: This criteria does not apply.

*4. The activity involves disturbance of an area less than 75 square feet;*

Findings: The project scope is in excess of 75 square feet, however permanent disturbance of buffer areas will be restored completely to no net loss of critical area function.

Conclusions: This criteria does not apply.

*5. The project does not result in the permanent transportation of sediment or increased stormwater flow.*

Findings: Mitigation measures for construction impacts have been designed to prevent stormwater from exiting the site during construction, and during mitigation work. There will be no transportation of stormwater from the site, according to the applicant's critical area study.

Conclusions: This criteria has been met.

16.16.120 Mitigation and monitoring.

*B. Mitigation of critical area impacts shall be conducted according to an approved mitigation plan that shall describe the existing functions and values of the affected critical areas, the nature and extent of impacts to those areas, and proposed mitigation measures to offset those impacts. The mitigation plan shall also contain a drawing that illustrates the compensatory mitigation elements. The plan and/or drawing shall list plant materials and other habitat features to be installed. Staff's findings and conclusions for each requirement, are as follows:*

Findings: The applicant has provided mitigation plans (see exhibit 6) in conjunction with their critical area report. These plans describe existing critical area functions, and values of the project area. They also outline the specific mitigation proposed to recover and compensate for permanent and temporary functions lost as a part of the construction process. Finally, the plan includes a specific vegetation list for the plantings. If the information contained within the design plans (Exhibit 6), and critical area report (Exhibit 1) are not sufficient for a contractor to execute construction level work, or for the City to perform any required inspections, the permittee will be required to obtain the necessary construction level permits (at the discretion of the City), with fully engineered designs for any work associated with the project (condition of approval).

Conclusions: As conditioned, this criteria has been met.

*C. The applicant shall submit a monitoring and maintenance program prepared by a qualified professional that shall, at a minimum, include the following:*

- 1. The goals and objectives for the mitigation plan;*
- 2. The criteria for assessing the mitigation;*
- 3. A monitoring plan that includes annual site visits by a qualified professional, with annual progress reports submitted to the planning director and that lasts for a period sufficient to establish that performance standards have been met as determined by the planning director, but no less than five years;*
- 4. A contingency plan; and*
- 5. A signed copy of the written contract with a qualified professional who will perform the monitoring program. The contract shall incorporate the terms of the required monitoring program.*

Findings: The applicant's monitoring plan is outlined in section 6.3 of the critical area study and includes all of the above elements. A signed copy of the written contract with a qualified professional who will perform the monitoring program will be a condition of this approval. The contract shall incorporate the terms of the required monitoring program.

Conclusions: As conditioned, this criteria has been met.

*16.16.130 Mitigation sequencing.*

*Applicants shall demonstrate that all reasonable efforts to avoid and minimize impacts to critical areas and buffers have been examined and that impacts have been avoided, minimized, or compensated for in the following order of preference. Staff's findings and conclusions for each requirement, are as follows:*

*A. Avoiding impacts to environmentally sensitive areas by avoiding actions or parts of actions;*

Findings: The applicant's critical area study indicates that avoiding project impacts isn't entirely feasible because of the nature of the Water District's function and existing infrastructure. It will be necessary to perform work within wetlands and combined wetland and stream buffer areas to connect to existing infrastructure, so that the community can be served with potable water.

Conclusions: This criteria does not apply.

*B. Minimizing impacts by limiting the degree or magnitude of the action by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;*

Findings: The applicant plans to minimize impacts to critical areas by shoring all excavation trenches, which will limit the area and vegetation disturbed. Excavation will be returned to the ground once finished, and all construction impacts will be supported by the appropriate temporary erosion and sedimentation control measures.

Conclusions: This criteria does not apply.

*C. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;*

Findings: It will not be possible to restore all of the affected areas, some impacts will be permanent. All permanent impacts will be compensated per the applicant's mitigation plan, and result in critical areas and buffers that compensate for all impacts. There will not be any loss of ecological function as a result.

Conclusions: This criteria has been met.

*D. Reducing or eliminating the impact over time through preservation and/or maintenance operations;*

Findings: The district will carry-on maintenance operations by utilizing the existing and proposed utility facilities in much the same fashion as they have to-date. Specifically, existing access roads will be used and maintenance equipment will avoid retained trees and critical areas.

Conclusions: Compensatory mitigation is planned for this project and will restore critical area function. This criteria does not apply.

*E. Compensating for the impact by replacing, enhancing, or providing substitute critical areas and/or buffers; and/or*

Findings: Finally, compensatory mitigation is proposed in the form of wetland, stream, and wetland buffer and stream buffer restoration and

enhancement (see Exhibit 6- mitigation plans). The result, according to the applicant's critical area study, will be new, larger buffers that encompass the entire project area.

Conclusions: This criteria has been met.

*F. Monitoring the impact and/or hazard and making appropriate corrective measures when necessary.*

Findings: The critical area study has a monitoring plan included, which includes performance measures for new plantings and all mitigation. If the new mitigation falls out of compliance with the performance standards, the applicant will be responsible for enacting the contingencies listed within the report.

Conclusions: This criteria has been met

16.16.330 Wetlands – Permitted alterations.

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*B. Alterations to wetlands and their buffers may only be allowed for the following activities, in addition to any established in LFPMC [16.16.220](#) and [16.16.230](#), if the city determines that there is no practical alternative location for the proposed activity with less adverse impacts on the wetlands or its buffer, subject to mitigation requirements set forth in this chapter. Staff's findings and conclusions for each requirement, are as follows:*

3. *Utility corridors may be allowed in wetland buffers only if:*
  - a. *The applicant demonstrates that there are no feasible alternatives;*

Findings: Impacts to wetland and buffer areas, as well as stream buffer areas are essentially unavoidable because of the nature of where the project's infrastructure must be installed in order for the agency to adequately provide the utility. Springs that are a source of water for the District also support onsite wetlands. The project is being done with the least amount of impact possible, according to the applicant's critical area study.

Conclusions: This criteria has been met.

- b. *The corridor is not located in a wetland or buffer that is used by species listed as endangered, threatened or priority by the state or federal government or that contains critical or outstanding actual habitat for those species or rookeries or raptor nesting sites;*

Findings: According to the applicant's critical area study, there is no evidence to suggest that this site is being used by endangered species. Although, the area is relatively undeveloped, and provides a moderate to high habitat function (see critical area study, Exhibit 1).

Conclusions: This criteria has been met.

*c. The corridor alignment including, but not limited to, any allowed maintenance roads follows a path beyond a distance equal to 75 percent of the standard buffer width from the wetland edge;*

Findings: The location of the pump house has already been authorized through the PAUE approval. Locations of water lines through critical areas will be largely underground. The existing maintenance road and all of the infrastructure for this project is located within the combined stream and wetland buffer. These impacts are unavoidable, but will be mitigated to result in no net loss of ecological function. The applicant seeks approval of this proposal under the provisions of LFPMC 16.16.330 (B) (6), where the Planning Director can approve wetland and buffer crossings when criteria (a) through (e) are met. Sections 5.1 of the applicant's critical area study address this criteria adequately.

Conclusions: This criteria does not apply.

*d. Any corridor construction or maintenance protects the wetland and buffer, the corridor is aligned to avoid cutting trees greater than 12 inches in diameter when possible, and use of pesticides, fertilizers, or herbicides is consistent with best management practices to avoid wetland and habitat impacts;*

Findings: The project has been designed to mitigate and protect wetlands and buffers. There will be a need to cut 14 trees as a part of the project, and some may be in excess of 12 inches in diameter. Tree cutting will be evaluated under the requirements of LFPMC 16.14, and appropriate replacement mitigation will be implemented. The use of pesticides, fertilizers, or herbicides is not anticipated.

Conclusions: This criteria has been met.

*e. Provision is made for an additional contiguous buffer of equal width to the proposed corridor, including any maintenance roads to protect the wetland;*

Findings: The existing maintenance road is proposed to remain as a part of this project. The applicant seeks approval of this proposal under the

provisions of LFPMC 16.16.330 (B) (6), where the Planning Director can approve wetland and buffer crossings when criteria (a) through (e) are met. According to a technical memorandum received from the Watershed Company (see Exhibit 5), section 5.1 of the applicant's critical area study address this criteria adequately.

Conclusions: This criteria has been met.

*f. The corridor is revegetated with native vegetation to a state equal to or greater than preconstruction densities immediately upon completion of construction or as soon as possible. Maintenance and monitoring provisions for the revegetation will be a part of any revegetation plan;*

Findings: As a part of the mitigation for the project, the utility corridor will be revegetated with wetland and native plant life, and in densities that are appropriate to create a functional wetland and buffer. The mitigation measures meet the standards of LFPMC 16.16.340. As a condition of this decision, monitoring and performance measures will be required, per the guidelines in the applicant's critical area study. If any of the plantings fall short of performance measures, maintenance and contingencies will be enacted.

Conclusions: As conditioned, this criteria has been met.

*g. Additional access for maintenance shall be limited to specific points rather than via parallel roads; and*

Findings: The applicant's critical area study does not address this criteria, so a condition for maintenance access to occur perpendicular to the established maintenance road will be included with this decision.

Conclusions: As conditioned, this criteria has been met.

*h. The width of any necessary parallel road providing maintenance access is as narrow as possible, not to exceed 15 feet, and maintenance is carried out in accordance with wetland management standards.*

Findings: The maintenance road that serves this project site will be required to be altered as a condition of this decision to equal a maximum of 15 feet. Any maintenance of the site will be subject to current and future versions of the City's critical areas ordinance.

Conclusions: As conditioned, this criteria has been met.

*6. Wetland and wetland buffer crossings may be allowed; provided, that the planning director determines that:*

*a. No possible alternative exists;*

Findings: Impacts to wetland and buffer areas, as well as stream buffer areas are essentially unavoidable because of the nature of where the project's infrastructure must be installed in order for the agency to adequately provide the utility. Springs that are a source of water for the District also support onsite wetlands. The project is being done with the least amount of impact possible, according to the applicant's critical area study.

Conclusions: This criteria has been met.

*b. All crossings minimize impact to the wetland and/or buffer and provide mitigation for unavoidable impacts through restoration, enhancement or replacement of disturbed areas;*

Findings: A total of 2,550 square feet of permanent buffer impact will result from construction of the new pump house. Meanwhile, 2,530 square feet of wetland will temporary disturbed during construction, whereas 30,290 square feet of buffer may be temporarily disturbed. As mitigation for temporary wetland impacts, a total of 8,000 square feet of wetland will be enhanced, equating to a ratio of 3.16:1. Meanwhile, 17,755 square feet of buffer will be restored, resulting in a ratio of 6.96:1 for permanent buffer impacts. Finally, all areas of temporary buffer impacts will be restored, at the direction of the restoration specialist. These mitigation ratios comply with the standards in LFPMC 16.16.340-1. The buffer mitigation proposed complies with the 1:1 ration in LFPMC 16.16.340 (D) (3). If the information contained within the design plans (Exhibit 6), and critical area report (Exhibit 1) are not sufficient for a contractor to execute construction level work, or for the City to perform any required inspections, the permittee will be required to obtain the necessary construction level permits (at the discretion of the City), with fully engineered designs for any work associated with the project (condition of approval).

Conclusions: As conditioned, this criteria has been met.

*c. The overall wetland hydrology is not changed;*

Findings: Temporary impacts to wetland hydrology are anticipated, according to the applicant's critical area study. All impacts will be

mitigated for, and overall wetland hydrology will improve as a result of mitigation measures.

Conclusions: This criteria has been met.

*d. Important habitat functions are not disturbed;*

Findings: Temporary impacts to habitat functions are anticipated, according to the applicant's critical area study. All impacts will be mitigated for, and overall habitat functions will improve as a result of mitigation measures.

Conclusions: This criteria has been met.

*e. Construction is scheduled during periods of low water tables as recommended by a qualified professional, generally during the drier summer months.*

Findings: A condition of this decision will be for construction to occur during the summer months (May-October).

Conclusions: As conditioned, this criteria has been met.

*16.16.340 Wetlands – Mitigation and restoration requirements.*

*A. Mitigation shall be conducted pursuant to LFPMC [16.16.100](#) through [16.16.130](#). Staff's findings and conclusions for each requirement, are as follows:*

Findings: These sections specifically deal with critical area studies, the content of critical area studies, mitigation and monitoring, and mitigation sequencing respectively. The applicant has submitted a critical area study that addresses all of the requirements in 16.16.110, but does not need a special study per 16.16.100. Mitigation and monitoring, as specified in 16.16.120, have been evaluated above (see section IV- staff findings and conclusions for mitigation and monitoring). Mitigation sequencing, as described in 16.16.130 has been evaluated above (see section IV- staff findings and conclusions for mitigation sequencing).

Conclusions: This criteria has been met.

*B. Compensatory mitigation shall address the functions affected by the proposed project, with an intention to achieve functional equivalency or improvement of functions. The goal shall be for the compensatory mitigation to provide similar wetland functions as those lost, except when either:*

*1. The lost wetland provides minimal functions, and the proposed compensatory mitigation action(s) will provide equal or greater functions or will provide functions shown to be limiting within a watershed through a formal Washington State watershed assessment plan or protocol; or*

*2. Out-of-kind replacement of wetland type or functions will best meet watershed goals formally identified by the city, such as replacement of historically diminished wetland types.*

Findings: The applicant has elected to provide compensatory mitigation, because restoration, creation, enhancement, and protection as described in LFPMC 16.16.340 (C) (1 through 4) does not fit the nature of this project. All compensatory mitigation, as described in section 6 of the critical area report meets the standards for this section. The specific mitigation measures have been described in detail above. All compensatory mitigation meets the ratios in LFPMC 16.16.340 (D). All buffers will be mitigated at a 1:1 ratio. See mitigation plans, Exhibit 6.

The applicant has not elected to use any credit/debit measures as described in LFPMC 16.16.340 (D) (2).

The applicant has not elected to utilize off-site mitigation as described in LFPMC 16.16.340 (E). Alternate wetland mitigation plans are not proposed.

Conclusions: This criteria has been met.

*C. Mitigation for lost or diminished wetland and buffer functions shall rely on a type listed below in order of preference. A lower preference form of mitigation shall be used only if the applicant's qualified wetland professional demonstrates to the planning director's satisfaction that all higher-ranked types of mitigation are not viable or consistent with the criteria in this section. Surface water management or flood control alterations shall not constitute any of the below unless other functions are simultaneously improved.*

*1. Restoration. The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former or degraded wetland.*

*a. Reestablishment. The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former wetland. Reestablishment results in a gain in wetland acres (and*

*functions). Activities could include removing fill material, plugging ditches, or breaking drain tiles.*

*b. Rehabilitation. The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural or historic functions of a degraded wetland. Rehabilitation results in a gain in wetland function but does not result in a gain in wetland acres. Activities could involve breaching a dike to reconnect wetlands to a floodplain or return tidal influence to a wetland.*

*2. Establishment (Creation). The manipulation of the physical, chemical, or biological characteristics of a site to develop a wetland on an upland or deepwater site where a wetland did not previously exist.*

*a. If a site is not available for wetland restoration to compensate for expected wetland and/or buffer impacts, the approval authority may authorize creation of a wetland and buffer upon demonstration by the applicant's qualified wetland professional that:*

*i. The hydrology and soil conditions at the proposed mitigation site are conducive for sustaining the proposed wetland and that creation of a wetland at the site will not likely cause hydrologic problems elsewhere;*

*ii. Adjacent land uses and site conditions do not jeopardize the viability of the proposed wetland and buffer (e.g., due to the presence of invasive plants or noxious weeds, stormwater runoff, noise, light, or other impacts); and*

*iii. The proposed wetland and buffer will eventually be self-sustaining with little or no long-term maintenance.*

*3. Enhancement. The manipulation of the physical, chemical, or biological characteristics of a wetland site to heighten, intensify, or improve specific function(s) or to change the growth stage or composition of the vegetation present.*

*4. Protection/Maintenance (Preservation). Removing a threat to, or preventing the decline of, wetland conditions by an action in or near a wetland.*

**Findings:** The project proposes use of wetland and buffer restoration and enhancement, as outlined in Sections 4.3 and 6 of the critical area study.

Conclusions: This criteria has been met.

*D. Compensatory mitigation for approved wetland alterations shall meet the ratio requirements in LFPWC 16.16.340 (D) (1):*

Findings: The project proposes no permanent wetland impacts. All wetland impacts are to be temporary, with full restoration occurring following project completion. In addition, further areas of existing degraded wetland will be restored, bringing the total ratio of wetland restoration to 3.16:1. [To clarify this ratio, several places within the submitted critical areas study misstate this number. Specifically, Sections 6 and 7 indicate that wetland mitigation will occur at a 3:16 ratio]. However, as shown on the project plans (8,000 square feet of restoration: 2,530 square feet of impact), this ratio is actually 3.16:1.] In further compliance with this provision, all temporary buffer impacts will be restored in place, with permanent buffer impacts compensated for at a 6.96:1 ratio, greatly exceeding the required standard.

Conclusions: This criteria has been met.

*E. Compensatory mitigation actions shall be conducted on the site of the alteration except when the applicant can demonstrate that off-site mitigation is ecologically preferable. The following criteria will be evaluated when determining whether the proposal is ecologically preferable. When considering off-site mitigation, preference should be given to using alternative mitigation, such as a mitigation bank, an in-lieu fee program, or advance mitigation.*

- 1. There are no reasonable opportunities on site (e.g., on-site options would require elimination of high-functioning upland habitat), or opportunities on site do not have a high likelihood of success based on a determination of the capacity of the site to compensate for the impacts.*
- 2. On-site mitigation would require elimination of high quality upland habitat.*
- 3. Off-site mitigation has a greater likelihood of providing equal or improved wetland functions.*
- 4. Off-site locations shall be in the same subdrainage basin unless:
  - a. Established watershed goals for water quality, flood storage or conveyance, habitat, or other wetland functions have been established by the city and strongly justify location of mitigation at another site; or**

*b. Credits from a state certified wetland mitigation bank are used as compensation, and the use of credits is consistent with the terms of the certified bank instrument;*

*c. Fees are paid to a state-approved in-lieu fee program to compensate for the impacts.*

*5. The design for the compensatory mitigation project must be appropriate for its location (i.e., position in the landscape). Therefore, compensatory mitigation should not result in the creation, restoration, or enhancement of an atypical wetland.*

Findings: All proposed mitigation will occur on-site in compliance with this provision.

Conclusions: This criteria has been met.

*F. Monitoring shall be required in accordance with LFPMC [16.16.120](#). If a shrub-scrub or forested vegetation community is proposed, monitoring may be required for 10 years or more.*

Findings: Monitoring protocols are outlined in Section 6.2 of the submitted critical areas study. A 10 year monitoring period is not required for the scrub shrub community in this project.

Conclusions: This criteria has been met.

*G. The planning director may approve alternative wetland mitigation plans that are based on best available science, such as priority restoration plans that achieve restoration goals identified in the [SMP](#). Alternative mitigation proposals must provide an equivalent or better level of protection of wetland functions and values than would be provided by the strict application of this chapter.*

Findings: Alternative mitigation is not proposed for this project.

Conclusions: This criteria is not applicable.

#### *16.16.355 Streams – Development standards*

*Development proposals and other alterations on sites containing streams or buffers shall comply with the standards in LFPMC 16.16.355 (A) through (F). Staff's findings and conclusions for those standards that are applicable are listed below:*

*A. The following minimum buffers shall be established from the ordinary high water mark or from the top of the bank if the ordinary high water mark cannot be identified:*

*2. Type F stream containing fish habitat shall have a 115-foot buffer;*

Findings: McKinnon Creek and its buffer is classified as a type F stream, where a 115 foot wide buffer is required. The entire proposal is within the combined wetland and stream buffer. The applicant has proposed mitigation within the buffer area, which will result in no net loss of ecological function.

Conclusions: This criteria has been met.

*6. Any stream adjoined by a riparian wetland or other contiguous critical area shall have the buffer required for the stream class involved or the buffer which applies to the wetland or other critical area, whichever is greater.*

Findings: The stream and buffer also contain category III wetlands within the buffer area. Each wetland buffer totals 165 feet wide. The combined stream and wetland buffer established for the project area is 165 feet.

Conclusions: This criteria has been met.

*C. Existing Legally Established Development in Stream Buffer.*

*4. The planning director may waive the buffer requirement if the waiver request is found to meet the following criteria:*

- a. The existing legal improvement creates a substantial barrier to the buffer function;*
- b. The interrupted buffer does not provide additional protection of the stream from the proposed development; and*
- c. The interrupted buffer does not provide significant hydrological, water quality and wildlife buffer functions relating to the portion of the buffer adjacent to the stream.*

Findings: The existing pump house and infrastructure had been established legally some years ago. The permittee has not requested a reduction of any buffers for the project.

Conclusions: This criteria does not apply.

*E. Compliance with this chapter shall be in addition to, and not a fulfillment of, all requirements under Chapter [90.58](#) RCW, the Shoreline Management Act, and any development proposal shall, in addition to the requirements of this chapter, comply with the permitting and substantive requirements of Chapter [90.58](#) RCW, the Shoreline Management Act.*

Findings: This project is not within the shoreline jurisdiction. Pursuant to the City's Shoreline Master Program, page 8; Lake Washington is the only shoreline of state significance in the City limits.

Conclusions: This criteria does not apply.

*F. All buildings or structures shall have a setback of at least 15 feet from any place on the edge of a stream buffer. The setback line shall be established by measuring perpendicularly from the edge of a stream buffer.*

Findings: The pump house location has been established through a previous land use approval (see exhibit 2). A 15 foot setback from the critical area buffer will not be possible due to the previously approved location.

Conclusions: This criteria does not apply.

#### *16.16.360 Streams – Permitted alterations*

*Alterations to streams and buffers may be allowed per LFPMC 16.16.360 (A) through (N). Staff's findings and conclusions for those standards that are applicable are listed below:*

##### *A. In accordance with a critical area study.*

Findings: The permittee has provided a critical area study and it has been evaluated in section IV, LFPMC 16.16.060, paragraph 3, of this report. All material contained within the study meets applicable municipal regulations.

Conclusions: This criteria has been met.

##### *D. LFPMC [16.16.330](#)(B) applies to streams and their buffers.*

Findings: These criteria were evaluated in previous sections of this report. See the findings under section IV, LFPMC 16.16.330 (B). All alterations have been considered as combined stream and wetland buffer impacts/mitigation.

Conclusions: This criteria has been met.

*E through N. LFPMC 16.16.360 E through N:*

Findings: These sections address work directly within the ordinary high water mark of a stream. The permittee is not proposing to perform any work within McKinnon Creek itself. Only the combined wetland and stream buffer will be affected.

Conclusions: These criterion do not apply.

## **V. SEPA DETERMINATION**

A determination of non-significance was issued for this project on December 19, 2018, and is Exhibit 7 in this decision. The determination was noticed using the optional DNS process in WAC 197-11-355.

## **VI. PUBLIC NOTIFICATION AND INPUT**

A notice of application, which included an optional Determination of Non-Significance (ODNS), was posted and published pursuant to LFPMC 16.26.040 (D) on December 19, 2018. This notice comes late, and out of compliance with LFPMC 16.26.040 (D). Staff has considered all public comments while drafting the decision and creating the conditions of approval. All of the citizen's concerns can be mitigated through the project as designed, or as it will be conditioned. The notice of decision to approve for this project was published and posted May 13, 2019.

## **VII. PRELIMINARY CONCLUSIONS**

Staff has reviewed the proposal for general conformance with city codes and ordinances and the requirements set forth herein, and has provided findings in response to each requirement. Based upon said findings, staff concludes that the major critical area permit application as described herein conforms to the criteria for major critical area permits as defined in LFPMC Section 16.16.

## **VIII. CONDITIONS**

In consideration of the above findings of fact and conclusions, the proposed major critical area permit is hereby granted approval, subject to the following conditions:

1. The permittee may be required to obtain additional permits, at the discretion of the City, if it is found that the exhibits supporting this permit are not adequate to support construction level activity.
2. On-site construction shall not commence until the associated tree removal permit application (2016-SATR-0011) is issued. A pre-construction meeting with the City is required prior to the start of construction.
3. Protection fencing shall be required for any vegetation retained.

4. The permittee shall record a notice on each property's title that the properties are subject to regulations within the City's critical area ordinance. Notice on title shall include the requirements for mitigation and monitoring for this project.
5. Any required mitigation shall be installed pursuant to the materials in Exhibit 1 and 6. The required mitigation shall meet the performance measures outlined in Exhibit 1. Should any of the required mitigation fail, the contingency measures detailed in Exhibit 1 shall be enacted.
6. A signed copy of the executed monitoring contract with the company responsible for monitoring the required mitigation shall be provided to the City prior to the finalization of this permit. The contract shall incorporate the terms of the required monitoring program.
7. Should access to critical areas occur as a result of maintenance of the installed infrastructure, it shall be limited to those points that are perpendicular to the maintenance road.
8. All portions of the existing and any extensions/alterations of the maintenance road shall be altered and/or limited to a width of 15 feet.
9. Construction for this project shall be limited to the months of May through October.

## **IX. ATTACHMENTS**

The following documents are attached to or referenced, and made a part of this report:

### Attached:

- Exhibit 1: Critical area report prepared by the Watershed Company, date stamped April 3, 2019 by the City of Lake Forest Park.
- Exhibit 2: Hearing Examiner decision for 2015-PAUE 0001, and 2018-CU-0001.
- Exhibit 3: Technical memorandum from Mundall Engineering describing changes to the project scope, date stamped July 19, 2018 by the City of Lake Forest Park.
- Exhibit 4: Temporary pipe impact assessment prepared by the Watershed Company, date stamped October 31, 2018 by the City of Lake Forest Park.
- Exhibit 5: Technical memorandum prepared by the Watershed Company, date stamped April 22, 2019 by the City of Lake Forest Park.
- Exhibit 6: Design Plans prepared by the Watershed Company, sheets W1 through 11; date stamped April 5, 2019 by the City of Lake Forest Park.
- Exhibit 7: SEPA determination issued December 19, 2018.

### Referenced:

- Sensitive Area Study prepared by the Watershed Company, date stamped February 7, 2017 by the City of Lake Forest Park.

- Arborist report prepared by Urban Forestry Services, dated October 26, 2016.
- SEPA checklist prepared by Mike Foster of the Watershed Company, date stamped February 7, 2017 by the City of Lake Forest Park.
- Sensitive Area Work Permit Application, date stamped February 7, 2017 by the City of Lake Forest Park.
- Arborist report prepared by the Watershed Company, date stamped April 3, 2019 by the City of Lake Forest Park.

**Staff Signatures:**



**Name & Title:**        Nick Holland  
                                 Senior Planner

**Issued Date:**         May 13, 2019

**A. APPEALS**

This decision may be appealed by the applicant or any party of record under the provisions of LFPWC Section 16.26.190. Appeals must be submitted in writing.