

August 9, 2017

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

King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
Telephone (206) 477-0860
Facsimile (206) 296-0198

hearingexaminer@kingcounty.gov
www.kingcounty.gov/independent/hearing-examiner

PRE-HEARING ORDER AND NOTICE OF HEARING

SUBJECT: Department of Permitting and Environmental Review file no. **CDUP160002**

CLOUD BUD

Conditional Use Permit Appeal

Location: 20241 269th Avenue SE, Maple Valley

Appellants: Marney and Scott Valdez and Adrian Medved
represented by **Stacy Goodman and Todd Wyatt**
20 Sixth Avenue NE
Issaquah, WA 98027
Telephone: (425) 837-4717
Email: stacy@carsonnoel.com; todd@carsonnoel.com

Applicant: **William Cloud**
20241 269th Avenue SE
Maple Valley, WA 98038
Telephone: (425) 413-7961
Email: cloudbud@outlook.com

King County: Department of Permitting and Environmental Review
represented by **Cristy Craig**
King County Courthouse
516 Third Avenue Room W400
Seattle, WA 98104
Telephone: (206) 477-1120
Email: cristy.craig@kingcounty.gov

A pre-hearing conference having been conducted on October 10, 2017 it is hereby ORDERED:

1. **Notice of Hearing.** The public hearing on this matter shall commence as follows:

10:00 a.m.
Tuesday, October 3, 2017
Thursday, October 5, 2017
Tuesday, October 10, 2017 (possible overflow day)
DPER Snoqualmie Pass Conference Room
35030 SE Douglas Street, Snoqualmie

Please go to the second floor and check-in with DPER’s reception desk. There is ample free parking at this location.

Any party wishing to reschedule this proceeding shall submit a request in writing to the Hearing Examiner’s Office, accompanied by the other party’s written concurrence. Absent such an agreement, the Examiner will only grant a request upon a showing of good cause.

2. **Appeal Issues/Claims.**

- A. The issues for hearing will be those detailed in Appellant’s July 3 appeal statement for both the CUP and SEPA DNS. Should Appellants wish to add or amend any appeal issues (including any Comp Plan items in play), those shall be submitted by **August 18, 2017**.
- B. One issue that need *not* be added is subsection E to the list of KCC 21A.44.040 subsections A, B, and H that Appellants explicitly challenge. Appeal issues 13, 14, and 15 clearly put subsection E in play. (The flip side of this is that 13, 14, and 15 are not really separate appeal issues; if after hearing all the testimony and argument we conclude that Appellants have not shown a “conflict with the health and safety of the community,” we would not take a second bite at the apple on health or safety issues.)
- C. Appellants included reference to *Sleasman* as it relates to deference to agency interpretations. We only grant deference “when directed to by an ordinance, statute, or pertinent case law.” Exam. R. XV.F.3. We would not normally apply any deference related to a DPER interpretations as it relates to Appellant’s permit-related challenge; ours is a *de novo* review. Conversely, as to Appellants’ SEPA-related challenge, their burden is showing that DPER’s determination was “clearly erroneous based on the record as a whole,” Exam. R. XV.F.1, considering the challenges raised in the July 3 appeal statement.

3. **Expert Witnesses and Exhibits.** To promote efficient hearings and to eliminate surprise, pre-hearing exchange (discovery) of certain new information is required. Each party shall provide to the other parties and to the Hearing Examiner:

- A. By **September 19, 2017**, a list of any witnesses the party plans to call. By **September 26, 2017**, a list of any rebuttal witnesses. For lay witnesses, the lists shall include a brief description of what the witness is expected to cover. For any

expert witnesses, the lists shall include the name, address, telephone number, and a brief summary of substantive area of expertise for each. The lists shall be limited to persons who have stated their availability or interest in testifying in this matter.

- B. By **September 19, 2017**, exhibits each party plans to offer at the hearing. For ease of reference Appellants should label their exhibits A1, A2..., while Applicant (Cloud) should label any he wants to present as C1, C2... and DPER as D1, D2.... We request exhibits in both paper form (tabbed if possible) and in electronic form. By **September 26, 2017**, each party shall provide to the other and to the Examiner any rebuttal studies or reports (whether prepared by experts or others) that are planned to be offered at the hearing.
 - C. Examiner Rule IV.E (see attached) sets our general service and filing requirements.
 - D. As we noted at conference, anything in the administrative file that any party wants us to focus on should be entered as an exhibit. The parties are encouraged to coordinate so that we are not receiving multiple copies of the same document.
 - E. In addition, DPER discussed submitting the entire administrative file. This would be helpful in electronic format; a paper copy is unnecessary (contrary to our normal Rule IV.E.3.e.2), because the idea is that the exhibits will make up the evidence we prepare for, discuss, and rely on, and the entire administrative file will act as a backup, in case something unexpected comes up at hearing. Presumably DPER will need to mail a disc or break it up into multiple files and emails. Feel free to call our office with questions.
- 4. **Discovery.** Discovery in an examiner proceeding is not as robust as civil litigation, but limited discovery may be authorized under Rule VII. No special discovery has been requested or authorized. Requests shall be submitted as soon as the need arises.
 - 5. **Order of Presentation.** The hearing will generally follow the order set in Rule XI.B.
 - 6. **Parties' Representatives and Service.** The representatives of the parties for the purpose of service and exchange of documents and information are those persons listed on the first page of this order. Rule IV.E, attached, covers service and filing.
 - 7. **Exhibits.** See Rule XII.C (attached), as amended by this order. Call with any questions
 - 8. **Pre-Hearing Order.** Any party taking exception to anything in this order (or wishing to modify the issues or matters raised in the appeal statement) shall submit that in writing by **August 21, 2017**. If not, this order shall control.

DATED August 9, 2017.



David Spohr
King County Hearing Examiner

To learn more about the process, please follow this [link](#). You may want to specifically review: Hearing Examiner Rule XI—Order and Conduct of Proceedings.

If the Snoqualmie Valley School district announces a district-wide school closure on the date of hearing, the proceeding will be automatically postponed. (Visit www.schoolreport.org or the district website for school closure information.) It will also be postponed if adverse weather conditions or similar area emergency prevent safe access to the hearing location, in which case we will make every reasonable effort to place case postponement notices and updates on the office website (www.kingcounty.gov/independent/hearing-examiner) and voicemail (206) 477-0860).

Once normal business operations resume, parties of record will be notified of the time and date of the rescheduled proceedings. Any other questions regarding postponements can be directed to the Hearing Examiner’s Office by phone or email to hearingexaminer@kingcounty.gov.



**Sign language and communication material in alternate formats
can be arranged given sufficient notice to (206) 296-1000**



DS/vsm

King County Hearing Examiner Rules of Procedure and Mediation

IV. FILING REQUIREMENTS

E. Filing and Service

1. Overview

The following default rules apply to filing and service after the agency submits an application or appeal to the examiner (as described in [III.C.](#)). The examiner may set alternative requirements for a particular case. Limited, technical assistance is available by emailing hearingexaminer@kingcounty.gov or by calling (206) 477- 0860. Call or email well in advance of a filing deadline.

2. Definitions Applicable to this Section

- a. “Document” refers to the aggregate submittal, not to each individual component. For example, a motion, plus any affidavits and other evidence in support of that motion, qualifies as a single document. Similarly, multiple exhibits due on a given day should be separately numbered, but the exhibits in total are considered a single document.

However, when truly separate items are due on the same day (e.g., exhibits and a witness list), each counts as a separate document.

- b. “Electronic document” is an electronic version of information otherwise filed in paper form.
- c. “E-filing” means emailing electronic documents to the examiner via hearingexaminer@kingcounty.gov.
- d. “File” (when used as a verb) or “filing” means submitting documents to the examiner.

- e. “Hardcopy” is a physical (non-electronic) copy of a document.
- f. “Postmark” means the official postal marking on a piece of mail showing the post office date of mailing.
- g. “Serve” or “Service” means submitting documents to named parties.

3. E-filing Documents with the Examiner

- a. Responsibility: It is the sender’s responsibility to confirm receipt of an e-filing. Requesting a confirmation receipt email is recommended. It is a sender’s responsibility to confirm that the examiner can read, view, and/or listen to an e-filing, lest the submission be excluded from the record.

- b. Format: Email attachments must be in the following readable formats:

<i>File type</i>	<i>Format</i>
Documents	.pdf (preferred); .doc, .docx, .xls, and .xlsx (acceptable)
Audio	.mp3
Video	.mp4

- c. Names: Emails and any attachments should reference the case number, party name, and document title, e.g., V-1234_Smith_Motion.pdf. When an electronic document must be broken into components (see [IV.E.3.e.](#)), the attachment titles should clearly reflect the intended order, e.g., V- 1234_Smith_Motion_A.pdf; V-1234_Smith_Motion_B.pdf; etc.
- d. Multiple Attachments Discouraged: As much as practicable, a submission (such as a motion and its supporting evidence, including any images) should be organized as a single electronic document. There are exceptions: to meet email megabyte limits (see [IV.E.3.e.](#)); truly separate filings (e.g., “motion” is one document and “expert witness list” is a separate document); or when the examiner provides specific, alternative directions. Multiple attachments, especially if not organized in a logical sequence, may result in the examiner ordering the sender to reformat and re-submit.
- e. Size: There are two size restrictions.
 - 1. Emails are limited to ten (10) megabytes (MB) per email. Participants may break electronic documents into smaller pieces and send multiple emails to meet the MB limit (see [IV.E.3.c.](#)). Emails larger than ten (10) MB will bounce back and will not be considered filed.
 - 2. For all documents, e-filing is encouraged. However, documents exceeding fifty (50) pages (see [IV.E.2.a.](#)), must also be filed in hardcopy (see [IV.E.5.b.2.](#)).
- f. Scaling: All documents must be printable in hardcopy on standard, 8.5”x11”-sized paper. Documents that cannot be printed on this size must also be filed in hardcopy (see [IV.E.5.b.2.](#)).
- g. Signatures: Digital signatures are not required, but emails should reference the sender’s name, address, and phone number.

- h. Timing: Emails the examiner receives on County holidays, weekends, or after 4:00 p.m. are considered filed on the next County business day.

4. Serving Documents on Named Parties

- a. A person filing a document with the examiner must contemporaneously serve that document on the named parties. However, an agency providing the examiner advance copies of a large case file (or portions of the case file) the agency intends to introduce at hearing (such as a preliminary plat file) need not serve those documents on other parties, so long as the materials only contain documents that were available for public inspection on the date of the agency's hearing notice (for an application) or on the date of the decision being appealed (for an appeal); the agency must contemporaneously serve more recent documents on all other named parties.
- b. Unless the examiner orders otherwise, the default rule is that a person filing a document with the examiner must serve that document on named parties in hardcopy. To promote easier sending and quicker receipt, the named parties may agree to alternative service arrangements among themselves. See [IV.E.5.](#)

5. Hardcopy Filing and Service

- a. Acceptable physical delivery includes first class, registered or certified mail (via the mailing addresses listed on the first page of the most recent examiner-issued document), hand-delivery, or courier. The examiner no longer accepts facsimiles. Except as distinguished in [IV.E.5.b.2.](#), receipt of items mailed to the examiner and to the named parties is presumed to occur on the third day after the postmark date.
- b. In the case of mailed documents, whether the hardcopy need only be postmarked by the due date or must actually be received by the examiner and other named parties by the due date depends on the following:
 - 1. For serving documents on any named party who has not agreed to accept email service in lieu of hardcopy, a hardcopy postmarked by the due date is sufficient.
 - 2. For filing documents with the examiner and for serving documents on any named party that has agreed to accept email service in lieu of hardcopy, or where the examiner states that electronic service is acceptable in a particular matter, the sender needs to plan ahead and ensure that the sender can meet all the requirements described in [IV.E.3.](#) for responsibility, electronic format, naming, organization, megabytes, signatures, and timing. If the sender cannot meet any of those requirements, the sender must either mail those documents three days in advance of the due date, or must hand-deliver or courier those documents by the due date. If the sender can meet all those e-filing requirements, and the only shortcoming is that a document is over fifty (50) pages or contains information not printable on standard page-sized paper, email on the due date is sufficient, provided hardcopies are postmarked by the due date.

XII. PRESENTATION AND RECEIPT OF EVIDENCE AT HEARINGS

C. Exhibits

1. Unless the examiner orders otherwise, anyone intending to offer a document as evidence at a hearing shall bring one copy to retain, one for each named party, one for the examiner to mark up, and one copy as the official exhibit.
2. Copies of documents submitted as exhibits must be legible.
3. A rare or one-of-a-kind exhibit held by an agency which cannot be conveniently reproduced (such as the official zoning map) may be entered in the record by reference. Duplicate, reduced copies should be provided as an exhibit when possible to do so without excessive cost.
4. The examiner may exclude even relevant physical evidence imposing an unreasonable custodial burden. The examiner may also require substitute photographs, reduced-sized copies, or written or oral descriptions.
5. While oversized displays may be used for demonstrative purposes, any exhibits must be sized (or folded) to fit within an 8.5 by 14.5-inch filing cabinet. (This is commonly achieved by attaching the item(s) to a plain paper backing prior to mounting on poster board with binder clips, allowing easy removal and folding.)
6. Any PowerPoint or similar presentation must be accompanied by printed paper copies of each panel/image: one for each for each named party, one for the examiner, and one for the record. An exact copy of any photograph or transparency, CD, DVD, or recording used in any other type of audio/video presentation shall be submitted for the record. Without such copies, the presentation may be disallowed. Finally, do not assume needed A/V equipment is available at the hearing; the intended user must ascertain equipment availability at least three (3) business days before the hearing.
7. Exhibits accepted into the record will not normally be returned to parties; the responsible County agency may act as the official case file custodian. The examiner may order an exhibit's return when there is no need for retention.
8. The agency's case file is normally admitted as an exhibit in its entirety. Any party may object to the admission of specific documents within the case file on any of the grounds in [XII.B](#). Parties are encouraged to offer specific case file documents as separate exhibits when of special importance.

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CERTIFICATE OF SERVICE

SUBJECT: Department of Permitting and Environmental Review file no. **CDUP160002**

CLOUD BUD

Conditional Use Permit Appeal

I, Vonetta Mangaoang, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **PRE-HEARING ORDER AND NOTICE OF HEARING** to those listed on the attached page as follows:

- ☒ EMAILED to all County staff listed as parties/interested persons and parties with e-mail addresses on record.
- ☒ caused to be placed with the United States Postal Service, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties/interested persons to addresses on record.
- ☒ caused to be placed via County INTEROFFICE MAIL to County staff to addresses on record.

DATED August 9, 2017.



Vonetta Mangaoang
Clerk/Manager

Aanrud, Jerry-Micheale

Hardcopy

Ando, Jessica

Hardcopy

Bergsma, Lee and Helen

Hardcopy

Burgher, Pamela

Hardcopy

Cabiao, Norman

Department of Permitting and Environmental Review

Cantrell, Eleanor

Hardcopy

Carl Buchholz, Mary Pachek

Hardcopy

Carlson, Joshua

Casey, Laura

Department of Permitting and Environmental Review

Charles Hahn, Leigh Landry

Hardcopy

Clasen, Don and Barbara

Hardcopy

Clayton, William-Jill

Hardcopy

Cloud, William

Cloud Bud LLC

Hardcopy

Conrad, Jerry

Hardcopy

Craig, Cristy

Prosecuting Attorney's Office

Hardcopy

Davis, Anne

Hardcopy

Dolce, Justin

Hardcopy

Dolce, Ronald-Becky

Hardcopy

Eichelsdoerfer, Robert

Department of Transportation

Erich White, Patricia Smith

Hardcopy

Febus, Wayne-Lorrie

Hardcopy

Girten, Robert-Dustin

Hardcopy

Goll, Shirley

Department of Permitting and Environmental Review

Goodman, Stacy

Carson and Noel PLLC

Hardcopy

Gorney, Connie

Guerrero, Eric

Hardcopy

Haberman, Rachel

Hardcopy

Heinz, Kathy

Hardcopy

Hell, Gene and Barb

Hardcopy

Hornberg, Tom and K.C.

Hardcopy

Houghton, Don and Mary

Hardcopy

Johnson, Tori

Hardcopy

Kratzer, Kathy

Hardcopy

Lewis, Ray and Fay

Hardcopy

Lundquist, Wendy-Lauren

Hardcopy

MacDonald, Shirley

Hardcopy

Mathewson, Elizabeth

Hardcopy

McLeod, Robert

Hardcopy

Medved, Adrian

Hardcopy

Munoz, Ralph

Puget Sound Clean Air Agency

Hardcopy

Pancheau, Marshall

Hardcopy

Peterson, Ty

Department of Permitting and Environmental Review

Phillips, Jack and Diane

Hardcopy

Resident, Maple Valley

Hardcopy

Rimbos, Peter

Greater Maple Valley Unincorporated Area Council

Hardcopy

Rovech, Michael

Hardcopy

Rufener, Lorna

Hardcopy

Sheridan, Greg-Kristina

Hardcopy

Snyder, Laurence-Teresa

Hardcopy

Streble, Wendy

Hardcopy

Sutter, John and Lori

Hardcopy

Swanson, Julie and Scott

Hardcopy

Valdez, Marney-Scott

Hardcopy

Walter, Karen

Muckleshoot Indian Tribe Fisheries Division

Hardcopy

Willing, Theresa

Hardcopy

Wyatt, Todd

Carson and Noel PLLC

Hardcopy