

**BEFORE THE HEARING EXAMINER  
FOR CLALLAM COUNTY**

In the Matter of the Application of	)	No. CUP2021-00005;
	)	No. ECL2021-00019
	)	
Olympic Systems Properties	)	<b>Olympic Systems Properties CUP</b>
	)	
	)	DECISION AND ORDER ON
	)	APPLICANT’S SECOND MOTION
<u>For a Conditional Use Permit</u>	)	FOR CONTINUANCE

**TO PARTIES OF RECORD:**

**BACKGROUND**

“Olympic Disposal, LLC” (Applicant) submitted the *current* application for approval of a conditional use permit (CUP) to allow construction of a “Municipal Solid Waste Transfer Station with a Commercial Recycling Consolidation Bay and Community Recycling Center,” on a vacant and unaddressed 5.46-acre property identified by Tax Parcel Number 043015-409010 and owned by “Olympic Systems Properties, LLC,” on November 12, 2021.<sup>1</sup> On November 30, 2021, Clallam County (County) determined that the CUP application was complete and assigned it application numbers CUP2021-00005 and ECL2021-00019. The County then scheduled an open record public hearing on the proposal for February 3, 2022.

Subsequently, the County issued a Mitigated Determination of Nonsignificance (MDNS) associated with the proposal under the State Environmental Policy Act (SEPA) on January 11, 2022. Attorney Tom Ehrlichman filed an appeal of the MDNS to the Hearing Examiner on behalf of several individuals, businesses, and other groups. Laudably, Mr. Ehrlichman’s appeal acknowledged potential conflicts between information provided by the County’s MDNS about the appeal process related to the MDNS and information otherwise dictated by the County’s municipal code. Around the same time that Mr. Ehrlichman filed the SEPA appeal, the County also “issued” its Staff Report on the proposal (on or about January 26, 2022), in which the County recommended denial of the CUP application, for reasons independent of SEPA. In light of these developments, the Applicant (and others) requested that the Hearing Examiner hold a pre-hearing conference to address various issues related to these matters.

Accordingly, the Hearing Examiner held a pre-hearing conference with those parties applicable/necessary for any SEPA appeal hearing that might occur as part of the required consolidated hearing process associated with the open record hearing on the CUP application

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<sup>1</sup> As detailed in the Application, identified as “Exhibit 2.”

(including representatives for the County, the Applicant, Mr. Ehrlichman on behalf of his clients, and Attorney Stephen DiJulio representing the City of Port Angeles as the City sought intervention in the SEPA appeal and requested it otherwise be included in all matters associated with the proposal or any appeals) to discuss jurisdictional concerns about the SEPA appeal, approximately two hours *prior* to the planned commencement of the open record hearing on the CUP application on February 3, 2022, along with discussion of a request by the Applicant that the CUP hearing itself be postponed.

Following discussion between the Hearing Examiner and the various parties, the Hearing Examiner ruled that he lacked jurisdiction to address any SEPA appeal(s) associated with the proposal and, also, that it would be appropriate to postpone the underlying CUP hearing following consideration of the Applicant's request for a continuance to obtain/produce necessary technical reports and other information to address concerns identified by the County in its Staff Report. The pre-hearing conference concluded shortly before the scheduled start time of the CUP application hearing. Thus, shortly after the conclusion of the pre-hearing conference, County staff informed interested members of the public (including those participating "in person" and through remote technology) that the open record hearing on the CUP application would be postponed until July 21, 2022.

The Hearing Examiner subsequently issued an "Order Following Pre-Hearing Conference," on March 3, 2022, memorializing the oral rulings he previously made, including: dismissing the various SEPA appeals associated with the proposal, without prejudice, in light of the Hearing Examiner's lack of jurisdiction to address such matters because the municipal code does not allow for an administrative appeal of a DNS/MDNS in these circumstances; determining that the MDNS issued on the proposal contained significant errors related to the comment and appeal period such that the County must reissue the SEPA determination, reopen the applicable comment period, and provide accurate and clarifying information in such materials about the County's SEPA appeal process; requiring that the County re-notice the open record hearing associated with the CUP application in a timely manner and as dictated by the municipal code, to convey that the hearing would commence on July 21, 2022, and additional written comments would be accepted until such hearing commenced; and, finally, that the County update the "document list" (potential "exhibit list") associated with the CUP application hearing now scheduled to commence on July 21, 2022, to ensure that all materials associated with the (now dismissed) SEPA appeal be properly included in the record, along with any additional written comments, reports, agency comments, or other documents received in advance of commencement of the postponed hearing. Finally, the order noted that the parties participating in the pre-hearing conference on February 3, 2022, all stated they would have the ability to participate in the CUP hearing scheduled for July 21, 2022. *Order Following Pre-Hearing Conference, dated March 3, 2022.*

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## MOTION TO CONTINUE HEARING

Despite suggesting at the pre-hearing conference, on February 3, 2022, that it would be ready to move forward with the CUP application hearing by July 21, 2022, the Applicant (through its attorneys Alexander M. Wu, Amit D. Ranada, and Stephen H. Roos) filed a motion on July 13, 2022, requesting that the CUP hearing be continued a second time. In its motion, the Applicant expressed surprise that the County expected submission of several studies in advance of the July hearing – despite requesting the initial hearing postponement precisely for this reason. *Applicant’s Motion to Continue Hearing, dated July 13, 2022.* More importantly, though, the Applicant raised an entirely new issue warranting further delay of a hearing on the current CUP application: analysis and review of an approved CUP from 2017 associated with property it owns to the north and the impact of development of that property on this proposal.

Specifically, in its motion, the Applicant contends that, in its 2017 application for a CUP (No. CUP2021-00005) related to property directly north of the subject site (across from the Olympic Discovery Trail), the Applicant sought approval of phased development to allow: use of existing facilities on-site as well as approval to park up to 50 solid waste collection trucks for maintenance (Phase One); construction of a 10,000 square foot maintenance facility/shop (Phase Two); and construction of an “11,250 square-foot transfer/bailing facility to transfer loads from solid waste collection trucks to trailers for long-hauling to landfills and to bale recyclables” (Phase 3). *Applicant’s Motion to Continue Hearing, dated July 13, 2022.* The Hearing Examiner approved this CUP application request on May 22, 2017. Accordingly, the Applicant suggests that the current proposal should be treated in the same manner and a continuance is appropriate to allow the Applicant and County to discuss this issue further:

Olympic believes the sharing of information and discussions with DCD may lead to modifications to the staff report and recommendations regarding the current CUP application, perhaps narrowing the issues to address at the hearing. These are reasonable grounds for a continuance. Olympic requests that the Hearing Examiner continue the hearing and set a new hearing date in November 2022.

*Applicant’s Motion to Continue Hearing, dated July 13, 2022; with Declaration of Alexander M. Wu in Support of Applicant’s Motion to Continue Hearing, and Declaration of Chad Young in Support of Applicant’s Motion to Continue Hearing.*

The Hearing Examiner has reviewed the materials provided by the Applicant with its motion, including his own decision from 2017, and has serious concerns with how the 2017 CUP approval has been characterized. In particular, the Hearing Examiner’s 2017 decision (based on submitted materials) characterized the potential third phase of the proposal as involving construction of a “transload or bailing facility,” the Applicant’s materials explicitly stressed that no “waste storage” would occur on-site and, further, never identified this third phase as involving a substantial operation involving the “transfer [of] loads from solid waste collection trucks to

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trailers for long-hauling to landfills and to bale recyclables” as suggested by the Applicant. Moreover, nothing in the 2017 materials suggested or contemplated an even larger facility being developed on property to the south across the Olympic Discovery Trail. Clearly, further discussion and communication between the Applicant and County concerning the 2017 CUP is warranted.

The Clallam County Rules of Procedure for Proceedings before the Hearing Examiner on Hearings on Permit Applications and Other Hearing Matters, Sec. 9.7(2) provide:

Any party of record may request continuance of a hearing. The request, if made prior to the hearing, must be in writing and state reasonable grounds for a continuance. If the request is made orally at the hearing it must be based on reasonable grounds. The Hearing Examiner shall have discretion to grant or deny the request for continuance. It shall be the policy of the Hearing Examiner that a maximum of two (2) continuances be granted in a matter.

In light of the fact that the Applicant (a) intends on submitting additional studies and information that may impact or clarify the current proposal and (b) has identified a new issue – arguing, essentially, that a 2017 CUP approval may impact the current application – warranting additional analysis and consideration by the County, a second continuance of the current CUP application hearing is appropriate. Accordingly, the Applicant’s motion to continue the hearing until November 2022 is **GRANTED**.

#### **OTHER MOTIONS**

In addition to the Applicant’s motion, the Hearing Examiner received a motion to intervene from Attorneys P. Stephen DiJulio, Jason Donovan, and Andrea Bradford, on behalf of the City of Port Angeles, requesting the ability to participate in the CUP hearing and, also, noting that witnesses the City anticipates calling to testify are only available on July 21, 2022. *City of Port Angeles’ Motion to Intervene, dated July 12, 2022*. In addition, Attorney Tom Ehrlichman, on behalf of A-M Systems, LLC, and Arthur B. Green III, submitted a motion requesting time to present witness testimony and evidence, including a right to present rebuttal witnesses or evidence, a right of cross examination, a right to present opening argument/summary and closing argument, and a right to file a post-hearing brief addressing the evidence and legal argument presented at hearing, prior to the close of the record. *A-M Systems, LLC, and Arthur B. Green III’s Motion for Time at Hearing, dated July 12, 2022*.

The CUP application open record hearing will be conducted under the Clallam County Rules of Procedure for Proceedings before the Hearing Examiner on Hearings on Permit Applications and Other Hearing Matters, which already provide, in Sec. 6.1 Rights of Parties of Record, that:

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Every party of record shall have the right to present evidence and testimony at hearings. The right of parties of record to cross-examine, object, and submit motions and arguments shall be at the discretion of the Hearing Examiner. The Hearing Examiner may impose reasonable limitations on the number of witnesses heard and the nature and length of their testimony. At the Hearing Examiner's discretion, irrelevant or unduly repetitious testimony may be excluded or bypassed.

Accordingly, the City of Port Angeles does not need to "intervene" in a CUP application hearing to submit comments or testimony. Nor do A-M Systems, LLC, and Arthur B. Green III, need to reserve time to participate, etc., although it is helpful to know the number of witnesses that may testify. These parties shall have the right to participate in the open record hearing associated with the CUP application (noting, however, that the Hearing Examiner retains discretion to limit and/or control such participation as necessary). Thus, the Hearing Examiner **DENIES** these two motions to the extent that participation in open record hearings is clearly delineated in the Hearing Examiner's rules.

#### **ORDER**

As detailed above, the open record hearing on the current CUP application is **GRANTED**, while the other motions are **DENIED**. That said, the Hearing Examiner has already granted one continuance to the Applicant and no further continuances shall be granted. This matter shall commence no later than the end of November 2022. Alternatively, the Applicant may withdraw its application at any time, as a matter of right.

Based on the above, the Hearing Examiner requests that the Applicant and County contact the Clerk to the Hearing Examiner by **Noon, October 21, 2022**, concerning the status of this CUP application and when the CUP open record hearing will be scheduled. Moreover, the County shall notify parties of record and the public that the hearing scheduled for July 21, 2022, has been postponed pending further review.

SO ORDERED this 18<sup>th</sup> day of July 2022.



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ANDREW M. REEVES  
Hearing Examiner  
Sound Law Center