



COUNTY COMMISSIONERS

Cathy Wolfe
 District One
 Sandra Romero
 District Two
 Karen Valenzuela
 District Three

HEARING EXAMINER

Creating Solutions for Our Future

**BEFORE THE HEARING EXAMINER
 FOR THURSTON COUNTY**

| | | |
|--|---|------------------------|
| In the Matter of the Application of |) | NO. 2012102888 |
| |) | |
| Gary Campbell |) | |
| |) | |
| For Approval of a |) | |
| Shoreline Substantial Development Permit |) | FINDINGS, CONCLUSIONS, |
| And Shoreline Conditional Use Permit |) | AND DECISION |
| _____ |) | |

SUMMARY OF DECISION

The request for a shoreline substantial development permit and shoreline conditional use permit to install a pre-manufactured pool approximately 60 feet from the ordinary high water mark and 50-feet from the top of a marine bluff on Puget Sound in the Rural Shoreline Environment is **GRANTED** subject to conditions.

SUMMARY OF RECORD

Request:

Gary Campbell (Applicant) requested shoreline substantial development and shoreline conditional use permits to install a swimming pool approximately 60 feet from the ordinary high water mark and 50-feet from the top of a marine bluff on Puget Sound in the Rural Shoreline Environment. The project site is atop the marine bluff at 4018 Sunset Beach Drive.

Hearing Date:

The Thurston County Hearing Examiner held an open record hearing on the request on March 18, 2013.

Testimony:

At the hearing the following individuals presented testimony under oath:

- Tony Kantas, Associate Planner, Resource Stewardship Department
- Brad Sangston, Thurston County Public Health and Social Services
- Gary Campbell, Applicant
- Lisa Palazzi, Applicant Representative

Scott Severs, Applicant Representative

Exhibits:

At the hearing the following exhibits were admitted in the record:

Exhibit 1 Resource Stewardship Department Staff Report, including the following attachments:

Attachment a Notice of Public Hearing

Attachment b Site Plan, dated Revision 1/2913

Attachment c Vicinity, Aerial, and Contour Map

Attachment d JARPA Application, submitted on January 7, 2013

Attachment e Notice of application mailed on September 18, 2012

Attachment f Memorandum from John Ward, Thurston County Health Department dated August 2, 2012

Attachment g Memorandum from Arthur Saint, Public Works, dated January 8, 2013

Attachment h Mitigated Determination of Non-Significance for Shoreline Exemption, dated January 22, 2013

Attachment i Shoreline Exemption Approval, dated March 5, 2013

Attachment j February 5, 2013 Letter from Washington State Department of Ecology

Attachment k October 8, 2012 Letter from Washington State Department of Ecology

Attachment l Supplement Report, dated June 28, 2012

Attachment m Geotechnical Report, dated June 28, 2012

Exhibit 2 Full size site plan

Exhibit 3 Color copies of 12 photographs of the site

Based upon the record developed at hearing, the following findings and conclusions are entered in support of the decision of the Hearing Examiner:

FINDINGS

1. The Applicant requested a shoreline substantial development permit and shoreline conditional use permit to install a pre-manufactured pool approximately 60 feet from the

ordinary high water mark and 50-feet from the top of a marine bluff on Puget Sound. The subject property is a 1.13-acre single-family residential parcel that fronts Eld Inlet and is accessed from Sunset Beach Drive.¹ *Exhibit 1, pages 1-2; Exhibit 1, Attachment D.*

2. The subject property is zoned Residential LAMIRD Zoning District (RL 1/1), One Unit Per One Acre. Surrounding land uses consist of single-family residences. The site contains an existing residence. *Exhibit 1, page 2.*
3. Land within 200 feet of the ordinary high water mark of Puget Sound is subject to the jurisdiction of the Shoreline Management Act. The shorelands on the subject property have been designated Rural Shoreline Environment pursuant to the Shoreline Master Program for the Thurston Region (SMPTR). *Exhibit 1, page 2.*
4. In related applications not under review in the instant proceedings, the Applicant submitted an application for shoreline exemption seeking to remove the existing single-family dwelling, decommission the existing on-site septic system, and construct a new single-family residence with a new septic system to current County standards. Thurston County conditionally approved the exemption in the "normal maintenance and repair" category on March 5, 2013. *Exhibit 1, Attachment I.* Additionally, the Applicant is working with the US Army Corp of Engineers, Washington State Department of Fish and Wildlife, and Thurston County to receive shoreline exemption approval. Proposed improvements include: repairs to an existing retaining wall at the top of the slope and an existing deck structure; repair of significant toe slope erosion and undercutting below the deck structure; beach feeding with gravel; installation of a new stormwater outfall to send on-site stormwater to the beach rather than down the face of the bluff; removal of two of three existing decks; deconstruction and removal of a failing tram structure; removal of an adjacent free-standing deck structure including concrete foundations from the beach; removal of existing English ivy from some portions of the bluff face around the deck and tram structures; and replanting of all disturbed bluff areas with native plants. *Exhibit 1, Attachments I and J; Exhibit 1, page 2.* None of these actions are under consideration in the instant shoreline permit applications. *Kantas Testimony.*
5. Thurston County Resource Stewardship Department was designated lead agency for review of the environmental impacts of the Applicant's overall project, including both the work proposed under the shoreline exemption and the instant swimming pool. Upon review of the applications and supplemental information from the Applicant, an environmental checklist, a marine bluff geotechnical report, and comments from the Washington State Department of Ecology, the County's SEPA Responsible Official issued a mitigated determination of non-significance (MDNS) on January 22, 2013 containing 16 conditions with which all development of the site must comply. The MDNS was not appealed and became final on February 12, 2013. *Exhibit 1, Attachment*

¹ The legal description of the site is a portion of Section 32, Township 19N, Range 2W; also known as Tax Parcel No. 12932320600. *Exhibit 1, page 1.*

H; Kantas Testimony.

6. The Rural Shoreline Environment requires a 50-foot setback from the ordinary high water mark (OHWM) of Puget Sound. *SMPTR Section Three, Chapter XVI.D.3.c.* The Thurston County critical areas ordinance (CAO) requires a 50-foot setback landward from the top of the marine bluff. *Thurston County Code (TCC) 17.15.620.B.2.*
7. If approved, the instant shoreline permits would authorize installation of a manufactured swimming pool 60 feet from the OHWM and 50 feet from the top of the marine bluff. Presently, the area between the top of the bluff and the edge of the existing deck is covered with shrubby vegetation and ivy. The pool would be four to five feet deep and 35 by 15 feet wide, with the long side parallel to the shoreline. The fiberglass pool would be installed by a licensed professional installer in an excavated hole dug six inches deeper than the pool depth. The hole would be filled with sand and leveled to create a pad for the pool. The sides of the hole would be approximately one-foot wider all around than the pool dimensions. The pool would be filled with water simultaneously as the gap around the pool is filled with sand to ensure proper placement and settling. *Exhibit 1, Attachments D and L; Palazzi Testimony; Campbell Testimony.*
8. The pool would be heated and covered when not in use. Rather than standard pool chemicals, the proposal would use a salt water purification system in which the only compound added to the water is regular salt (NaCl). The average dissolved salt levels in the water would range from 3000 to 5000 parts per million, which is less saline than typical contact lens solution. *Exhibit 1, Attachments D and L; Palazzi Testimony.*
9. The pool would not have a drain on the bottom and is not designed to be drained. Rather than emptying it to clean the water, a process called "freshening" would be used during which the pool is partially drained at the same time fresh water is added. Typically, the pool is freshened every other year, draining about 500 gallons and adding the same amount back. The pool water is not allowed or proposed to be drained to the beach. Although the materials submitted with the application discuss sending the drained pool water to regional treatment with the pumped out septic system, at hearing the Applicant indicated that there is no intention to do so. Rather, because the salinity is so low, the Applicant intends to water on-site lawn and landscaping with the water drained from the pool every other year. *Exhibit 1, Attachment L; Campbell Testimony; Palazzi Testimony.*
10. The pool manufacturer offers a 25-year warranty. Fiberglass is more flexible and able to withstand pressure better than concrete. Any damage to the fiberglass pool resulting in a leak that allowed pool water to escape into soils below would be visually detectable fairly shortly upon commencement of leaking. Discrete cracks could be patched under water; larger damage to the pool would require it to be removed. *Campbell Testimony; Palazzi Testimony.*
11. Staff from the County Public Health Department noted that draining the pool through the on-site septic system could damage the system due to hydraulic overload and that pool water could have a negative biological effect on the bacteria in the tank. The Health

Department would not approve of draining the pool via the on-site septic system.
Sangston Testimony.

12. Swimming pools are not listed as permitted or prohibited shoreline uses, identified as customary accessory uses to single-family residences, or classified in any manner in the SMPTR. Because its fair market value exceeds the threshold of \$6,416, a shoreline substantial development permit is required for construction of a pool within the shorelands. *Washington Administrative Code (WAC) WAC 173-27-040(2)(a); Exhibit 1, Attachment D.* As an unclassified use, the SMPTR also requires a shoreline conditional use permit. *WAC 173-27-160; Exhibit 1, page 2; Kantas Testimony.*
13. The Applicant submitted a professionally prepared geotechnical report assessing the impacts of the proposal on the marine bluff. According to the survey, the marine bluff toeslope is at 7.5 feet elevation and the top of the slope is at 25 feet, making the bluff height 17.5 feet. Despite being less than 20 feet in height, the bluff is still regulated because the Coastal Zone Atlas maps the entire shoreline in the area as "unstable." According to the Applicant's geotechnical consultant, the on-site bluff is currently stable. The work proposed under the Applicant's shoreline exemption would protect bluff functions and reduce the potential for future erosion and sloughing. The swimming pool would provide the required 50-foot setback from the top of the slope. Soil weighs 1.3 to 1.5 times as much as water; therefore, the pool would weigh less than the soil currently at the top of the slope. The pool would not drain into the soil on top of the slope. The proposed pool would not adversely affect the marine bluff. *Exhibit 1, Attachment M; Palazzi Testimony.* County Staff determined that the report satisfied the requirements of the critical areas ordinance for review of geologic hazard areas. *Kantas Testimony.*
14. Thurston County Public Health and Social Services Staff provided testimony at the hearing indicating that the proposed placement of the swimming pool satisfies all required setbacks from domestic water and septic components and waived any objection to the approval aside from the objection to draining the "freshening" pool water via the septic system. *Sangston Testimony.*
15. The Washington State Department of Ecology (DOE) submitted comments on the proposal noting: that a conditional use permit is required for the pool; that appropriate measures must be taken if contaminants are discovered in site soils during construction; removal of construction debris; prevention of sediment laden discharge to Puget Sound; and the fact that the proposal must comply with the Shoreline Management Act and the SMPTR. *Exhibit 1, Attachments J and K.*
16. Notice of the public hearing was sent to all property owners within 500 feet of the site on March 4, 2013. Notice was also posted on-site and published in The Olympian on March 8, 2013, at least ten days prior to the hearing. *Exhibit 1, page 2; Exhibit 1, Attachment A; Exhibit 2.* The County received no public comment on the proposal. *Kantas Testimony.*
17. Upon hearing testimony offered at the public hearing and review of evidence submitted by the Applicant, Planning Staff recommended approval of the shoreline permits with

conditions. *Kantas Testimony; Exhibit 1, pages 5-6.* The Applicant waived objection to the recommended conditions of approval. *Campbell Testimony.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner is granted jurisdiction to hear and decide applications for shoreline substantial development permits and shoreline conditional use permits pursuant to RCW Chapter 36.70, WAC 173-27, and Section One, Part V of the Shoreline Master Program for the Thurston region.

Criteria for Review

Shoreline Substantial Development Permit (WAC 173-27-150)

To be approved by the Hearing Examiner, the proposed shoreline substantial development permit must be consistent with:

- A. The policies and procedures of the Shoreline Management Act;
- B. The provisions of applicable regulations; and
- C. The Shoreline Master Program for the Thurston Region.

A. Shoreline Management Act

Chapter 90.58 RCW, the Washington State Shoreline Management Act (SMA) of 1971, establishes a cooperative program of shoreline management between the local and state governments with local government having the primary responsibility for initiating the planning required by the chapter and administering the regulatory program consistent with the Act. The Thurston County Shoreline Master Program (SMPTR) provides goals, policies and regulatory standards for ensuring that development within the shorelines of the state is consistent the policies and provisions of Chapter 90.58 RCW.

The intent of the policies of RCW 90.58.020 is to foster “all reasonable and appropriate uses” and to protect against adverse effects to the public health, the land, and its vegetation and wildlife. The SMA mandates that local governments adopt shoreline management programs that give preference to uses (in the following order of preference) that: recognize and protect the statewide interest over local interest; preserve the natural character of the shoreline; result in long term over short term benefit; protect the resources and ecology of the shoreline; increase public access to publicly owned areas of the shorelines; and increase recreational opportunities for the public in the shoreline. The public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state is to be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses that are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline, are to be given preference.

B. Applicable regulations from the Washington Administrative Code

WAC 173-27-140 Review criteria for all development.

- (1) No authorization to undertake use or development on shorelines of the state shall be granted by the local government unless upon review the use or development is determined to be consistent with the policy and provisions of the Shoreline Management Act and the master program.
- (2) No permit shall be issued for any new or expanded building or structure of more than thirty-five feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines except where a master program does not prohibit the same and then only when overriding considerations of the public interest will be served.

WAC 173-27-190 Permits for substantial development, conditional use, or variance.

- (1) Each permit for a substantial development, conditional use or variance issued by local government shall contain a provision that construction pursuant to the permit shall not begin and is not authorized until twenty-one days from the date of filing as defined in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within twenty-one days from the date of such filing have been terminated; except as provided in RCW 90.58.140 (5)(a) and (b).

C. Shoreline Master Program for the Thurston Region
The following are applicable provisions of the SMPTR:

SMPTR Section Two -- General Goals and Policies

C. Rural Environment (page 30)

Purpose. The primary purposes of the Rural Environment are to protect areas from urban expansion, restrict intensive developments along undeveloped shore-lines, function as a buffer between urban areas, and maintain open spaces for recreational purposes compatible with rural uses. New developments in a Rural Environment are to reflect the character of the surrounding area.

Definition. The "Rural Environment" designates shoreline areas in which land will be protected from high-density urban expansion and may function as a buffer between urban areas and the shorelines proper. This environment is characterized by low intensity land use and moderate to intensive water use. Residential development does not exceed two dwellings per acre. Visual impact is variable with a moderate portion of the environment dominated by structures of impermeable surfaces. Intensive cultivation and development of the renewable soils, aquatic and forest resources, as well as limited utilization of nonrenewable mineral resources is permitted. Recreational activities and public access to the shoreline are encouraged to the extent compatible with other rural uses and activities designated for this environment.

SMPTR Section Two, Chapter V. REGIONAL CRITERIA (pages 22-23)

The Shoreline Master Program for the Thurston Region contains regional criteria that apply to the proposal. All development within the jurisdiction of this Master Program shall demonstrate compliance with the following criteria:

- A. Public access to shorelines shall be permitted only in a manner which preserves or enhances the characteristics of the shoreline which existed prior to establishment of public access.
- 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.
- C. Future water-dependent or water-related industrial uses shall be channeled into shoreline areas already so utilized or into those shoreline areas which lend themselves to suitable industrial development. Where industry is now located in shoreline areas that are more suited to other uses, it is the policy of this Master Program to minimize expansion of such industry.
- D. Residential development shall be undertaken in a manner that will maintain existing public access to the publicly-owned shorelines and not interfere with the public use of water areas fronting such shorelines, nor shall it adversely affect aquatic habitat.
- E. Governmental units shall be bound by the same requirements as private interests.
- 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.

SMPTR Section Three, Policies And Regulations For Use Activities, Chapter XVI, Residential Development (pages 98-107)

The SMPTR defines "residential development" as activity associated with provision of human dwelling facilities, including subdivision of property, accessory buildings common to residential structures and individual utility services to residential units. The following policies, general regulations, and shoreline environment-specific regulations apply.

B. Policies

1. Residential development on shorelines and wetlands should be planned with minimum adverse environmental and visual impact.
2. Clustering of residential development is encouraged to minimize adverse environmental impact and to provide open spaces.
3. Residential developments created after the effective date of this Program should provide adequate common access to the shoreline and open space along the shoreline for all residences of the subdivision. The access and open space should be of adequate size to provide for recreation and to insure against unreasonable interference with adjacent properties.
4. When subdividing land, the area under shoreline jurisdiction may be set aside as an open space tract even if the tract would be smaller than the minimum lot size requirement in that shoreline environment. The public interest is served by maintaining shoreline property in a relatively undeveloped state, and private interests are furthered by allowing more flexibility in site design.
5. Residential developments created after the effective date of this Program should provide easements for access to or along the shorelines for the general public if there has been significant historical usage by the public. Historic use is regular use by the public over a period of years rather than incidental or occasional use by one or only few members of the public. This policy is not intended to apply to construction of an individual dwelling on a single lot.
6. Residential development should be consistent with the environmental designation in which it is located as well as the local jurisdiction's land use plans and ordinances. If a conflict arises between the regulations of the Master Program and some other regulation of the local jurisdiction, then the most restrictive standard or density shall prevail.
7. Removal of vegetation should be minimized and any areas disturbed should be restored to prevent erosion and other environmental impacts.
8. Waste materials from construction should not be left on shorelines or beaches but stored upland.
9. A variety of housing types on land should be encouraged provided that they are consistent with the environmental designation criteria and the zoning regulations for the site.
10. Residential structures should be located to minimize obstruction of views of the water from upland areas. The intent of this policy is to encourage the retention of views in and through new residential developments. This policy is not intended to prohibit the development of individual shoreline lots simply because it may minimize or eliminate views from upland properties.

11. Residential development along shorelines should be designed and sited to make unnecessary such protective measures as filling, beach feeding, bulkheading, shoreline berms, construction groins or jetties, or substantial grading of the site.

C. General Regulations

1. Residential development over water is not permitted.
2. "Submerged lands" within the boundaries of any waterfront parcel shall not be used to compute required lot area, lot dimensions, densities and/or required yards. Wetlands, i.e., marshes, bogs, swamps and tidelands, may or may not be used to compute required lot area, lot dimensions, densities and/or required yards depending upon adopted local policy of the legislative body of each jurisdiction. That portion of a parcel not identified as a submerged land or a wetland shall be referred to as dry land area. Wetlands may be included as open space depending upon adopted local policy of the legislative body of each jurisdiction.
3. Residential development proposals shall identify those areas of natural vegetation, retention and erosion control measures.
4. Residential development shall be arranged and designed to protect views, vistas, aesthetic values to protect the character of the shoreline environment and the views of neighboring property owners.
5. Residential structures shall not exceed thirty-five (35) feet above average grade unless it can be shown through the variance process that a higher structure will not interfere with visual access to the water from landward or adjacent properties. [Exception: See Urban Environment regulation 1.d]
6. Landfill for residential development which results in the creation of new dry land is prohibited.
7. Landfilling in flood hazard areas is allowed only for flood protection.
8. Storm drainage facilities shall be separate from sewage disposal facilities and include provisions, as required by the jurisdiction, to prevent direct entry of surface water runoff into receiving waters (see Utilities and Road Section).
9. Residential developers must demonstrate that ground water withdraws are consistent with state regulations.
10. New residential subdivisions have the option of setting aside in an open space tract the portion of the property being divided that is under the jurisdiction of this Master Program. The following conditions must be met:
 - a. Restrictive covenants must be filed prior to final subdivision approval prohibiting the use of the open space tract as a building site.

- b. The open space tract must be clearly identified on the final plat map.
11. All stair towers meeting one of the following conditions must be designed by a licensed civil engineer:
 - a. The location proposed is mapped as "unstable" or "Intermediate Stability" in the Washington Coastal Zone Atlas prepared by the State Department of Ecology.
 - b. All stair towers 24 feet in height or greater.
 - c. Other instances where the building official determines that site conditions dictate the preparation of plans by a licensed civil engineer.
12. Stair towers shall be designed to minimize obstructing the views enjoyed by adjoining residences.
13. Only one (1) dock or pier is permitted in a new residential development. Prior to final project approval of a residential development, a usable area shall be set aside for pier or dock; unless there is no suitable area.
14. New residential developments shall provide general public access to and along shorelines that have been historically used by the public for recreation.
15. Residential subdivision developments and planned unit developments shall provide areas sufficient to ensure usable access to and along the shoreline area for all residents of the development except where the shoreline topography does not permit the same.
16. Each shoreline environment has a setback requirement for structures, from the ordinary high-water mark. Uncovered porches, decks or steps may project into the required setback provided such structures are no higher than thirty (30) inches above the average grade. The setback in each environment may be increased or decreased by the Administrator in the following way:
 - a. Increased Setback Requirements. The setback may be increased if the building area or setback areas have a slope of greater than forty percent (40%), severe slope instability exists or a feeder bluff is present. (Refer to the Coastal Zone Atlas of Washington, Volume 8, to identify these areas on marine shorelines.)
 - b. Decreased Setback Requirements. The setback may be relaxed provided that existing structures within three hundred (300) feet of each property line infringe on the setback. In such cases, the setback shall be determined by averaging the setback's existing structures within three hundred (300) feet along the waterfront of each property line. This shall not be construed to allow residential development over water. The setback shall be the minimum required in the environment on properties within three hundred (300) feet where residences do not exist for purposes of averaging.

17. Clustering of residential dwellings in all environments except Natural is allowed. The number of clustered lots or residential units encroaching into the shoreline area shall not exceed the number of units which results from multiplying the total acres (minus submerged lands) in shoreline area by the density allowed in the specific environment.
18. Proposed residential development in the vicinity of aquaculture operations shall install drainage and waste treatment facilities to prevent any adverse impacts to aquaculture operations.
19. Restrictive covenants shall be filed which will inform prospective buyers of the proximity of the Aquacultural District for residential development proposed within or adjacent to an Aquacultural District, or which may be adversely affected by the aquaculture operation. Residential development, which requires plat approval or site plan review, shall be approved subject to a requirement that notice of the proximity of the Aquacultural District be placed on the face of the plat. Another suitable mechanism shall be used to notify new residents when the project does not require plat approval.

D. Environmental Designations and Regulations

3. Rural Environment
 - a. Residential densities in this environment shall not exceed two dwelling units per acre, regardless of housing type.
 - b. For shoreline lots which are not clustered, the minimum lot size shall be twenty thousand (20,000) square feet of dry land area and the minimum lot width shall be one hundred (100) feet (measured at the ordinary high water mark and at the building setback line). Lot coverage with impervious surfaces in this environment shall not exceed thirty percent (30%).
 - c. The basic setback for residential structures shall be fifty (50) feet from the ordinary high-water mark and/or comply with General Regulation #16.
 - d. Land clearing and grading is permitted after obtaining a shoreline permit, an exemption from the Administrator, or a land clearing permit from the local jurisdiction for preparation of new building sites. A buffer of existing ground cover must be maintained in the area between the ordinary high-water mark and twenty (20) feet from the structure. The ground cover in the buffer may be disturbed only after approval of the Administrator where one or more of the following conditions apply:
 - (1) A building site has been approved in the buffer area and an erosion control and vegetation protection plan has been approved by the Administrator.
 - (2) The applicant wishes to landscape the area with other vegetation and has an erosion control plan approved by the Administrator.
 - (3) When the construction of access pathway is proposed for to the shoreline,

vegetation will be removed only within the boundaries of constructed access pathway.

Shoreline Conditional Use Criteria (WAC 173-27-160)

The Washington Administrative Code (WAC) contains criteria for review of Conditional Use applications. The Applicant must demonstrate compliance with the criteria for the Conditional Use to be authorized. The criteria are listed below, along with staff analysis of project compliance.

- (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 90.59.020 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

Shoreline Substantial Development Permit

1. As conditioned, the proposal would be consistent with the policies and procedures of the Shoreline Management Act. Residential development and residential appurtenances are

allowed in the Rural Shoreline Environment. Installation of a swimming pool in compliance with shoreline and critical area setbacks is a “reasonable and appropriate use” of the shorelands within the project limits. The project was reviewed by the County's Health Department and no impacts to public health were identified. The swimming pool would not impact public shoreline access or views from upland or from the water. The pool was considered in review for compliance with SEPA and an MDNS was issued. *Findings 3, 5, 7, 8, 9, 10, 11, 12, 13, 14, and 17; SMPTR Section 3, Chapter XVI.*

2. As conditioned, the swimming pool project complies with applicable regulations in the Washington Administrative Code. No new above-grade structures would be installed. There would be no impacts to views or the character of the rural area. A condition of approval would ensure compliance with the requirements of WAC 173-27-190. *Findings 7, 8, 9, 10, 11, and 12.*
3. The proposal is consistent with the applicable policies and regulations of the Shoreline Master Program for the Thurston Region, including those applicable to residential uses in the shoreline jurisdiction and those specific to the Rural Shoreline Environment. The proposed pool would function as a residential appurtenance and in this way be compatible with surrounding existing and permitted uses. It would enhance on-site recreational opportunities without impacting any existing public recreational access to the shoreline. In complying with the 50-foot Rural Shoreline Environment setback, the proposal would not impact the shoreline, water quality, aquatic habitat, or the public health. Built into the ground, the pool would not impact views from upland parcels, nor affect views of the bluff from the water. *Findings 7, 8, 9, 10, 11, 12, 13, 14, and 17.*

Shoreline Conditional Use Permit

4. As concluded above in the SSDP conclusions, the proposal is consistent with the policies of RCW 90.58.020 and the SMPTR. It would result in no impacts to public shoreline access and no adverse effects to the shoreline environment. The proposed pool would function as a residential amenity, increasing recreation opportunities on-site without impacting neighborhood character, water quality, or habitat. The Rural Shoreline Environment's required 50-foot setback from the ordinary high water mark would be satisfied. Pool water would not be drained down the bluff nor onto the beach, nor in a concentrated fashion into soils on top of the bluff. The record contains no evidence of harm to the public. *Findings 3, 5, 7, 8, 9, 10, 11, 12, 13, 14, and 17.*
5. Should additional residences in the nearby Rural Shoreline Environment apply for permits to install swimming pools that comply with SMPTR policies and regulations, including the shoreline and critical areas setbacks, there would be no cumulative impacts to Puget Sound. *Findings 7, 8, 9, 10, and 11.*

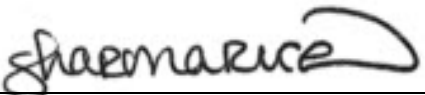
DECISION

Based upon the preceding findings and conclusions, the requested shoreline substantial development permit and shoreline conditional use permit to install a pre-manufactured pool approximately 60 feet from the ordinary high water mark and 50-feet from the top of a marine

bluff on Puget Sound in the Rural Shoreline Environment is **GRANTED** subject to the following conditions:

1. The Applicant must obtain a building permit for the swimming pool from the Thurston County Permit Assistance Center.
2. The proposed project must be consistent with all applicable policies and other provisions of the Shoreline Management Act, its rules, and the Shoreline Master Program for the Thurston Region.
3. The swimming pool shall maintain a minimum setback of 50 feet from the ordinary high water line of the Puget Sound and six feet from the side property lines.
4. The swimming pool shall be enclosed by a fence or other barrier at least forty-two inches in height (TCC 20.07.040(5)).
5. Prior to draining the pool, all water within the pool shall be neutralized of all chemicals. The drained water shall not be discharged into the Puget Sound or the on-site septic system. The Applicant shall contact Washington State Department of Ecology and abide by all State requirements for draining the swimming pool.
www.ecy.wa.gov/biblio/0610015.html
6. The impervious surface of the subject property shall not exceed thirty percent (30%).
7. All development shall be in substantial compliance with drawings and site plan submitted and made part of this staff report. Any expansion or alteration of this use will require approval of a new or amended Shoreline Substantial Development Permit and/or Shoreline Conditional Use Permit. The Resource Stewardship Department will determine if any proposed amendment is substantial enough to require Hearing Examiner approval.
8. Construction pursuant to the permit shall not begin and is not authorized until twenty-one days from the date of filing as defined in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within twenty-one days from the date of such filing have been terminated; except as provided in RCW 90.58.140 (5)(a) and (b).

Decided April 1, 2013 by



Sharon A. Rice
Thurston County Hearing Examiner

THURSTON COUNTY
PROCEDURE FOR RECONSIDERATION AND APPEAL
OF HEARING EXAMINER DECISION TO THE BOARD

NOTE: THERE MAY BE NO EX PARTE (ONE-SIDED) CONTACT OUTSIDE A PUBLIC HEARING WITH EITHER THE HEARING EXAMINER OR WITH THE BOARD OF THURSTON COUNTY COMMISSIONERS ON APPEALS (Thurston County Code, Section 2.06.030).

If you do not agree with the decision of the Hearing Examiner, there are two (2) ways to seek review of the decision. They are described in A and B below. Unless reconsidered or appealed, decisions of the Hearing Examiner become final on the 15th day after the date of the decision.* The Hearing Examiner renders decisions within five (5) working days following a Request for Reconsideration unless a longer period is mutually agreed to by the Hearing Examiner, applicant, and requester.

The decision of the Hearing Examiner on an appeal of a SEPA threshold determination for a project action is final. The Hearing Examiner shall not entertain motions for reconsideration for such decisions. The decision of the Hearing Examiner regarding a SEPA threshold determination may only be appealed to Superior Court in conjunction with an appeal of the underlying action in accordance with RCW 43.21C.075 and TCC 17.09.160. TCC 17.09.160(K).

A. RECONSIDERATION BY THE HEARING EXAMINER (Not permitted for a decision on a SEPA threshold determination)

1. Any aggrieved person or agency that disagrees with the decision of the Examiner may request Reconsideration. All Reconsideration requests must include a legal citation and reason for the request. The Examiner shall have the discretion to either deny the motion without comment or to provide additional Findings and Conclusions based on the record.
2. Written Request for Reconsideration and the appropriate fee must be filed with the Resource Stewardship Department **within ten (10) days of the written decision**. The form is provided for this purpose on the opposite side of this notification.

B. APPEAL TO THE BOARD OF THURSTON COUNTY COMMISSIONERS (Not permitted for a decision on a SEPA threshold determination for a project action)

1. Appeals may be filed by any aggrieved person or agency directly affected by the Examiner's decision. The form is provided for this purpose on the opposite side of this notification.
2. Written notice of Appeal and the appropriate fee must be filed with the Resource Stewardship Department **within fourteen (14) days of the date of the Examiner's written decision**. The form is provided for this purpose on the opposite side of this notification.
3. An Appeal filed within the specified time period will stay the effective date of the Examiner's decision until it is adjudicated by the Board of Thurston County Commissioners or is withdrawn.
4. The notice of Appeal shall concisely specify the error or issue which the Board is asked to consider on Appeal, and shall cite by reference to section, paragraph and page, the provisions of law which are alleged to have been violated. The Board need not consider issues, which are not so identified. A written memorandum that the appellant may wish considered by the Board may accompany the notice. The memorandum shall not include the presentation of new evidence and shall be based only upon facts presented to the Examiner.
5. Notices of the Appeal hearing will be mailed to all parties of record who legibly provided a mailing address. This would include all persons who (a) gave oral or written comments to the Examiner or (b) listed their name as a person wishing to receive a copy of the decision on a sign-up sheet made available during the Examiner's hearing.
6. Unless all parties of record are given notice of a trip by the Board of Thurston County Commissioners to view the subject site, no one other than County staff may accompany the Board members during the site visit.

C. STANDING All Reconsideration and Appeal requests must clearly state why the appellant is an "aggrieved" party and demonstrate that standing in the Reconsideration or Appeal should be granted.

D. FILING FEES AND DEADLINE If you wish to file a Request for Reconsideration or Appeal of this determination, please do so in writing on the back of this form, accompanied by a nonrefundable fee of **\$595.00** for a Request for Reconsideration or **\$820.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Permit Assistance Center on the second floor of Building #1 in the Thurston County Courthouse complex no later than 4:00 p.m. per the requirements specified in A2 and B2 above. **Postmarks are not acceptable.** If your application fee and completed application form is not timely filed, you will be unable to request Reconsideration or Appeal this determination. The deadline will not be extended.

* Shoreline Permit decisions are not final until a 21-day appeal period to the state has elapsed following the date the County decision becomes final.



| |
|---|
| Project No. <u>2012102888</u> Appeal Sequence No.: _____ |
|---|

Check here for: RECONSIDERATION OF HEARING EXAMINER DECISION

THE APPELLANT, after review of the terms and conditions of the Hearing Examiner's decision hereby requests that the Hearing Examiner take the following information into consideration and further review under the provisions of Chapter 2.06.060 of the Thurston County Code:

(If more space is required, please attach additional sheet.)

Check here for: APPEAL OF HEARING EXAMINER DECISION

TO THE BOARD OF THURSTON COUNTY COMMISSIONERS COMES NOW _____
 on this _____ day of _____, 20___, as an APPELLANT in the matter of a Hearing Examiner's decision rendered on _____, 20___, by _____ relating to _____

THE APPELLANT, after review and consideration of the reasons given by the Hearing Examiner for his decision, does now, under the provisions of Chapter 2.06.070 of the Thurston County Code, give written notice of APPEAL to the Board of Thurston County Commissioners of said decision and alleges the following errors in said Hearing Examiner decision:

Specific section, paragraph and page of regulation allegedly interpreted erroneously by Hearing Examiner:

1. Zoning Ordinance _____
2. Platting and Subdivision Ordinance _____
3. Comprehensive Plan _____
4. Critical Areas Ordinance _____
5. Shoreline Master Program _____
6. Other: _____

(If more space is required, please attach additional sheet.)

AND FURTHERMORE, requests that the Board of Thurston County Commissioners, having responsibility for final review of such decisions will upon review of the record of the matters and the allegations contained in this appeal, find in favor of the appellant and reverse the Hearing Examiner decision.

STANDING

On a separate sheet, explain why the appellant should be considered an aggrieved party and why standing should be granted to the appellant. This is required for both Reconsiderations and Appeals.

Signature required for both Reconsideration and Appeal Requests

 APPELLANT NAME PRINTED

 SIGNATURE OF APPELLANT

Address _____

 Phone _____

Please do not write below - for Staff Use Only:

Fee of \$595.00 for Reconsideration or \$820.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
 Filed with the Resource Stewardship Department this _____ day of _____, 20___.