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6 **CLALLAM COUNTY**
7 **OFFICE OF THE HEARING EXAMINER**

8 IN RE:

9 **CONDITIONAL USE PERMIT HEARING**
10 **FOR OLYMPIC SYSTEMS PROPERTIES**
11 **FILE NO. CUP2021-00005**

No. ECL2021-00019, CUP2021-00005

CITY OF PORT ANGELES'S
RESPONSE TO APPLICANT'S MOTION
TO CONTINUE

12 **I. INTRODUCTION**

13 The City of Port Angeles ("City") opposes Olympic Systems Properties' Motion to
14 Continue Hearing ("Second Motion to Continue"). The hearing on the Conditional Use Permit
15 Application, File No. CUP2021-00005 ("Application") has already been delayed by five months
16 at the Applicant's request, purportedly to engage its own experts. Five months later, the Applicant
17 seeks a second continuance of an additional four months, partially on this same basis, and partially
18 on the newly introduced—and erroneous—assertion that a 2017 CUP authorizes a transfer station.
19 The Applicant should withdraw its application and refile when it is ready to proceed, provided that
20 all comments already received on the Application remain part of the record on any re-filed
21 application.

22 If the Hearing Examiner grants the continuance, the City requests (1) the Hearing Examiner
23 hold a prehearing conference in August 2022 to establish a briefing schedule in advance of the
24 rescheduled hearing and (2) the hearing be rescheduled to January 2023. The City also requests,
25 if possible, the Hearing Examiner rule on the Second Motion to Continue no later than close of
26 business on Tuesday, July 19, 2022, because the City is preparing witness testimony to present at

1 Thursday’s hearing. Further, given the level of public interest in the Application, the City believes
2 it is appropriate to provide as much advance notice as possible to members of the public who may
3 wish to attend the hearing.

4 **II. FACTS**

5 This matter was originally set for hearing on February 3, 2022. Three days before the
6 hearing, on January 31, 2022, the Applicant filed a Motion to Continue (“First Motion to
7 Continue”). In the Applicant’s first motion, the Applicant sought a continuance of “several
8 months” in order to “engage its own experts” and prepare for hearing in this matter. First Motion
9 to Continue at 2. The Applicant sought and obtained a continuance of over five months. Order
10 Following Pre-Hearing Conference (March 3, 2022).

11 The Applicant’s Second Motion to Continue requests to continue the hearing on the current
12 2021 CUP Application proposing to build a transfer station on a parcel located at the intersection
13 of Carlsborg Road and Business Park Loop. It also introduces a new issue. It discusses a separate
14 conditional use permit (CUP) application: a 2017 CUP application for a parcel located at 970
15 Carlsborg Road, which is north of, and across the Olympic Discovery Trail from, the parcel
16 addressed in the 2021 Cup Application.

17 The 2017 CUP Application sought approval to use an “existing office and shop on site for
18 operations and maintenance,” and to “park up to 50 vehicles on the eastern portion of the property,”
19 with trucks leaving the property “between 5 and 7 AM and return between 2 and 5 PM.” Wu Decl.,
20 Ex. A at 2. The 2017 CUP Application identified that in a second and third phase of the proposal,
21 the applicant would construct a “10,000 square foot maintenance shop” and “an 11,250 square foot
22 transload or bailing facility.” *Id.* Clallam County Hearing Examiner Andrew Reeves issued the
23 Findings, Conclusions and Decision approving the application with conditions. *In the Matter of*
24 *the Application of Olympic Disposal for Approval of a Conditional Use Permit*, No. CUP-2017-
25 00005.

1 Contrary to the Applicant’s current claims, the 2017 CUP approval does not authorize a
2 “transfer station.” The 2017 CUP Application discusses a “transload or bailing facility.” There are
3 several facts that demonstrate the 2017 CUP Application does not contemplate a “transfer station.”
4 Among them are that the 2017 CUP Application does not as identify any odor impacts, a matter
5 of great concern to residences and businesses that neighbor a true transfer station. *Compare* Wu
6 Decl. Ex. B at Exhibit 5 p. 3 (2017 SEPA Checklist noting “none” for each of the three questions
7 regarding air impacts) *with* County DCD Exhibit 14 at 4–5 (2021 SEPA Checklist submitted with
8 Application listing full page of odor impacts). In addition, the 2017 CUP Application does not
9 identify the need to obtain a solid waste handling permit, which is required by state law for a
10 transfer station. Wu Decl. Ex. B at Ex. 5 p. 2 (2017 SEPA Checklist noting no other government
11 approvals or permits are needed for the 2017 proposal); WAC 173-350-310 (permit requirements
12 for transfer stations).

13 III. ARGUMENT

14 The Hearing Examiner should deny the request for a four-month continuance. Requests for
15 a continuance of a matter before the hearing examiner must be based on reasonable grounds.
16 Clallam County Administrative Manual, Policy 921, § 9.7(2).

17 The Applicant’s request for a continuance is not supported by reasonable grounds, and the
18 City believes the Applicant should withdraw its Application and refile when it is prepared to
19 proceed. After five months of delay, the Applicant lodges a second request for a lengthy
20 continuance based in part on the same grounds articulated in its original motion: the need to obtain
21 expert reports. *See* Second Motion to Continue at 5; First Motion to Continue at 2 (seeking delay
22 to “engage its own experts”). The Applicant fails to explain why any such reports could not have
23 been obtained during the five-month delay in these proceedings. Further, nothing about the
24 additional traffic study and lighting plan that the Applicant proposes to submit will remedy the
25 fatal defects in its Application: the proposed transfer station is inconsistent with the spirit and
26 intent of the comprehensive plan, inconsistent with the low nuisance, low intensity industrial

1 zoning, and attempts an end run around the County’s adopted Solid Waste Management Plan.
2 None of these fatal deficiencies will be remedied by a traffic study, a lighting plan, or further
3 expert analysis.

4 The Applicant’s reliance on the 2017 CUP Application also does not justify further delay.
5 The Applicant has known about its own 2017 CUP Application and approval since 2017 but has
6 brought it forward as an issue only a few days prior to the continued hearing on the 2021 CUP
7 Application. Again, the City disputes that the 2017 CUP approval authorizes a transfer station on
8 the northern parcel: the 2017 application and supporting material do not disclose a “transfer
9 station” nor the impacts (including odor and traffic impacts) that would be associated with a
10 transfer station. The Hearing Examiner should reject the Applicant’s transparently revisionist
11 history. In any event, the Applicant’s failure to discuss alleged inconsistencies between the County
12 staff’s recommendations on the two applications does not justify further delay.

13 The City recognizes that the Applicant has a right to decide whether to move forward with
14 its own project. But another last-minute delay, after the City and other parties have expended
15 resources in preparing for hearing, is unjustified. The City believes that the Applicant should
16 withdraw the Application and refile when it is prepared to provide the County with sufficient
17 information; and all comments and materials currently made part of the record should remain on
18 file as part of any future application.

19 If the Hearing Examiner grants the motion to continue, the City requests that the Hearing
20 Examiner (1) hold a conference in August in order to establish a briefing schedule for the
21 rescheduled hearing and (2) reschedule the hearing for January 2023, as year-end is a busy time of
22 year for City staff with budget preparations and hearings.

23 IV. CONCLUSION

24 The City requests the Second Motion to Continue be denied. In the alternative, the City
25 requests a status conference in August to establish a briefing schedule in advance of the continued
26 hearing, and that the hearing be rescheduled for January 2023.

1 DATED this 18th day of July, 2022.

2 FOSTER GARVEY PC

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14 **CERTIFICATE OF FILING**

15 I, P. Stephen DiJulio, am a principal at Foster Garvey P.C. and hereby certified that I caused
16 this document to be filed electronically on Anastasia White, Clerk for the Hearing Examiner (the
17 Clallam County Department of Community Development), awhite@co.clallam.wa.us, Donella
18 Clark, dclark@co.clallam.wa.us, with electronic copies to Chief Civil Deputy Prosecuting
19 Attorney, Elizabeth Stanley, estanley@co.clallam.wa.us; the Applicant's counsel, Alexander M.
20 Wu, alex.wu@hcmp.com and Stephen H. Roos, steve.roos@hcmp.com; and counsel for A-M
21 Systems LLC and Arthur Green, Tom Ehrlichman, tom@dykesehrlichman.com.

22 Signed, July 18, 2022:

23 

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