

REVISED 8/14/14 to clarify condition 6(b)

Property Owner:

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Old 99 LLC (Bart and Patty Smith)	Parcel P29546, the northernmost parcel.
COLCO LLC (Jim Coles)	Parcels P119262, P119265, and P119267.
Thomas A. Little	Parcel P119263

Applicant: Skagit County

Hearing Examiner #: MV 2014-1

Planning # PL14-037

Hearing Date: July 29, 2014

Decision Date: August 12, 2014

**Recommendation Summary:** Approve the Conditional Use Permit – Essential Public Facility, and the corresponding Master Plan for the proposal with the conditions described below.

## I. FINDINGS OF FACT

This matter came before the Hearing Examiner for public hearing and a recommendation to the Mount Vernon City Council on the application for Master Plan Approval and a Conditional Use Permit – Essential Public Facility, for a county-wide correctional facility.

Public testimony was received at hearing from Skagit County Commissioner Sharon Dillon, and from Balisa Koetje..

In addition to the Mount Vernon Municipal Code and Comprehensive Plan, those documents identified in the attached Exhibit List were considered by the Hearing Examiner.

The Hearing Examiner makes the following Findings of Fact based upon consideration of the exhibits admitted herein, and evidence presented at the public hearing on July 29,

2014. To the extent that any finding of fact is more properly characterized as a conclusion of law, or vice versa, the Hearing Examiner adopts it as such:

**A. Project Overview.**

1. Skagit County (hereinafter, the "Applicant") is a general purpose local government that provides and administers a full range of governmental functions, including services relating to criminal justice functions. The Applicant currently operates an existing jail, and has determined that replacement of the existing facility with a new facility is necessary in order to reduce overcrowding, maintain a safe environment for offenders and correctional staff, and obtain enhanced efficiencies in the operation of the jail and the delivery of programs.
2. The proposed facility is a "correctional facility" as that term is defined by RCW § 36.70A.200 and WAC § 365-196-550 (d)(vi).
3. The existing Skagit County jail originally opened in 1984, and had a capacity of 83 offenders. That jail was expanded, single cells were converted to hold 2 – 3 beds each, and recreational areas converted to hold offenders in a dorm-like setting. Laundry, medical services, food service, and other support services are provided from the same spaces designed to serve a maximum of 83 offenders. Projections indicate that by 2040, the average daily population of incarcerated adults may be over 400 offenders per day. By all accounts, the existing jail is overcrowded and as constructed is incapable of providing adequate facilities to meet the County's current or anticipated needs. At the same time, between 1999 and 2005 the county sheriff office's calls for service increased 53 percent, and between 2002 and 2012 the criminal cases filed in the Skagit County Superior Court increased 73 percent. The Hearing Examiner takes notice that only felonies are filed in Washington superior courts, while misdemeanor cases are filed in district or municipal courts; both felons and misdemeanants may be incarcerated in correctional facilities such as the one proposed here.
4. The proposed facility will accommodate 400 beds when the facility is opened. The proposed facility will also house medical diagnosis and treatment functions related to jail operations; an educational and programming area to provide drug and alcohol treatment, and high school educational opportunities for offenders; a courtroom; administrative services necessary or convenient to operate the correctional facility; and parking for staff and visitors.
5. It is anticipated that the facility will need to be expanded at a later date. An area of the site has been designated for potential expansion, and at full build-out the correctional facility would accommodate a total of up to 800 beds.
6. The proposed correctional facility structure would be approximately 110,000 square feet when the facility is opened. Later expansion may bring the facility to 165,000 square feet. The structure will be a single story.

7. The proposed correctional facility is intended to serve the needs of Skagit County, and the cities, towns, and tribes located in Skagit County over the next 15 – 20 years. Future expansion of the correctional facility is anticipated to serve infrastructure needs for 40 – 50 years.

**B. Site Selection.**

8. The Applicant engaged in a site selection process that is described in Section 2.1, *et. seq.*, of the DEIS. The Applicant established criteria deemed to be significant in the evaluating different jail sites. In particular, the Applicant's siting criteria included a minimum size that would be able to hold a facility housing 800 beds, the expected size of the facility at ultimate build-out (see, FoF Nos. 5 – 6, above). These criteria were utilized to evaluate 14 different potential sites between the years 2006 and 2014.
9. Application of the criteria resulted in two alternative sites being studied in the DEIS, known as the "Truck City" site, finally selected for the project, and the "Alf Christianson Seed" site, ultimately rejected.
10. The City and the Applicant, acting as SEPA co-leads, received 60 written comments during the comment period on the DEIS. At a public hearing, 14 people provided verbal comments on the DEIS. The majority of these comments addressed site selection, and the relative merits of the proposed sites.
11. The EIS evaluated potential environmental impacts, and contrasted those impacts between the two sites. A comparison of the differing environmental impacts is tabulated as follows:
  - a. Geology: The Alf Christianson Seed will require 47,000 to 52,000 cubic yards of fill, while the Truck City site will require 75,000 to 83,000 cubic yards of fill. Soils on the Alf Christianson site create a settlement hazard, while soils on the Truck City site have a limited settlement hazard.
  - b. Floodplains: both sites are currently within the 100 year floodplain.<sup>1</sup>
  - c. Hazardous Materials: both sites may contain hazardous materials in the soil, and asbestos may be present in buildings at both sites.
  - d. Aesthetics: the visual quality of the Alf Christianson site would be slightly improved by the construction of the correctional facility, while the visual quality of the Truck City site would be slightly decreased.

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<sup>1</sup> The Hearing Examiner takes notice that the City of Mount Vernon has proposed and has under construction a flood control project, that is anticipated to remove the Alf Christianson site from the floodplain. The ultimate determination of whether or not the floodplain will encompass the Alf Christianson site will be made at a later date, after the construction project has been completed.

- e. Historic and Cultural Preservation: both sites carry a risk of impacting unknown cultural resources.
- f. Transportation: both sites will have a modest impact on traffic during the p.m. peak, of approximately 33 vehicle trips.
- g. Economics: Development of a facility on the Alf Christianson site would result in a foregone opportunity to develop a mixed use development that could result in \$86M in gross receipts, 220 jobs, \$9M in personal income, and \$500,000 in annual tax revenue. Development of a facility on the Truck City site would result in a foregone opportunity to develop a business park that could result in \$17M in gross receipts, 112 jobs, \$3M in personal income, and \$150,000 in annual tax revenue; development would further displace an existing business currently located on this site, and attendant impacts.

### **C. Permitting Process**

- 12. The Final EIS that included the subject site development was issued and published on March 3, 2014. An addendum to the FEIS was issued on June 30, 2014. The appeal period for this SEPA process has tolled with no appeals having been filed.<sup>2</sup>
- 13. The applicant requested approval of a Conditional Use Permit (CUP) for an Essential Public Facility for a proposed correctional facility. With this application the applicant also seeks approval of a Master Plan consistent with the requirements of Chapter 17.30 MVMC.
- 14. The City determined that the land use applications filed by the Applicant were technically complete for further processing on July 1, 2014. City staff sought input from other City departments, public agencies and the public regarding the submitted materials. In response to this the City received a number of comments from the public and two (2) comments from City staff. City staff technical comments do not reveal any fatal flaws that would prevent the project from proceeding.

### **D. Public Notice**

- 15. The Notice of Application & Public Hearing was issued on July 1, 2014, was sent by U.S. mail and email to property owners within 300-feet of the project site and parties of record on July 8, 2014. Notice was published on July 8, 2014. Land

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<sup>2</sup> The Hearing Examiner observes that Washington law requires an analysis of whether a) the project complies with development regulations or other applicable laws, and b) the development regulations and applicable laws adequately address the project's specific SEPA impacts. This analysis is conducted by the SEPA Responsible Official, and is not addressed herein.

Use Change signs (that included a copy of the Notice of Application & Hearing Notice) were posted on the project site on July 2, 2014. A second Notice of Public Hearing was issued on July 15, 2014, and sent to property owners within 300-feet of the project site and parties of record on July 17, 2014. Notice was further published on July 18, 2014.

16. The Hearing Examiner takes notice that a newspaper article appeared on July 24, 2014, in the Skagit Valley Herald, that described the proposed project and the hearing to be conducted by the Hearing Examiner, and provided the date, time, and location of the hearing. The Skagit Valley Herald is the largest newspaper in Skagit County and the newspaper recognized by the City of Mount Vernon as its legal newspaper in accordance with RCW 65.16.020.

**E. Public Participation.**

17. The Applicant has provided 17 public meetings and work sessions allowing public participation. In addition, a SEPA public hearing was held on August 13, 2013 at which time site comment on site selection, environmental impacts, and mitigation was received. Written comments were received on the draft environmental impact statement. A hearing before the Hearing Examiner took place on July 29, 2014.
18. All persons present at the hearings wishing to speak were heard and all written comments were considered, along with the written report submitted by City staff.

**F. Project Site.**

19. The project site is an approximately 10.4 acre site in south Mount Vernon, bounded on the west by Old Highway 99 South; I-5 to the east; Suzanne Lane to the south; and industrial property to the north.
20. A preliminary geotechnical analysis concludes that soils encountered at the proposed site are susceptible to seismically-induced settlement, liquefaction, and amplification of ground motion in a seismic event. As described by the geotechnical report, the site is generally level. Four or more feet of fill will be required to bring the site to design grade.
21. The site is not subject to shoreline jurisdiction.
22. The 10.4 acre site meets the facility's minimum physical site requirements, including projected expansion needs. Site requirements shall be determined by the minimum size of the facility, setbacks, access, support facilities, topography, geology, and on-site mitigation needs

**G. Zoning and Land Use.**

23. In accordance with RCW 36.70A.200 and its implementing regulation WAC § 365-196-550, the City of Mount Vernon has included within its comprehensive plan the goals and objectives to be employed in the identification and siting of essential public facilities. The City's land use policies are set out in Goal LU-64. The City's goals and objectives are reflected in the process established by the City to identify and site essential public facilities, which is contained in the City's development regulations and found in Chapter 17.200 MVMC.
24. The City Council adopted Ordinance No. 3629, which re-designated the zoning and Comprehensive Plan designation of the site from Commercial-Limited Industrial to a zoning designation of Public (P) and a Comprehensive Plan designation of Government Center (GC). Ordinance 3629 was published on April 26, 2014 and became effective on May 2, 2014.
25. As articulated in the Mount Vernon Comprehensive Plan, the intent of the Government Center comprehensive plan designation, and the corresponding Public District within the development regulations, is to provide areas that are available for public uses, and to have master plans prepared for some of those uses.
26. Pursuant to Section Four of Ordinance No. 3629, the Mount Vernon City Council has previously found that the proposed correctional facility would be consistent with Comprehensive Plan Policy LU-54.1, which provides that residential, commercial, industrial and public land uses within the City should be balanced.
27. The proposed site is encompassed by the planning area described in Mount Vernon Comprehensive Plan Subarea Plan "G" - Northern and Southern Approaches. That subarea plan articulates two applicable goals: maintenance of a buffer between commercial uses and I-5, preferably "fields and agricultural in feeling," and preservation of forests and mountain backdrop to the east of Interstate 5. Pursuant to Section Four of Ordinance No. 3629, the Mount Vernon City Council has previously found that the proposed correctional facility is compliant with Subarea Plan "G."
28. Permitted uses within the Public (P) zoning district include institutions, and government buildings.
29. Required setbacks in the Public (P) zoning district are 25 feet from an arterial, and a 20 side and rear yard setback applicable only to property lines adjoining a residentially zoned district. The Hearing Examiner takes notice from public records that Old Highway 99 South is classified by the Mount Vernon Public Works Department as an arterial.

30. The properties surrounding the subject site have the following uses:

North: C-L zoned property developed as a commercial nursery.

East: C-L zoned property that is developed with commercial buildings, parking lots, and a business that sells landscape rock and other associated materials.

South: Suzanne Lane.

West: Old Highway 99 South

30. The entire site is within a 100-year floodplain that has been designated by the Flood Insurance Rate Map (FIRM) as Zone A-02.

#### **H. Stormwater and Wetlands.**

31. There are no aquifer recharge areas, or wetlands on the site. There are no streams on-site, and a drainage culvert that carries an intermittent flow is not subject to the City's critical areas ordinance.

32. The applicant has submitted conceptual stormwater drainage plans (and narratives), Parking and Landscaping Counts, a Cursory Geotechnical Evaluation Report, and a series of conceptual site plans.

#### **I. Traffic.**

33. A transportation concurrency review was performed by David Evans and Associates. That study identified a p.m. peak of 33 vehicle trips related to the proposed facility.

34. The transportation study recommended several conditions to mitigate traffic impacts resulting from the proposed facility: (1) that pedestrian facilities be provided on Suzanne Lane, in accordance with MVMC § 14.10.080; (2) that ¾ street LOS improvements be in place on the project frontage of Suzanne Lane; (3) that impact fees be paid.

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following,

## **II. CONCLUSIONS OF LAW**

To the extent that any conclusion of law is more properly characterized as a finding of fact, the Hearing Examiner adopts it as such:

## **A. Notification**

1. The Mount Vernon Municipal Code establishes two distinct categories of Essential Public Facilities (“EPF”): Type One – Regional EPFs that are major facilities that provide public services to more than one county, and Type Two – Local EPFs that serve residents of Skagit County. The proposed correctional facility will primarily serve the residents of Skagit County, and the proposal is thus properly characterized as a Type Two Local EPF.
2. Procedures to provide notification to the community of the application of a Type Two EPF is established by MVMC § 17.200.060 (B)(2), which requires notification to be provided in accordance with Chapter 14.05 MVMC in addition to “standard notification requirements for conditional uses.” There are no additional notice provisions included in Chapter 17.108 MVMC, the chapter that addresses conditional uses.
3. The content of public notices is established in MVMC § 14.05.150 (A)(2). The notice of application & public hearing notice distributed by the City comply with the content requirements of MVMC § 14.05.150 (A)(2).
4. Notice distribution requirements are established in MVMC § 14.05.150 (A)(3), which provides that notice is to be provided (1) by publication in the newspaper of record; (2) by posting a land use notice board in a conspicuous location on each public street frontage bordering the subject property and visible by members of the public; and (3) by mail. The Hearing Examiner concludes that appropriate notice was provided. The Hearing Examiner further concludes that additional notice was provided of the hearing before the Hearing Examiner by a newspaper article that appeared and explained the nature of the hearing; this notice was supplemental to that official notice provided by the City. The City properly distributed notices as set forth in the municipal code.

## **B. CUP – EPF**

5. Pursuant to RCW § 36.70A.200, and MVMC § 17.06.060, the proposed correctional facility is properly characterized as an EPF. In accordance with WAC § 365-196-550 (f), the proposed correctional facility is necessary to provide criminal justice services in Skagit County. Further, the record demonstrates that the correctional facility requires a specific type of site in terms of size, location, and proximity to available public services, and there are few available site options. Finally, the proposed facility, including ancillary functions and spaces such as court rooms and programming spaces, are essential to the provision of safe and secure criminal justice services in Skagit County. As such, the proposed correctional facility together with all ancillary functions is properly characterized as an EPF.



6. In accordance with MVMC § 17.200.060 (F), the Hearing Examiner may recommend that the Mount Vernon City Council approve, or condition its approval of a conditional use permit for a local EPF only when the proposal meets all of the criteria established in that subsection.

Each of the criteria appearing in that subsection are discussed below, in the same order as the criteria appear in the municipal code.

**C. 17.200.060 (F)(1), Consistency with Comprehensive Plan.**

7. As set out in RCW 36.70A.120, Washington cities are to “perform their activities . . . in conformity with their comprehensive plans.” Similarly, MVMC § 17.200.060 (F)(1) provides that proposals “shall be consistent with the comprehensive plan and types of uses of the underlying zoning of the proposed site including being consistent with the environmental impacts of the underlying zoning permitted uses.”
8. City of Mount Vernon Comprehensive Planning Policy LU-4.1.1 articulates the goal of preventing property damage from flooding by implementing the following development regulations:
  - a. Require adequate peak flow controls for new development.
  - b. Perform the necessary analysis and recommend solutions for existing flooding problems.
  - c. Employ management strategies in flood prone areas to ensure that new development is not exposed to significant flood risk.
9. The subject site is within the 100 year flood plain. No feasible site outside of the 100 year floodplain has been identified that meets the Applicant’s site selection criteria.
10. The materials submitted by the Applicant provide enough information to determine that the proposal can satisfy the City’s development regulations. Peak flow controls are to be developed and permitted at a later date.
11. Elevation of the structure above the existing grade elevation will serve to protect the facility, and minimize existing flood hazards. City staff’s recommendation that the structure be elevated no less than five (5) feet above existing grade is reasonable.
12. Section 15.36.030 MVMC defines a “critical facility” as a “facility for which even a slight chance of flooding might be too great.” Correctional facilities house individuals who either have limited ability to escape to a safe haven in the event

of a flood, or if released would pose a threat to the community and divert public safety resources. The proposed correctional facility is properly characterized as a critical facility.

13. Mount Vernon Comprehensive Plan Policy LU-49.1 establishes the goal of implementing mitigation activities that will assist in protecting lives and property by making critical facilities more resistant to natural hazards.
14. The DEIS concludes that flood events are mitigated by flood-fighting efforts, and that advance warning of major flooding events allows preparations to be taken. The advance identification of procedures to be implemented during a major flood event will mitigate flood risk.
15. Mount Vernon Comprehensive Plan Policy LU-47.1 anticipates adequate erosion and sedimentation controls for new construction sites. Compliance with the City of Mount Vernon's Phase II NPDES permit will meet this comprehensive plan policy.
16. As previously found by the Mount Vernon City Council, the proposal is consistent with Comprehensive Plan Policy LU-61.1, which provides that residential, commercial, industrial and public land uses within the City should be balanced.
17. The site of the proposed facility is included in Mount Vernon Comprehensive Plan Subarea Plan "G". The proposed facility will be buffered from I-5 through on-site landscaping, and further buffered by property adjacent on the east (which is anticipated to be subject to a boundary line adjustment.) The buffering will provide an agricultural "feel" to the proposed facility and its environs. The perspective and elevation drawings that are included in the record depict an unobtrusive design of the proposed structure. While the structure will be elevated from existing grade in order to achieve compliance with flood restrictions, the structure will be a single story with a center clerestory spine, which will minimize structure height. The clerestory spine mimics and responds aesthetically to the mixed industrial/commercial use of nearby properties. The proposed facility's design will minimize impacts to views of the forest and mountain backdrop to the east of Interstate 5. Further, and as previously found by the Mount Vernon City Council, the proposal is consistent with Mount Vernon Comprehensive Plan Subarea Plan "G" - Northern and Southern Approaches, provided that an anticipated boundary line adjustment is accomplished.
18. The underlying zoning of the Public (P) district permits uses such as schools, colleges, museums, churches, emergency shelters, and government buildings. These uses have characteristics of residential and commercial uses. There are

no aquifer recharge areas, steep slopes, or wetlands on the site. There are no streams on-site, and a drainage culvert that carries an intermittent flow is not subject to the City's critical areas ordinance. The proposed site is situated within a geologic hazard area, which is defined by MVMC § 15.40.070 as including those areas susceptible to a seismic hazard resulting from soil liquefaction and soil strength loss resulting from ground shaking. The Hearing Examiner concludes that the Applicant will likely be able to satisfy the requirements of MVMC § 15.40.070. As such, the Hearing Examiner further concludes that the proposal is consistent with the environmental impacts of the permitted uses of the underlying zoning.

19. In sum, and in accordance with Chapter 36.70B RCW and MVMC § 17.200.060 (F)(1), the proposal is consistent with the City's comprehensive plan.

**D. 17.200.060 (F)(2), Project Need.**

20. The applicant has properly analyzed the projected offender population, demonstrating a need for additional beds to house offenders. The availability of other facilities, referred to as "outsourcing" in the DEIS, concludes that transporting offenders to other facilities is infeasible because of cost and scheduling needs. Under the criteria established in MVMC § 17.200.060 (F)(2), there is a need for the project.

**E. 17.200.060 (F)(3), Facility to Serve City Population**

21. The current overcrowding of the jail has resulted in offenders being turned away from the jail due to a lack of space, with those offenders charged with, or convicted of, property crimes being booked and released (i.e., immediately released.) Releasing offenders immediately into the community without observing the typical processes and procedures, and appropriate interventions, of the criminal justice system decreases the safety of the community. As such, the project will serve a significant share of the city's population as required by MVMC § 17.200.060 (F)(3).
22. The proposed project location is a reasonable distance from law enforcement facilities, medical services and facilities, emergency medical services responder locations, and legal offices situated nearby in downtown Mount Vernon (including the public defender's office). The Hearing Examiner thus concludes that the project location will reasonably serve the proposed service population in accordance with MVMC § 17.200.060 (F)(3).

**F. 17.200.060 (F)(4), Applicant has Investigated Alternative Sites.**

23. The Applicant has engaged in a lengthy and detailed site selection process as described in the DEIS. The methodology included participation by various user groups within the criminal justice system, selection studies prepared by consultants, and public comment. The Applicant has reasonably investigated alternative sites, in accordance with MVMC § 17.200.060 (F)(4).

**G. 17.200.060 (F)(5), the Project is Consistent with the Applicant's Long-range Plans for Facilities and Operations;**

24. The proposed correctional facility, at build-out, is anticipated to serve correctional facility needs for 40 – 50 years. The Hearing Examiner observes that there is nothing in the record to suggest that use of this facility over the 40 – 50 year horizon will not be accomplished. Although the record does include a comment by the Applicant to the effect that the Applicant's long-range plans include a downtown Law and Justice campus, and that the proposed site would not be considered to be part of that downtown campus, those long-range plans are not part of this record. The Hearing Examiner therefore concludes that the proposal is consistent with the Applicant's long range plans for facilities and operations.

**H. 17.200.060 (F)(6), The project has fewer impacts in the particular geographic area in contrast with other available locations;**

25. The Applicant considered 14 different sites, and eliminated 12 of those sites for failure to meet the Applicant's selection criteria. The two remaining sites were evaluated in the EIS. The environmental impacts identified in the EIS, including economic impacts, leads the Hearing Examiner to conclude that there are fewer impacts with the development of the proposed site than with other sites that were rejected, all as set forth in MVMC § 17.200.060 (F)(6).

**I. 17.200.060 (F)(7), the Applicant has Provided a Meaningful Opportunity for Public Participation in the Siting Decision and Development of Mitigation Measures.**

26. Numerous opportunities to comment on environmental impacts, site selection, mitigation measures, and compliance with applicable code requirements have been made available by the City and the Applicant, all as described in FoF No. 17. Taken together, these opportunities demonstrate compliance with MVMC § 17.200.060 (F)(7).

**J. 17.200.060 (F)(8), the Proposal Complies With Applicable Requirements of All Other Applicable Provisions of the City Code;**

27. Applicable provision of the municipal code implicates project design and development. At the stage a conditional use permit is approved, the Applicant must demonstrate that it can comply with code requirements, as distinguished from the construction permit stage, where the Applicant must show that the project does comply.
28. There is nothing in the record in the form of technical comments made by City staff or others to suggest that a fatal flaw in the project will prevent the project from going forward. The Hearing Examiner concludes that as conditioned, and in accordance with MVMC § 17.200.060 (F)(8), compliance with applicable code provisions is feasible.

**K. 17.200.060 (F)(9), the Project Site Meets the Facility's Minimum Physical Site Requirements, Including Projected Expansion Needs.**

29. The Applicant determined a minimum site size necessary to accommodate facilities for a 40 – 50 year horizon. The programmatic site design supplied by the Applicant demonstrates that it is feasible for the proposed facility to be constructed on the site, and comply with setback and access requirements. Parking areas, and stormwater treatment areas depicted on the programmatic site design demonstrate that compliance with the City's development regulations in this regard is feasible. Similarly, site geology has been assessed in a geotechnical report; although further analysis is required, the report identifies no fatal flaws that would preclude development of the proposed facility.

**L. 17.200.060 (F)(10), the Proposal, as Conditioned, Adequately Mitigates Significant Adverse Impacts to Life, Limb, Property, the Environment, Public Health and Safety, Transportation Systems, Economic Development and Other Identified Impacts.**

30. The public health, safety and general welfare standard is a general standard expressing a municipality's police power authority. Washington cities, including Mount Vernon, rely on development regulations to identify required mitigation, construction requirements, and approvals necessary to ensure protection of the public health, safety and general welfare.
31. In the event a city's development regulations fail to adequately address a particular impact, a city may use its SEPA authority to address that impact. The EIS identifies several impacts, and establishes proposed mitigation to address those impacts.

32. There are no issues of public health, safety, or welfare identified in the record that have not been addressed by development regulations, or the City's SEPA process (including development conditions). The Hearing Examiner concludes that the conditioned proposal adequately mitigates significant adverse impacts to life, limb, property, the environment, public health and safety, and transportation systems,
33. The EIS does not identify significant adverse economic impacts to the City.
- M. 17.200.060 (F)(11), the Proposal Shall Not Have any Probable Significant Adverse Impact on Critical Areas or Resource Lands.**
34. In accordance with WAC 365-196-830 (2), Critical areas that must be protected include (1) Wetlands; (2) aquifer recharge areas; (3) fish and wildlife habitat conservation areas; (4) frequently flooded areas; and (5) geologically hazardous areas.
35. Pursuant to MVMC § 15.40 (B), geologic hazard areas include those areas of seismic hazard. Pursuant to WAC 365-190-120, areas of seismic hazard include areas subject to severe risk of damage as a result of earthquake induced ground shaking, settlement or subsidence, or soil liquefaction. Based upon the initial determination contained within the preliminary geotechnical study, it is presumed that the proposed site is in a geologically hazardous area.
36. Pursuant to WAC 365-190-110, frequently flooded areas include the 100 year floodplain. The proposed site is within the 100 year floodplain.
37. The proposed project will comply with the City's Floodplain Management Standards, which adequately mitigates impacts to the flood hazard critical area.
38. The proposed project will comply with the state building code, which establishes construction requirements for seismic areas. In addition, a detailed geotechnical report will be submitted by the applicant with building permit submittal, which will characterize the nature of any seismic hazard and identify additional information to be utilized by the project's design engineers to avoid seismic risk. Taken together, these measures will adequately mitigate impacts to the seismic hazard critical area.
39. The proposed correctional facility will be located across Old Highway 99 South from an existing field. The 33 car trips anticipated will have less impact than the existing truck fueling station.

**N. 17.200.060 (F)(12), the Proposal Incorporates Specific Features to Ensure it Responds Appropriately to the Existing or Planned Character, Appearance, Quality of Development, and Physical Characteristics of the Site and Surrounding Property;**

- 40. The conceptual design depicted in the FEIS illustrates a single-story structure with landscaped areas surrounding the structure. The design is consistent with the types of structures to be expected in a mixed commercial/industrial area.
- 41. The single story design responds appropriately to the level site. The construction materials depicted in the design respond appropriately to the types of construction expected in commercial/industrial areas. The building massing also responds appropriately to the massing of structures typically found in commercial and industrial areas.
- 42. The quality of the structure depicted in the design is of a type that equals or exceeds that which may be expected in a mixed commercial/industrial area.
- 43. The proposal responds appropriately to the site, and to surrounding property.

**O. 17.200.060 (F)(13), Major Public Facilities Which Generate Substantial Traffic Should be Sited Near Major Transportation Corridors.**

- 44. The proposed facility is not expected to generate substantial traffic. In particular, 33 vehicle trips in the p.m. peak may not be properly characterized as substantial traffic on an arterial.
- 45. The proposed facility is sited on an arterial, and near I-5, which provides ready access.

**P. 17.200.060 (F)(14), the Project Sponsor Has Proposed Mitigation Measures that are Consistent with the Uniform Relocation Assistance Act, Chapter 8.26 RCW.**

- 46. As noted in Section 3.8.3 of the EIS, acquisition of the site will be conducted in accordance with state law. Observance of such state law procedures ensures that appropriate levels of compensation will be paid, and that relocation assistance will be provided as may be appropriate.

**Q. 17.200.060 (F)(15), the Proposal Will Not be Materially Detrimental to Uses or Property in the Immediate Vicinity;**

- 47. The proposed facility is not expected to generate substantial traffic, which would interfere with the owners/users of nearby properties.

48. The proposed facility is not expected to emit hazardous waste, noxious odors, or other attributes of a nuisance.
49. The property uses in the vicinity of the proposed project are industrial in nature. These uses are unlikely to experience downward pressure on value resulting from the proposed facility.
50. The Hearing Examiner concludes the proposed facility will not have a detrimental impact on neighboring properties.
- R. 17.200.060 (F)(16), the Proposal is Compatible With and Incorporates Features to Ensure it Responds Appropriately to the Existing or Planned Character, Appearance, Quality of Development, and Physical Characteristics of the Site and Surrounding Property.**
51. The proposed facility is visually compatible with the surrounding industrial uses.
52. The expected 33 vehicle trips generated during the p.m. peak by the facility is compatible with the traffic generation in the vicinity.
53. While industrial and commercial uses in the vicinity do not benefit from proximity to a correctional facility, the advantage of additional commercial or industrial uses on the proposed site is of questionable value. The Hearing Examiner recognizes that customers of the industrial fueling facility that currently exists on the site will be inconvenienced by traveling to a different fueling site. However, the owners of the existing fueling business have indicated that the business may be terminated regardless of whether or not a correctional facility is constructed on the site.
54. The Hearing Examiner concludes that the industrial property in the vicinity is compatible with a correctional facility, in accordance with MVMC § 17.200.060 (F)(16).
55. See subsection "N" above, for additional conclusions addressing the criteria described in MVMC § 17.200.060 (F)(12). Those conclusions are incorporated into this subsection.
- S. 17.200.060 (F)(17), Parity Exists With the Uses Permitted in the Same General Area in Their Freedom From Nuisance Generating Features in Matters of Noise, Odors, Air Pollution, Wastes, Vibration, Traffic, Physical Hazards, and Similar Matters.**
56. The proposed facility will not emit odors, air pollutants, vibrations, or result in physical hazards. Noise is similar to the commercial and industrial uses in the



region. Traffic would increase a nominal amount. The Hearing Examiner concludes that the proposed facility is in parity with the impacts caused by surrounding land uses.

**T. Master Plan Approval**

57. Section 17.30.090 MVMC provides that a master plan is to be prepared for uses in the public (P) zone that are 10 acres in size or larger. The proposed site is 10.4 acres, and requires a master plan be approved.
58. In accordance with MVMC § 17.30.090 (A), a master plan is to include information concerning land use, densities, site design, adjacent uses, circulation, utility corridors and alignments, wetlands, for review and approval, and a phasing plan.
59. Pursuant to MVMC § 14.05.080 (G), the City may process multiple applications concurrently.
60. The information required for processing a master plan is also required to process a CUP for an EPF.
61. The master plan for the proposed project is identical to the CUP – EPF for the proposed project, except for phasing.
62. The programmatic drawings submitted by the Application identify an area reserved for expansion of up to 400 additional beds, and area reserved for additional parking.
63. The horizon for the expansion is estimated by the county to be in the range of 20 years, dependent on jail population and future population growth.
64. The Hearing Examiner concludes that the phasing as show on the proposed site plan adequately describes the Applicant's future expansion plans, and constitutes an adequate showing for a master plan.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Examiner makes the following Recommendation:

**RECOMMENDATION**

The Hearing Examiner recommends that the Conditional Use Permit – EPF for the proposal, and the corresponding Master Plan for the proposal be approved by the Mount Vernon City Council, subject to the following conditions:

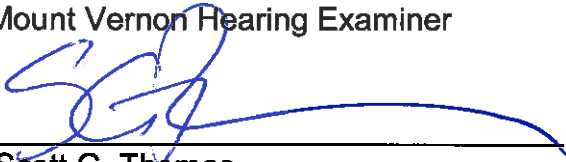
1. Permit applications to be submitted to the City for review and approval following the subject permit approval shall comply with all applicable provisions of the Mount Vernon Municipal Code.
2. With the submittal of the first construction related permit for the installation of infrastructure or buildings, excluding a permit application for any pre-load that may be required, the applicant shall submit a final site plan for City review and approval. This final site plan shall demonstrate compliance with all of applicable development regulations.
3. Within 90-days following the recordation of a deed transferring ownership of the subject site to Skagit County, the Applicant shall complete a Boundary Line Adjustment consistent with Chapter 16.36 MVMC that: 1) results in no split zoned lots of record; 2) results in no property lines running through proposed buildings; 3) results in compliance with the setbacks for the Public District; and 4) results in easements/encumbrances being both extinguished and created for all infrastructure serving the site.
4. The Applicant shall submit with its building permit application a geotechnical report prepared by a qualified professional that further characterizes site soils and their potential for liquefaction in a seismic event.
5. The Applicant shall submit with its building permit application a structural analysis prepared by a professional engineer registered in the state of Washington, which describes the foundation system to be used for the structure. In the event spread footings are infeasible for the project, the Applicant shall describe the foundation system to be utilized.
6. In addition to compliance with Chapter 15.36 MVMC the facility shall:
  - a. In accordance with MVMC § 15.36.255, install flood proofing and sealing measures to ensure that hazardous materials, including hydrocarbons, will not be displaced by or released into floodwaters.
  - b. Elevate the correctional facility such that the facility complies with Chapter 15.36 MVMC, with the finish floor elevated as required for a critical facility.
  - c. The Applicant shall submit an Emergency Preparedness Plan identifying procedures to be implemented during a major flood event. County staff at the jail shall be trained in the emergency procedures outlined within the Plan.
  - d. A plaque or reference line shall be installed on the site that shows past and probable flood heights. Such plaque or reference line shall be clearly visible so as to be able to be used for flood fighting efforts.
  - e. The site construction contractor shall identify a location where heavy equipment can be evacuated to during flood events.

7. Further investigation shall be completed by a qualified professional to ascertain whether hazardous materials, including but not limited to hydrocarbons, pesticides, and asbestos, are present on the site. Remediation of any contamination shall be accomplished by the Applicant in accordance with a plan approved by the Washington State Department of Ecology.
8. During the construction phase of this project the site construction contractor shall prepare for City approval a hazardous materials emergency response plan and spill control and prevention plan to cover their planned operation and maintenance activities.
9. The Applicant shall submit to the City with building permit submittal a site lighting plan. The lighting plan shall (1) confine lighting to the extent necessary for safety purposes; (2) utilize fixtures that direct light downward; (3) prevent light from crossing property lines; (4) limit fixture heights; and (5) utilize shielded and cut-off fixtures.
10. Additional archaeological review shall be completed prior to the start of construction. If archaeological materials are encountered during construction, an archaeologist, the City, and the Applicant shall be notified and work must be halted until the material can be inspected and assessed.
11. Pedestrian facilities on the project frontage that connect to the existing sidewalks built on the south side of Suzanne Lane shall be constructed.
12. Three-quarter street improvements shall be constructed or demonstrated to be in place along the portion of the site abutting Suzanne Lane.
13. The applicant shall pay traffic impact fees in accordance with the fee schedule in effect at the time of issuance of the building permit.
14. A final parking analysis shall be submitted to the City with the first Fill & Grade (with the exception of a Fill & Grade permit that may be submitted for pre-loading the site) or Building Permit (whichever is submitted first) that provides final, detailed information such that final parking counts can be ascertained.
15. A Skagit Transit (SKAT) bus stop shall be constructed in close proximity to the subject site. The Applicant shall coordinate with SKAT to ensure that transit service is available from the subject site at regular intervals (to be approved by the City) to ensure that released offenders are able to board a SKAT bus within a reasonable amount of time following their release.

16. An offender release plan shall be submitted for City approval before the City Council hearing where a final decision on the subject applications will be made. The requested plan shall outline rules, policies and procedures that the Applicant will follow to ensure that released offenders are transported from the site by: 1) someone picking them up; 2) boarding a SKAT bus; or, 3) the Applicant arranging for vehicular transport.

RECOMMENDATION MADE this 13th day of August 2014.

Mount Vernon Hearing Examiner



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Scott G. Thomas

## EXHIBIT LIST

1. Mount Vernon Staff Report dated July 23, 2014
2. Land Use Application Form, date stamped July 3, 2014
3. Final EIS Notice of Availability and Subsequent Addendum
4. Mount Vernon Ordinance No. 3629
5. Pre-application Materials
6. Technically Complete Letter
7. Notice of Application and Public Hearing, and Posting Affidavit
8. Notice of Public Hearing
9. Affidavits of Mailing for Notices
10. Comments from Mount Vernon Solid Waste Division Manager
11. Comments from Mount Vernon Engineering Services Manager
12. Email from Al Peraino dated July 9, 2014, and Marc Estvold's response thereto
13. Email from Sonya Dahl dated May 9, 2014
14. Email from Marc Estvold summarizing response to Roger Pederson
15. Letter dated July 21, 2014 from Clarita Navidad
16. Letter dated July 20, 2014 from Cherry Armstrong
17. Site Plans submitted by the Applicant
18. Preliminary Geotechnical Evaluation prepared by MTC, dated October 8, 2013
19. Stormwater Strategy dated July 2, 2014, and a stormwater narrative dated July 2, 2014 from KPFF Consulting Engineers
20. Summary of parking and landscaping requirements from the applicant
21. Draft EIS

22. Final EIS

23. Staff report narrative prepared for the Comprehensive Plan Amendment and  
Rezone