SUMMARY OF DECISION

A request for a Shoreline Substantial Development Permit (SSDP) and Shoreline Conditional Use Permit (SHCU) is APPROVED, with conditions.

SUMMARY OF RECORD

Request
The Applicant is requesting approval of a Shoreline Substantial Development Permit and a Shoreline Conditional Use Permit to authorize construction of a 70’ long x 7.5’ tall retaining wall within the Rural Shoreline Environment of the Nisqually Reach.

Hearing Date
An open record hearing on the request was held before the Hearing Examiner of Thurston County on June 19, 2000.

Testimony
At the hearing the following individuals presented testimony under oath:

1. Linda Whitcher, Development Services Department
2. Anne Mitchelson, Applicant
3. Ted Hultman, Applicant’s Contractor

Exhibits
At the hearing the following exhibits were admitted:

EXHIBIT 1 Development Services Report
Attachment a Notice of Public Hearing
Attachment b JARPA Application
Upon consideration of the testimony and exhibits submitted at the open record hearing, the following Findings and Conclusions are entered by the Hearing Examiner.

**FINDINGS**

1. The Applicant (Anne Mitchelson) is requesting approval of a Shoreline Substantial Development Permit and a Shoreline Conditional Use Permit to authorize construction of a 70’ long x 7.5’ tall retaining wall within the Rural Shoreline Environment of the Nisqually Reach. The subject property is located 8014 61st Avenue Northeast, Thurston County, Olympia, Washington. *Exhibit 1.*

2. The Applicant’s house is located about 25 feet from the top of an 80-foot high bluff and about 150 feet from a bulkhead. Two years ago the Applicant noticed a large slide and began work to stabilize the hillside. Her first application was for a shoreline exemption to install a drainage system to dry out the bluff. The exemption was approved in August 1999 and the drain system installed that fall. *Exhibit 1, Testimony of Anne Mitchelson.*

3. The sand bluff continued to slide over the winter of 1999/2000, and in March 2000 Mrs. Mitchelson applied for an emergency permit to construct the retaining wall that is the subject of this decision. Spears Engineering and Technical Services found that construction of the wall should begin while the soils were wet enough to hold the sand together and give the contractor the safest working conditions possible. An emergency permit was issued April 3 2000 and work began immediately. At the time of the SSDP/SHCU application, the retaining wall was completely built. *Exhibit 1, Testimony of Anne Mitchelson.*

4. The existing 7-½ foot tall retaining wall is constructed of galvanized pin piles and treated timbers. The pin piles were driven in with a jackhammer and extend several feet below...
grade. The wall is anchored to the hillside with a specialized anchor and cable system. The wall is back-filled with washed gravel. *Exhibit 1, Testimony of Ted Hultman.*

5. The Mitchelson property lies within the Rural Residential/Resource, One Dwelling Unit per Five Acres (RRR 1/5), zone classification. The lot contains approximately 0.8 acres and was developed prior to the adoption of the RRR 1/5 zone classification and was considered nonconforming. Lots made nonconforming by adoption of the Thurston County Zoning Ordinance may be developed with uses allowed by the zone classification. Single family residences are permitted within the RRR 1/5 zone classification. While the lot is nonconforming, the development conforms to the zoning requirements. (TCC Chapter 20.56). *Exhibit 1.*

6. The Thurston County Critical Area Ordinance (CAO) regulates development within marine bluff hazard areas for bluffs having a vertical height of 20 feet or more and those upland areas within 200 feet for the top of the marine bluff. Slope stabilization and retaining walls are subject to the CAO. *Exhibit 1.*

7. The Shoreline Master Program for the Thurston Region has designated this area of the Nisqually Reach as Rural. Because this construction project exceeds $2,500 in value and is not specifically listed as being exempt, a Shoreline Substantial Development Permit is required. Retaining walls are not considered customary accessory residential uses and the Shoreline Master Program for the Thurston Region does not have specific policies or regulations for retaining walls. Retaining walls are regulated under the conditional use provisions of Chapter 173-27 WAC. *Exhibit 1.*

8. Written notice of the public hearing was sent to all property owners within 500 feet of the site and notice was published in *The Olympian* on June 9, 2000 at least 10 days prior to the hearing. The site was posted June 6, 2000. The County has received no comments. *Exhibit 1-a.*

9. Pursuant to the State Environmental Policy Act (RCW 43.21C) (SEPA), Thurston County is designated as the lead agency for environmental review. After review of a checklist and other documentation a Mitigated Determination of NonSignificance (MDNS) was issued on May 11, 2000. The public comment period ended May 25, 2000 and no comments were received. The MDNS was conditioned on a revegetation plan for the site. *Exhibit 1-d.*

10. Thurston County reviewed the proposed project, the purpose of the project and the construction that has occurred and determined that it satisfies all applicable zoning code and development standards. With conditions, the County has no objection to the retaining wall. *Testimony of Linda Whitcher.*

11. The Department of Ecology requested that construction debris be disposed of properly and that the site be revegetated using bioengineering techniques. *Exhibit 1-h.*

Findings, Conclusion & Decision
Hearing Examiner of Thurston County
Anne Mitchelson, SSDP/SHCU 000367
12. At the hearing the Applicant submitted a revegetation plan and expressed her desire to begin planting the slope as soon as possible. The plan, written by Gary Ritchie, Ph.D. and Consultant in Forest and Environmental Sciences, details how a previously ecologically thriving hillside became a steep sandbank. It recommends planting most of the slope with indigenous plants. In order to help stabilize the slope, the Hearing Examiner authorized the Applicant to start implementing the plan immediately. *Testimony of Anne Mitchelson, Exhibit 2.*

13. The Rural Shoreline Environment is guided by general goals and policies. These include, economic development, public access, circulation, recreation, shoreline use, conservation, historical and cultural values, and restoration. *SMPTR, page 30-31.* The Applicant wishes to comply with the restoration and conservation goals. *Testimony of Anne Mitchelson.*

**CONCLUSIONS**

**Jurisdiction**
The Hearing Examiner is granted jurisdiction to hear and decide applications for Shoreline Substantial Development Permits pursuant to RCW Chapter 36.70, WAC 173:14-80, TCC 19.04.010(c) and RCW 90.58.020. The decision must be consistent with the general and specific criteria for review as set forth in the Shoreline Master Program of the Thurston County Code.

**Criteria for Review**

**Standards for Shoreline Substantial Development Permits:**
To be approved by the Hearing Examiner, the criteria for review as set forth in Thurston County Shoreline Master Program, Section Two, Part V must be satisfied. The relevant criteria for this proposal include:

B. Protection of water quality and aquatic habitat is recognized as a primary goal. All applications for development of shorelines and use of public waters shall be closely analyzed for their effect on the aquatic environment. Of particular concern will be the preservation of the larger ecological system when a change is proposed to a lesser part of the system, like a marshland or tideland.

F. Applicants for permits shall have the burden of proving that a proposed substantial development is consistent with the criteria which must be met before a permit is granted. In any review of the granting or denial of an application for a permit as provided in RCW 90.58.18.180(1), the person requesting the review shall have the burden of proof.

G. Shorelines of this region which are notable for their aesthetic, scenic, historic or ecological qualities shall be preserved. Any private or public development which would degrade such shoreline qualities shall be discouraged. Inappropriate shoreline uses and
poor quality shoreline conditions shall be eliminated when a new shoreline development or activity is authorized.

H. Protection of public health is recognized as a primary goal. All applications for development or use of shorelines shall be closely analyzed for their effect on the public health.

**Standards for Conditional Use Permits:**
To be approved by the Hearing Examiner, the Applicant must also be consistent with applicable regulations of the criteria for review as set forth in WAC 173-27-160. The relevant criteria for this proposal include:

(1) Uses which are classified or set forth in the applicable master program as conditional uses may be authorized provided that the Applicant demonstrates all of the following:
   
   (a) That the proposed use is consistent with the policies of RCW 90.58.020 and the Master Program;
   
   (b) That the proposed use will not interfere with the normal public use of public shorelines;

   (c) That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the Comprehensive Plan and Shoreline Master Program;

   (d) That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and

   (e) That the public interest suffers no substantial detrimental effect.

(2) In the granting of all Conditional Use Permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if Conditional Use Permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.

(3) Other uses which are not classified or set forth in the applicable Master Program may be authorized as conditional uses provided the Applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the Master Program.

(4) Uses which are specifically prohibited by the Master Program may not be authorized pursuant to either subsection (1) or (2) of this section.
Conclusions Based on Findings

1. **With conditions of approval, the proposed development will be consistent with policies as set forth in Chapter 90.58 RCW.** Findings of Fact 1-12. Chapter 90.58, the Washington State Shoreline Management Act of 1971, establishes a cooperative program of shoreline management between the local and state governments with local government having the primary responsibility for initiation the planning required by the chapter and administering the regulatory program consistent with the Shoreline Management Act. The Thurston County Shoreline Master Program provides goals, policies and regulatory standards for ensuring that development within the shorelines of the State is consistent with the policies and provisions of Chapter 90.58 RCW.

2. **With conditions of approval, the proposal will be consistent with the Shoreline Master Program.**
   
   a. **The project will be consistent with the Regional Criteria.** The effect on the environment was reviewed pursuant to SEPA and an MDNS was issued. Finding of Fact 9. As conditioned, this proposal will protect water quality, the aquatic habitat and improve the aesthetic and ecological characteristics of the shoreline.
   
   b. **The project will be consistent with the site’s Rural Shoreline Environment designation.** The purpose of this designation is to protect areas from urban expansion and maintain open spaces; this project helps achieve that goal. SMPTR, page 30. The 1999/2000 rain produced a steep sandbank with little remaining natural vegetation. The revegetation plan will attempt to restore the natural habitat of the slope by planting mostly native plants. Most development has a negative impact on the ecosystem; however, the Applicant’s retaining wall and revegetation plan will rejuvenate a habitat rather then help destroy it. Findings of Fact 9 & 12.
   
   c. **The project will be consistent with the goals of the Shoreline Master Program.** The purpose of the Restoration goal is to restore to a useful or original condition those areas that are blighted by present uses. The Conservation goal strives to have sound management of natural resources. SMPTR, page 31. The Applicant’s stabilization and revegetation plans coincide with these goals. Public Access, also listed as a goal, is not necessary in this project. Findings of Fact 13.

3. **Before the retaining wall was built, the almost barren slope was sliding towards the water.** However, with the retaining wall, there is less of a chance that the sensitive shoreline ecosystem will be damaged. Findings of Fact 12. With her testimony and revegetation plan, the Applicant has met the burden of proving that the development is consistent with the criteria.
4. **With conditions, the project meets all the standards for a Conditional Use Permit.** The proposed use is consistent with RCW 90.58.020; it does not interfere with the normal public use of the shoreline; it has no adverse effects to the shoreline or the public; the use is compatible with the surrounding area; and the use is not specifically prohibited by the master program. With conditions, the project alleviates the area from a natural disaster. The cumulative impact of additional requests would not have a negative impact on the area as long as vegetation restoration is followed. This project is evaluated under the criteria for conditional use because the Shoreline Master Program for the Thurston Region does not have specific policies or regulations for retaining walls. *Findings of Fact 7, 9 & 12.*

5. The Thurston County CAO applies. *Findings of Fact 6.* Retaining walls for an existing single family residence are only allowed when non-structural techniques are no longer viable. In this case an emergency permit was issued so that the sliding could be stopped as soon as possible. The Applicant initially installed a drainage system in order to dry out the bluff, but this proved unsuccessful. *Findings of Fact 2 & 3.* As was done here, a retaining wall is only allowed as a last resort. The CAO also requires a revegetation plan, which the Applicant has submitted. *Findings of Fact 12.*

**DECISION**

Based upon the preceding Findings and Conclusions, the request for a Shoreline Substantial Development Permit and a Conditional Use Permit for a Shoreline Substantial Development Permit and a Shoreline Conditional Use Permit is **APPROVED**, subject to the following conditions:

1. Proper disposal of construction debris shall be conducted on land in a manner that debris cannot enter Puget Sound or cause water quality degradation of state waters.

2. Proper erosion and sediment control practices must be implemented and used on the construction site and adjacent areas to prevent upland sediments from entering Puget Sound. All areas disturbed or newly created by construction activities must be revegetated using bioengineering techniques or other equivalent protection.

3. All conditions listed on the May 11, 2000 Mitigated Determination of NonSignificance must be complied with and become part of the condition of the permit.

4. The existing maple trees on the top of the banks shall remain and not be removed or disturbed.

5. There shall be no removal of trees on the bank.
6. Except where it is in conflict with conditions 4 and 5. The submitted revegetation plan (Exhibit 2) shall be followed

Decided this 5th day of July 2000.

______________________________________________
James M. Driscoll
Hearing Examiner for Thurston County

Property owners affected by this decision may request a change in valuation for property tax purposes from the Thurston County Assessor. TCC 20.60.020(3)(j)