

July 17, 2020

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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**REPORT AND RECOMMENDATION TO THE
METROPOLITAN KING COUNTY COUNCIL**

SUBJECT: Department of Local Services file no. **LUT418-0002**
Proposed ordinance no.: **2020-0189**

WASHINGTON STATE PATROL FIRE TRAINING ACADEMY
Special Use Permit Application

Location: 50802 SE Grouse Ridge Road, North Bend

Applicant: **Travis Matheson**
Washington State Patrol
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Email: travis.matheson@wsp.wa.gov

King County: Department of Local Services
represented by **Nancy Hopkins Goree**
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FINDINGS AND CONCLUSIONS:

Overview

1. The Washington State Patrol seeks a special use permit (SUP) to upgrade and redevelop the existing North Bend Fire and Safety Training Academy (Academy) campus under a proposed six-phase master plan. We held the public hearing on behalf of the Council. After hearing witness testimony, studying the exhibits entered into evidence, and considering the parties' arguments and the relevant law, we recommend that Council approve the SUP, as conditioned.

Background

2. The Academy sits on the site of a former gravel pit, several miles north of I-90 and ten miles or so east of North Bend. Zoned Forestry (F), it is surrounded by forest land and a forest production district.
3. One can conceptually break the facility—both existing and proposed—into three main parts:
 - administrative buildings for those who work at the site, classrooms and dorms for those responders who come to the site to train, and parking for both;
 - areas to light wood pallets ablaze to simulate fires in various real-world scenarios: a low-rise apartment-looking “burn building,” a faux ship’s brig, some mock airplanes, a replica vehicle, prop railcars, etc.; and
 - an intricate drainage and water treatment system for the whole site, with the emphasis on treating and re-using water from and for firefighting exercises.
4. The Academy started operating in 1985, after an Environmental Impact Statement (EIS) and the Council’s 1982 adoption of an Unclassified Use Permit.¹ The site expanded its approximately 48 acres to add a three-acre area for aircraft firefighting training, pursuant to an EIS addendum and the Council’s 1997 approval of an SUP.²
5. For a development authorized by a SUP, the Department of Local Services–Permitting (Permitting) may allow modifications and expansions of up to ten percent for building square footage and height, impervious surface, and parking. Over the years, the Academy has added some impervious surface and other modifications, but the proposed development would exceed those cumulative expansions, triggering review and approval as a special use. *See* KCC 21A.42.190.A.
6. The current application, submitted in August 2018, encompasses a six-phase master development plan:
 - the first and currently most detailed phase is to replace the burn building with three burn buildings: apartment, single-family, and commercial tower;
 - the second tackles an expanded administrative/educational building, replacing several smaller buildings and portables;
 - the third involves upgrades to the airplane and marine props;
 - the fourth creates a simulated hazardous material³ training spot and a cityscape;

¹ <https://aqua.kingcounty.gov/council/clerk/OldOrdsMotions/Ordinance%2005853.pdf>

² <https://aqua.kingcounty.gov/council/clerk/OldOrdsMotions/Ordinance%2012906.pdf>

³ We asked at hearing, and confirmed, that this involves constructing a training area to simulate a facility where in the real-world hazardous chemicals *would* be stored; hazardous chemicals will not actually be brought to the site to then be combated.

- the fifth encompasses highway and transportation simulation improvements; and
 - the sixth wraps up with industry and manufacturing props.
7. The Washington State Department of Ecology (Ecology) regulates the Academy's wastewater treatment under a National Pollutant Discharge Elimination System (NPDES) permit. The current permit is good until September 2021; the Applicant has been working with Ecology on the next permit.
 8. Wastewater (including sanitary sewage, fire training wastewater, and stormwater), is directed to a State Department of Health-approved, on-site membrane bioreactor and ultraviolet disinfection system for treatment. Oil is separated, skimmed off, and sent to an off-site recycler. Effluent from the separator flows into a series of three detention ponds, before it is reused for fire training purposes. The Academy has a State Reclaimed Water Permit, valid until January 2023. There is a valve before the third pond that can be shut off in the event of an emergency, such as an oil spill. And Permitting is requiring several drainage improvements as a condition of approval (see the final paragraph of this report).
 9. The State Patrol was the lead agency for the State Environmental Policy Act analysis. The Patrol issued a determination of non-significance in 2018. Three responses were received during the comment period (discussed below), but no appeal was filed.
 10. After two more years of review, Permitting requested a hearing date. Permitting circulated a preliminary report to all interested persons; unless otherwise noted, we adopt and incorporate the facts set forth in that report (and in the Department's amendment to its report), and in proposed ordinance 2020-0189. We held a Zoom public hearing on June 26. No one other than representatives of Permitting and the Applicant elected to participate. We kept the record open for additional submittals, before closing the record on July 2.

Analysis

11. KCC 21A.44.050 sets the decision criteria. A special use permit can only be granted where the applicant demonstrates that:
 - A. The characteristics of the special use will not be unreasonably incompatible with the types of uses permitted in surrounding areas;
 - B. The special use will not materially endanger the health, safety and welfare of the community;
 - C. The special use is such that pedestrian and vehicular traffic associated with the use will not be hazardous or conflict with existing and anticipated traffic in the neighborhood;
 - D. The special use will be supported by adequate public facilities or services and will not adversely affect public services to the surrounding area or conditions can be established to mitigate adverse impacts;

- E. The location, size and height of buildings, structures, walls and fences, and screening vegetation for the special use shall not hinder or discourage the appropriate development or use of neighboring properties; and
- F. The special use is not in conflict with the policies of the Comprehensive Plan or the basic purposes of this title.
12. Subsections C. and D. overlap. The upgraded facility will not significantly increase vehicular traffic, as the traffic impact analysis shows. The upgraded Academy figures to have 2 to 6 full-time administrative and maintenance staff, and approximately 100 trainees and 8 to 10 instructors at any one time. None of the phases will require new public facilities or services; the site has its own water and treatment facilities. It will not adversely affect public services for the surrounding area; the long road to access the site, SE Grouse Ridge Road, is privately maintained.
13. Subsections A., E., and F. seem to be getting at the same thing here. The site sits surrounded by forest and in a forest production zone. Comp Plan R-620 requires a forestry production district to remain in large blocks of contiguous forests, with other resource uses managed to be compatible with forestry. However, the bulk of the site was a historic gravel pit, the decision to allow the approximately 48-acre gravel pit to be converted to a fire training facility was made in 1982, and the decision to allow conversion of three forested acres to training uses was made in 1997. The current proposal will not expand the current site boundaries. Changes to the buildings and configuration *within* the Academy envelope will not be incompatible with uses in surrounding areas.⁴ And the location, size and height of buildings, structures, walls, and fences will not discourage the development or use of neighboring properties.⁵ And a public agency training facility is allowed as a special use in the forestry zone. KCC 21A.06.940; KCC 21.08.100.
14. The main focus of our inquiry has been B., whether the special use will materially endanger the community's health, safety, and welfare.⁶
15. Our first concern, upon receiving a transmittal for an application involving firefighting, was PFAS, perfluorinated and polyfluorinated alkyl substances sometimes used in firefighting foam. PFAS are water soluble, highly mobile, can easily contaminate groundwater, and can build up in people and the environment.⁷ PFAS-containing foams have been banned for use in firefighting training in Washington since 2018. RCW 70.75A.010.
16. Ecology's fact sheet for the Academy's 2016 NPDES permit shows that Ecology discovered that in the past, a small quantity of wetting foam agent, Micro-Blaze Out, had

⁴ One commenter noted concern on the SUP limiting access to future recreational opportunities on Grouse Ridge and lower Mailbox Peak. With little added traffic, and no expansion beyond the facility boundaries, there appears to be no impact on recreational access.

⁵ Vegetation screening is not a requirement. KCC 21A.16.030.

⁶ The Tulalip Tribe expressed concern about building structures near critical areas that may affect fish habitat. A commenter in 2018 wanted the State to pay to move the Academy to a location far downriver to the mouth of the river, cited health impacts and illness, and expressed concern about water quality.

⁷ <https://ecology.wa.gov/Waste-Toxics/Reducing-toxic-chemicals/Addressing-priority-toxic-chemicals/PFAS>.

been occasionally used in training exercises. That surfactant agent can complicate oil/water separation for wastewater treatment purposes, but it is not a PFAS. And the current Ecology permit prohibits the use of any surfactant agents unless and until Ecology approves a treatment method.

17. Ecology's NPDES permit puts strict effluent limits on discharges. During its review that culminated in the current permit, Ecology reviewed the Academy's compliance with the 2007 version. Ecology found that the Academy had not consistently complied with effluent limits during the duration of its earlier permit. Ecology noted that it had issued several warning letters and violation notices over the years. Ecology discussed actions the Academy had undertaken to rectify these problems; there were no violations in the two-plus years leading up to the September 2016 NPDES renewal. And Ecology determined that, given that record, approval was appropriate.
18. That is not to say there are no impacts. A fundamental aspect of the Academy is to set fires and practice putting them out, so that responders know what they are doing when real lives and properties are at stake. That creates, and will continue to create, smoke and noise; a fire training facility seems like the very definition of a LULU (locally unwanted land use). It is tough to see how the Academy could get more removed from population centers than its current location, without running afoul of some other policy like chewing up even more remote forest land. And again, the Council decided in 1982 and in 2007 that the site was appropriate for the training facility. There is no indication that area development patterns have substantially changed since then and altered that calculus. And Comp Plan R-402 puts a priority on maintaining existing facilities and services that protect health and safety, as a modernized fire training facility will accomplish. We find that the SUP here will not materially endanger the community's health, safety, or welfare.
19. In sum, we conclude that the Applicant has met the relevant criteria, and that an SUP is appropriate.

Additional Items

20. The Applicant makes two requests. The first relates to phase one, the second to phases two through six.
21. The Applicant has secured funding for phase one (burn buildings), and is preparing to submit a building permit for constructing that phase. The Applicant requests that it be allowed to comply with King County's Surface Water Design Manual (Manual) currently in place (the 2016 version) when it submits that permit. The Applicant's concern is that if the Manual were to be updated before it obtained its permit and started construction, it would have to redesign the project to a new Manual.
22. Permitting supports the Applicant's request to apply the 2016 Manual to phase one, provided the Applicant submits a complete building application within a year of SUP approval and Permitting issues the permit within a year of the application being deemed complete.
23. The County's normal vesting rules do not cover Type 4 decisions like an SUP application. KCC 20.20.070.A. And drainage is treated somewhat differently than other

regulations. As Ecology successfully argued to our Court relatively recently, vested rights do not apply to municipal stormwater regulations implemented as part of the NPDES permitting program. *Snobomish County v. Pollution Control Hearings Board*, 187 Wn.2d 346, 386 P.3d 1064 (2016). So, the idea of allowing an Applicant to lock in a drainage review standard seemed problematic.

24. However, here the Applicant will need to apply to Ecology, and Ecology will decide the matter under the standard Ecology deems applicable. Permitting has determined that its guidelines for treatment of processed water and discharge will be deferred to Ecology and to the Applicant's NPDES permit's guidelines. So, this is not a scenario where a municipality is sidelining Ecology. The Applicant's request does not seem to run into the concern *Snobomish* addressed about municipalities circumventing the Clean Water Act by allowing a development proposal to avoid complying with the most current NPDES requirements.
25. Moreover, cabining the "vesting" to the Applicant submitting a complete application within a year of SUP approval, and, if so to only extend the "vesting" an additional year from the date the application is deemed complete, does not seem an overly-extended window. It is not, for example, the scenario the Examiner and Council encountered in the *L04P0032—Tall Chief* subdivision application, where in 2013 the Council approved an application vested to 2004 standards. And it would only come up *if* a new Manual is finalized and approved before construction starts. We have no insight on where a new Manual is in its development cycle, but given that it took seven years post-2009 Manual to adopt the 2016 Manual, and given the pandemic, we are not holding our breath. In sum, the Applicant's first "ask" does not seem inappropriate.
26. The Applicant's second request has a much longer tail. The Applicant initially requested that it be allowed twenty years to complete all six phases. The Applicant explained that it only has phase one lined up and will need legislative approval and funding for future phases. Permitting noted that, unlike other types of permits, the code does not set any time parameters for completing an SUP. Permitting recommended a 15-year timeframe. At hearing, the Applicant requested an extension to 30 years. Permitting responded that it was comfortable with 20 years, but not more.
27. The code sets a timeframe for finalizing many classes of permits and approvals, but not SUPs. On one hand, two decades seems a very long time. On the other hand, after phase one, any subsequent phases will need to comply with the then-current code in place when the Applicant submits, say, a permit to construct a cityscape building or a new detention pond; the SUP is a master planning document, not a granular review. And SUPs are, well, special. They are reserved for siting a regional land use at a particular location. KCC 21A.06.1195. Unless our tracking system is missing something, the Examiner's Office has not issued a recommendation to Council on an SUP this millennium. That means we have little past practice to guide us, but it also minimizes our concern with setting a precedent for future SUP applications; we do not expect a cavalcade of SUP applicants clamoring for long completion windows. Twenty years seems acceptable.

RECOMMENDATION:

We recommend that Council approve the proposed phased Washington State Patrol Fire Training Academy Master Development Plan, set forth in Special Use Permit LUT418-0002, subject to the following conditions.

1. The phased SUP Master Development Plan must be completed within 20 years of the effective date of ordinance adoption.
2. Except as may be amended by these SUP conditions, the proposed six phases must be carried out in substantial conformance with the master development plan described in the Applicant's revised SUP narrative received September 4, 2018, with the SUP site plans received August 14, 2018, with the final revised civil engineering plans, and with the TIRs dated January 23, 2020. While phase one will occur first, phases two through six need not be implemented in a chronological or sequential order.
3. In a subsequent building permit application for phase one construction, the Applicant is allowed to finalize its conceptual drainage engineering plans using the current 2016 Manual, under which this SUP was reviewed, provided:
 - A. The applicant files a complete building permit application that is deemed complete within one year of SUP approval by ordinance adoption; and,
 - B. The building permit is issued within one year from the date the application is deemed complete.

If these deadlines are not met, the Applicant must use whatever Manual is currently adopted and in use when the application is deemed complete.

4. Development under this SUP is subject to all current rules, regulations, policies and codes not specifically modified by this approval.
5. Subsequent building permit applications under this SUP must incorporate storage space and collection points for recyclables, as set forth in KCC 21A.24.210.
6. Subsequent building permit applications under this SUP must evaluate and incorporate site accessibility (ADA) relative to parking, pedestrian circulation, and overall site access which meets the current International Building Code, as adopted by King County.
7. Based on the final revised civil engineering plans and Technical Information Report (TIR) dated January 23, 2020, the SUP is conditioned on the following:
 - A. As a combined facility of wet pond and detention pond system, the contributing area to each system must be the same in sizing each facility. Design specifics will be reviewed and approved through each of the future construction building permit applications.
 - B. All proposed and existing burn buildings and props within the proposed site redevelopment must be processed through the sediment pond system, consistent

with the guidelines of the NPDES permit. In addition, areas that Ecology's NPDES permit deems contaminated water that require treatment must be processed through the sediment pond system.

- C. Within the location of the flow splitter, all contaminated water must be directed to the sediment pond processing system. The overflow design of the flow splitter that is directed to the detention pond system must be designed beyond the 100-year storm.
- D. The design and layout of the proposed dispersion and infiltration flow BMP will be reviewed and approved under the future building permit application. The proposed flow control BMP will have to meet the guidelines of the current drainage manual applicable at the time of permit application.
- E. As stipulated in the TIR, dated January 23, 2020, the full build-out of the detention facility will be permitted and constructed under the phase one building permit application utilizing the current 2016 Manual.
- F. Although the Permitting Division reviewed this Special Use Permit application under the guidelines of the 2016 Manual, there is no vesting on the drainage code requirement. The only exception is using the current 2016 Manual for phase one. In the event a new Manual is adopted, subsequent phases two through six must address the drainage code applicable at the time of permit application.

DATED July 17, 2020.



David Spohr
Hearing Examiner

NOTICE OF RIGHT TO APPEAL

A person appeals an Examiner recommendation by following the steps described in KCC 20.22.230, including filing with the Clerk of the Council a sufficient appeal statement and a \$250 appeal fee (check payable to the King County FBOD), and providing copies of the appeal statement to the Examiner and to any named parties listed on the front page of the Examiner’s recommendation. Please consult KCC 20.22.230 for exact requirements.

Prior to the close of business (4:30 p.m.) on **August 10, 2020**, an electronic copy of the appeal statement must be sent to Clerk.Council@kingcounty.gov and a paper copy of the appeal statement must be delivered to the Clerk of the Council's Office, Room 1200, King County Courthouse, 516 Third Avenue, Seattle, Washington 98104. Prior mailing is not sufficient if the Clerk does not actually receive the fee and the appeal statement within the applicable time period.

Unless the appeal requirements of KCC 20.22.230 are met, the Clerk of the Council will place on the agenda of the next available Council meeting a proposed ordinance implementing the Examiner’s recommended action.

If the appeal requirements of KCC 20.22.230 are met, the Examiner will notify parties and interested persons and will provide information about “next steps.”

MINUTES OF THE JUNE 26, 2020, HEARING ON THE APPLICATION OF WASHINGTON STATE PATROL FIRE TRAINING ACADEMY, DEPARTMENT OF LOCAL SERVICES FILE NO. LUT418-0002, PROPOSED ORDINANCE NO. 2020-0189

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Nancy Hopkins, Howard Struve, Ron Hoelscher, Mark Davis, Chad Cross, Richard Duke and Brian Bottoms.

The following exhibits were offered by Permitting and entered into the record on June 26:

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|------------------|--|
| Exhibit no. D1. | Department of Local Services file no. LUT418-0002 |
| Exhibit no. D2. | Preliminary Department report, transmitted to the Examiner on May 26, 2020 |
| Exhibit no. D3. | A. SUP Application, received August 14, 2018
B. Updated Certification of Applicant status, dated May 22, 2020 |
| Exhibit no. D4. | Land use application, received August 14, 2018 |
| Exhibit no. D5. | SUP code criteria narrative, received August 14, 2018 |
| Exhibit no. D6. | Assessors maps, received September 4, 2018 |
| Exhibit no. D7. | SEPA Environmental Checklist, Washington State Patrol, signed June 6, 2018 |
| Exhibit no. D8. | DNS, Washington State Patrol, issued June 15, 2018 |
| Exhibit no. D9. | Notice of Complete Application (NOCA), dated November 13, 2018 |
| Exhibit no. D10. | Notice of Application (NOA), dated November 28, 2018 |

- Exhibit no. D11. Notice of Hearing & Recommendation (NOH) dated May 22, 2020
- Exhibit no. D12. A. NOA Affidavit, posted on November 28, 2019,
B. NOA Affidavit of Newspaper published November 28, 2018, and
Snoqualmie Record, published November 23, 2018
C. NOHR Affidavit, posted May 20, 2020
D. NOHR Legal Ad by COC, dated June 10, 2020
- Exhibit no. D13. Proposed Master Plans site plans phases 1-6, received August 14, 2018
- Exhibit no. D14. Proposed Master Plan project narrative phases 1-6, received
August 14, 2018
- Exhibit no. D15. Final Approved Conceptual Engineering Plans, dated January 23, 2020
- Exhibit no. D16. Final Approved Conceptual TIR Phase 1, dated January 23, 2020
- Exhibit no. D17. Final Approved Conceptual TIR Phase 2-6, dated January 23, 2020
- Exhibit no. D18. Geotech report by Krazan and Associates, dated May 27, 2014
- Exhibit no. D19. Traffic Impact Study by Parametrix, dated September 28, 2015
- Exhibit no. D20. NPDES Permit, WA0031836, received September 4, 2018
- Exhibit no. D21. State reclaimed water Permit ST0045506, received September 4, 2018
- Exhibit no. D22. Letter from Kelly Wynn Utilities Mgr. FTA approved water, dated
October 4, 2018
- Exhibit no. D23. Email from Thom Proeh from Valley Camp, received June 2, 2020
- Exhibit no. D24. Email from Nancy Hopkins amending staff report, along with
attachments, received June 26, 2020

The following exhibit was offered by the Applicant and entered into the record on July 2, 2020:

- Exhibit no. A1. Aerial map of FTA facility sent by Ron Easterday, received July 2, 2020

DS/jf